Metropolitan area) or toll free (800) 424-5403.

Decided: December 30, 1983.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Sterrett did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-432 Filed 1-6-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 447]

Petition To Delay Application of Direct Connector Requirement to Joint Rail Rates in General Increases

AGENCY: Interstate Commerce Commission.

ACTION: Final decision.

SUMMARY: The Commission finds that petitioners failed to show that it is not feasible for railroads to implement without delay and put into effect on January 1, 1984, the "direct connector" standard of 49 U.S.C. 10706(a)(3)(B) for joint rail rates in general rate increases. The petition for an extension of antitrust immunity is denied.

DATES: The decision is effective on January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the complete decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Authority: 49 U.S.C. 10321 and 10706; and 5 U.S.C. 553.

Decided: December 28, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre dissented with a separate expression.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-433 Filed 1-6-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-92)

Seaboard System Railroad, Inc.; Abandonment in Jefferson County, AL; Findings

The Commission has issued a certificate authorizing the Seaboard System Railroad, Inc. (SBD) to abandon its 6.7 mile rail line between milepost WR-374.2 near Monmouth and milepost WR-380.9 near Kimberly in Jefferson County, AL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-429 Filed 1-6-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-90)]

Seaboard System Railroad, Inc.; Abandonment in Sumter County, FL; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 5.48 mile rail line known as the Tarrytown Spur of the Tampa Division, between milepost AT-826.52, near Mabel, FL, and milepost AT-832.0, near Tarrytown, FL, in Sumter County. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person had offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicnt no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-430 Filed 1-6-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 83-2]

Hawkins Rexall Drug Inc.; Revocation of Registration

On December 6, 1982, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Hawkins Rexall Drug, Inc. (Respondent), 113 South Market Street, Madison, North Carolina 27025, seeking to revoke DEA Certificate of Registration AH3165962 issued to Respondent under 21 U.S.C. 823. The statutory predicate for the order under 21 U.S.C. 824(a)(2) was the conviction of Clayburn Irvin Hawkins, R.Ph., the owner and manager of Respondent pharmacy, on September 21, 1982, in the United States District Court for the Middle District of North Carolina of one count of unlawfully distributing a Schedule IV controlled substance in violation of 21 U.S.C. 841(a)(1). This is a felony conviction relating to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held May 24 and 25, 1983, in Greensboro, North Carolina. Administrative Law Judge Francis L. Young presided. On October 28, 1983, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, which were duly served on counsel for the Government and Respondent. The Government filed exceptions to Judge Young's recommended ruling. On November 23, 1983, the Administrative Law Judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. Having considered this record in its entirety, the Administrator under 21 CFR 1316.67 hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The investigation of Clayburn Hawkins began in early November, 1981 when campus police at the University of North Carolina-Greensboro reported to DEA that diverted controlled substances were appearing on campus. DEA

Diversion Investigator (DI) John Anthony and North Carolina State Bureau of Investigation (SBI) Agent Fred Tucker went to the University and interviewed three students about the report. One student said that on October 26, 1981, she and two other students drove with one Linwood Chapman to the Respondent pharmacy, about 20 miles from Greensboro. Chapman entered the pharmacy about 7:00 p.m. and shortly thereafter the lights were turned off. About 20 or 30 minutes later Chapman returned to the car with Clayburn Hawkins. Chapman had eight or ten various sized bottles of controlled substances with him. Similarly, on October 28, 1981, the student drove with Chapman to the pharmacy where Chapman again obtained controlled substances from Hawkins.

One of the students volunteered to aid in the investigation. He told the investigators that he had been engaged in a homosexual relationship with Chapman during which Chapman told the student he was receiving controlled substances from Hawkins. The student also said that during their relationship Chapman was in possession of substantial quantities of controlled substances. The student told Investigator Anthony that he believed that he, the student, could obtain controlled substances from Hawkins.

On December 3, 1981, Agent Tucker, another SBI agent and the student went to Respondent pharmacy. The student wore a body tape recorder and a recording was made of his conversation with Hawkins, who gave him a vial containing six dosage units of Placidyl 750 mg. and four dosage units of Placidyl 500 mg. This was an illegal distribution made without a prescription with respect to which Hawkins pled guilty.

The student telephoned Hawkins on December 9, 1981, to discuss a convenient time for the student to come to the pharmacy to pick up some "hits of speed" the following day. On December 10, 1981, Agent Tucker and the student proceeded to the pharmacy where, again, Hawkins unlawfully distributed 54 phentermine to the student.

On December 16, 1981, the student called Hawkins to tell him that the student and Agent Tucker might come to the pharmacy later that day to get some Placidyl. During the recorded conversation Hawkins said of Agent Tucker, "Tell him I might reach down and feel of him."

Later that day Agent Tucker went to the pharmacy. Hawkins gave him a bag bearing the student's name and Agent Tucker asked if he might have a few things for himself. Hawkins instructed the Agent to go to an office area behind the prescription counter out of sight of the public and other employees. Hawkins gave Tucker another bag. While they were talking, Hawkins made some sexual gestures and touched Agent Tucker in the groin area and said: "Where did he get a handsome stud like you?" The bag first given by Hawkins contained eight Placidyl 500 mg; two Placidyl 750 mg; two Quaalude 300 mg; and 28 phentermine. The second bag contained 18 Placidyl 500 mg.

Agent Tucker telephoned Hawkins on January 20, 1982. He asked Hawkins if he could obtain some Quaalude and Placidyl. Hawkins told him there was no way he could give Agent Tucker Quaalude, saying he needed a prescription and he could not take a prescription over the phone for that. Hawkins said he could get Agent Tucker a few Placidyl. Later that day, Agent Tucker went to the pharmacy and picked up a bottle of 24 Placidyl 500 mg. and 46 phentermine. As at each of his previous encounters with Hawkins, Agent Tucker did not present a prescription or pay any money.

On February 1, 1982, Agent Tucker again telephoned Hawkins at the pharmacy. He asked Hawkins if he could obtain Dilaudid 4 mg. or Quaalude. Dilaudid (hydromorphone) is a Schedule II narcotic that is heavily abused. Quaalude (methaqualone) is a Schedule II nonnarcotic that is also very heavily abused. Hawkins replied that there was "no way" he could help Agent Tucker with the Dilaudid and that he would need a prescription for the Quaalude. Agent Tucker asked Hawkins if he would fill a Quaalude prescription from a physician and Hawkins agreed.

Agent Tucker visited the pharmacy on February 2, 1982. Hawkins motioned Agent Tucker to the back room, saying he "couldn't do anything with the druggist out there." Hawkins told the agent to return at 8:00 that evening, again saying that he could not give him any drugs when "the other druggist is there." Agent Tucker asked Hawkins if Chapman ever paid for the controlled substances he obtained from Hawkins. Hawkins said that Chapman did not pay and that Chapman had stolen controlled substances from Respondent pharmacy. Agent Tucker also asked how Hawkins covered the controlled substances he was giving the student, Agent Tucker and Chapman. Hawkins said he simply acted as though it was a call-in prescription and would make up a name and sign a physician's name to it. This procedure would not work for Schedule II controlled substances, such as Dilaudid, according to Hawkins. They discussed Dilaudid and Hawkins said he could obtain six for Agent Tucker, who tendered a blank presciption from a cooperating dentist. Hawkins told the agent to "just hold the prescription."

The next day, February 3, 1982, Agent Tucker went to the pharmacy. Hawkins motioned the agent to the office area. He again told Agent Tucker he could not do anything with the other pharmacist present. After some discussion, Agent Tucker left and returned 15 minutes later at Hawkins's instruction. Hawkins gave Agent Tucker a vial containing six Dilaudid 4 mg. Dilaudid was selling for about $50 a tablet on the street in North Carolina at that time.

DI Anthony conducted an audit of the pharmacy in February, 1982. The audit revealed significant recordkeeping violations, including failure to take a required biennial inventory of several substances including Placidyl. At least 1,442 dosage units of phentermine and 230 dosage units of Quaalude 300 mg. could not be accounted for in Respondent pharmacy's records. The figure for Quaalude represents 47% of the quantity for which the pharmacy was accountable. DI Anthony found 34 suspicious prescriptions for controlled substances presumably "written" by area physicians. The physicians denied signing the prescriptions. They also did not recognize the patients' names on the prescriptions.

Jerry Welch, the Chief of Police in Madison, North Carolina, the town in which Respondent pharmacy is located, testified that he visited the home of Linwood Chapman's mother, Mrs. Gates, in a rural area outside Madison while Chapman was a fugitive. Mrs. Gates gave Chief Welch permission to look in the bedroom formerly occupied by her son where the Chief found an envelope on which was drawn an accurate diagram of Respondent pharmacy. The diagram gave directions on how to find controlled substances at the pharmacy and also showed the location of money, a lock box, and the alarm system. Only an individual who had unrestricted access to the interior of the pharmacy would have been able to draw such a diagram.

Chief Welch further testified that the pharmacy was broken into on February 5, 1983, and that a large quantity of controlled substances, as well as blank money orders and a money order writing machine were stolen. An individual in Durham, North Carolina, was arrested for passing a money order stolen from the pharmacy. When Chapman was brought back to North Carolina, he had been incarcerated at a facility in Durham with an associate of the individual arrested for passing the stolen money order. The Administrator

believes that the break-in and theft after Chapman was in jail in Durham were more than mere coincidence and finds, as did the Administrative Law Judge, that Chapman had free access to the pharmacy area and that Hawkins could not control Chapman's movements for fear that Chapman would expose the nature of their relationship.

Chapman was convicted on March 17, 1983, of distributing controlled substances. Following his sentencing and at his request, he spoke with Agent Tucker. Chapman stated that he and Hawkins had had a homosexual relationship for approximately one year and that Hawkins had provided him with money and controlled substances, including Placidyl and Talwin. The Administrative Law Judge found, as does the Administrator, that Hawkins provided Chapman with controlled substances and money in return for sexual favors. Hawkins was clearly culpable not only for the quantities of controlled substances he unlawfully distributed to the student and Agent Tucker, but also for those diverted from the pharmacy by Chapman.

On September 21, 1982, Clayburn Hawkins was convicted of unlawfully distributing a controlled substance in violation of 21 U.S.C. 841(a)(1). Hawkins was sentenced to a one-year term of imprisonment which was suspended. He was ordered to enter a community treatment center for 120 days and to pay a fine of $15,000.

The Administrator finds that there is a lawful or statutory basis for the revocation of the Respondent's DEA registration as a result of the felony conviction of the pharmacy's owner and Manager, Clayburn Hawkins. See, *S & S Pharmacy, Inc.*, (no docket number), 46 FR 13052 (1981); *Big-T Pharmacy, Inc.*, Docket No. 80.34, 47 FR 51830 (1982); *Lawson & Sons Pharmacy and Fenwick Pharmacy*, (no docket number), 48 FR 16140 (1983), and cases cited therein. The Administrator further finds that there are compelling reasons for revoking the registration Hawkins so blatantly abused.

Having determined that Respondent's registration may be revoked, the Administrator must now determine whether the Respondent has produced sufficient evidence to mitigate against revocation. In deciding whether to leave a controlled substance registration in the hands of a convicted felon there is one overriding consideration—protection of the public health and safety. To leave a registration in the possession of a person who has previously abandoned his professional responsibilities and violated a public trust by diverting controlled substances requires that the Administrator be convinced that there is no likelihood of diversion again occurring at the hands of this individual. If there is any real doubt, then the Administrator, who is responsible for protecting the public interest, cannot again entrust such an individual to properly handle the very instrumentality of his crime. The burden on a convicted applicant or registrant who must show sufficient mitigation is great. However, the dangers inherent in the diversion and misuse of controlled substances are much greater and the public should not be required to endure the risk of future diversion where such risk can be totally avoided by denial of registration to an individual such as Clayburn Hawkins. While the Administrator does not want to unnecessarily restrict the professional or business activity of any registrant, the public interest in the effective enforcement of the laws relating to controlled substances must outweigh an individual's interest in securing or retaining a registration to handle those substances.

A number of witnesses, including Mr. Hawkins' psychiatric counsellor, his pastor, a local physician, two co-workers and the Sheriff of Rockingham County, North Carolina, testified on behalf of Mr. Hawkins and the Respondent pharmacy. Since his arrest and plea of guilty in the criminal case, Mr. Hawkins has sought psychiatric counselling. Marty Rosser, his counsellor testified that Hawkins' relationship with Chapman was an aberration brought on by loneliness, significant personal stress, childhood traits and martial difficulties. Nevertheless, both Ms. Rosser and Dr. Larry Bennett, Hawkins' clergyman, felt that there was little likelihood of similar occurrences in Hawkins' life in the future. The Administrative Law Judge noted that Hawkins had been less than honest with Ms. Rosser with respect to the duration and type of his homosexual conduct. For example, Hawkins had never told his counsellor that he had fondled Agent Tucker.

Alexander Cox, M.D., a now-retired physician who practiced in Madison, North Carolina, testified as to Mr. Hawkins' excellent character and reputation in the community. Although Dr. Cox had testified three times on behalf of Mr. Hawkins, he had always been sequestered and had never heard the testimony of the witnesses who appeared to testify against Mr. Hawkins. Furthermore, Mr. Hawkins frequently filled prescriptions for Schedule II controlled substances which were telephoned in to the Respondent pharmacy by Dr. Cox. The two co-workers who testified on behalf of Mr. Hawkins and the Respondent pharmacy were Virginia Sharpe and Oscar Mills. Ms. Sharpe is a part owner of the Respondent corporation and is also employed there. Mr. Mills is a registered pharmacist employed by the Respondent pharmacy. Both of these individuals have a significant financial stake in the Respondent pharmacy. The Administrator does not find their testimony to be persuasive.

The religious leader of Mr. Hawkins' church and the Sheriff of Rockingham County also testified for the Respondent. While the clergyman's testimony is accepted as sincerely given, the Sheriff's testimony is not particularly credible. Sheriff Vernon testified that Mr. Hawkins' character and reputation in the community were good. Later, however, the Sheriff admitted that he had no personal knowledge of the criminal activity of Mr. Hawkins and that he really did not know what the public opinion concerning Hawkins was. The Administrator is disturbed that cross-examination of Sheriff Vernon was severely limited and that portions of that testimony were physically expunged from the record. The Administrator fully supports the idea that the Respondent in proceedings such as this should be able to present testimony relevant to mitigation. In fairness to the public interest, such testimony should be subject to all proper cross-examination with respect to the witness' motivation and ties to the Respondent. Furthermore, expungement denies the Administrator the opportunity to review a complete record of the proceeding. While the weight of all other evidence in the record of this case rendered the expungement harmless, such might not be the case under other circumstances.

Although the Administrative Law Judge found that there was a lawful basis for revocation in this case, he recommended against imposition of that remedy. The judge concluded that Hawkins was a community leader who enjoys the support of the community and that Hawkins enjoyed an outstanding reputation in the community prior to the previously discussed incidents. He also found that Hawkins had already suffered great humiliation and anguish as a result of his conduct and that he was unlikely to violate the law again.

The Administrator does not accept these conclusions. The evidence in this case clearly shows that Clayburn Hawkins illegally distributed controlled substances and then falsified pharmacy records to conceal those distributions. These were not isolated incidents, they

continued over a period of time. As recently as February 1982, Hawkins was illegally distributing drugs to Agent Tucker. He knew that he was committing illegal acts when he gave drugs to young men in return for sexual favors, actual or potential. Hawkins did not voluntarily put a stop to this diversion. He did not notify law enforcement authorities about Chapman, admit his problems with homosexuality or reveal his illicit distribution of controlled substances until after he was caught. While the Administrator is hopeful that Hawkins will continue to seek psychiatric counselling, he is unconvinced that Hawkins is unlikely to again violate the law with respect to controlled substances. The appearance of a few employees, political and religious witnesses on behalf of the Respondent is not persuasive. The Controlled Substances Act applies in Madison, North Carolina, as it does throughout the United States. Its mandate must be followed by all registrants, regardless of their status in the community and their apparent contrition.

It is unusual for the Administrator to reject a recommendation of the Administrative Law Judge, but it is not unknown. See Lincoln Eramo, M.D., 42 FR 61336 (1977). In *Sokoloff v. Saxbe*, 501 F.2d 571 (2nd Cir. 1974), the Administrator rejected a recommendation of a two-year suspension and revoked a practitioner's registration. Similarly, in *River Forest Pharmacy v. Drug Enforcement Administration*, 501 F.2d 1202 (7th Cir. 1974), the Administrator suspended a pharmacy's DEA registration for two years even though the Administrative Law Judge had recommended a suspension of six months. Both courts held the action of the Administrator was proper as long as the action is a reasonable choice of remedy.

The Administrator concludes that under all of the facts and circumstances presented in this case the Respondent's registration must be revoked. Having concluded that the facts herein require revocation and having determined that there is a lawful basis for such revocation, the 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), hereby orders that DEA Certificate of Registration AH3165962 be, and it hereby is, revoked, and that any pending applications for renewal of such registration be denied.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-509 Filed 1-6-84; 8:45 am]

BILLING CODE 4410-09-M

[Hydromorphone Docket No. 83-36]

Manufacture of a Controlled Substance; Objections, Request for Hearing, and Hearing; Mallinckrodt, Inc.

On November 3, 1983, at 48 FR 50806, notice was given that Mallinckrodt, Inc., Dept. CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, had made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Hydromorphone, a basis class of controlled substance listed in Schedule II of the Controlled Substances Act of 1970.

Opportunity was given in the notice for the filing of comments and objections to this application and for the filing of requests for hearing with respect to it. A request for an extension of the time period for the filing of these papers was requested by Knoll Pharmaceutical Company. The request was granted by the Deputy Assistant Administrator, Office of Diversion Control.

Knoll Pharmaceutical Company subsequently filed objections to Mallinckrodt's application and a request for hearing. Knoll is presently registered by DEA as a bulk manufacturer of hydromorphone.

Knoll states its desire to be heard with respect to the issue of whether the registration of Mallinckrodt as an additional bulk manufacturer of hydromorphone would be consistent with the public interest under the criteria set forth in the Controlled Substances Act and applicable regulations and with U.S. obligations under international treaties, conventions, or protocols as required by 21 U.S.C. 823(a). Knoll believes that the Administrator of DEA cannot make this determination on the basis of the information presently available to him.

Knoll states its belief that there is presently an adequate and uninterrupted supply of hydromorphone, produced under what it feels are adequately competitive conditions existing in the relevant market, and that the relevant market in which hydromorphone competes also includes other substances used for the same or similar medical, scientific, research and industrial purposes.

Knoll believes that the public interest in adequately competitive conditions and in maintaining effective controls against the diversion of hydromorphone would not be served by the registration of Mallinckrodt.

Accordingly, notice is hereby given pursuant to 21 U.S.C. 1301.43 that a hearing will be held on the aforesaid application for registration commencing at 10:00 a.m. on Thursday, February 9, 1984, in Courtroom No. 10, Third Floor, U.S. Court of Claims, 717 Madison Place, NW., Washington, D.C., the proceedings on that day to be limited to a preliminary discussion to identify proper parties and issues, and to determine procedures and set dates and locations for further proceedings. Any person entitled to participate in said hearing and desiring to do so must file a Notice Of Appearance pursuant to 21 CFR 1301.54 and 1316.48 within thirty days of the date of publication of this notice. A person who has filed a request for hearing need not also file a Notice Of Appearance.

Dated: January 4, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-507 Filed 1-6-84; 8:45 am]

BILLING CODE 4410-09-M

[Levorphanol Docket No. 83-37]

Manufacture of a Controlled Substance; Objections, Request for Hearing, and Hearing; Mallinckrodt, Inc.

On November 3, 1983, at 48 FR 50806, notice was given that Mallinckrodt, Inc., Dept. CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, had made applicaion to the Drug Enforcement Administration to be registered as a bulk manufacturer of levorphanol, a basic class of controlled substance listed in Schedule II of the Controlled Substances Act of 1970.

Opportunity was given in the notice for the filing of comments and objections to this application and for the filing of requests for hearing with respect to it. A request for an extension of the time period for the filing of these papers was requested by Hoffmann-LaRoche, Inc. (Roche). The request was granted by the Deputy Assistant Administrator, Office of Diversion Control.

Roche subsequently filed objections to Mallinckrodt's application and a request for hearing. Roche is presently registered by DEA as a bulk manufacturer of levorphanol.