

the authority must be established by *an act of the principal*.” *Id.* (citing *FDIC v. Oaklawn Apartments*, 959 F.2d 170, 175 (10th Cir. 1992) (emphasis added)).

With respect to Brown’s, even assuming that the attorney it served with the Show Cause Order was in an attorney-client relationship with the pharmacy, the Government has produced no evidence establishing that Brown’s authorized the attorney to accept service of the Order on its behalf. *See David M. Lewis*, 78 FR 36591, 36591 (2013) (holding service on attorney was improper where only evidence offered by Government was that “the attorney requested to take possession of the Order”) (citing *Focus Media*, 387 F.3d at 1084)). Accordingly, I find that the Government did not accomplish service on Brown’s.

Even if I concluded otherwise, under the Agency’s regulations, a hearing request must be submitted by the applicant/registrant to vest jurisdiction over the matter in the Office of Administrative Law Judges. *See* 21 CFR 1301.42 (“If requested by a person entitled to a hearing, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation or suspension of any registration.”); *id.* § 1301.43(a) (“Any person entitled to a hearing . . . and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause . . . file with the Administrator a written request for a hearing in the form prescribed”); *id.* § 1301.43(d) (“If any person entitled to a hearing . . . fails to file a request for a hearing . . . such person shall be deemed to have waived the opportunity for a hearing . . . unless such person shows good cause for such failure.”). Because in contrast to Bolling, Brown’s never filed a hearing request, the ALJ had no authority to offer “the Government the option of providing evidence and arguments regarding the issue of . . . whether Brown’s lacks state authority to handle controlled substances,” R.D. 2, at n.2; and he had no authority to rule on the issue.²

As for Bolling Discount Apothecary, its owner attached a copy of its registration with his Request for Hearing, which shows that his registration does not expire until July

² According to the Show Cause Order, Brown’s registration was due to expire on July 31, 2015, and the registration records of the Agency, of which I take Official Notice, *see* 5 U.S.C. 556(e), show that Brown’s allowed its registration to expire on July 31, 2015 (before the ALJ forwarded the record) and has not filed a renewal application. *See Patel*, 80 FR at 28,694 n.3. In any event, because the Government did not serve Brown’s, the matter of its registration is not before me.

31, 2017, thus rendering a remand to establish jurisdiction unnecessary. Having reviewed the Board’s Emergency Suspension Order, I adopt the ALJ’s finding that the pharmacy does not have authority to dispense controlled substances in Alabama, the State in which it is registered with DEA, and that therefore, it no longer meets the statutory definition of a practitioner. *See* 21 U.S.C. 802(21) (“The term ‘practitioner’ means a . . . pharmacy . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which [it] practices . . . to . . . dispense . . . a controlled substance in the course of professional practice[.]”). *See also* 21 U.S.C. 823(f). Accordingly, I will order that Respondent Bolling Discount Pharmacy’s registration be revoked and that any pending application to renew or modify its registration be denied. *See* 21 U.S.C. 824(a)(3); *see also* R.D. at 4 n.10 (collecting cases).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 28 CFR 0.100(b), I order that DEA Certificate of Registration AB9375456 issued to Bolling Apothecary be, and it hereby is, revoked. I further order that any application of Bolling Apothecary to renew or modify its registration be, and it hereby is, denied. This Order is effective immediately.³

Dated: September 15, 2015.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Underground Retorts

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, “Underground Retorts,” to the Office of Management and Budget (OMB) for review and approval for continued use, without

³ For the same reasons that led the Board to order the emergency suspension of Respondent’s pharmacy license (*i.e.*, the extensive allegations that it was diverting controlled substances), I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 23, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201507-1219-002 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Underground Retorts information collection. Regulations 30 CFR 57.22401 sets forth the safety requirements for using a retort to extract oil from shale in an underground metal or nonmetal I–A and I–B mine that operates in a combustible ore and either liberates methane or has the potential to liberate methane based on the history of the mine or the geological area in which the mine is located. This presently applies only to underground oil shale mines. The standard requires that, prior to ignition of an underground retort, the mine operator must submit a written ignition operation plan to the

appropriate MSHA District Manager. The plan must contain site-specific safeguards and safety procedures for any underground area of the mine that is affected by the retort. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. See 30 U.S.C. 811(a); 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219-0096.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 28, 2015 (80 FR 30494).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219-0096. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-MSHA.

Title of Collection: Underground

Retorts.

OMB Control Number: 1219-0096.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Time Burden: 160 hours.

Total Estimated Annual Other Costs Burden: \$0.

Dated: September 17, 2015.

Michel Smyth,

Departmental Clearance Officer.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0030]

Proposed Extension of Information Collection; Main Fan Operation and Inspection (I-A, II-A, III, and V-A Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Main Fan Operation and Inspection (I-A, II-A, III, and V-A Mines).

DATES: All comments must be received on or before November 23, 2015.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2015-0018.

- *Regular Mail:* Send comments to USDOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452.

- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT:

Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Potentially gassy (explosive) conditions in underground metal and nonmetal mines are largely controlled by the main mine fans. When accumulations of explosive gases, such as methane, are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results of such contacts are usually disastrous, and multiple fatalities may be reasonably expected to occur. 30 CFR 57.22204, which only applies to metal and nonmetal underground mines that are categorized as gassy, requires main fans to have pressure-recording systems. This standard also requires main fans to be inspected daily while operating if persons are underground and certification made of such inspections by signature and date. Certifications and pressure recordings are to be retained for one year and made available to authorized representatives of the Secretary. This information collection addresses the recordkeeping associated with 30 CFR 57.22204.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Main Fan Operation and Inspection (I-A, II-A, III, and V-A Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the