

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):*

Extension, with change, of a currently approved collection.

2. *The Title of the Form/Collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5487 (5330.4).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Federal Government and State, Local, or Tribal Government.

Abstract: The purpose of this information collection is to allow ATF to determine if the registrant qualifies to engage in the business of importing a firearm or firearms, ammunition, and implements of war, and to facilitate the collection of registration fees.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete their responses to this form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 150, which is equal to 300 (# of respondents) * one (# of times per response) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 13, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-04967 Filed 3-15-19; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0077]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection; Report of Stolen or Lost ATF Form 5400.30, Intrastate Purchase Explosive Coupon

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 17, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Jason Lynch, United States Bomb Data Center (USBDC) either by mail at 3750 Corporal Road, Redstone Arsenal, AL 35898, by email at Jason.Lynch@atf.gov, or by telephone at 256-261-7588.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):*

Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Report of Stolen or Lost ATF Form 5400.30, Intrastate Purchase Explosive Coupon.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5400.30.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: When any Intrastate Purchase of Explosives Coupon (ATF Form 5400.30 is stolen, lost, or destroyed, the person losing possession will, upon discovery of the theft, loss, or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director by telephoning 1-888-ATF-BOMB.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10 respondents will utilize this information collection once a year and it will take each respondent approximately 20 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 3 hours which is equal to 10 (# of respondents) * 1 (# of responses per respondent) * .333333 (20 mins).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 13, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joel A. Smithers, D.O.; Decision and Order

On November 15, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joel A. Smithers, D.O. (Registrant), of Martinsville, Virginia. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. FS4850459 on the ground that he "has no state authority to handle controlled substances." Government Exhibit (GX) 2 (Order to Show Cause) to Government's Request for Final Agency Action (RFAA), at 1 (citing 21 U.S.C. 824(a)(3)). For the same reason, the Order also proposed the denial of "any applications for renewal or modification of such registration and any applications for any other DEA registrations." *Id.*

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Certificate of Registration No. FS4850459, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 445 Commonwealth Blvd. East, Suite A, Martinsville, Virginia. *Id.* The Order also alleged that this registration does not expire until February 29, 2020. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on May 10, 2018, the Virginia Board of Medicine issued "an Order of Summary Suspension" that suspended Registrant's Virginia osteopathic medical license. *Id.* The Show Cause Order alleged that, as a result, he is "currently without authority to handle controlled substances in the Commonwealth of Virginia, the [S]tate in which [he is] registered with the DEA." *Id.* Based on his "lack of authority to handle controlled substances in the Commonwealth of Virginia," the Order asserted that "DEA must revoke" his registration. *Id.* at 1-2 (citing 21 U.S.C. 824(a)(3); 21 CFR 1301.73(b)). *Id.*

The Show Cause Order notified Registrant of (1) his right to request a

hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* at 2. (citing 21 CFR 1301.43). The Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

With respect to service, a Task Force Officer (TFO) in the Roanoke Resident Office of DEA's Washington Field Division executed a Declaration on February 4, 2019, stating that she "personally served Registrant with the" Show Cause Order on November 20, 2018. GX 4 (Declaration of TFO) to RFAA, at 1.

On February 5, 2019, the Government forwarded its Request for Final Agency Action and evidentiary record to my Office. In its Request, the Government represents that more than 30 days have passed since Registrant had been served with the Show Cause Order and that "Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the Order served on him." RFAA, at 1. Based on the Government's representation and the record, I find that more than 30 days have passed since the Show Cause Order was served on Registrant, and he has neither requested a hearing nor submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(d). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government and the findings below. *See id.* I make the following findings.

Findings of Fact

Registrant is the holder of DEA Certificate of Registration No. FS4850459 pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of 445 Commonwealth Blvd. East, Suite A, Martinsville, Virginia. GX 1 (Certification of Registration Status) to RFAA, at 1. This registration does not expire until February 29, 2020. *Id.*

In addition, I take official notice of an "Order of Summary Suspension" (Suspension Order) on the Virginia Board of Medicine's website,¹ which

¹ *See* http://www.dhp.virginia.gov/Notices/Medicine/0102204264/0102204264_Order05102018.pdf. Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA

states that on May 10, 2018, the Executive Director of the Virginia Board of Medicine entered an order that Registrant's Virginia license to practice osteopathic medicine "is SUSPENDED." Suspension Order, at 1. In its Suspension Order, the Virginia "Board conclude[d] that a substantial danger to public health or safety warrants this action." *Id.* The Suspension Order also stated that it would apply to Registrant's "multistate licensure privilege, if any, to practice osteopathic medicine in the Commonwealth of Virginia." *Id.* Finally, the Suspension Order ordered "that a hearing be convened within a reasonable time of the date of entry of this Order to receive and act upon evidence in this matter." *Id.*

I also take official notice of the results of a search of the Virginia Board of Medicine's license verification web page showing that, as of the date of this Decision, Registrant's Virginia medical license remains suspended.² There is no evidence in the record that the Virginia Board of Medicine ever issued a superseding order or decision ending the suspension of Registrant's medical license. Accordingly, I find that Registrant currently does not possess a license to practice medicine in the Commonwealth of Virginia, the State in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826

and DEA's regulations, Registrant is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Registrant the opportunity to refute the facts of which I take official notice, Registrant may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed. The Government also attached an identical (but unverified) copy of the Suspension Order as an exhibit to its Request for Final Agency Action. GX 3 (Suspension Order) to RFAA.

² *See* <https://dhp.virginiainteractive.org/Lookup/Detail/0102204264>. I take official notice pursuant to the authority set forth *supra* in footnote 1.