

and accurate records of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21, as evidenced by the audit discrepancies. For less than a one year period of time, Respondent could not account for over 13,500 dosage units of controlled substances. Respondent did not actually offer any explanation for its failure to account for these drugs. Instead, Mr. Hurd seemed to suggest that the discrepancies were caused by the compounding over time of his estimates of Schedule III through V drugs on hand when conducting his yearly inventory. The Acting Deputy Administrator recognizes that it is permissible to estimate Schedule III through V controlled substances when conducting controlled substance inventories. See 21 CFR 1304.11(e)(3). However, such estimations would not compound over time. Instead, for each inventory, Respondent would estimate what it had on hand on that date. It was Respondent's estimated inventory taken on February 26, 1993, that was used as the initial inventory for DEA's accountability audit. It is inconceivable that Respondent's estimations on that date were off by over 13,500 dosage units. Therefore, the Acting Deputy Administrator concludes that Respondent did not offer any plausible explanation whatsoever for the tremendous shortages revealed during the audit.

Respondent's failure to maintain 6 purchase invoices and 12 prescriptions is further evidence of its failure to maintain complete and accurate records of controlled substances as required by 21 U.S.C. 827. This failure to keep accurate records also violated the Texas Controlled Substances Act, title 6 Tex. Health & Safety Code §§ 13.6(d) & 13.64(b).

While the Acting Deputy Administrator has concluded that it is unnecessary to determine whether or not Respondent dispensed controlled substances to the undercover agents for no legitimate medical purpose, its dispensing of controlled substances pursuant to the prescriptions presented nonetheless violated 21 CFR 1306.05(a). This regulation imposes a "corresponding liability [on] the pharmacist who fills a prescription not prepared in the form prescribed by these regulations." Pursuant to 21 CFR 1306.05(a), a prescription must contain, among other things, the date of issuance and the address of the patient. The prescriptions filled for the undercover agents did not contain this information. Additionally, Respondent's filling of these prescriptions violated the Texas Controlled Substances Act, Title 6, Tex.

Health & Safety Code § 481.074(k)(2) & (3).

Regarding factor three, as Judge Bittner found, "[t]here is no evidence that Mr. Hurd or any other officer or agent of Respondent has ever been convicted under State or Federal laws relating to controlled substances." As to factor five, the Acting Deputy Administrator agrees with Judge Bittner's assessment that the allegation that Respondent dispensed controlled substances without a prescription to the individual who overdosed is entitled to little weight. No corroborating evidence was presented to support the allegation.

Judge Bittner concluded that "Respondent offers little in the way of an explanation for the serious shortages in inventory and there is no suggestion in this record that Respondent is likely to be more responsible in the future." Consequently, Judge Bittner found that Respondent's continued registration would be inconsistent with the public interest, and therefore recommended that its registration be revoked. The Acting Deputy Administrator agrees with Judge Bittner. Respondent's failure to account for over 13,500 dosage units of controlled substances over an approximately one year period of time, is extremely troublesome. At the very least, the shortages indicate that respondent has failed miserably in complying with the requirement that it maintain complete and accurate records of its controlled substance handling. These requirements are in place in order to prevent and detect the diversion of these potentially dangerous substances. Respondent's failure to recognize the seriousness of the shortages, does not bode well for its future compliance with the laws and regulations relating to controlled substances. See Rocco's Pharmacy, 62 FR 3056 (1997). Therefore, the Acting Deputy Administrator concludes that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Acting 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 AT8866468, previously issued to Townwood Pharmacy, be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 23, 1998.

Dated: February 12, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

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DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

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 an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure 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 Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Employment, Wages, and Contributions Report (ES-202 Program).

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 20, 1998.

The Bureau of Labor Statistics is particularly interested in comments which:

- 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 submissions of responses.

ADDRESSES: Send comments to Kairn G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202-606-7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The ES-202 program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Employment Security Agencies (SESAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The ES-202 data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employees covered by the Unemployment Compensation for Federal Employees program are also included. These data are submitted to the Bureau of Labor Statistics (BLS) by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas, the States, and the nation. The ES-202 program provides a virtual census of nonagricultural employees and their wages, with about 47 percent of the workers in agriculture covered as well.

The ES-202 program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the four-digit Standard Industrial Classification (SIC) level, and the national, State, Metropolitan Statistical Area, and county levels. The North American Industry Classification System (NAICS), which will replace the SIC coding system, is scheduled to be implemented in the ES-202 program with data for the first quarter of 2000. The ES-202 series has broad economic significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

II. Current Actions

BLS is requesting a revision of the current Office of Management and Budget (OMB) approval of the Employment, Wages, and Contributions Report (ES-202 Program).

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Employment, Wages, and Contributions Report (ES-202 Program).
OMB Number: 1220-0012.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time Per Response: 4,464 hours.

Estimated Total Burden Hours: 846,400 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 12th day of February, 1998.

W. Stuart Rust, Jr.,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 98-4194 Filed 2-18-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10213, et al.]

Proposed Exemptions; Bankers Trust Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days

from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete