

requirements have been approved under OMB No. 2127-0600, through April 30, 2008.

#### F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

#### G. Civil Justice Reform

This final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceedings are not required before parties may file suit in court.

#### H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

#### List of Subjects in 23 CFR Part 1345

Grant programs—Transportation, Highway safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 23 CFR Part 1345 is amended to read as follows:

#### PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

■ 1. The authority citation continues to read as follows:

**Authority:** Pub. L. 105-78; Pub. L. 109-59; 23 U.S.C. 405, delegation of authority at 49 CFR 1.50.

■ 2. Accordingly, the interim final rule amending 23 CFR part 1345 which was published at 70 FR 69078 on November 14, 2005, is adopted as a final rule without change.

Issued on: December 23, 2005.

**Gregory Walter,**

*Senior Associate Administrator for Policy and Operations.*

[FR Doc. 05-24653 Filed 12-29-05; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-108-FOR]

#### West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Code of State Regulations (CSR) concerning surety bonds. The amendment is intended to provide the State with an alternative source of reliable financial information about the surety, and to allow sureties that are licensed and in good financial condition but are not currently listed with the U.S. Department of the Treasury as an acceptable surety of Federal bonds to provide surety bonds to the coal industry in West Virginia. The amendment was authorized by the West Virginia Secretary of State as an emergency rule under the State's Administrative Procedures Act.

**DATES:** *Effective Date:* December 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158, Internet address: [chfo@osmre.gov](mailto:chfo@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal

and non-Indian lands within its borders by demonstrating that its program includes, among other things, “\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

#### II. Submission of the Amendment

By letter dated October 17, 2005 (Administrative Record Number WV-1441), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of a proposed emergency rule revision to CSR 38-2-11.3.a.3 concerning surety bonds, a briefing document, an emergency rule justification, which includes an affidavit that was submitted in support of the emergency rule package, and a decision by the Secretary of State dated October 11, 2005, approving the emergency rule.

In its submittal of this amendment, the WVDEP stated that its current rule at CSR 38-2-11.3.a.3 requires that after July 1, 2001, a surety must be recognized by the Treasurer of the State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal bonds (otherwise referred to as being “T-Listed”). The WVDEP stated that the original standard was adopted to address concerns about the financial solvency of sureties providing reclamation bonds in West Virginia. The WVDEP did not have the necessary resources or expertise to regularly and timely monitor the financial condition of sureties doing business in West Virginia. However, a surety that is T-Listed is required to provide, on a regular basis, financial information to the U.S. Department of the Treasury, which reviews this information and provides its findings to State regulatory agencies. While this information provided by the Department of the Treasury has been helpful, WVDEP

stated, this restriction has prevented sureties that are not T-Listed, and that are otherwise in good financial condition, from providing reclamation bonds in West Virginia. The WVDEP stated that this, along with other reasons, has adversely impacted the market for reclamation bonds in West Virginia. Further, the WVDEP stated, since a surety must have at least two years experience providing surety bonds before it can be T-Listed, a new insurance company or an existing insurance company that has not previously issued surety bonds cannot offer surety bonds in West Virginia.

The WVDEP stated that the emergency rule amendment to CSR 38-2-11.3.a.3 not only addresses the concerns noted above by providing an alternative source of reliable financial information about the surety, but it also allows sureties that are licensed and in good financial condition but are not T-Listed to provide surety bonds in West Virginia.

The WVDEP stated that an "emergency" exists under the State's Administrative Procedures Act because there is presently a great demand for reclamation bonds from the coal industry in West Virginia that is not being met by the limited number of sureties currently offering surety bonds in West Virginia. As a result, alternative, more expensive means are being used by coal companies to comply with the State's bonding requirements. Among other things, this has greatly restricted the availability of capital for the development of new coal mines and the creation of new jobs. The State acknowledges that at a time when coal is so important to West Virginia's economy, this dearth of surety bonds is having a significant negative impact on West Virginia's coal industry. The proposed amendment to 38 CSR 2 is thus necessary "to prevent substantial harm to the public interest."

By electronic mail dated November 4, 2005, WVDEP submitted revisions it made to its emergency rule based upon the State's comment period which ended on October 27, 2005 (Administrative Record Number WV-1447). The revision package consists of the amended emergency rule, Form #8 Notice of an Emergency Amendment to an Emergency Rule, amended Emergency Rule Questionnaire dated October 28, 2005, and Form #3 Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rulemaking Review Committee. These documents were filed with the West Virginia Secretary of State and the Legislative Rulemaking Review Committee on November 2, 2005.

We announced receipt of the proposed amendment in the November 8, 2005, **Federal Register** (70 FR 67654). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV-1448). We did not hold a hearing or a meeting because no one requested one. The public comment period closed on December 8, 2005. We received comments from one industry organization and one Federal agency.

### III. OSM's Findings

Following are the findings that we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment in full, as modified on November 4, 2005. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

#### *CSR 38-2-11.3.a.3 Surety*

The existing rule currently provides that surety received after July 1, 2001, must be recognized by the Treasurer of the State as holding a current certificate of authority from the U.S. Department of the Treasury as an acceptable surety on Federal bonds. In its October 17, 2005, submittal, CSR 38-2-11.3.a.3 was proposed to be amended by adding new language at the end of the existing requirement to provide as follows:

11.3.a.3. Surety received after July 1, 2001 must: (i) be recognized by the treasurer of state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds; Or (ii) submit to the Secretary proof that the surety holds a valid license issued by the basis a certificate of good standing or other evidence demonstrating that the surety remains licensed or otherwise in good standing with the West Virginia Insurance Commissioner and the insurance regulator of its domiciliary state and within four (4) years take all steps necessary to obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

The WVDEP filed the emergency rule with the West Virginia Secretary of State on September 21, 2005. The Secretary of State approved the rule on an emergency basis pursuant to W. Va. Code 29A-3-15a on October 11, 2005.

The WVDEP also filed a legislative rule containing the same language with the Secretary of State on September 21, 2005 (Administrative Record Number WV-1442). At the same time, the State announced a public comment period on the legislative rule. The public comment period commenced on September 21,

2005, and closed on October 27, 2005. A public hearing was held at the WVDEP office in Kanawha City prior to the close of the comment period.

On October 3, 2005, the WVDEP provided OSM a copy of the proposed rule for informal review. Unlike the State's existing surety bond provisions at CSR 38-2-11.3.a.1 and the Federal surety bond requirements at 30 CFR 800.20(a), the proposed revision at CSR 38-2-11.3.a.3 did not appear to require the surety to be licensed to do business in the State. To resolve this concern and to make additional clarifications without altering the purpose or intent of either the emergency or the legislative rule, on October 14, 2005 (Administrative Record Number WV-1443), OSM recommended that the language in both rules be revised as follows:

11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must: (i) Be recognized by the treasurer of the state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds by being included on the Treasury Department's listing of approved sureties (Department Circular 570); or (ii) submit proof to the Secretary that it holds a valid license issued by the West Virginia Insurance Commissioner, and agree to submit to the Secretary on at least a quarterly basis a certificate of good standing from the West Virginia Insurance Commissioner and such other evidence from the insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also in good standing in that state. Companies not included on the United States Treasury Department's listing of approved sureties must diligently pursue application for listing, submit evidence on a semi-annual basis demonstrating that they are pursuing such listing, and within four (4) years, obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

At the time, State officials agreed that while the recommended technical revisions offered by OSM appeared to clarify that a surety must be licensed to do business in the State and did not change the intent of their initial rule, they needed to wait until after the close of their comment period before making any changes to the rule. The WVDEP stated that it would submit the revisions and any additional changes to OSM after the close of the State's comment period on October 27, 2005. The WVDEP further stated that the revision would be in the form of both an emergency and a legislative rule. We subsequently stated in our November 8, 2005, proposed rule notice that if the WVDEP submits revised rules that contain language identical to the language recommended by OSM, and

quoted above, that revised language would be acted upon by OSM in this final rulemaking. If substantive changes beyond or other than those recommended by OSM were included in the revised rules, we stated that we may need to reopen the comment period.

The legislative rule was submitted to the Legislative Rulemaking Review Committee after the close of the comment period, and it is to be acted upon by the West Virginia Legislature during the upcoming 2005–2006 regular legislative session. If that rule is adopted with the identical language recommended by OSM as quoted above, no further action will be required by OSM, and it will become part of West Virginia's permanent regulatory program upon submission by the State.

Given that an emergency situation currently exists in West Virginia with regard to surety bonds and to avoid any unnecessary delays in approving the proposed State rule, we requested comments on both the proposed State rule and our suggested revisions to that rule as quoted above. We stated in the proposed rule notice that any changes adopted by the State after the close of its public comment period would result in the revision to both its emergency and legislative rules. As mentioned above, any substantive changes in the proposed State rules that go beyond the suggested language provided by OSM and quoted above would also be subject to further rulemaking.

In its November 4, 2005, submittal, the WVDEP provided revisions to its emergency rule at CSR 38–2–11.3.a.3 that were approved by the West Virginia Secretary of State. The effective date of the revision is September 21, 2005. As proposed in the State's November 4, 2005, submittal, the existing language was deleted and CSR 38–2–11.3.a.3 now provides as follows:

11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must: (i) Be recognized by the treasurer to [of] the state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds by being included on the Treasury Department's listing of approved sureties (Department Circular 570); or (ii) submit proof to the Secretary that it holds a valid license issued by the West Virginia Insurance Commissioner, and agree to submit to the Secretary on at least a quarterly basis a certificate of good standing from the West Virginia Insurance Commissioner and such other evidence from the insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also in good standing in that state. Companies not included on the United States Treasury Department's listing of approved sureties must diligently pursue application for listing,

submit evidence on a semi-annual basis demonstrating that they are pursuing such listing, and within four (4) years, obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

With the exception of the typographical error which the State intends to correct (“to” should be changed to “of”), we find that the revised emergency rule language submitted by the State on November 4, 2005, is identical to the language that OSM recommended it adopt, and that is quoted above, to resolve our initial concerns with the language that was submitted on October 17, 2005. Furthermore, we find that, as amended, the emergency rule at CSR 38–2–11.3.a.3 contains changes that have no direct Federal counterparts, but is, nevertheless, consistent with and no less effective than the Federal regulations at 30 CFR 800.20(a) concerning surety bonds and can be approved. As we stated above, the legislative rule that will make permanent the provisions of the emergency rule was submitted to the West Virginia Legislative Rulemaking Review Committee on November 2, 2005. That provision will be acted upon by the West Virginia Legislature during the upcoming 2005–2006 regular legislative session. If that legislative rule is adopted with language identical to that which we are approving here, and quoted above, no further action will be required by OSM, and it will become part of West Virginia's permanent regulatory program upon submission by the State. Any substantive changes to that legislative rule that go beyond the language that we are approving here and quoted above will be subject to public review and further rulemaking.

#### IV. Summary and Disposition of Comments

##### Public Comments

We published a **Federal Register** notice on November 8, 2005, and asked for public comments on the proposed State amendment (Administrative Record Number WV–1448). One organization responded on December 2, 2005 (Administrative Record Number WV–1450). The West Virginia Coal Association (WVCA) encouraged OSM's approval of the amendment. According to the WVCA, there are currently a very limited number of surety companies offering surety bonds in West Virginia. Because of market conditions, there is a great demand for surety bonds. The WVCA said that the proposed amendment would not only have the potential to increase the availability of

bonds in West Virginia, but it would do so without increasing any risk for the State. It would only allow surety companies that are licensed in West Virginia and in good standing/good financial condition, but are not T-listed, to market surety bonds in West Virginia. As noted above in the finding, we are approving the amendment.

##### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1446). We only received comments from the U.S. Environmental Protection Agency. Its comments are summarized below.

##### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV–1446). EPA responded by letter dated December 5, 2005, and stated that it did not identify any apparent inconsistencies with the Clean Water Act or other statutes and regulations under EPA's jurisdiction. EPA went on to say, “Our primary interests concerning reclamation bonds are that they be sufficient to provide restoration of land and water resources in case of bankruptcy and that surety companies which underwrite these bonds remain solvent.” (Administrative Record Number WV–1451). We note that the amendment that we are approving here does not alter the State's approved bonding requirements concerning the amount of bond.

##### V. OSM's Decision

Based on the above findings, we are approving the program amendment West Virginia sent us on October 17, 2005, and amended on November 4, 2005. To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5

U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the Federal bonding regulations.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State Governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and

regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is consistent with and no less effective

than the Federal bonding regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions used in the Federal bonding regulations.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the Federal bonding regulations.

### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the Federal bonding regulations.

### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 2005.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

### **PART 948—WEST VIRGINIA**

■ 1. The authority citation for part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by "Date of publication of final rule" to read as follows:

**§ 948.15 Approval of West Virginia regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of publication of final rule	Citation/description
* * * * *	* * * * *	* * * * *
October 17, 2005, and amended November 4, 2005 .....	December 30, 2005 .....	CSR 38–2–11.3.a.3.

[FR Doc. 05–24643 Filed 12–29–05; 8:45 am]  
BILLING CODE 4310–05–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[EPA–OAR–2005–0161; FRL–8017–1]

**Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Requirements for 2006**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rulemaking.

**SUMMARY:** EPA is taking direct final action to interpret and clarify the 2006 default standard applicable under the Renewable Fuel Program set forth in the Energy Policy Act of 2005. The Act requires that 2.78 volume percent of gasoline sold or dispensed to consumers in the U.S. in 2006 be renewable fuel if EPA does not promulgate comprehensive regulations to implement the Renewable Fuel Program by August 8, 2006. Given the short timeframe available and the need to provide certainty to the regulated community, the Agency is finalizing a limited set of regulations for the default standard for 2006 that will provide for collective compliance by refiners, blenders, and importers to meet the 2.78 volume percent requirement, with compliance determined by looking at the national pool of gasoline sold in 2006. The Agency will develop and

promulgate the comprehensive program subsequent to this action.

**DATES:** This rule is effective on February 28, 2006 without further notice, unless EPA receives adverse comment by January 30, 2006. If we receive such comment on one or more distinct sections of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public of the distinct provisions that will become effective and which distinct provisions of this rule will not take effect.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–2005–0161. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** Julia MacAllister, U.S. EPA, National Vehicle

and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4131, FAX (734) 214–4816, E-mail *macallister.julia@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register** publication, we are publishing a separate document that will serve as the proposal if adverse comments are filed. This rule is effective on February 28, 2006 without further notice, unless EPA receives adverse comment by January 30, 2006. If EPA receives adverse comment on one or more distinct sections of this rule we will publish a timely withdrawal in the **Federal Register** indicating which provisions of this rule will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the proposal. Any parties interested in commenting must do so at this time.

**I. General Information**

*A. Does This Action Apply to Me?*

Entities potentially affected by this final action include those involved with the production, distribution and sale of gasoline motor fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities include:

Category	NAICS <sup>1</sup> codes	SIC <sup>2</sup> codes	Examples of potentially regulated entities
Industry .....	324110	2911	Petroleum Refiners, Importers.

<sup>1</sup> North American Industry Classification System (NAICS).

<sup>2</sup> Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not

listed in the table could also be affected. To decide whether your organization might be affected by this action, you should carefully examine today’s notice and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action

to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Table of Contents**

I. Overview

A. What Is Being Finalized for 2006?