

proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**ACE NE E5 Beatrice, NE [Amended]**

Beatrice Municipal Airport, TX

(Lat. 40°18'05" N., long. 96°45'15" W.)

Beatrice VOR/DME

(Lat. 40°18'05" N., long. 96°45'17" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Beatrice Municipal Airport and within 2.4 miles each side of the 320° radial from the Beatrice VOR/DME extending from the 6.5-mile radius to 7.5 miles northwest of the airport, and within 2.4 miles each side of the 003° radial from the Beatrice VOR/DME extending from the 6.5-mile radius to 7.5 miles north of the airport.

Issued in Fort Worth, TX, on February 24, 2010.

**Walter Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2010–5569 Filed 3–12–10; 8:45 am]

**BILLING CODE 4901–13–P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1450**

**Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed interpretive rule.

**SUMMARY:** The Consumer Product Safety Commission (“Commission” or “CPSC”) is issuing this proposed rule to interpret the term “public accommodation” as used in the Virginia Graeme Baker Pool and Spa Safety Act.

**DATES:** Written comments in response to this document must be received no later than April 14, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2010–0018, by any of the following methods:

**Electronic Submissions**

Submit electronic comments in the following way:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

**Written Submissions**

Submit written submissions in the following way:

*Mail/Hand delivery/Courier (for paper (preferably in five copies), disk, or CD–ROM submissions), to:* Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

*Docket:* For access to the docket to read background comments or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Barbara E. Little, Regulatory Affairs Attorney, Office of General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; [blittle@cpsc.gov](mailto:blittle@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001, (“VGB Act” or “Act”) requires that drains in public pools and spas be equipped with ASME/ANSI A112.19.8 compliant drain covers, and that each public pool and spa with a single main drain other than an unblockable drain be equipped with certain secondary anti-entrapment systems. Section 1404(c) of the Act. The Act defines “public pool and spa” to include a swimming pool or spa that is “open exclusively to patrons of a hotel or other public accommodations facility.” Section 1404(c)(2)(B)(iii) of the Act. The term “public accommodations facility” is not defined in the Act.

The Commission has received numerous inquiries regarding what constitutes a public accommodations facility under the VGB Act. This proposed interpretive rule would define “public accommodation” as the term in used in the Virginia Graeme Baker Pool and Spa Safety Act.<sup>1</sup>

**B. Legal Analysis**

In adopting a reasonable interpretation of “public accommodations facility,” the Commission examined how other federal statutes define this same term. The Americans with Disabilities Act (ADA) defines “public accommodation” in relevant part as “an inn, hotel, motel, or other place of lodging, *except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor*” (emphasis added). 42 U.S.C. § 12181(7). Under this definition, pools or spas found at bed and breakfasts with five or fewer rooms for rent or hire and that are actually occupied by the proprietor would not be considered “public pools or spas” under the VGB Act, nor would pools or spas that are located on single family home rental properties.

The Civil Rights Act (CRA) employs the same definition of “public accommodation” in relevant part as does the ADA, i.e., “any inn, hotel, motel, or other establishment which provides lodging to transient guests, *other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence*” (emphasis added). 42 U.S.C. 2000(b). This definition, then, is used in two prominent federal statutes addressing civil rights. Operators of inns, hotels, and lodging establishments likely are aware of these statutes addressing civil rights and the definitions they employ.

The phrase “public accommodation” also appears in a Federal statute administered by the CPSC. Section 104(c) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) provides that it is a violation of the Consumer Product Safety Act for “any person to which this subsection applies to manufacture \* \* \* or otherwise place in the stream of commerce a crib that is not in compliance with a

<sup>1</sup> The Commissioners voted 4–1 (Commissioner Robert Adler dissenting) to issue this proposed interpretive rule. Commissioner Robert Adler filed a statement, a copy of which is available from the Office of the Secretary or on the Commission’s Web site at <http://www.cpsc.gov>.

standard promulgated under subsection (b) [of section 104].” Section 104(c)(2)(D) of the CPSIA provides, in relevant part, that section 104(c) of the CPSIA applies to any person who “owns or operates a public accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (FFPCA) (15 U.S.C. 2203)” (emphasis added). Section 4 of the FFPCA defines a place of public accommodation as “any inn, hotel, or other establishment not owned by the Federal Government that provides lodging to transient guests, *except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment*” (emphases added). 15 U.S.C. 2203(7). The FFPCA contains the same exclusion from public accommodation as do the ADA and CRA; in other words, all three statutes exclude an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment. The FFPCA, like the VGB Act, is a statute intended to promote public safety. Further, the FFPCA’s definition is used in the CPSIA, a statute which is administered by the CPSC. Parties familiar with the CPSC may already be familiar with the definition of “public accommodation” as used in the CPSIA. Thus, the Commission believes it is appropriate to enforce the same interpretation of the phrase “public accommodation” in the VGB Act as used in the CPSIA, especially given the similar public safety goals of the statutes.

#### List of Subjects in 16 CFR Part 1450

Consumer protection, Infants and children, Law enforcement.

#### C. Conclusion

For the reasons stated above, the Commission proposes to amend chapter II of title 16 of the Code of Federal Regulations by adding a new part 1450 to read as follows:

#### PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

Sec.

1450.1 Scope.

1450.2 Definitions.

**Authority:** 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794

#### § 1450.1 Scope.

This part pertains to the Virginia Graeme Baker Pool and Spa Safety Act, (“Act”), 15 U.S.C. 8001 *et seq.*, which is designed to prevent child drowning, drain entrapments and eviscerations in pools and spas.

#### § 1450.2 Definitions.

(a) *Public accommodations facility* means an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

(b) [Reserved.]

Dated: March 4, 2010.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2010–5130 Filed 3–12–10; 8:45 am]

**BILLING CODE 6355–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2010–0039; FRL–9127–3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Nitrogen Oxide Emissions From Industrial Boilers and Process Heaters at Petroleum Refineries

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision adds a new section, Section 2—Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries to Delaware’s Regulation No. 1142/SIP Regulation No. 42— Specific Emission Control Requirements for controlling nitrogen oxide (NO<sub>x</sub>) emissions from industrial boilers. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before April 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0039 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA–R03–OAR–2010–0039, Cristina Fernandez, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA–R03–OAR–2010–0039. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental