than the Consent Order to support its motion, Respondent had an ample and meaningful opportunity to present evidence refuting the Government's evidence and creating a triable issue and/or to make argument (were there any viable ones to be made), regarding the legal effect of his filing of the State renewal application. While Respondent further argues that if the Agency ''was going to place in issue allegations that were not named in the Order to Show Cause, the proper course of action would have been to move to amend the Order to Show Cause,'' he does not identify how he has been prejudiced by the Government's failure to amend the Order. Exc. at 4; *cf. Facet Enterprises,* 907 F.2d at 972 (''In determining whether a respondent can be held liable for an unfair labor practice not charged in the complaint, the central inquiry is fairness: considering the circumstances of the case, did the respondent know what conduct was being alleged and have 'a fair opportunity to present [its] defense?''') (quoting *Soule Glass & Glazing Co.* v. *NLRB,* 652 F.2d 1055, 1074 (1st Cir. 1985)).[2]

The rules governing DEA hearings do not require the formality of amending a show cause order to comply with the evidence. The Government's failure to file an amended Show Cause Order alleging that Respondent's state CDS license had expired does not render the proceeding fundamentally unfair.

Respondent also argues that the ALJ's ruling on the summary disposition motion ''should have been stayed pending disclosure of evidence.'' Exc. at 5. Respondent analogizes the prehearing statements to civil discovery and argues that ''the usual prehearing procedures for exchanging information was [sic] not completed.'' *Id.* There is, however, no general right to discovery under either the APA or DEA regulations, but rather only a limited right to receive in advance of the hearing the documentary evidence and summaries of the testimony which the Government intends to rely upon. *Nicholas A. Sychak, d/b/a Medicap Pharmacy,* 65 FR 75959, 75961 (2000) (citing *McClelland* v. *Andrus,* 606 F.2d 1278, 1285 (DC Cir. 1979)); *see also* 21 CFR 1316.54(e) & 1316.57. Nor, given the narrowness of the issue upon which the motion for summary disposition was based—whether Respondent has authority under state law to dispense a controlled substance—has Respondent shown what material evidence he might have obtained from the Government which he could not have obtained from another source such as the State itself. The contention is therefore without merit.

Respondent also argues that the ALJ unlawfully shifted the burden of proof to him. According to Respondent, ''[t]here is an issue of disputed fact as to whether there has been [a] suspension[,] revocation[,] or denial of [his] state authority to prescribe controlled substances or merely [a] delay in processing his renewal application.'' Exc. at 6. Respondent further claims that the ALJ did not require the DEA to show that the license was ''pending,'' and placed on him the burden of ''show[ing] that he had been granted the requisite authority.'' *Id.* at 7. Relatedly, Respondent maintains that the Government cannot revoke his registration under 21 U.S.C. 824(a)(3) because it has not shown that his registration has been suspended, revoked, or denied by competent authority. *Id.*

Respondent ignores, however, that Congress has made the possession of state authority a prerequisite for obtaining a DEA registration. *See id.* Section 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). In addition, the CSA defines the term ''practitioner'' to ''mean[] a physician * * * or other person licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to dispense [or] administer * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). A physician who no longer holds authority under State law to dispense a controlled substance is therefore not a practitioner within the meaning of the CSA and cannot lawfully dispense.

DEA has therefore consistently held that a practitioner may not maintain his registration if he lacks state authority to dispense controlled substances. This rule has been applied to revoke the registration of a practitioner even when the practitioner's loss of state authority was based on the expiration of a state license rather than a formal disciplinary action of a state board. *See William D. Levitt,* 64 FR 49822, 49823 (1999); *see also id.* at 49822 (collecting cases). As the Agency explained in *Levitt,* because state authorization was clearly intended to be a prerequisite to DEA registration, Congress could not have intended for DEA to maintain a registration if a registrant is no longer authorized by the state in which he practices to handle controlled substances due to the expiration of his state license. Therefore, it is reasonable for DEA to interpret that 21 U.S.C. § 824(a)(3) would allow for the revocation of a DEA * * * Registration where, as here, a registrant's state authorization has expired.

Id. at 49823. *See also Chevron, Inc.,* v. *NRDC, Inc.,* 467 U.S. 837, 843 (1984) (where Congress is silent on a question, courts defer to an agency's reasonable interpretation of the statute it administers).

Accordingly, in relying on the undisputed fact that Respondent's State CDS license had expired, the ALJ did not erroneously shift the burden of proof from the Government to him. Rather, she correctly applied the Agency's settled precedent that because Respondent clearly lacks authority to dispense controlled substances in the State in which he holds his DEA registration and practices medicine, he is not entitled to maintain his registration. Respondent's registration will therefore be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as by 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BB0492912, issued to Roy E. Berkowitz, M.D., be, and it hereby is, revoked. I further order that any pending application of Roy E. Berkowitz, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective immediately.[3]

Dated: July 17, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–17714 Filed 7–23–09; 8:45 am]

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[2] Likewise, the Administrative Procedure Act requires only that ''[p]ersons entitled to notice of an agency hearing shall be timely informed of * * * the matters of fact and law asserted.'' 5 U.S.C. 554(b). He was.

[3] Because of the importance of the legal issues raised by Respondent, I conclude that the public interest necessitates that this Order be made effective immediately.

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 20, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable

supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB 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 submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Claims and Payment Activities.

OMB Control Number: 1205–0010.

Agency Form Number: ETA–5159.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 1,272.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Form ETA–5159 report provides important program information on claims taking and benefit payment activities under State/Federal unemployment insurance laws. These data are needed for budget preparation and control, program planning and evaluation, personnel assignment, actuarial and program research, and for accounting to Congress and the public. This collection is authorized under the Social Security Act, Title III, Section 303(a)(6). For additional information, see related notice published at Volume 74 FR 23886 on May 21, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–17676 Filed 7–23–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Mentoring, Educational, and Employment Strategies To Improve Academic, Social, and Career Pathway Outcomes

AGENCY: Employment and Training Administration, U.S. Department of Labor.

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 08–14.

Catalog Federal Assistance Number: 17.261.

SUMMARY: The Employment and Training Administration (ETA) announces the availability of $34 million for grants to serve high schools that have been designated as persistently dangerous by State Educational Agencies for the 2008–2009 school year under section 9532 of the Elementary and Secondary Education Act. The goal of these grants is to reduce violence within these schools through a combination of mentoring, education, employment, case management, and violence prevention strategies. These grants will be awarded to fund projects in schools not currently receiving a DOL grant for these purposes through a competitive process open both to school districts which include persistently dangerous high schools and to community-based organizations (CBOs) in partnership with these school districts. High schools which have been designated as persistently dangerous this school year and which are not currently receiving a Department of Labor (Department or DOL) grant under this initiative are located in the school districts of Baltimore City, Plainfield (New Jersey), New York City, Schenectady (New York), Salem-Keiser (Oregon), Philadelphia, and Puerto Rico. These schools are listed in Section VIIIA below. School districts and CBOs must submit a separate application for each high school that they propose serving, but may submit as many applications as they have eligible schools. Applications submitted by school districts must include plans to have one or more CBOs as sub-grantees/contractors to operate at a minimum the mentoring component. These proposed CBO sub-grantees/contractors do not need to be listed in the application, as the Department strongly encourages the use of competition in selecting sub-grantees and contractors either before or after grant award. Applications submitted by CBOs must have a school district identified as a partner, with a signed memorandum of understanding (MOU) with the school district included in the application. To be eligible to apply for these grants as a CBO, organizations must be not-for-profit entities and can operate either nationally or locally.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantees.

DATES: *Key Dates:* The closing date for receipt of applications under this announcement is September 22, 2009. Application and submission information is explained in detail in Part IV of this SGA.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Reference SGA/DFA PY 08–14, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the submission requirements set forth in this notice will be granted. For detailed guidance, please refer to Section IV.C.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

Part I provides a description of this funding opportunity
Part II describes the size and nature of the anticipated awards
Part III describes eligibility information and other grant specifications
Part IV provides information on the application and submission process
Part V describes the criteria against which applications will be reviewed and explains the proposal review process