

verify that the person named on the probable identification is in fact the individual concerned before using the information as the basis of any action against the individual.

\* \* \* \* \*

4. Add a new section, 1327.7, to read as follows:

**§ 1327.7 Procedures for NDR information requests.**

(a) To initiate an NDR file check, an individual who is employed or seeking employment as a motor vehicle operator; who has applied for or received an airman's certificate; who is employed or seeking employment as a locomotive operator; who holds or has applied for a license, certificate of registry, or a merchant mariner's document or is an officer, chief warrant officer, or enlisted member of the U.S. Coast Guard or Coast Guard Reserve; or who is seeking employment as a pilot with an air carrier; shall either:

(1) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose; or

(2) Authorize, by completing and signing a written consent, the authorized NDR user to request a file check through the chief driver licensing official of a participating State in accordance with the procedures established by that State for this purpose.

(b) If the authorized NDR user is an employer or prospective employer of a motor vehicle operator, the request for an NDR file check must be submitted through the chief driver licensing official of the State in which the individual is licensed to operate a motor vehicle.

(c) If the authorized NDR user is the head of a Federal department or agency, the request for an NDR file check may be submitted instead directly to the NDR in accordance with procedures established by the NDR for this purpose.

(d) The request for an NDR file check or the written consent, whichever is used, must:

(1) State that the NDR records are to be released;

(2) State as specifically as possible who is authorized to receive the records;

(3) Be signed and dated by the individual (or the individual's legal representative as appropriate);

(4) Specifically state that the authorization is valid for only one search of the NDR; and

(5) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is

recommended, but not required, that the employer/prospective employer verify matches with the State of Record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

Issued on: April 13, 1999.

**Ricardo Martinez,**

*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 99-9653 Filed 4-19-99; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 77

[AG Order No. 2216-99]

#### Ethical Standards for Attorneys for the Government

**AGENCY:** Department of Justice.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule supersedes the Department of Justice regulations relating to Communications with Represented Persons and implements 28 U.S.C. 530B pertaining to ethical standards for attorneys for the government. Under that provision, an attorney for the Government shall be subject to State laws and rules, and local federal court rules governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State. This rule fulfills the Attorney General's obligation under section 530B and provides guidance to all Department of Justice employees who are subject to section 530B regarding their obligations and responsibilities under this new provision.

**DATES:** *Effective Date:* This interim rule is effective April 19, 1999.

*Comment Date:* Written comments must be submitted on or before June 21, 1999.

**ADDRESSES:** Please submit written comments, in triplicate, to Department of Justice, Justice Management Division, 950 Pennsylvania Ave., NW., Room 1110, Washington, DC 20530-0001 Attn: Juliet A. Eurich. To ensure proper handling, please refer to 28 U.S.C. 530B on your correspondence. Comments are available for public inspection at the above address by calling 202-353-7300 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Juliet A. Eurich, Justice Management Division, Department of Justice, 202-353-7300.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 21, 1998, the President signed the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277. Division A, section 801 of that Act enacted into law 28 U.S.C. 530B, entitled "Ethical Standards for Federal Prosecutors." That statute provides as follows:

"(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c) As used in this section, the term "attorney for the Government" includes any attorney described in § 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employees of such a counsel, appointed under chapter 40."

Absent further congressional action, 28 U.S.C. 530B will become effective on April 19, 1999.

The Department is publishing this interim rule to meet the requirement of section 530B(b) that the Attorney General "make and amend rules \* \* \* to assure compliance" with the legislation. Section 530B adopts the definition of the "attorney for the government" that was contained in § 77.2(a) of part 77 (now replaced), with the exception that the scope of the definition has been expanded to include an independent counsel, or employee of such counsel, appointed pursuant to chapter 40 of title 28, United States Code. As made clear by this definition, section 530B applies only to Department of Justice attorneys and attorneys acting pursuant to Department authorization. It does not apply to investigative agents (even if they are attorneys), although, under the regulations, agents operating under the direction of a covered attorney will be required to conform their conduct if so required by the ethical rules that apply to the attorney. Section 530B also does not apply to attorneys in other federal government agencies, unless they are appointed as Special Assistant United States Attorneys.

The Department has concluded that the text, title, and legislative history demonstrate that Section 530B applies only to rules of ethical conduct, such as codes of professional responsibility

adopted by states or federal courts. Neither the Act nor its legislative history suggests that Section 530B should be interpreted to provide that state rules of evidence or procedure or state substantive law will supersede the Federal Rules of Evidence, the Federal Rules of Civil, Criminal, and Appellate Procedure, or the provisions of federal substantive law. See *United States v. Lowery*, 166 F.3d 1119 (11th Cir. 1999) (interpreting Section 530B, prior to its effective date, and rejecting the argument that, under Section 530B, state rules of professional responsibility govern admission of evidence in federal court). Accordingly, Department attorneys who are conducting investigations under federal law or litigation in the federal courts are not required to comply with state rules of evidence or procedure or state substantive law. Similarly, the Department has also concluded that section 530B does not provide authority for state bars or federal courts to enact substantive or procedural rules in the guise of ethics rules or to exceed otherwise applicable regulatory, statutory, or constitutional limits on their ability to promulgate rules.

Under various federal statutes, the Attorney General has the authority to assign any officer of the Justice Department to appear on behalf of the United States in any case in any court in the United States, so long as that attorney is duly licensed and authorized to practice as an attorney under the laws of a State, territory, or the District of Columbia. See 28 U.S.C. 509, 510, 515(a), 516, 517, 519, 533, 547; Pub. L. 96-132, 93 Stat. 1040, 1044 (1979); and Pub. L. 105-277, section 102 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1999. Section 530B does not alter, amend, or supersede those statutes, or in any way interfere with the Attorney General's authority to determine who may represent the United States in any proceeding.

Section 530B directs Department attorneys to comply with rules of ethical conduct, but is silent on enforcement mechanisms. For this reason, section 530B does not change the enforcement authority of the Department of Justice's Office of Professional Responsibility, state authorities, or the federal courts. Furthermore, the Department has determined that Section 530B does not create new enforceable rights for litigants against the federal government. This comports with the long line of judicial authority holding that violations of rules of professional responsibility do not create private

rights. See *United States v. Lowery*, 166 F.3d 1119, 1124 (11th Cir. 1999) (section 530B does not change pre-existing principle that "state rule[s] of professional conduct cannot provide an adequate basis for a federal court to suppress evidence that is otherwise admissible"); *United States v. Balter*, 91 F.3d 427, 436 n.7 (3rd Cir.) (noting that even if Rule 4.2 applied to preindictment contracts, suppression would not be appropriate), *cert. denied*, 117 S.Ct. 517 (1996); *United States v. Heinz*, 983 F.2d 609, 613-14 (5th Cir. 1993) (rejecting proposition that suppression would be an appropriate remedy for violation of Rule 4.2); *Zambrano v. City of Tustin*, 885 F.2d 1473, 1475 n.4 (9th Cir. 1989) (district court should not have declared mistrial based on ethical lapses of attorneys); *United States v. Dennis*, 843 F.2d 652, 657 (2nd Cir. 1988) (sanction for ethical violations "should be disciplinary action," not adverse consequences in criminal litigation); *Johnson v. Cadillac Plastic Group, Inc.*, 930 F.Supp. 1437, 1442 (D.Colo. 1996) (exclusion of evidence in a civil case is "an inappropriate remedy" for alleged violation of Rule 4.2).

Section 530B(a) directs Department attorneys to comply with rules of ethical conduct "in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State." The Department has concluded that section 530B does not authorize state authorities to impose stricter rules on Department attorneys than on other attorneys and in no way alters prevailing state and federal court rules of ethical conduct that provide exceptions for the conduct of government attorneys.

Department attorneys represent the United States in courts throughout the country, and also supervise or otherwise participate in investigations that cross state lines. Determining what rules apply to particular conduct presents the most complex issues from both an interpretation and an application standpoint, especially in instances involving Department attorneys stationed in litigating components of the Department of Justice in Washington, DC who investigate and litigate cases in numerous jurisdictions around the country and in cases where Department attorneys are licensed in one state and are stationed or conducting litigation in another jurisdiction. As has frequently been recognized, "existing authority as to (the) choice of law in the area of ethics rules is unclear and inconsistent." ABA Committee Report

Explaining 1993 Amendment to Rule 8.5.

In crafting implementing regulations, the Department sought to be consistent with the statute's language and its legislative history by attempting to ensure that Department attorneys face obligations similar to, but not greater than, those faced by non-Department attorneys. The regulations thus recognize that attorneys are principally subject to discipline by their state of licensure and the courts before which they practice. Thus, although Department attorneys are also subject to discipline by the Office of Professional Responsibility, the regulations generally direct Department attorneys to look, according to the circumstances, to the rules of the court before which they are appearing and the rules of their licensing jurisdiction.

Consequently, the Department crafted regulations that (1) seek to define the statutory language in a reasonable way, consistent with settled principles of statutory construction and the legislative history of section 530B, and (2) identify issues that Department attorneys should examine when faced with a question about what state's rule applies. The Department has concluded that the regulations comply with section 530B's statutory directive to make regulations that will assure compliance with the statute and, at the same time, provide reasonable protection for any Department attorney who makes a good faith attempt to determine what state's ethics rules apply and to comply with those ethics rules. The decision to replace the Department's regulation on contacts with represented parties does not constitute a determination that any of the conduct previously authorized by those regulations is impermissible.

The regulations generally direct Department attorneys to comply with the rule of the court before which they are litigating. The Department believes that this should generally be sufficient, but Department attorneys should also consider whether their state of licensure would apply a different rule to their conduct. If there is no pending case, the regulations direct Department attorneys to comply with the rules of their state of licensure, but to consider whether application of choice of law principles would direct the attorney to comply with a different rule.

Finally, the regulations recognize the importance of consultation concerning an attorney's ethical responsibilities. The Department strongly believes that attorneys should be encouraged to consult concerning their ethical obligations and that agents should be encouraged to seek legal advice where

appropriate. The regulations prohibit supervisory attorneys from directing attorneys or agents to engage in conduct if that would violate relevant ethics rules, but also recognize that an attorney who, in good faith, provides legal advice or guidance to an agent (without otherwise controlling the agent's actions) or gives guidance to an attorney about that attorney's ethical obligations should not be deemed to violate these rules.

#### **Administrative Procedures Act 5 U.S.C. 553: Good Cause Exception**

The Department is implementing this interim final rule to provide an interpretation of Section 530B that those affected by that statute can use as a guide in carrying out their duties. The Department began the work needed to determine the rules and procedures required to best comply with section 530B promptly after that statute was enacted into law in 1998, but found that it was not possible to develop a workable rule, complete the inter-departmental review process needed to ensure that the rule adequately responded to the requirements of the statute and the practical concerns faced by Department attorneys on a daily basis, and provide a meaningful period of notice and comment before the statute takes effect on April 19, 1999. It is imperative that Department attorneys affected by section 530B have some early guidance concerning the standards of ethical conduct to which they will be held when that statute goes into effect. Unless guidance is promptly provided, attorneys for the Department will be left with substantial uncertainty regarding what rules they must follow in performing their duties and supervising others. Such uncertainty would run counter to the purpose of the Act and would likely chill prosecutors in the discharge of their critical duties. After completing the long and difficult process of developing regulations that interpret and adequately respond to the requirements of Section 530B, the Department is of the view that there is a significant benefit in its receiving public comments after the interim final rule has been issued. Accordingly, the Department will provide a sixty day period of comment, commencing upon the publication of its rule. However, in the unique circumstances presented, the Department has determined that, in the interim, the guidance should nonetheless take effect. To the extent necessary in these circumstances, the Department has determined that "good cause" exists for issuing its rule without prior notice and comment.

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities because these regulations provide guidance to those affected by 28 U.S.C. 530B regarding their obligations under the statute.

#### **Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

#### **Executive Order 12612**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Executive Order 1988—Civil Justice Reform**

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Robert Hinchman, Department of Justice, Office of Policy Development, 950 Pennsylvania Avenue, NW., Room 4258, Washington, DC 20530-0001, 201-514-8059.

#### **List of Subjects in 28 CFR Part 77**

Government employees, Investigations, Law Enforcement, Lawyers.

Accordingly, part 77 of chapter I of title 28 of the Code of Federal Regulations is revised to read as follows:

#### **PART 77—ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT**

##### **Sec.**

- 77.1 Purpose and authority.
- 77.2 Definitions.
- 77.3 Application of 28 U.S.C. 530B.
- 77.4 Guidance.
- 77.5 No private remedies.

**Authority:** 28 U.S.C. 530B.

##### **§ 77.1 Purpose and authority.**

(a) The Department of Justice is committed to ensuring that its attorneys perform their duties in accordance with the highest ethical standards. The purpose of this part is to implement 28 U.S.C. 530B and to provide guidance to attorneys concerning the requirements imposed on Department attorneys by 28 U.S.C. 530B.

(b) Section 530B requires Department attorneys to comply with state and local federal court rules of professional responsibility, but should not be construed in any way to alter federal substantive, procedural, or evidentiary law or to interfere with the Attorney General's authority to send Department attorneys into any court in the United States.

(c) Section 530B imposes on Department attorneys the same rules of professional responsibility that apply to non-Department attorneys, but should not be construed to impose greater burdens on Department attorneys than those on non-Department attorneys or to alter rules of professional responsibility that expressly exempt government attorneys from their application.

(d) The regulations set forth in this part seek to provide guidance to Department attorneys in determining

the rules with which such attorneys should comply.

#### § 77.2 Definitions.

As used in this part, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) The phrase *attorney for the government* means the Attorney General; the Deputy Attorney General; the Solicitor General; the Assistant Attorneys General for, and any attorney employed in, the Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, and Tax Division; the Chief Counsel for the DEA and any attorney employed in that office; the General Counsel of the FBI and any attorney employed in that office or in the (Office of General Counsel) of the FBI; any attorney employed in, or head of, any other legal office in a Department of Justice agency; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney duly appointed pursuant to 28 U.S.C. 515; any Special Assistant United States Attorney duly appointed pursuant to 28 U.S.C. 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; and any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States. The phrase *attorney for the government* also includes any independent counsel, or employee of such counsel, appointed under chapter 40 of title 28, United States Code.

The phrase *attorney for the government* does not include attorneys employed as investigators or other law enforcement agents by the Department of Justice who are not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

(b) The term *case* means any proceeding over which a state or federal court has jurisdiction, including criminal prosecutions and civil actions. This term also includes grand jury investigations and related proceedings (such as motions to quash grand jury subpoenas and motions to compel testimony), applications for search warrants, and applications for electronic surveillance.

(c) The phrase *civil law enforcement investigation* means an investigation of possible civil violations of, or claims under, federal law that may form the

basis for a civil law enforcement proceeding.

(d) The phrase *civil law enforcement proceeding* means a civil action or proceeding before any court or other tribunal brought by the Department of Justice under the authority of the United States to enforce federal laws or regulations, and includes proceedings related to the enforcement of an administrative subpoena or summons or civil investigative demand.

(e) The terms *conduct* and *activity* means any act performed by a Department attorney that implicates a rule governing attorneys, as that term is defined in paragraph (h) of this section.

(f) The phrase *Department attorney[s]* is synonymous with the phrase "attorney[s] for the government" as defined in this section.

(g) The term *person* means any individual or organization.

(h) The phrase *state laws and rules and local federal court rules governing attorneys* means rules enacted or adopted by any State or Territory of the United States or the District of Columbia or by any federal court, that prescribe ethical conduct for attorneys and that would subject an attorney, whether or not a Department attorney, to professional discipline, such as a code of professional responsibility. The phrase does not include:

(1) Any statute, rule, or regulation which does not govern ethical conduct, such as rules of procedure, evidence, or substantive law, whether or not such rule is included in a code of professional responsibility for attorneys;

(2) Any statute, rule, or regulation that purports to govern the conduct of any class of persons other than attorneys, such as rules that govern the conduct of all litigants and judges, as well as attorneys; or

(3) A statute, rule, or regulation requiring licensure or membership in a particular state bar.

(i) The phrase *state of licensure* means the District of Columbia or any State or Territory where a Department attorney is duly licensed and authorized to practice as an attorney. This term shall be construed in the same manner as it has been construed pursuant to the provisions of Pub. L. 96-132, 93 Stat. 1040, 1044 (1979), and Sec. 102 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agency Appropriations Act, 1999, Pub. L. 105-277.

(j)(1) The phrase *where such attorney engages in that attorney's duties* identifies which rules of ethical conduct a Department attorney should comply with, and means, with respect to particular conduct:

(i) If there is a case pending, the rules of ethical conduct adopted by the local federal court or state court before which the case is pending; or

(ii) If there is no case pending, the rules of ethical conduct that would be applied by the attorney's state of licensure.

(2) A Department attorney does not "engage[] in that attorney's duties" in any states in which the attorney's conduct is not substantial and continuous, such as a jurisdiction in which an attorney takes a deposition (related to a case pending in another court) or directs a contact to be made by an investigative agent, or responds to an inquiry by an investigative agent. Nor does the phrase include any jurisdiction that would not ordinarily apply its rules of ethical conduct to particular conduct or activity by the attorney.

(k) The phrase *to the same extent and in the same manner as other attorneys* means that Department attorneys shall only be subject to laws and rules of ethical conduct governing attorneys in the same manner as such rules apply to non-Department attorneys. The phrase does not, however, purport to eliminate or otherwise alter state or federal laws and rules and federal court rules that expressly exclude some or all government attorneys from particular limitations or prohibitions.

#### § 77.3 Application of 28 U.S.C. 530B.

In all criminal investigations and prosecutions, in all civil investigations and litigation (affirmative and defensive), and in all civil law enforcement investigations and proceedings, attorneys for the government shall conform their conduct and activities to the state rules and laws, and federal local court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State, as these terms are defined in § 77.2 of this part.

#### § 77.4 Guidance.

(a) *Rules of the court before which a case is pending.* A government attorney shall, in all cases, comply with the rules of ethical conduct of the court before which a particular case is pending.

(b) *Inconsistent rules where there is a pending case.*

(1) If the rule of the attorney's state of licensure would prohibit an action that is permissible under the rules of the court before which a case is pending, the attorney should consider:

(i) Whether the attorney's state of licensure would apply the rule of the court before which the case is pending,

rather than the rule of the state of licensure;

(ii) Whether the local federal court rule preempts contrary state rules; and

(iii) Whether application of traditional choice-of-law principles directs the attorney to comply with a particular rule.

(2) In the process of considering the factors described in paragraph (b)(1) of this section, the attorney is encouraged to consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(c) *Choice of rules where there is no pending case.*

(1) Where no case is pending, the attorney should generally comply with the ethical rules of the attorney's state of licensure, unless application of traditional choice-of-law principles directs the attorney to comply with the ethical rule of another jurisdiction or court, such as the ethical rule adopted by the court in which the case is likely to be brought.

(2) In the process of considering the factors described in paragraph (c)(1) of this section, the attorney is encouraged to consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(d) *Rules that impose an irreconcilable conflict.* If, after consideration of traditional choice-of-law principles, the attorney concludes that multiple rules may apply to particular conduct and that such rules impose irreconcilable obligations on the attorney, the attorney should consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(e) *Supervisory attorneys.* Each attorney, including supervisory attorneys, must assess his or her ethical obligations with respect to particular conduct. Department attorneys shall not direct any attorney to engage in conduct that violates section 530B. A supervisor or other Department attorney who, in good faith, gives advice or guidance to another Department attorney about the other attorney's ethical obligations should not be deemed to violate these rules.

(f) *Investigative Agents.* A Department attorney shall not direct an investigative agent acting under the attorney's supervision to engage in conduct under circumstances that would violate the attorney's obligations under section 530B. A Department attorney who in good faith provides legal advice or guidance upon request to an investigative agent should not be deemed to violate these rules.

#### **§ 77.5 No private remedies.**

The principles set forth herein, and internal office procedures adopted pursuant hereto, are intended solely for the guidance of attorneys for the government. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States, including criminal defendants, targets or subjects of criminal investigations, witnesses in criminal or civil cases (including civil law enforcement proceedings), or plaintiffs or defendants in civil investigations or litigation; or any other person, whether or not a party to litigation with the United States, or their counsel; and shall not be a basis for dismissing criminal or civil charges or proceedings or for excluding relevant evidence in any judicial or administrative proceeding. Nor are any limitations placed on otherwise lawful litigative prerogatives of the Department of Justice as a result of this part.

Dated: April 14, 1999.

**Janet Reno,**

*Attorney General.*

[FR Doc. 99-9845 Filed 4-19-99; 8:45 am]

BILLING CODE 4410-19-M

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[CA 164-0112a; FRL-6324-8]

#### **Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District (SMAQMD), Mojave Desert Air Quality Management District (MDAQMD), and the Ventura County Air Pollution Control District (VCAPCD) as Revisions to the California State Implementation Plan (SIP)**

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

**ACTION:** Direct final rules.

**SUMMARY:** EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from Sacramento Metropolitan Air Quality Management District (SMAQMD), Mojave Desert Air Quality Management District (MDAQMD), and the Ventura County Air Pollution Control District (VCAPCD) as revisions to the California State Implementation Plan (SIP). SMAQMD's Rule 414 controls emissions

of oxides of nitrogen from natural gas-fired water heaters; MDAQMD's Rule 1157 controls emissions from boilers and process heaters; and VCAPCD's Rule 74.16 controls emissions of oxides of nitrogen from oilfield drilling operations. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving of these rules is to regulate emissions of oxides of nitrogen (NO<sub>x</sub>) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

**DATES:** These rules are effective on June 21, 1999 without further notice, unless EPA receives adverse comments by May 20, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that these rules will not take effect.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District (SMAQMD), 8475 Jackson Rd., Suite 200, Sacramento, CA 95826-3904.

Mojave Desert Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

Ventura County Air Pollution Control District (VCAPCD), 800 South Victoria Avenue, Ventura, CA 93009.

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 744-1185.