

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, security measures, waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–002 is added to read as follows:

#### § 165.T09–002 Security Zones; Captain of the Port Chicago Zone, Lake Michigan.

(a) *Location.* The following areas are security zones. All coordinates are based upon North American Datum 1983.

(1) All waters between the Navy Pier and the Jardine Water Filtration Plant shoreward of a line starting at the southeast corner of the Jardine Water Filtration Plant at 41°53'36" N, 87°36'17" W, and ending at the northeast corner of the Navy Pier at 41°53'33" N, 87°35'55" W, and shoreward of a line starting at the southeast corner of the Navy Pier at 41°53'29" N, 87°35'55" W, thence to the east end of Dime Pier at 41°53'23" N, 87°35'58" W, thence along the south side of Dime Pier to the west end of Dime Pier at 41°53'23" N, 87°36'29" W thence southeast to the corner of the seawall at 41°53'22" N, 87°36'28" W;

(2) All waters in the vicinity of the Dresden Nuclear Power Plant south of a line starting at the Illinois River shore at approximate position 41°23'45" N, 88°16'18" W, thence east to shore at approximate position 41°23'39" N, 88°16'09" W;

(3) All waters of Lake Michigan around the Donald C. Cook Nuclear Power Plant water intakes within a line starting at the shoreline at 41°58.656' N, 86°33.972' W, thence northwest to 41°58.769' N, 86°34.525' W, thence southwest to 41°58.589' N, 86°34.591' W, thence southeast to the shoreline at 41°58.476' N, 86°34.038' W;

(4) All waters of Lake Michigan around the Palisades Nuclear Power Plant within a line starting at the shoreline in approximate position 42°19'02" N, 86°19'05" W, thence northwest to 42°20'10" N, 86°20'01" W, thence northeast to 42°19'43" N, 86°19'52" W, thence to the shoreline at 42°19'26" N, 86°18'55" W;

(5) All waters of the Rock River within a 100-yard radius of the Byron Nuclear Power Plant; with its center in approximate position 42°05'01" N, 89°19'27" W;

(6) All waters 100 yards in all directions of the 68th Street Crib, with its center in approximate position 41°47'10" N, 87°31'51" W;

(7) All waters 100 yards in all directions of the Dever Crib; with its center in approximate position 41°54'55" N, 87°33'20" W;

(8) All waters of Lake Michigan around the Zion Nuclear Power Plant within a line starting from the shoreline in approximate position 42°26'36" N, 87°48'03" W, thence southeast to 42°26'20" N, 87°47'35" W, thence northeast to 42°26'53" N, 87°47'22" W, thence to the shoreline at 42°27'06" N, 87°48'00" W;

(9) All waters of Lake Michigan within an arc of a circle with a 100-yard radius centered on the 79th Street Water Filtration Plant, approximate position 41°45'30" N, 87°33'32" W.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Chicago. Section 165.33 also contains other general requirements.

(2) The Captain of the Port Chicago will normally permit those U. S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U. S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to request permission before leaving or entering the security zone. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before transiting the security zone. This rule will not obstruct the regular flow of traffic and will allow vessel traffic to pass around the security zone.

(3) All persons and vessels shall comply with the instruction of the Captain of the Port Chicago or the designated on-scene U.S. Coast Guard patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S.

Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zones.

(4) Persons desiring to transit the area of these security zones may contact the Captain of the Port at telephone number (630) 986–2175 or on VHF channel 16 (121.5 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: March 25, 2002.

**R.E. Seebald,**

*Captain, U.S. Coast Guard, Captain of the Port, Chicago.*

[FR Doc. 02–9939 Filed 4–22–02; 8:45 am]

**BILLING CODE 4910–15–U**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 46

**RIN 2900–AJ76**

#### Policy Regarding Participation in National Practitioner Data Bank

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends our regulations regarding reporting of health care practitioners to the National Practitioner Data Bank (NPDB). We are amending the provisions concerning malpractice payment reporting by delegating the underlying decision-making to malpractice payment review panels; by delegating the actual reporting authority to facility directors and the Chief Patient Care Services Officer; by establishing new procedures for obtaining information from affected health care practitioners and others; and by establishing medical reporting criteria for licensed trainees and supervisory health care professionals. We also are amending the regulations concerning malpractice payment reporting and clinical privileges actions reporting by stating that reporting may not be the subject of negotiated settlements and that independent contractors acting on behalf of the Department of Veterans Affairs (VA) are subject to the NPDB reporting provisions. These amendments are necessary to make the reporting process more efficient and fair and to ensure that reporting is accomplished in

accordance with the statutory framework.

**DATES:** Effective May 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kathryn W. Enchelmayer, Director, Credentialing and Privileging, Office of Quality and Performance (10Q), VHA, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202)-273-7464 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on June 5, 2001, at 66 FR 30141, we proposed to amend our regulations set forth at 38 CFR Part 46 concerning the reporting of physicians, dentists, and other health care practitioners to the NPDB. These regulations concern malpractice payment reporting and clinical privileges actions reporting.

Interested persons were given 60 days to submit comments. The comment period ended August 6, 2001. We received comments from two commenters. One commenter, a representative of a medical association, supported the proposed rule without change. The other commenter, a representative of a medical school, suggested that certain changes should be made. These comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with certain changes discussed below.

The medical school representative objected to the regulations based on the incorrect assumption that VA would report a health care practitioner if the claim constituted a "nuisance claim" or "if the status of a given practitioner as a beneficiary [of a malpractice payment] cannot be demonstrated." No changes are made based on this comment. The regulations at § 46.3 provide for reporting only after a determination by at least a majority of a review panel that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the actual health care practitioner to be reported.

The medical school representative asserted that the review panel should consist only of members having the same area of expertise as the practitioner in question "or, in the alternative, only panel members having such expertise be allowed to vote." No changes are made based on these comments. Based on a review of the more than 1,100 paid claims that have been considered by a review panel since 1997, we have concluded that the overwhelming majority of claims do not

include issues requiring such specialized expertise. Further, the regulations at § 46.3(b) allow for the review panel to obtain and consider opinions of experts as needed.

The medical school representative asserted that VA should provide legal representation to a health care practitioner during the preliminary tort case and during the subsequent process for determining whether such individual should be reported to the NPDB. No changes are made based on these comments. In matters of dispute, VA must represent VA's interest. VA counsel would create a conflict of interest if they were also to represent a health care practitioner regarding the reporting issues. However, a health care practitioner may obtain personal counsel regarding any submissions to the review panel. Moreover, as stated in § 46.3(b), any prior statements provided by the health care practitioner during the tort consideration process are not included in the information provided to the review panel for consideration.

The medical school representative asserted that the review panel should be required to obtain all necessary information before making a determination on a case. No changes are made based on this comment. Under the provisions of § 46.3(b) the review panel is required to be provided the documents pertinent to the care that led to the claim, including the medical records of the patient whose care led to the claim, any report of an administrative investigation board appointed to investigate the care, the opinion of any consultant which the panel may request in its discretion and, to the extent practicable, written statements of the individual(s) involved in the care which led to the claim. We believe this is adequate to ensure that a review panel has all of the necessary information for making reporting determinations.

The medical school representative asserted that the review panel should be required to articulate in its conclusions the reasons for reporting a health care practitioner. We agree and have amended § 46.3 accordingly.

The medical school representative asserted that the reporting standards should be based on the local standard of care. No changes are made based on this comment. VA is a nation-wide health care system that is designed to adhere to one standard of care at all health care facilities.

The proposed rule at § 46.3(b) provides that a health care practitioner whose actions are under review will receive a written notice from the VA facility director indicating that VA is

considering whether to report the practitioner to the National Practitioner Data Bank because of a specified malpractice payment made, and providing the practitioner the opportunity, within 30 days of receipt, to submit a written statement concerning the care that led to the claim. Based on our further review of this matter, we believe it is necessary to lengthen the time period allowed for the health care practitioner to respond from 30 days to 60 days to ensure that the practitioner has sufficient time to prepare a response.

#### **Paperwork Reduction Act**

This document contains provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520) approved by the Office of Management and Budget under control number 2900-0621.

#### **Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rulemaking proceeding affects only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, 64.024, and 64.025.

#### **List of Subjects in 38 CFR Part 46**

Health professions.

Approved: February 19, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 46 is revised to read as follows:

### **PART 46—POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK**

#### **Subpart A—General Provisions**

Sec.

46.1 Definitions.

46.2 Purpose.

#### **Subpart B—National Practitioner Data Bank Reporting**

46.3 Malpractice payment reporting.

46.4 Clinical privileges actions reporting.

**Subpart C—National Practitioner Data Bank Inquiries**

46.5 National Practitioner Data Bank inquiries.

**Subpart D—Miscellaneous**

46.6 Medical quality assurance records confidentiality.

46.7 Prohibitions concerning negotiations.

46.8 Independent contractors.

**Authority:** 38 U.S.C. 501; 42 U.S.C. 11101–11152.

**Subpart A—General Provisions**

**§ 46.1 Definitions.**

(a) *Act* means The Health Care Quality Improvement Act of 1986, as amended (42 U.S.C. 11101–11152).

(b) *Claim of medical malpractice* means a written claim or demand for payment based on an act or omission of a physician, dentist, or other health care practitioner in furnishing (or failing to furnish) health care services, and includes the filing of a complaint or administrative tort claim under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680.

(c) *Clinical privileges* means privileges granted by a health care entity to individuals to furnish health care.

(d) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or dentistry by a State (or any individual who holds himself or herself out to be so authorized).

(e) *Director* means the duly appointed director of a Department of Veterans Affairs health care facility or any individual with authorization to act for that person in the director's absence.

(f) *Gross negligence* is materially worse than substandard care, and consists of an entire absence of care, or an absence of even slight care or diligence; it implies a thoughtless disregard of consequences or indifference to the rights of others.

(g) *Health care facility* means a hospital, domiciliary, outpatient clinic, or any other entity that provides health care services.

(h) *Other health care practitioner* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services.

(i) *Physician* means a doctor of medicine or osteopathy authorized to practice medicine or surgery by a State (or any individual who holds himself or herself out to be so authorized).

(j) *Professional review action* means a recommendation by a professional review panel (with at least a majority vote) to affect adversely the clinical

privileges of a physician or dentist taken as a result of a professional review activity based on the competence or professional conduct of an individual physician or dentist in cases in which such conduct affects or could affect adversely the health or welfare of a patient, or patients. An action is not considered to be based on the competence or professional conduct of a physician or dentist, if the action is primarily based on:

(1) A physician's or dentist's association with, administrative supervision of, delegation of authority to, support for, or training of, a member or members of a particular class of health care practitioner or professional, or

(2) Any other matter that does not relate to the competence or professional conduct of a physician or dentist in his/her practice at a Department of Veterans Affairs health care facility.

(k) *Professional review activity* means an activity with respect to an individual physician or dentist to establish a recommendation regarding:

(1) Whether the physician or dentist may have clinical privileges with respect to the medical staff of the facility;

(2) The scope or conditions of such privileges or appointment; or

(3) Change or modification of such privileges.

(l) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territories or possessions of the United States.

(m) *State Licensing Board* means, with respect to a physician, dentist, or other health care practitioner in a State, the agency of the State, which is primarily responsible for the licensing of the physician, dentist, or practitioner to furnish health care services.

(n) *Willful professional misconduct* means worse than mere substandard care, and contemplates the intentional doing of something with knowledge that it is likely to result in serious injuries or in reckless disregard of its probable consequences.

**§ 46.2 Purpose.**

The National Practitioner Data Bank, authorized by the Act and administered by the Department of Health and Human Services, was established for the purpose of collecting and releasing certain information concerning physicians, dentists, and other health care practitioners. The Act mandates that the Department of Health and Human Services seek to enter into a Memorandum of Understanding with

the Department of Veterans Affairs (VA) for the purpose of having VA participate in the National Practitioner Data Bank. Such a Memorandum of Understanding has been established. Pursuant to the Memorandum of Understanding, VA will obtain information from the Data Bank concerning physicians, dentists, and other health care practitioners who provide or seek to provide health care services at VA facilities and also report information regarding malpractice payments and adverse clinical privileges actions to the Data Bank. This part essentially restates or interprets provisions of that Memorandum of Understanding and constitutes the policy of VA for participation in the National Practitioner Data Bank.

**Subpart B—National Practitioner Data Bank Reporting**

**§ 46.3 Malpractice payment reporting.**

(a) VA will file a report with the National Practitioner Data Bank, in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice. The report will identify the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made. It is intended that the report be filed within 30 days of the date payment is made. This may not be possible in all cases; e.g., sometimes notification of payment is delayed, and sometimes the malpractice payment review process cannot be completed within the timeframe. The report will provide the following information:

(1) With respect to the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made—

- (i) Name;
- (ii) Work address;
- (iii) Home address, if known;
- (iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974;
- (v) Date of birth;
- (vi) Name of each professional school attended and year of graduation;
- (vii) For each professional license: the license number, the field of licensure, and the State in which the license is held;

(viii) Drug Enforcement Administration registration number, if applicable and known;

(ix) Name of each health care entity with which affiliated, if known.

(2) With respect to the reporting VA entity—

(i) Name and address of the reporting entity;

(ii) Name, title and telephone number of the responsible official submitting the report on behalf of the Federal government; and

(iii) Relationship of the entity to the physician, dentist, or other health care practitioner being reported.

(3) With respect to the judgment or settlement resulting in the payment—

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number;

(ii) Date or dates on which the act(s) or omission(s), which gave rise to the action or claim occurred;

(iii) Date of judgment or settlement;

(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement;

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment;

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based; and

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary of Health and Human Services.

(b) Payment will be considered to have been made for the benefit of a physician, dentist, or other licensed health care practitioner only if (at least a majority of) a malpractice payment review panel concludes that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the physician, dentist, or other licensed health care practitioner. For purposes of this part, a panel shall have a minimum of three individuals appointed by the Director, Medical-Legal Affairs (including at least one member of the profession/occupation of the practitioner(s) whose actions are under review). The conclusions of the panel shall, at a minimum, be based on review of documents pertinent to the care that led to the claim. These documents include the medical records of the patient whose care led to the claim, any report of an administrative investigation board appointed to investigate the care, and the opinion of any consultant which the panel may request in its discretion. These documents do not include those generated primarily for consideration or litigation of the claim of malpractice. In addition, to the extent practicable, the documents shall include written statements of the individual(s) involved in the care which led to the claim. The practitioner(s) whose actions

are under review will receive a written notice, hand-delivered or sent to the practitioner's last known address (return receipt requested), from the VA facility director at the time the VA facility director receives the Notice of Payment. That notice from the VA facility director will indicate that VA is considering whether to report the practitioner to the National Practitioner Data Bank because of a specified malpractice payment made, and provide the practitioner the opportunity, within 60 days of receipt, to submit a written statement concerning the care that led to the claim. Inability to notify or non-response from the identified practitioner(s) will not preclude completion of the review and reporting process. The panel, at its discretion, may request additional information from the practitioner or the VA facility where the incident occurred. The review panel's notification to the VA facility Director shall include the acts or omissions considered, the reporting conclusion, and the rationale for the conclusion.

(c) Attending staff (including contract employees, such as scarce medical specialists providing care pursuant to a contract under 38 U.S.C. 7409) are responsible for actions of licensed trainees assigned under their supervision. Notwithstanding the provisions of paragraph (b) of this section, actions of a licensed trainee (intern or resident) acting within the scope of his or her training program that otherwise would warrant reporting for substandard care, professional incompetence, or professional misconduct under the provisions of paragraph (b) of this section, will be reported only if the panel, by at least a majority, concludes that such actions constitute gross negligence or willful professional misconduct. For purposes of paragraph (b) of this section, payment will be considered to be made for the benefit of a physician, dentist, or other health care practitioner, in their supervisory capacity, if the panel concludes, by at least a majority, that the physician, dentist or other health care practitioner was acting in a supervisory capacity; that the payment was related to substandard care, professional incompetence, or professional misconduct of the trainee and not the supervisor; and that the trainee did not commit gross negligence or willful professional misconduct. Such report will note that the physician, dentist, or other health care practitioner is being reported in a supervisory capacity.

**Note to paragraph (c):** Licensed trainees acting outside the scope of their training program (e.g. acting as admitting officer of the day) will be reported under the provisions of paragraph (b) of this section.

(d) The Director of the facility at which the claim arose has the primary responsibility for submitting the report to the National Practitioner Data Bank and for providing a copy to the practitioner, to the State Licensing Board in each State where the practitioner holds a license, and to the State Licensing Board in which the facility is located. However, the Chief Patient Care Services Officer is also authorized to submit the report to the National Practitioner Data Bank and provide copies to the practitioner and State Licensing Boards in cases where the Chief Patient Care Services Officer deems it appropriate to do so. The Director of the facility also shall provide to the practitioner a copy of the review panel's notification to the Director.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0621.)

#### **§ 46.4 Clinical privileges actions reporting.**

(a) VA will file an adverse action report with the National Practitioner Data Bank in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any of the following actions:

(1) An action of a Director after consideration of a professional review action that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking, or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.

(2) Acceptance of the surrender of clinical privileges, including the surrender of clinical privileges inherent in resignation or retirement, or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding whether or not the individual remains in VA service.

(b) The report specified in paragraph (a) of this section will provide the following information—

(1) With respect to the physician or dentist:

(i) Name;

(ii) Work address;

(iii) Home address, if known;

(iv) Social Security number, if known (and if obtained in accordance with section 7 of the Privacy Act of 1974);

(v) Date of birth;

(vi) Name of each professional school attended and year of graduation;

(vii) For each professional license: the license number, the field of licensure, and the name of the State in which the license is held;

(viii) Drug Enforcement Administration registration number, if applicable and known;

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender; and

(x) Action taken, date action was made final, length of action and effective date of the action.

(2) With respect to the VA facility—

(i) Name and address of the reporting facility; and

(ii) Name, title, and telephone number of the responsible official submitting the report.

(c) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board in the State(s) in which the practitioner is licensed and in which the facility is located. It is intended that the report be filed within 15 days of the date the action is made final, that is, subsequent to any internal (to the facility) appeal.

(d) As soon as practicable after it is determined that a report shall be filed with the National Practitioner Data Bank and State Licensing Boards under paragraphs (a)(2) and (c) of this section, VA shall provide written notice to the practitioner that a report will be filed with the National Practitioner Data Bank with a copy to the State Licensing Board in each State in which the practitioner is licensed and in the State in which the facility is located.

### Subpart C—National Practitioner Data Bank Inquiries

#### § 46.5 National Practitioner Data Bank inquiries.

VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:

(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or other health care entity operated under the auspice of VA;

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on

the medical staff or who has clinical privileges at a VA hospital or other health care entity operated under the auspice of VA; and

(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

### Subpart D—Miscellaneous

#### § 46.6 Medical quality assurance records confidentiality.

Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.

#### § 46.7 Prohibitions concerning negotiations.

Reporting under this part (including the submission of copies) may not be the subject of negotiation in any settlement agreement, employee action, legal proceedings, or any other negotiated settlement.

#### § 46.8 Independent contractors.

Independent contractors acting on behalf of the Department of Veterans Affairs are subject to the National Practitioner Data Bank reporting provisions of this part. In the following circumstances, VA will provide the contractor with notice that a report of a clinical privileges action will be filed with the National Practitioner Data Bank with a copy with the State Licensing Board in the State(s) in which the contractor is licensed and in which the facility is located: where VA terminates a contract for possible incompetence or improper professional conduct, thereby automatically revoking the contractor's clinical privileges, or where the contractor terminates the contract, thereby surrendering clinical privileges, either while under investigation relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding.

(Authority: 38 U.S.C. 5705)

[FR Doc. 02-9875 Filed 4-22-02; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 247-0322a; FRL-7158-4]

### Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from the transfer of gasoline into stationary storage containers and from gasoline bulk plants and terminals. We are approving local rules that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on June 24, 2002, without further notice, unless EPA receives adverse comments by May 23, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

#### Table of Contents

I. The State's Submittal