the first year of dues withholding. As such, the majority cannot rely on Section 7115(a) as the statutory basis for § 2429.19—a substantive rule that is entirely about what happens after the first year of a dues authorization, and that dictates what parties may or may not do, and may or may not bargain over and agree to, after that first year. If there is another statutory grounding for § 2429.19, the majority does not say what it is.

Separate from the proper interpretation of Section 7115(a), two additional considerations support returning to the *Army* framework.

First, doing so would not significantly upset any reliance interests. Because the *Army* framework was in place for nearly forty years, innumerable existing collective-bargaining agreements have dues-revocation provisions that were negotiated under that framework. Additionally, as noted above, § 2429.19 does not apply to assignments that were authorized before the regulation's effective date of August 10, 2020, or to collective-bargaining agreements that were in effect on that date. As a result, returning to the *Army* framework would not significantly disrupt the status quo.

Second, some of the policy arguments raised in the comments support returning to the *Army* framework. Specifically, as some comments state, prohibiting revocations except at annual intervals can allow unions to better estimate the dues revenue that they would receive over the course of a year, which can assist them in planning their budgets and give them the financial continuity that would encourage them to invest resources in representational activities that benefit unit employees, rather than holding off due to uncertainty regarding future funding. It also could assist unions in complying with legal requirements governing the election of local union officers. Some comments note that, under the Labor-Management Reporting and Disclosure Act, unions must finalize a list of members in good standing who are eligible to participate in union elections in advance of any election. 29 U.S.C. 481(b) (''Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.''). Allowing unions to rely on members' dues-withholding commitments could assist the unions in preparing and maintaining accurate lists.

Therefore, I would return to the *Army* regime and rescind the policy statement in *OPM.* The next question becomes whether to amend 5 CFR 2429.19 or rescind it in its entirety. After considering all of the comments, I believe that the better approach would be to rescind it. While I acknowledge that amending § 2429.19 could foster more stability in the law, the comments have persuaded me that—given the wide range of individual workplace circumstances and dues-revocation arrangements—Section 7115 is particularly well-suited for clarification through case-by-case adjudication, rather than a ''one-size-fits-all'' regulatory approach. As some comments note, the Authority's adoption of § 2429.19 constituted a unique foray into substantive, rather than procedural, rulemaking by the Authority. I would not essentially repeat that mistake by keeping an amended version of § 2429.19 in place.

In sum, I would rescind 5 CFR 2429.19 and the policy statement in *OPM,* and I dissent from the majority's refusal to do so.

[FR Doc. 2026–04396 Filed 3–4–26; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 77

[Docket No. OAG199, AG Order No. 6653–2026–A]

RIN 1105–AB82

Review of State Bar Complaints and Allegations Against Department of Justice Attorneys

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (''Department'') proposes to establish a process for reviewing bar complaints and allegations against its attorneys. Under the proposed rule, before a current or former Department lawyer may participate in any investigative steps initiated by the bar disciplinary authority of a State, Territory, or the District of Columbia in response to allegations that a current or former Department attorney violated an ethics rule while engaging in that attorney's federal duties, the Department will have the right to review the allegations in the first instance and shall request that the bar disciplinary authority suspend any parallel investigations until the completion of the Department's review.

DATES: Comments are due on or before April 6, 2026. Comments received by mail will be considered timely if they are postmarked on or before the last day of the comment period. The electronic Federal Docket Management System will accept electronic comments until midnight Eastern time at the end of that day.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name, via the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the website instructions for submitting comments.

Instructions: All submissions received must include the agency name and Docket No. OAG199. Paper comments that duplicate an electronic submission are unnecessary. All comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, telephone (202) 514–4601.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule through the method identified above and by the deadline stated above.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifiable information (such as name, address, etc.) voluntarily submitted by the commenter.

The Department may withhold from public viewing information provided in comments that it determines is offensive, that may adversely impact the privacy of a third party, or that should be withheld for other legitimate reasons. For additional information, please read the privacy notice that is available through the link in the footer of *https://www.regulations.gov.*

II. Discussion

A. Overview

The proposed rule would amend 28 CFR part 77 to establish a process for the Department to review complaints and allegations filed against its attorneys with the bar disciplinary

authorities of the States, the Territories, and the District of Columbia (''State bar disciplinary authorities''). If finalized as proposed, whenever a third party files a bar complaint alleging that a current or former Department attorney violated an ethics rule while engaging in that attorney's duties for the Department, or whenever bar disciplinary authorities open an investigation into such allegations without a complaint having been filed, the Attorney General will have the right to review the complaint and the allegations in the first instance. The Attorney General or her designee will notify the applicable State bar disciplinary authorities and the affected lawyer whether she intends to exercise this right, and will request that the relevant State bar disciplinary authorities suspend any investigative steps that require information or other participation from a Department attorney in response to the allegations pending completion of her review. If the Attorney General decides not to complete her review, she or her designee will notify the applicable State bar disciplinary authorities and the affected attorney of that fact so they may resume their investigations or disciplinary hearings. The Attorney General or her designee will also notify the applicable State bar disciplinary authorities of the completion and, as appropriate, the results of the review. The proposed rule would further provide that should the relevant bar disciplinary authorities refuse the Attorney General's request, the Department shall take appropriate action to prevent the bar disciplinary authorities from interfering with the Attorney General's review of the allegations.

B. 28 U.S.C. 530B and 28 CFR Part 77

The Department has long been committed to upholding the highest standards of ethics among its attorneys. On October 21, 1998, the President signed the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681. Division A, section 801 of that statute, also known as the McDade Amendment, is enacted at 28 U.S.C. 530B and became effective on April 19, 1999. *See generally* Charles Doyle, Cong. Rsch. Serv., RL30060, *McDade-Murtha Amendment: Ethical Standards for Justice Department Attorneys* (Dec. 18, 2001), *https://perma.cc/C3AE-F8X2.* Section 530B, titled ''Ethical standards for attorneys for the Government,'' provides:

(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 section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.

28 U.S.C. 530B.

Section 530B applies to Department attorneys and attorneys acting pursuant to Department authorization. It does not apply to investigative agents, even if they are attorneys, although covered attorneys must ensure that an investigator whom they supervise conforms his conduct to any applicable rules if so required by the ethics rules that apply to the attorneys. *See* 28 CFR 77.2(a) (defining the phrase ''attorney for the government'' to exclude attorneys employed as investigators by the Department). It does not apply to attorneys in Federal government agencies other than the Department, unless they are appointed as Special Assistant United States Attorneys. *See id.*

On April 20, 1999, the Department published an interim final rule to meet the requirement of section 530B(b) that the Attorney General ''make and amend rules . . . to assure compliance'' with the statute. *See Ethical Standards for Attorneys for the Government,* 64 FR 19273 (Apr. 20, 1999) (codified as amended at 28 CFR 77) (''1999 Rule''). The Department ''concluded that the text, title, and legislative history'' of section 530B demonstrate that the statute ''applies only to rules of ethical conduct, such as codes of professional responsibility'' adopted by States or Federal courts. *See id.* at 19273–74. In the 1999 Rule, the Department sought to provide reasonable definitions of the statutory language and to identify issues that Department attorneys should examine when faced with questions about whether States' rules of professional responsibility apply to them. *See id.* at 19274.

The Department further concluded when it promulgated the 1999 Rule that ''section 530B does not change the enforcement authority of the Department of Justice's Office of Professional Responsibility, state authorities, or the federal courts'' because the statute ''is silent on enforcement mechanisms.'' *Id.* Accordingly, the 1999 Rule left in place the existing structure for the enforcement of ethical rules whether by the Department, the State bar disciplinary authorities, or the courts. *See id.* (''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.''). That disciplinary process will be described in the next section.

C. The Department's Attorney Discipline Process

The Department's process for discipling attorneys currently involves three chief Department components: the Office of Professional Responsibility (''OPR''), the Professional Misconduct Review Unit (the ''PMRU''), and the Office of the Inspector General (''OIG'').

OPR has jurisdiction to review allegations of misconduct made against Department attorneys that relate to the attorneys' exercise of their authority to investigate, litigate, or provide legal advice. *See* 28 CFR 0.39, 0.39a(a)(1). When OPR has determined after a full investigation that a career Department attorney has engaged in professional misconduct—*i.e.,* that the attorney has violated a clear and unambiguous standard either intentionally or recklessly—it refers the matter to the PMRU.

The PMRU reviews OPR's facts, analysis, and conclusions. If it finds that a preponderance of the evidence supports OPR's conclusions regarding professional misconduct, the PMRU will decide whether discipline is appropriate. Attorney discipline may include a reprimand, suspension, termination, counseling, or additional training. In addition, when the PMRU concludes that a State rule of professional conduct is implicated by the Department attorney's conduct, it will authorize OPR to refer the matter to the appropriate bar disciplinary authorities. Under current practice, for most attorney professional misconduct matters, the PMRU is the final decisionmaker for the Department with respect to findings of misconduct by career Department attorneys, whether and what discipline to impose on the Department attorney, and whether to refer the Department attorney to the bar.

OIG has jurisdiction to review allegations against Department attorneys when the allegations concern waste,

fraud, or abuse and when the allegations are not otherwise in OPR's jurisdiction. 28 CFR 0.29h(b); *see also* 28 CFR 0.29c(a)–(b). OIG refers its findings both to the subject attorney's component for discipline and to the PMRU to determine whether the conduct at issue implicates a rule of professional conduct. When requested by the PMRU, OPR reviews the OIG investigation, analyzes the conduct and findings in light of the applicable rules of professional conduct, and provides a recommendation to the PMRU as to whether the employee should be referred to the appropriate bar when a rule is implicated by the subject's conduct. If the PMRU concludes a bar rule is implicated, it authorizes OPR to notify the appropriate bar disciplinary authorities of the Department's findings.

OPR is responsible for acting as a liaison with the bar disciplinary authorities of the States, the Territories, and the District of Columbia on behalf of the Department. *See* 28 CFR 0.39a(a)(6). In practice, OPR advises the relevant State bars of attorney misconduct after authorization from the PMRU; assists the State bars in obtaining evidence in the control of the Department, unless disclosure is precluded by law or a significant law enforcement interest; and coordinates with the State bars on matters of mutual interest to improve attorney ethical standards and conduct.

When OPR refers a matter to a State bar, it is often the first information the State bar has received about the allegations. In some instances, however, a complainant has separately made an allegation to the State bar. In even rarer instances, the matter may have garnered sufficient media attention that the State bar is aware of the allegations absent a formal complaint. Generally, even in those matters in which a State bar has received a complaint about a Department attorney's conduct before or during OPR's investigation, most State bars refrain from taking further action until OPR is able to complete the investigation so that the bar has a full account, through OPR's report of investigation, of the evidence and OPR's analysis, as well as the PMRU's conclusions, when determining whether to open their own investigation.

Based on OPR's experience interacting with State bar disciplinary authorities over several decades, most State bars do not take additional action after referrals are made concerning current or former Department attorneys. State bars have limited resources to oversee all the attorneys licensed in their respective jurisdictions, and they may determine that the Department attorney's conduct does not warrant the use of their resources. They may also decline to take further action because they view the Department's disciplinary actions as sufficient to accomplish the purposes of attorney discipline, including deterring future misconduct.

D. Prioritizing Attorney Discipline and Ending the Weaponization of the Bar Complaint and Investigation Process

After more than a quarter century operating under the 1999 Rule and the attorney discipline process described above, recent events have prompted the Department to consider whether it is necessary to restructure the enforcement of ethical rules by OPR and the bar disciplinary authorities.

First, the President directed the Department to examine attorney discipline and its role in government weaponization. In Executive Order 14147, *Ending the Weaponization of the Federal Government,* the President announced that the policy of the United States is ''to identify and take appropriate action to correct past misconduct by the Federal Government related to the weaponization of law enforcement.'' E.O. 14147, 90 FR 8235, 8235 (Jan. 20, 2025). He further ordered the Attorney General to ''take appropriate action to review the activities of all departments and agencies exercising civil or criminal enforcement authority of the United States,'' including the Department. *Id.* The President subsequently directed the Attorney General ''to prioritize enforcement of . . . regulations governing attorney conduct and discipline.'' *Memorandum on Preventing Abuses of the Legal System and the Federal Courts,* 2025 Daily Comp. Pres. Doc. 2 (Mar. 21, 2025). These broad pronouncements necessitate an evaluation of the ways in which the Attorney General manages, supervises, and, if necessary, disciplines Department attorneys.

Second, over the past several years, political activists have weaponized the bar complaint and investigation process. For example, political activists have filed bar complaints against senior Department officials, including the Deputy Attorney General, the former Acting Deputy Attorney General, the Deputy Assistant Attorney General for the Federal Programs Branch of the Civil Division, and the former interim United States Attorney for the District of Columbia, as well as career Department of Justice attorneys. Even more troubling than the recent spate of State bar complaints is the willingness of some State bar disciplinary authorities to give credence to such complaints. Recently, for example, certain State bar disciplinary authorities have undertaken investigations of Department attorneys without notifying and coordinating with OPR.

This unprecedented weaponization of the State bar complaint process risks chilling the zealous advocacy by Department attorneys on behalf of the United States, its agencies, and its officers. That chilling effect, in turn, would interfere with the broad statutory authority of the Attorney General to manage and supervise Department attorneys. The Attorney General is ''the head of the Department of Justice,'' 28 U.S.C. 503, and, subject to several circumscribed exceptions, is ''vested'' with ''[a]ll functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice,'' 28 U.S.C. 509. These functions include ''conduct[ing] any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys are authorized by law to conduct.'' 28 U.S.C. 515(a). Conducting litigation on behalf of the United States or its officers ''is reserved to officers of the Department of Justice, under the direction of the Attorney General.'' 28 U.S.C. 516. The Attorney General has the authority to send these officers ''to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.'' 28 U.S.C. 517. Furthermore, the Attorney General is responsible for ''supervis[ing] all litigation to which the United States, an agency, or officer thereof is a party.'' 28 U.S.C. 519. To fulfill these responsibilities, the Attorney General is authorized to ''make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.'' 28 U.S.C. 510.

When it promulgated the 1999 Rule, the Department concluded that the enactment of section 530B did ''not alter, amend, or supersede'' these statutes, nor did it ''in any way interfere with the Attorney General's authority to determine who may represent the United States in any proceeding.'' 64 FR at 19274. At the time, however, bar disciplinary complaints against Department lawyers were comparatively rare, and complaints with political valences vanishingly so. In the decades following the 1999 Rule, the Department, through OPR, worked

collaboratively with State bar disciplinary authorities to ensure that Department attorneys maintain the highest standards of ethics. But the recent complaints and disciplinary proceedings that target internal Department deliberations undoubtedly intrude on the Attorney General's statutory responsibility to carry out the functions of the Department of Justice through its attorneys in a way unknown in the late 1990s. This intrusion requires the Department to reconsider the current system for enforcing ethics rules against Department attorneys.

E. Authority for the Department To Enforce State Ethics Rules

The Department has not previously offered a legal interpretation on the scope of the Attorney General's rulemaking authority under subsection (b) of section 530B. When the Department promulgated the 1999 Rule shortly after the enactment of section 530B, it noted that the statute ''is silent on enforcement mechanisms.'' *Id.* Because of this silence, the Department concluded that section 530B did ''not change the enforcement authority of [OPR], state authorities, or the federal courts.'' *Id.* But this statement is fundamentally ambiguous as it does not explain the nature of these entities' respective existing authorities. This is problematic as the Department had previously taken the position that State bars had no authority over its lawyers in the performance of their official functions.[1] The Department offered no opinion as to whether the Attorney General could change this enforcement authority pursuant to her rulemaking authority under subsection (b).

The Department has concluded that section 530B permits the Attorney General to establish an enforcement mechanism for assuring that Department attorneys comply with State ethics rules. The general presumption is that absent a clear statement from Congress, federal law ''control[s] the constitution and laws of the respective [S]tates, and cannot be controlled by them.'' *McCulloch* v. *Maryland,* 17 U.S. (4 Wheat.) 316, 426 (1819). ''From this principle is deduced [a] corollary'' the ''effect'' of which ''is 'that the activities of the Federal Government are free from regulation by any [S]tate.' '' *Hancock* v. *Train,* 426 U.S. 167, 178 (1976) (quoting *Mayo* v. *United States,* 319 U.S. 441, 445 (1943)); *see also, e.g., United States* v. *Washington,* 596 U.S. 832, 835 (2022); *Goodyear Atomic Corp.* v. *Miller,* 486 U.S. 174, 180 (1988); *Cunningham* v. *Neagle,* 135 U.S. 1 (1890).

The McDade Amendment provides limited authority for State bars to regulate Department lawyers by requiring those attorneys to conform to the same substantive standards of conduct as non-Federal attorneys in the States in which they are practicing, where compliance with the State rules does not interfere or conflict with Federal law. *See* 28 CFR 77.1(b) (stating that the McDade Amendment ''should not be construed in any way to alter federal substantive, procedural, or evidentiary law''). Subsection (a) of section 530B requires that State ethics rules be applied to Department attorneys ''to the same extent and in the same manner as other attorneys in that State.'' 28 U.S.C. 530B(a).

The Department has concluded that this language requires that Department attorneys be subject to the same substantive State ethics rules as every other attorney in that State, but that because Congress did not expressly confer to the States enforcement authority, the statute otherwise preserves the authority of the Attorney General to enforce those substantive standards. *See Neagle,* 135 U.S. at 60–62. In addition, subsection (b) of section 530B provides that ''[t]he Attorney General shall make and amend rules of the Department of Justice to assure compliance with [section 530B].'' 28 U.S.C. 530B(b). Accordingly, subsection (b) authorizes the Attorney General to promulgate regulations to assure that Department attorneys comply with the applicable rules of ethical conduct.

By its plain meaning, the power conferred on the Attorney General ''to assure compliance'' with the statute is broad. *Id.* The verb ''assure'' means to ''make (something) certain to happen,'' *New Oxford American Dictionary* 98 (3d ed. 2010), or ''to make certain the coming or attainment of'' some objective or event, *Merriam-Webster's Collegiate Dictionary* 75 (11th ed. 2020). Subsection (b) of section 530B thus requires the Attorney General to exercise his regulatory authority to make certain that Department attorneys comply with applicable ethics rules. It does not impose any limitations on how the Attorney General goes about structuring the regulatory system designed to accomplish this objective. The regulations could leave the responsibility for enforcing ethics rules up to the bar disciplinary authorities of the States, the Territories, and the District of Columbia. Alternatively, the regulations could establish a process wherein the Department assumes the responsibility for enforcing State ethics rules directly against Department attorneys. The Attorney General may select from a range of policy choices. Both the Supreme Court and the lower courts have ''consistently instructed'' that when Congress writes statutes with ''broad, sweeping language,'' such statutes ''should be given broad, sweeping application.'' *Consumer Elecs. Ass'n* v. *FCC,* 347 F.3d 291, 298 (D.C. Cir. 2003) (citing *New York* v. *FERC,* 535 U.S. 1, 21 (2002)); *see also PGA Tour, Inc.* v. *Martin,* 532 U.S. 661, 689 (2001) (citing *Pa. Dep't of Corr.* v. *Yeskey,* 524 U.S. 206, 212 (1998)). Here, because the language selected by Congress in section 530B is broad, so too is the authority of the Attorney General.

The broader statutory framework regulating the Department provides further support that Congress preserved the Attorney General's authority to enforce the substantive standards imposed by the McDade Amendment on Department attorneys. Department attorneys are authorized by Federal statute to practice law on behalf of the United States, subject to the Attorney General's supervision. *See* 28 U.S.C. 517 (''The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.''). Congress has required that Department attorneys be licensed members of a State bar but has not required that they be members of the bar of the State in which they practice. *See* 28 U.S.C. 530C(c)(1) (funds provided to the Attorney General may not be used to pay attorneys who are not ''duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia''). Department attorneys are not required to be licensed in each State or jurisdiction in which they practice—and are not liable for the unlicensed practice of law when they do so—because the Department's officers and agents do not need approval from a State or the District of Columbia to discharge their Federal responsibilities. *See Sperry* v. *Florida ex rel. Fla. Bar,* 373 U.S. 379, 384–85 (1963).

Congress has thus created a framework for Department attorneys under which the State whose substantive ethics rules apply may differ from the State of licensure and enforcement, and Congress has left to

[1] Memorandum for all Federal Prosecutors from Richard Thornburgh, Attorney General (June 8, 1989), Memorandum, Reprinted in Hearing before the Government Information, Justice, and Agriculture Subcomm. of the Comm. on Government Operations, 101st Cong. 289 (1990); 28 CFR part 77, FR Vol. 59, No. 149 (1994)(reflecting the Thornburgh Memorandum).

the Attorney General the discretion on how to enforce substantive ethics rules. To date, the Attorney General has relied upon the State bar licensing authorities to enforce these substantive ethics standards. But the Attorney General retains the discretion to displace State bar enforcement and to create an entirely Federal enforcement mechanism, or to displace State bar enforcement in part when it is inconsistent with the Federal Government's determinations regarding the regulation of Federal attorneys.

Subsection (a) of section 530B, which only directs Department attorneys to comply with State and local Federal court ethics rules, does not change the enforcement authority of OPR or the State bar disciplinary authorities. But subsection (b) of section 530B grants the Attorney General rulemaking authority to assure compliance with the statute. And the regulations that the Attorney General is authorized to promulgate include those that establish ''enforcement mechanisms.'' 64 FR at 19274.

F. Proposed Amendments to 28 CFR Part 77

Pursuant to the Attorney General's rulemaking authority in subsection (b) of section 530B, the proposed rule would amend 28 CFR part 77 to formalize a process—abided by in practice if not mandated by law until recently—for the Department to review allegations against its attorneys before the bar disciplinary authorities may undertake any investigative steps that seek information or otherwise require participation from a Department attorney. The primary proposed amendment would be the addition of a new § 77.5, which would establish the process for the Attorney General or her designee to review bar complaints and allegations. The proposed rule would also make corresponding amendments to § 77.1, which addresses the purpose and authority of 28 CFR part 77.

1. Addition of New 28 CFR 77.5 and Redesignation of 28 CFR 77.5 as 77.6

The proposed rule would redesignate § 77.5 as § 77.6 and add a new § 77.5. The new § 77.5 would be titled ''Review of state bar complaints and allegations against current and former attorneys for the government.'' Although not named in the proposed rule, OPR would be the Attorney General's designee for reviewing bar complaints and allegations against Department attorneys. The rule, as proposed, would not alter or abolish the responsibilities of the PMRU and OIG in carrying out the Department's attorney discipline process.

If adopted as proposed, under the rule, the Attorney General, through OPR, will have the right to review in the first instance any allegations that a current or former Department attorney violated an ethics rule while engaging in that attorney's duties for the Department. This right of first review will apply whether the allegations are made in a complaint filed by a third party or the bar disciplinary authorities open an investigation into the allegations without a complaint having been filed. To ensure that OPR is aware of all bar complaints filed against Department attorneys and all investigations opened into Department attorneys by bar disciplinary authorities, the Department will amend title 1 of the Justice Manual to require Department employees to report to OPR through their supervisors all State bar complaints filed against them and all investigations opened into them by bar disciplinary authorities of which they are informed (whether by service or other means).[2] Department attorneys who end their service with the Department will receive appropriate training on how to contact OPR if they later become the subject of State bar complaints or investigations into allegations that they engaged in ethical misconduct while still working for the Department.[3]

Upon learning that a State bar complaint has been filed against a current or former Department attorney, or that a State bar investigation has been opened into a current or former Department attorney without a complaint, OPR will promptly notify the appropriate State bar disciplinary authorities about whether the Department intends to exercise its right to review the complaint and allegations in the first instance. If the Department decides to review the State bar complaint and allegations, OPR will request the State bar disciplinary authorities to suspend their investigations or disciplinary proceedings, and direct Department personnel not to provide any non-public information to any parallel investigations or disciplinary proceedings until the completion of OPR's review.[4] If the Department declines to exercise its right of review, it will also notify the State bar disciplinary authorities of that decision so they may resume their investigations or disciplinary proceedings. If OPR begins a review of a State bar complaint and allegations but the Department decides for whatever reason not to complete the review—because, for example, a former Department attorney refuses to cooperate with OPR's investigation—OPR will promptly notify the appropriate State bar disciplinary authorities so they may resume their investigations or disciplinary proceedings.

Once OPR has concluded its investigation and the PMRU has rendered a decision, OPR will notify the appropriate State bar disciplinary authorities of the completion and, as appropriate, the results of the investigation. If the PMRU finds that the Department attorney violated an ethics rule while engaging in that attorney's duties, the State bar disciplinary authorities will then have the option of beginning or resuming their investigations or disciplinary proceedings. The proposed rule does not require State bar disciplinary authorities to defer to OPR's findings that a Department attorney violated an ethics rule. Furthermore, the proposed rule permits the State bar disciplinary authorities to impose additional sanctions beyond those already imposed by the Department, including suspension or permanent disbarment.

The proposed rule would better reflect the existing practices that have developed between OPR and the State bar disciplinary authorities, which will deter political activists from abusing the State bar disciplinary process. Most bars already wait for OPR to complete its investigation so that the bar has a full account, through OPR's report, of the evidence and OPR's analysis when determining whether to open their own investigations. In addition, most State bars decide not to take additional action after a referral is made concerning a current or former Department attorney.

In drafting this proposed rule, the Department considered that State bars have interests that are different from those protected by the Department. For instance, the Department is limited to reprimanding, suspending, or terminating the employment of a Department attorney who has engaged in misconduct, whereas the bar disciplinary authorities may suspend or

[2] The Department is aware that certain bars filter obviously meritless complaints before forwarding them to the affected lawyer. That practice is commendable, and it imposes no obligation on Department lawyers to take action before a complaint is formally provided to them by bar authorities.

[3] If a former employee chooses not to inform OPR, and the Attorney General learns of the complaint, he reserves the right to choose to participate consistent with the relevant State's law.

[4] Because all or nearly all interviews with State bars regarding bar complaints are confidential, this will extend to requests for such interviews.

revoke an attorney's license to practice law. The proposed rule therefore does not prohibit the State bar disciplinary authorities from imposing additional sanctions if the Department determines that an attorney violated an ethics rule. But it does allow the Department, which has access to information unavailable to any State bar due to various statutory and constitutional privileges, to determine whether such a rule was violated in the first instance. It also deters bad actors from turning the State bar disciplinary process itself into a tool to punish department lawyers and impede an unpopular initiative.

Relatedly, the Department also considered the fact that OPR cannot compel former Department attorneys to submit to an interview or to respond in writing to requests for information, whereas the bar disciplinary authorities where an attorney is licensed have that authority. Under the proposed rule, former Department attorneys have the option to cooperate with OPR's investigation if they want the allegations against them to be reviewed by OPR in the first instance. However, if the former Department attorney declines to cooperate fully with OPR's review, OPR may terminate its review without reaching a conclusion as to the allegation. In that circumstance, the review of the allegation will revert to the appropriate State bar disciplinary authorities, which have the power to compel the attorney's cooperation.

The proposed rule will benefit Department attorneys by ensuring the consistent application of the State ethics rules. OPR has 50 years of experience in evaluating allegations of professional misconduct against Department attorneys. It is intimately familiar with all State rules of professional conduct and how they apply to the work of Department attorneys. In addition, whereas the State bar disciplinary authorities receive and review allegations against attorneys in a wide variety of practice areas concerning many disparate issues, OPR's jurisdiction encompasses only allegations of Department attorney misconduct, *see* 28 CFR 0.29c(b), which affords OPR a level of expertise that is unmatched by any other entity. Funneling allegations of Department attorney misconduct to one entity for review and resolution will ensure that professional standards are maintained while also achieving the consistent application of uniform standards.

The Department has concluded that the proposed rule is consistent with the requirement in section 530B that State ethics rules must be applied to Department attorneys ''to the same extent and in the same manner as other attorneys in that State.'' 28 U.S.C. 530B(a). Under the proposed rule, every Department attorney will still be subject to the same substantive State ethics rules as non-Department attorneys in that State—*i.e.,* ''to the same extent.'' Moreover, the State ethics rules will apply to Department attorneys under the same factual circumstances as they would to non-Department attorneys under identical or similar circumstances—*i.e.,* ''in the same manner.'' For example, a State ethics rule that prohibits attorneys from deceiving the court would apply to both Department attorneys and non-Department attorneys alike, and it would prohibit both Department attorneys and non-Department attorneys from making deceptive statements to the court. The Department does not interpret section 530B to require that Department attorneys must be subject to the same procedures for enforcing substantive State ethics rules.

The proposed rule does not create meaningful conflict with Model Rule 8.5 of the American Bar Association's Model Rules of Professional Conduct, which provides that a lawyer admitted to practice in a jurisdiction or providing legal services in a jurisdiction is subject to the disciplinary authority of that jurisdiction. *See Model Rules of Pro. Conduct* r. 8.5(a) (ABA 2002). Under the proposed rule, Department attorneys will still be subject to the disciplinary authority of the bars of the States in which they are licensed and in which they engage in their official duties. The State bar disciplinary authorities will still have the power and the opportunity to review complaints against current or former Department attorneys, to conduct disciplinary proceedings, and to impose appropriate sanctions.

The proposed rule also does not create any conflict with Model Rule 8.3, which requires lawyers to report professional misconduct committed by other lawyers to the appropriate bar disciplinary authorities. *See Model Rules of Pro. Conduct* r. 8.3 (ABA 2002). Under the proposed rule, a Department attorney's obligations to report professional misconduct committed by other lawyers remains unchanged. OPR will engage with the bar disciplinary authorities and will inform them of the Department's conclusions with respect to allegations of professional misconduct by current or former Department attorneys.

Nothing in the proposed rule addresses the authority of the Federal courts to address alleged violations of local Federal court rules by Department attorneys. *See generally Chambers* v. *NASCO, Inc.,* 501 U.S. 32, 43 (1991) (''[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it.''). The proposed rule is focused only on the relationship between the Department and the bar disciplinary authorities of the States, the Territories, and the District of Columbia.

2. Amendments to 28 CFR 77.1

Section 77.1 addresses the purpose and authority of the regulations included in part 77. Currently, the sole purpose of these regulations is to provide guidance to Department attorneys. *See* 28 CFR 77.1(d). In light of the addition of a new § 77.5, the proposed rule amends § 77.1 to add that an additional purpose of part 77 is to establish a process for the Attorney General or her designee to review bar complaints and allegations against Department attorneys.

Paragraph (a) currently provides that the purpose of part 77 is ''to implement 28 U.S.C. 530B and to provide guidance to attorneys concerning the requirements imposed on Department attorneys'' by that statute. 28 CFR 77.1(a). The proposed rule adds that an additional purpose of part 77 is ''to fulfill the Attorney General's obligation to assure Department attorneys comply with these requirements.''

Paragraphs (b) and (c) interpret 28 U.S.C. 530B and the requirements that the statute imposes on Department attorneys. The proposed rule adds a new paragraph (d), shifting the current paragraph (d) to become a new paragraph (e), that further interprets the statute and the obligation that it imposes on the Attorney General to ''make and amend rules of the Department of Justice to assure compliance with this section.'' 28 U.S.C. 530B(b). The new paragraph (d) explains that section 530B requires the Attorney General to assure that Department attorneys comply with applicable ethics rules.

The renumbered paragraph (e) states that the regulations set forth in part 77 ''provide guidance to Department attorneys in determining the rules with which such attorneys should comply.'' 28 CFR 77.1(d). The proposed rule adds a new paragraph (f) that explains that an additional goal of the regulations in part 77 is to establish a process for the Attorney General or his designee to review bar complaints and allegations against Department attorneys.

G. Comments on the 1999 Rule

In addition to seeking public comment on the proposed rule, the Department encourages comments on the provisions of the 1999 Rule that are not being amended by this proposed rule. The Department issued the 1999 Rule as an interim final rule with request for comments, but it never adopted a final rule responding to comments on the interim final rule.

III. Regulatory Certifications

A. Administrative Procedure Act

This proposed rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. As such, this proposed rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), (d). Nonetheless, in its discretion, the Department is seeking public comment on this proposed rule.

B. Regulatory Flexibility Act

An analysis under the Regulatory Flexibility Act is not required for this proposed rule because the Department is not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 601(2), 604(a).

C. Executive Orders 12866 and 13563—Regulatory Review

This proposed rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, 58 FR 51735, 51735–36 (Sept. 30, 1993), and Executive Order 13563, 76 FR 3821 (Jan. 18, 2011).

This proposed rule is ''limited to agency organization, management, or personnel matters'' and thus is not a ''rule'' for purposes of review by the Office of Management and Budget under section 3(d)(3) of Executive Order 12866. *See* 58 FR at 51737. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget.

D. Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4729, 4730–32 (Feb. 5, 1996).

E. Executive Order 13132—Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It does not dictate the substance of the ethical standards a State may adopt. The proposed rule would merely better reflect the existing balance of responsibilities between State bar authorities and the Department, whereby the State bar authority should wait for OPR to conduct its review of the allegations and reach a conclusion before deciding whether to pursue its own disciplinary investigation. Therefore, in accordance with Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), the Department has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 14192—Unleashing Prosperity Through Deregulation

Executive Order 14192 (Unleashing Prosperity through Deregulation), 90 FR 9065 (Jan. 31, 2025), requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed or revised when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M–25–20 as a final significant regulatory action as defined in section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the incremental costs associated with such new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least 10 prior regulations. *Id.* at 9065. However, this proposed rule is not an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and it does not impose total costs greater than zero.

Therefore, this proposed rule is exempt from the offset requirements of Executive Order 14192.

G. Executive Order 14294—Overcriminalization of Federal Regulations

Executive Order 14294 (Overcriminalization of Federal Regulations), 90 FR 20363 (May 9, 2025), requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. *Id.* at 20363. This proposed rule would not create a Federal regulatory offense and is thus exempt from Executive Order 14924 requirements.

H. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

I. Congressional Review Act

This proposed rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used in the Congressional Review Act, 5 U.S.C. 804(3)(B), (C), and the reporting requirements of 5 U.S.C. 801 do not apply.

J. Paperwork Reduction Act of 1995

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 28 CFR Part 77

Government employees, Investigations, Law Enforcement, Lawyers.

Authority and Issuance

For the reasons stated in the preamble, the Attorney General proposes to amend 28 CFR part 77 as follows:

PART 77—ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

■ 1. The authority for Part 77 continues to read as follows:

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

■ 2. Revise § 77.1 to read as follows:

§ 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 purposes of this part are to implement 28 U.S.C. 530B, to provide guidance to attorneys concerning the requirements imposed on Department attorneys by 28 U.S.C. 530B, and to fulfill the Attorney General's obligation to assure

Department attorneys comply with these requirements.

(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) Section 530B requires the Attorney General to assure Department attorneys comply with applicable rules of professional responsibility.

(e) The regulations set forth in this part provide guidance to Department attorneys in determining the rules with which such attorneys should comply.

(f) The regulations set forth in this part establish a process for the Attorney General or her designee to review bar complaints and allegations against Department attorneys.

§ 77.5 [Redesignated as § 77.6]

■ 3. Redesignate § 77.5 as § 77.6.

■ 4. Add new § 77.5 to read as follows:

§ 77.5 Review of state bar complaints and allegations against current and former attorneys for the government.

(a) Before the bar disciplinary authorities of the States, the Territories, or the District of Columbia undertake any investigative steps that seek information or otherwise require participation from an attorney for the government in response to allegations that a current or former attorney for the government violated a rule of ethical conduct while engaging in that attorney's duties for the Department, the Attorney General shall have the right to review the allegations in the first instance. The Attorney General shall have this right whether the allegations are made in a complaint filed by a third party or the bar disciplinary authorities open an investigation into the allegations without a complaint. The Attorney General or her designee shall notify the appropriate bar disciplinary authorities whether she intends to exercise her right to review the allegations and, if she does, she or her designee shall request that the bar disciplinary authorities suspend any parallel investigations or disciplinary proceedings until the completion of the review. If the Attorney General decides not to complete her review, she or her designee shall notify the appropriate bar disciplinary authorities so they may resume their investigations or disciplinary proceedings. The Attorney General or her designee shall inform the appropriate bar disciplinary authorities of the completion of her review. As appropriate, the Attorney General or her designee shall also inform the appropriate bar disciplinary authorities of the results of her review, including if the review finds that the attorney for the government did not violate any rule of ethical conduct while engaging in that attorney's duties.

(b) Should the relevant bar disciplinary authorities refuse the Attorney General's request, the Department shall take appropriate action to enforce this regulation or to prevent the bar disciplinary authorities from interfering with the Attorney General's review of the allegations.

Dated: February 26, 2026.

Pamela Bondi,

Attorney General.

[FR Doc. 2026–04390 Filed 3–4–26; 8:45 am]

BILLING CODE 4410–28–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 118

[EPA–HQ–OLEM–2021–0585; FRL–7881.1–01–OLEM]

RIN 2050–AH38

Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes To Reflect Administration Policy

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to delay the compliance date for Facility Response Plan (FRP) requirements as well as to make language modifications to align with the Administration's climate change and environmental justice policies in Executive Order 14148 of January 20, 2025. These requirements are for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment from a CWA hazardous substance worst case discharge to navigable waters, adjoining shorelines, or the exclusive economic zone. This delay action is necessary to allow the Agency to consider implementation and compliance assistance tools that regulated parties may be able to take advantage of when complying with the new requirements. EPA notes that it cannot quantify the number, nature, and magnitude of covered discharges that may occur during the proposed rule delay period.

DATES: Comments must be received on or before April 6, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0585, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments. A plain language summary of the proposed rule is also available at this address.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, EPA–HQ–OLEM–2021–0585 Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rebecca Broussard, Office of Land and Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–6706; email address: *broussard.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0585 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any