

**DEPARTMENT OF VETERANS
AFFAIRS****38 CFR Part 14****RIN 2900-AM29****Accreditation of Service Organization
Representatives and Agents****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing the accreditation of representatives of claimants for veterans' benefits. As amended, the regulations require service organizations to recertify the qualifications of their accredited representatives every 5 years, and to notify VA when requesting cancellation of a representative's accreditation based upon misconduct or lack of competence, or if a representative resigns to avoid cancellation of accreditation for misconduct or lack of competence. They also clarify that VA's authority to cancel accreditation includes the authority to suspend accreditation. The purpose of these amendments is to ensure that claimants for veterans' benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims.

DATES: *Effective Date:* This final rule is effective January 10, 2008. See **SUPPLEMENTARY INFORMATION** for initial compliance dates.

FOR FURTHER INFORMATION CONTACT: Michael G. Daugherty, Staff Attorney, Office of the General Counsel (022G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6315. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 23, 2005 (70 FR 76221), VA proposed to amend the regulations governing the accreditation of recognized veterans service organization representatives and claims agents. The public comment period ended on February 21, 2006. VA received comments from an individual veteran, two State veterans service organizations, and three national veterans service organizations. These comments are discussed below.

After the notice of proposed rulemaking was published, Public Law 109-461 was enacted. Section 101 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, amends chapter 59 of title 38, United States Code, governing the recognition of

individuals for the preparation, presentation, and prosecution of claims for benefits before VA. The amendments to chapter 59, among other things, require VA to: (1) Regulate the qualifications and standards of conduct applicable to accredited agents and attorneys; (2) annually collect information about accredited agents' and attorneys' standing to practice or appear before any court, bar, or Federal or State agency; (3) add to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA; and (4) subject veterans service organization representatives and individuals recognized for a particular claim to suspension and exclusion from further practice before VA on the same grounds as apply to agents and attorneys.

Section 101 of Public Law 109-461 also amends the fee provisions in chapter 59. Prior to the amendments, section 5904(c)(1) proscribed the charging of fees by agents and attorneys for services provided before a first final Board of Veterans' Appeals (Board) decision in a case. Under the amendments, accredited agents and attorneys may charge fees for representational services provided after the claimant files a notice of disagreement in a case, and may receive fees for representation directly from VA out of past-due benefits paid to claimants.

These various amendments, viewed together, indicate to us that Congress intends VA to treat agents and attorneys in the same manner for purposes of accreditation, suspension or cancellation of accreditation, and payment of fees. To properly implement the provisions of Public Law 109-461, VA will withdraw the provisions of the notice of proposed rulemaking relating to the accreditation of claims agents and will revisit the issue in a later rulemaking.

Based on the rationale described in this document and in the notice of proposed rulemaking, VA adopts the proposed rule as revised in this document.

**Section 14.629(a)—Periodic
Recertification of Service Organization
Representatives**

Five commenters expressed overall support for the concept of periodic recertification of service organization representatives. One of these commenters, a national veterans service organization, while supporting the proposed rule, expressed concern with its ability to recertify hundreds of accredited representatives in a timely manner after VA publishes a final rule.

The commenter asked for a 6-month grace period following the effective date of the regulation to achieve initial compliance and asked for a 4-month grace period for each subsequent recertification of an accredited representative. VA acknowledges that many service organizations, by virtue of the size of their operations, will face administrative challenges in recertifying representatives accredited by VA more than 5 years before the effective date of this rule. To address this issue, the rule is being made effective 90 days after the date of publication in the **Federal Register** and VA is establishing a phased series of initial compliance dates based on the first letter of representatives' last names. The initial compliance date for service organization representatives accredited more than 5 years before the effective date of this rule is April 9, 2008 for representatives with last names beginning with letters A through F; July 8, 2008 for representatives with last names beginning with letters G through M; October 6, 2008 for representatives with last names beginning with letters N through S; and January 5, 2009 for representatives with last names beginning with letters T through Z.

The delayed effective date and phased initial compliance dates will permit organizations to make conforming changes to their procedures and phase-in the recertification requirements over a 15-month period. We believe that these accommodations are sufficient to avoid undue burdens on recognized organizations. Thereafter, VA intends that organizations will recertify their accredited representatives before the expiration of each 5-year certification period. Accordingly, we will not make further changes based on these comments.

One commenter, a national veterans service organization, requested clarification about proposed § 14.629(a). Specifically, the organization asked whether VA's amendment would require accredited service organization representatives "to take a written examination administered by VA every 5 years as a prerequisite for recertification" as proposed for agents in § 14.629(b)(2). The organization does not support such a requirement for its accredited representatives. Another commenter, a State veterans service organization, expressed similar concern that the rule would impose a new testing requirement for representatives.

It is not VA's intention to impose a new testing requirement for recertification of accredited representatives of service organizations under this rule. Section 14.629(a)

outlines the initial accreditation and periodic recertification requirements for accredited representatives of service organizations, and § 14.629(b) provides the requirements for claims agents. To recertify an accredited representative, an organization files a VA Form 21 (Application for Accreditation as Service Organization Representative) with the signature of the certifying official indicating the representative continues to meet the requirements of § 14.629(a)(1) through (3) in that he or she is of good character and reputation, is qualified to represent veterans, meets organizational membership requirements or is a full-time employee of the organization, and is not an employee of the United States Government. The organization may determine for itself the best means to determine the continuing qualifications of its representatives. The service organization's filing of the VA Form 21 is the only requirement for recertification of accredited representatives under § 14.629(a).

Section 14.629(b)—Agents

One commenter, a State veterans service organization, objected to the testing requirements in VA's accreditation regulations. However, the successful completion of an examination exists as a requirement for the initial accreditation of claims agents and the initial accreditation of county veterans' service officers recommended by a recognized State organization, not for service organization representatives in general. For the reasons discussed above relating to the enactment of Public Law 109–461, VA will withdraw the proposed amendments requiring periodic recertification of claims agents and will revisit the issue in a later rulemaking.

Section 14.633—Suspension of Accreditation

One commenter, a national veterans service organization, suggested that VA “better define the circumstances under which accreditation can be suspended” and “describe the maximum length of a suspension and the mechanism for obtaining reinstatement.” We agree.

Section 5904(b) permits VA to suspend or exclude agents and attorneys from practice before VA. VA has interpreted section 5902 and its predecessor, 38 U.S.C. 3402, as similarly authorizing the suspension or exclusion of accredited representatives of recognized service organizations. *See* 38 CFR 14.627(c) (1965) (suspension or exclusion for cause); *see also* 38 CFR 14.633(c) (1979) (suspension or exclusion based upon a finding of clear

and convincing evidence of proscribed conduct). Moreover, in Public Law 109–461, Congress amended section 5902 to subject accredited representatives to suspension and exclusion from further practice before VA on the same grounds as apply to agents and attorneys as provided for in section 5904(b). VA agrees that there is a need for greater clarity in the procedures for reinstatement. Accordingly, we have revised the proposed amendments to the rule concerning suspension to provide that the General Counsel may suspend accreditation for a definite period or until the individual satisfies the conditions established by the General Counsel for reinstatement. The General Counsel will reinstate suspended accreditations at the end of the period of suspension or upon verification that the individual has satisfied the conditions for reinstatement.

Concerning the circumstances under which a representative may be suspended, VA believes that further clarification is unnecessary. The plain language of section 5904(b) authorizes VA to suspend or exclude from further practice before VA agents or attorneys found incompetent or to have engaged in misconduct. Congress' recent amendment of section 5902 in Public Law 109–461 codifies VA's longstanding interpretation of section 5902 by providing VA with authority to suspend the accreditation of representatives or exclude them from further practice before VA on the same grounds as apply to agents and attorneys. VA's decision to suspend or cancel an individual's accreditation will be based on the facts and circumstances of the particular case, with suspension being appropriate in cases involving extenuating circumstances or less egregious conduct not warranting permanent cancellation of accreditation.

Section 14.633—Duty To Inform VA of Misconduct or Incompetence

Two commenters disagreed with the proposed requirement for an organization to inform VA of the reasons for requesting cancellation of a representative's accreditation under 38 CFR 14.633(a) when the request is due to the representative's misconduct or lack of competence or because the representative resigned to avoid cancellation of accreditation based upon misconduct or lack of competence.

One commenter, a national service organization, expressed concern that the proposed requirement would create an adversarial relationship between the employer service organization and employee representative and that it would create “a potential ethical

conflict in situations where the representative is also represented by the organization to which he or she is accredited.” According to this organization, “[p]roviding the VA with information that may potentially adversely impact the representative's entitlement to VA benefits is in direct conflict with the organization's obligation as the individual's representative.” We disagree.

Under the law governing recognition, service organizations have a legal duty to assist VA in ensuring the competent representation of claimants before The Department. Section 5902(a) of title 38, United States Code, authorizes VA to recognize organizations for the limited purpose of ensuring competent representation of veterans in the preparation, presentation, and prosecution of claims for VA benefits. *See* 38 CFR 14.626 (“The purpose of the regulation of representatives is to ensure that claimants for [VA] benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.”). VA implemented this authority in 38 CFR 14.628, which, among other things, requires that an organization applying for recognition demonstrate a substantial service commitment to veterans. An organization applying for VA recognition must demonstrate that it satisfies the legal requirements for recognition and then certify to VA that each of the organization's representatives who will assist veterans in the preparation, presentation, and prosecution of claims before VA meets the legal requirements for accreditation in 38 CFR 14.629(a). Furthermore, recognized organizations are required to train and monitor their accredited representatives to ensure the proper handling of claims. 38 CFR 14.628(d)(1)(v). Thus, an organization's legal duty to establish systems to ensure the competent representation of claimants does not end with its recognition, but continues as long as the organization is recognized by VA.

Under current § 14.633(c) and (d), cancellation of accreditation is mandatory if the General Counsel finds that a representative engaged in misconduct or that a representative's performance before the Department demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims. However, under current § 14.633(a), service organizations may request cancellation of a representative's accreditation without informing VA of the reason for the request. The amendments to § 14.633(a), which

require organizations to report the reason for the request if it involves misconduct or incompetence, will assist VA in monitoring the qualifications of individuals who apply for accreditation or are cross-accredited through more than one recognized organization.

The practice of cross-accreditation is defined in 38 CFR 14.627(i) as “accreditation based on the status of a representative as an accredited and functioning representative of another organization.” Although cross-accreditation enhances claimants’ opportunities for representation, it may conceal a representative’s misconduct or incompetence absent the amendments to § 14.633(a) in this rule. Consider the situation where a representative, accredited by several organizations, is discharged for an offense at one organization that, if proven, would clearly lead to cancellation of accreditation by VA. If the organization does not report the reason for the discharge to VA when requesting cancellation of the representative’s accreditation, the individual’s accreditations through other organizations remain valid and the representative may continue to provide representation through those organizations. As a result, an individual who engages in unlawful, unethical or unprofessional acts or is incompetent may continue to represent veterans.

An additional rationale for the amendment requiring notification is the situation where a representative ends his or her affiliation with the organization in order to avoid cancellation of accreditation based on misconduct and then applies for accreditation through another organization that has no knowledge of the misconduct. In this case, without knowledge of the previous misconduct, VA would likely accredit the representative through the new organization based upon the new organization’s unknowing certification. Certainly, if a representative engages in misconduct or provides incompetent representation at one organization, VA should not accredit the individual through another organization. This rule, which requires organizations to notify VA of the reason for requesting cancellation of a representative’s accreditation if that reason involves misconduct or incompetence, closes these gaps and better ensures the competent representation of claimants. VA believes that these benefits greatly outweigh any potential effect on the employer/employee relationship between organizations and their representatives.

Regarding the commenter’s concern about a potential adverse impact on a veteran’s benefit entitlements by virtue of the obligation to inform VA of misconduct or incompetence, the service organizations’ duty to inform provides VA with the information necessary to investigate misconduct and incompetence and ensure competent representation of claimants. It is not clear how information about a representative’s misconduct or incompetence could adversely affect his or her own entitlement to VA benefits, unless the information relates to a scheme of fraud in obtaining benefits. Although an organization’s primary purpose is to serve veterans, clearly this obligation does not include concealing fraud against the United States.

Recent changes in the law governing representation reinforce the obligation of service organizations to report a representative’s misconduct or incompetence to VA. As discussed earlier, Public Law 109–461 amended 38 U.S.C. 5904(a) to require VA to regulate the qualifications and standards of conduct applicable to accredited agents and attorneys. Amended section 5902(b)(2) subjects veterans service organization representatives to suspension and exclusion from further practice before VA on the same grounds as apply to agents and attorneys. VA’s statutory obligation to regulate the standards of conduct of accredited representatives as reflected in amendments to chapter 59 requires that organizations fulfill the reporting obligations described in § 14.633(a). In May 2007, we published in the **Federal Register** a notice of proposed rulemaking implementing Public Law 109–461, which, among other things, established standards of conduct for practice before VA applicable to all service organization representatives. 72 FR 25930.

The commenter also expressed concern about the disclosure of disaccreditation information providing a basis for claimants to seek readjudication of numerous claims. However, VA decisions are final absent reopening based on new and material evidence or a finding of clear and unmistakable error (CUE) in a prior regional office or Board of Veterans’ Appeals (Board) decision. See 38 U.S.C. 5108, 5109A, 7111. To establish CUE in a final VA decision, it must be shown that VA committed a specific error in adjudicating the claim and that the outcome would have been manifestly different but for the error. *Cook v. Principi*, 318 F.3d 1334, 1343 (Fed. Cir. 2002). Therefore, an allegation that a claimant was represented by a person

later discredited for misconduct or incompetence, by itself, would generally not be sufficient to require readjudication of a claim based on conduct by the representative.

The commenter suggested that “very few individuals would be brought to the attention of the VA” for misconduct or incompetence because it is likely those individuals would resign before any allegations of misconduct or incompetence were ever substantiated. The situation described by the organization is foreseeable under current § 14.633(a) and under the amendments made by this rule. While VA recognizes that individuals may resign before any incompetence or misconduct is substantiated as a means to avoid a formal inquiry, this does not mean that VA should forego any effort to improve the quality of representation in cases where an organization has determined that misconduct or incompetence is sufficient to request cancellation of VA accreditation. With the rule in effect, the organization will be required to inform VA that a request to cancel accreditation under § 14.633(a) is based upon misconduct, incompetence, or resignation to avoid cancellation of accreditation for misconduct or incompetence. Upon receipt of such information, when appropriate, VA will initiate the procedures under 38 CFR 14.633(e) to determine whether the representative should be barred from further representation of VA claimants. As a result, VA, in cooperation with service organizations, will seek to ensure the competent representation of claimants.

Another commenter, a State organization, expressed disagreement with the proposed requirement to notify VA in cases of cancellation of accreditation for misconduct “unless [VA] assumes all potential civil liability for the accrediting organizations.” The organization expressed concern that it might incur civil liability as a result of a lawsuit brought by a representative after it provides accreditation cancellation information to VA.

VA cannot guarantee immunity from civil suit, nor can it underwrite an organization’s potential liability resulting from civil suit. While VA acknowledges the potential for civil liability in a defamation action under state law for disclosure of employment-related information, this is a risk incurred by all employers in providing information about former employees to current or potential employers. The sole purpose of the requirement that service organizations disclose the reason for requesting cancellation of a representative’s accreditation is to

ensure competent representation of claimants by cancelling accreditation and preventing further accreditation in appropriate cases. In the commenter's jurisdiction, section 47(b) of the California Civil Code provides an absolute privilege for a communication "in any other official proceeding authorized by law." See CAL. CIV. CODE § 47(b). A "communication to an official administrative agency, which communication is designed to prompt action by that agency" is considered part of an official proceeding. See *King v. Borges*, 104 Cal. Rptr. 414, 417 (Cal. Ct. App. 1972). Thus, an organization's communication to VA concerning the reasons for requesting cancellation of a representative's accreditation, a communication required by law and designed to prompt action by VA concerning the representative's accreditation through other organizations, is absolutely privileged under California law.

Most States have statutory or common law provisions that establish truth as a defense in defamation actions and protect certain communications as privileged. Communication of accreditation cancellation information to VA by a service organization, without malice, and within accepted limits, would generally be privileged and thus not likely to result in liability for defamation damages. Even in the absence of a privilege, the publication of a true statement by a service organization to VA would not lead to liability for defamation. See *Restatement (Second) of Torts* § 581A (1977) ("One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true."). Because the nature of defamation liability and privileged communication varies from State to State, VA encourages organizations to seek counsel regarding applicable laws. As an additional protection from liability, organizations should consider making disclosure of accreditation cancellation information to VA a condition of employment by or affiliation with the organization and obtaining prior written authorization from the representative to disclose such information.

Paperwork Reduction Act

This document contains provisions constituting collections of information at 38 CFR 14.629(a), 14.629(b), and 14.633(a) under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) has approved these collections and has assigned OMB control number 2900–0018.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will 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 601–602). This rule will affect the 87 veterans service organizations recognized by VA to represent benefit claimants. However, the rule would not have a significant economic impact on these organizations because it would only impose certification requirements the costs of which would not be significant. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it raises novel policy issues.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may 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 year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

There are no Federal Domestic Assistance programs associated with this final rule.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organizations and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: July 2, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 14 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Revise § 14.629(a) introductory text to read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

* * * * *

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. The form must be signed by the prospective representative and the organization's certifying official. For each of its accredited representatives, a recognized organization's certifying official shall complete, sign and file with the Office of the General Counsel, not later than five years after initial accreditation through that organization or the most recent recertification by that organization, VA Form 21 to certify that the representative continues to meet the criteria for accreditation specified in paragraph (a)(1), (2) and (3) of this section. In recommending a person, the organization shall certify that the designee:

* * * * *

■ 3. Section 14.633(a) is amended by:
 ■ a. Revising paragraphs (a) and (e)(2)(i).
 ■ b. In paragraphs (b), (c) introductory text, and (d) adding "suspended or" before "canceled" each time it appears.
 ■ c. In paragraph (e) introductory text adding "suspension or" before "cancellation".

- d. In paragraph (e)(1), removing “and maintain the record for 3 years”.
- e. In paragraph (e)(2)(ii), adding “further suspend or” before “cancel” and “suspension or” before “cancellation”.
- f. Redesignating paragraph (g) as paragraph (h).
- g. Adding new paragraph (g).
- h. In redesignated paragraph (h), adding “suspension or” before “termination”, and by removing the last sentence of the paragraph.
- i. Adding a parenthetical at the end of the section.

The revisions and addition read as follows:

§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a) Accreditation may be suspended or canceled at the request of an agent, attorney, representative, or organization. When an organization requests suspension or cancellation of the accreditation of a representative due to misconduct or lack of competence on the part of the representative or because the representative resigned to avoid suspension or cancellation of accreditation for misconduct or lack of competence, the organization shall inform VA of the reason for the request for suspension or cancellation and the facts and circumstances surrounding any incident that led to the request.

* * * * *

- (e) * * *
- (2) * * *

(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the interim suspension and of an intent to cancel or continue suspension of accreditation. The notice to the representative will also state the reasons for the interim suspension and impending cancellation or continuation of suspension, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

* * * * *

(g) The General Counsel may suspend the accreditation of a representative, agent, or attorney, under paragraphs (b), (c), or (d) of this section, for a definite period or until the conditions for reinstatement specified by the General Counsel are satisfied. The General Counsel shall reinstate an individual's accreditation at the end of the suspension period or upon verification

that the individual has satisfied the conditions for reinstatement.

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(The Office of Management and Budget has approved the information collections requirements in this section control number 2900-0018.)

[FR Doc. E7-20211 Filed 10-11-07; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2007-0657; FRL-8479-4]

Approval and Promulgation of Implementation Plans; Revisions to the California State Implementation Plan; San Francisco Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action under the Clean Air Act to approve a revision to the San Francisco Bay Area portion of the California State Implementation Plan (SIP). This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect is to update the transportation conformity criteria and procedures in the applicable SIP.

DATES: This rule is effective on December 11, 2007 without further notice, unless EPA receives adverse comments by November 13, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2007-0657, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* vagenas.ginger@epa.gov.

3. *Mail or deliver:* Ginger Vagenas (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972-3964, vagenas.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA. This supplementary information section is arranged as follows:

- I. Transportation Conformity
- II. Background for This Action
 - A. Federal Requirements
 - B. San Francisco Bay Area Conformity SIP
- III. State Submittal and EPA Evaluation
- IV. Public Comment and Final Action
- V. Statutory and Executive Order Reviews

I. Transportation Conformity

Transportation conformity is required under section 176(c) of the Clean Air Act (CAA or Act) to ensure that federally supported highway, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂).

Conformity to the purpose of the SIP means that transportation activities will