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October 17, 2002	April 10, 2003	ASMC 880–X–1B; 880–X–6A–.06(g)2(ii)(I).

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 14 and 17

RIN 2900–AL31

Referrals of Information Regarding Criminal Violations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends VA's conduct regulations to provide that VA employees are required to report information about possible criminal activity to appropriate authorities. The VA Police and the VA Office of Inspector General, the department's two law enforcement entities, will receive such information, will investigate those cases within their respective jurisdiction and will refer proper cases for prosecution. In addition, the final rule will clarify and more accurately state the investigative jurisdiction of the Office of Inspector General. The goal of the final rule is to protect the VA, its employees and the veterans it serves, by having information about criminal activity reported and properly investigated as quickly and thoroughly as possible to prevent additional harm and to bring criminal perpetrators to justice.

DATES: *Effective Date:* April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael R. Bennett, Attorney Advisor, Office of Inspector General (51A1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 565–8678. (The telephone number is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Some significant, serious criminal matters related to VA programs and operations have not been reported to the VA Office of Inspector General (OIG), or to any law enforcement organization, in a timely manner to permit a thorough, effective criminal investigation. In reviewing these cases, it was discovered that there is no regulation that requires all VA employees to report possible criminal activity to law enforcement organizations. The final rule corrects this flaw by adding new sections to 38 CFR part 1.

Employee's Duty To Report Possible Crimes

The final rule is a reasonable and logical extension of an existing regulatory duty to report wrongdoing already placed on VA (and Federal) employees. 5 CFR 2635.101(b)(1) requires that ''[e]mployees shall disclose waste, fraud, abuse and corruption to appropriate authorities.'' Obviously, this requirement already requires Federal employees to report some criminal behavior to appropriate authorities. Given that there is a legal duty to report certain possibly criminal behavior, there should be an equal duty placed on employees to report even more serious matters that could involve physical harm to other employees, VA patients, veterans or other individuals.

In addition, a duty to report criminal activities exists in VA's Employee Handbook. The Handbook, which is dated February 2002, states on page 30 that, ''You, as a VA employee, are responsible for reporting any evidence or information that gives reasonable cause to suspect that a serious irregularity or other criminal violation may have occurred in any activity of VA.'' The VA Employee Handbook goes on to cite section 7(a) of the Inspector General Act, which authorizes the OIG to ''receive and investigate complaints or other information from any employee concerning * * * a violation of law * * *.'' It is worth noting that the section on ''How To Contact the Office of Inspector General'' is on the same page as the duty to report serious irregularities and criminal acts.

At least six other Federal agencies (Department of the Interior, Department of Health and Human Services, Small Business Administration, Department of Energy, Department of Health and Human Services/Office of Scientific Investigations, and Federal Aviation Administration) have enacted regulations which require their employees to report information about possible criminal activity. The regulations of the first five agencies listed include references to their respective Offices of Inspector General as an appropriate recipient of such information.

Office of Inspector General Experience in Criminal Investigations

A second reason for the final rule is to make certain that, once reported, the appropriate law enforcement organization quickly and properly investigates serious criminal matters relating to the programs and operations of VA. Independent and objective investigations of criminal matters relating to the programs and operations of VA are a major part of the OIG's statutory responsibilities.

In coordination with the VA police, the OIG intends to ensure that the appropriate entity investigates allegations of criminal conduct. Because the criminal law enforcement authority of VA police is restricted to VA property, their ability to conduct criminal investigations is limited. The OIG is the only VA entity with the authority to conduct criminal investigations off VA premises. The OIG's experience and knowledge of VA, combined with its statutory authority, makes the OIG uniquely qualified to conduct criminal investigations related to VA programs and operations since virtually all serious, complex cases will require some investigative work away from VA premises.

The VA OIG is also well qualified to serve as the point of referral and contact with the United States Attorneys' Offices on serious criminal matters affecting VA. Finally, there is a clear legal basis for the OIG's jurisdiction and statutory authority to conduct such criminal investigations.

Current Regulatory Scheme

At present, the only VA regulations that relate to the referral of criminal allegations are found in 38 CFR 14.560 *et seq.* This section of VA's regulations is a part of the chapter on ''Legal Services'' and is found under the section heading ''Prosecution.'' Section 14.560(a) imposes upon the Regional Counsels the duty to refer allegations of crimes against the person or property to the U.S. Attorney's Office, the FBI or local law enforcement agencies. Section 14.560(b) provides that ''[a]llegations of fraud, corruption or other criminal conduct involving programs and operations of VA will be referred to the Office of Inspector General.'' The final rule removes the obligation from the Regional Counsels to make referrals to

law enforcement agencies, both for investigation and prosecution, and instead utilizes the VA's own law enforcement entities, the VA police and the OIG, to take the primary role in investigation of criminal behavior and referral to prosecution authorities. 38 CFR 14.560(a), 14.560(b), and 14.563 should be deleted because they all involve criminal matters and referrals to the U.S. Attorneys' Office and are obsolete given the new final rule. In addition, 38 CFR 17.170(c) must be amended by substituting ''Office of Inspector General'' in the place of ''Regional Counsel'' in both the first and second sentence of § 17.170(c). Finally, the final rule clarifies and more accurately sets forth the OIG's jurisdiction for criminal investigations.

OIG's Jurisdiction for Criminal Investigations

The existing regulation cited above, and various other VA policy directives, indicate that the jurisdiction of the VA OIG is limited to ''fraud, waste and abuse'' and does not include crimes against the person or property. In fact, the Inspector General Act of 1978 (IG Act) confers extremely broad jurisdiction on the OIG with respect to investigations. 5 U.S.C. App. 3. The purpose section of the IG Act states that Offices of Inspector General are created so that ''independent and objective units within departments and agencies [can conduct] investigations relating to the programs and operations' of the department. *Id.*, § 2(1). Section 4 of the IG Act provides that one of the duties and responsibilities of the IG is to conduct ''investigations relating to the programs and operations'' of the department in question. Thus, the IG Act authorizes the IG to conduct virtually any investigation so long as it relates to VA's programs and operations.

The IG Act also provides that, in order to assure independence and objectivity, the IG is personally vested with the discretion to determine whether to conduct a particular investigation. Section 6(a)(2) of the IG Act states that the Inspector General ''is authorized to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable.''

Perhaps the most significant section of the IG Act, with respect to the IG's investigative authority, is section 7 of the Act. Section 7(a) provides that the IG may investigate complaints from an employee ''concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety.'' A felony is a ''violation of law'' and can also constitute a ''substantial and specific danger to the public health or safety.'' Therefore, so long as there is some relation to the programs and operations of VA, these violations are clearly within the IG's investigative jurisdiction. Current VA regulations and policies improperly limit and restrict the IG's statutory authority by stating, or implying, incorrectly, that OIG jurisdiction is limited to fraud, waste and abuse. The final rule, in part, corrects the improper limitations placed on the IG by the current regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Administrative Procedure Act

This document is published without regard to the notice and comment and effective date provisions of 5 U.S.C. 553 since it relates to agency management and personnel.

Regulatory Flexibility Act

The Secretary of Veterans Affairs 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. 601–612. This final rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Courts, Government employees, Government property, Penalties, Reporting and recordkeeping requirements, Security measures.

38 CFR Part 14

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

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: February 14, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR parts 1, 14 and 17 are amended as set forth below.

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. An undesignated center heading and §§ 1.200 through 1.205 are added to read as follows:

Referrals of Information Regarding Criminal Violations

§ 1.200 Purpose.

This subpart establishes a duty upon and sets forth the mechanism for VA employees to report information about actual or possible criminal violations to appropriate law enforcement entities.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

§ 1.201 Employee's duty to report.

All VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any management official, or directly to the Office of Inspector General.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

§ 1.203 Information to be reported to VA Police.

Information about actual or possible violations of criminal laws related to VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA premises, will be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question. If there is no VA police component with jurisdiction over the offense, the information will be reported to Federal, state or local law enforcement officials, as appropriate.

(Authority: 38 U.S.C. 902)

§ 1.204 Information to be reported to the Office of Inspector General.

Criminal matters involving felonies will also be immediately referred to the Office of Inspector General, Office of Investigations. VA management officials with information about possible criminal matters involving felonies will ensure and be responsible for prompt referrals to the OIG. Examples of felonies include but are not limited to, theft of Government property over $1000, false claims, false statements, drug offenses, crimes involving information technology systems and serious crimes against the person, *i.e.*, homicides, armed robbery, rape, aggravated assault and serious physical abuse of a VA patient.

(Authority: 5 U.S.C. App. 3)

§ 1.205 Notification to the Attorney General or United States Attorney's Office.

VA police and/or the OIG, whichever has primary responsibility within VA for investigation of the offense in question, will be responsible for notifying the appropriate United States Attorney's Office, pursuant to 28 U.S.C. 535.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

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

■ 3. 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.

§ 14.560 [Amended]

■ 4. In § 14.560, remove paragraphs (a) and (b); and remove the designation (c) from paragraph (c).

§ 14.563 [Removed]

■ 5. Section 14.563 is removed.

PART 17—MEDICAL

■ 6. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.170 [Amended]

■ 7. Section 17.170, paragraph (c), first sentence, remove ''appropriate Regional Counsel'' and add, in its place, ''Office of Inspector General''; and in the second sentence, remove ''Regional Counsel'' and add, in its place, ''Office of Inspector General''.

[FR Doc. 03–8723 Filed 4–9–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–113–7343A; FRL–7466–6]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) for the attainment of the one-hour ozone standard for the Milwaukee-Racine area. This SIP revision, submitted to EPA on December 16, 2002, provides new compliance options for sources subject to the state's rules limiting emissions of nitrogen oxides (NO_X) from large electricity generating units in southeast Wisconsin. Under the revised SIP, sources would have the option of complying with emissions limits on a per unit basis or complying as part of an emissions averaging plan that also includes an emissions cap. In addition, the revision creates a new categorical emissions limit for new integrated gasification combined cycled units.

DATES: This direct final rule is effective on June 9, 2003 without further notice unless EPA receives adverse written comments by May 12, 2003. If we receive adverse comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the state's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions (NO_X). These limits apply to large electricity generating units in Southeast Wisconsin. EPA approved the rules setting these NO_X emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO_X emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple sources would be assessed collectively. Participating sources would need to submit such plans to the Wisconsin Department of Natural Resources (WDNR) at least 90 days prior to the start of the ozone season, and would need to identify the participating units, their owners or operators, applicable emissions limitations, projected heat input and emissions rate, and projected mass emissions for the ozone season. The plan would establish an aggregate ozone season emissions rate limit for participating units through a formula that sums allowable emissions for each unit (based on projected heat input and each source's individual emissions rate), and divides it by the total projected heat input. To provide an environmental benefit from averaging, the formula subtracts 0.01 pounds/mmbtu from each unit's allowable emissions.

Plan Emission Rate = {Sum [Projected Unit Heat Input x (Unit Emission Rate Limit—0.01)}/(Sum of Projected Unit Heat Inputs)

As a result, total emissions under an averaging plan would be lower than they would be if each unit demonstrated compliance on an individual basis. However, individual units would be allowed to exceed emissions rates specified in the NO_X reduction rules, while other units would emit less than