

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)