

amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

**§ 1202.94 What NARA systems of records are exempt from release under the Investigatory Information Material exemption of the Privacy Act?**

(a) The General Law Files (NARA-18) and the Personnel Security Case Files (NARA-24) systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because these contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal employment or access to classified information. The only information exempt under this provision is that which would disclose the identity of a confidential source described in 5 U.S.C. 552a(k)(2).

(b) The systems of records described in paragraph (a) of this section are exempt from 5 U.S.C. 552a(d)(1). Exemption from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation.

Dated: May 29, 2001.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 01-14077 Filed 6-4-01; 8:45 am]

BILLING CODE 7515-01-P

---

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 46**

**RIN 2900-AJ76**

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

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend our regulations regarding reporting of health care practitioners to the National Practitioner Data Bank (NPDB). We propose to amend the reporting provisions concerning malpractice payment reporting by delegating the underlying decision-making to malpractice payment review panels; by delegating the actual reporting authority to facility directors and the Chief Patient Care Services Officer; by establishing new procedures for obtaining information from affected health care practitioners and others; and by establishing medical reporting criteria for licensed trainees and supervisory health care professionals. We also propose to amend the regulations

concerning malpractice payment reporting and clinical privileges actions reporting by stating that reporting may not be the subject of negotiated settlements and that independent contractors acting on behalf of the Department of Veterans Affairs (VA) are subject to the NPDB reporting provisions. These amendments appear to be necessary to make the reporting process more efficient and fair and to ensure that reporting is accomplished in accordance with the statutory framework.

**DATES:** Comments must be received on or before August 6, 2001.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov).

Comments should indicate that they are submitted in response to "RIN: 2900-AJ76." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:**

Kathryn W. Enchelmayer, Director, Credentialing and Privileging, Office of Quality and Performance (10Q), VHA, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (301) 443-9901 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This document proposes to amend our regulations set forth in 38 CFR Part 46 concerning the reporting of physicians, dentists, and other health care practitioners to the NPDB. These regulations concern malpractice payment reporting and clinical privileges actions reporting.

With respect to malpractice payment reporting, the regulations currently provide that VA will file a report with the NPDB regarding any payment for the benefit of a physician, dentist, or other health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice. The regulations also state that the report will identify the practitioner for whose benefit the payment is made. Currently, the regulations provide for facility directors to file a report when they affirm a recommendation from a peer review body regarding whether payment was made for the benefit of a practitioner.

Also, currently the regulations provide that the peer review bodies are to be appointed by facility directors. We propose to change the delegation of authority for making the determinations of whether payment was made for the benefit of a practitioner by delegating this function to malpractice payment review panels appointed by the Director of Medical-Legal Affairs. We believe that this will be a more efficient process and help ensure independent decisionmaking. We propose that this new process be used in all cases for which a panel is appointed on or after the effective date of the final rule.

The current regulations further provide for reporting to the NPDB if it is determined that payment was made for the benefit of a practitioner. We propose to delegate this reporting authority to the Director of the facility in which the acts or omissions occurred and the Chief Patient Care Services Officer. These are the appropriate reporting officials within VA. Further, to help ensure that the reported practitioner is aware of the reporting, the reporting official would be required to send a copy of the report to the reported practitioner.

For malpractice payment determinations, the current regulations provide for review of documents pertinent to the claim, including, to the extent practicable, information collected directly from the individual for whose benefit payment was made. The regulations also provide that individuals under consideration for malpractice payment reporting are to be given an opportunity for discussion with the facility director and any other individual designated by the facility director before a reporting determination is made. We propose to eliminate the discussion provisions and otherwise change these procedures as follows:

- Written notice shall be provided to the practitioner whose actions are under review stating that VA is considering whether to report the practitioner to the NPDB because of a specified malpractice payment made, and providing the practitioner with the opportunity to submit a written statement concerning the care that led to the claim within 30 days of receipt of the notice. The written notice shall be hand-delivered to the practitioner whose actions are under review or sent return-receipt requested to the last known address of such practitioner.

- Prior to making a determination, the malpractice payment review panel will review documents pertinent to the care that led to the claim. This may include

information prepared in response to a request from the panel.

We believe these procedures provide for more efficient and timely reporting while preserving the practitioner's right to fair and impartial consideration of his or her actions.

With respect to malpractice payment reporting, we also propose to establish special reporting criteria for licensed trainees and for health care professionals who supervise trainees. We propose that actions of a licensed trainee acting within the scope of his or her training program that otherwise would warrant reporting for substandard care, professional incompetence, or professional misconduct will be reported only if the panel, by at least a majority, concludes that such actions constitute gross negligence or willful professional misconduct. Also, we propose to report a physician, dentist, or other health care practitioner in their supervisory capacity, if the panel concludes, by at least a majority, that the health care practitioner was acting in a supervisory capacity when the event occurred; that the payment was related to substandard care, professional incompetence, or professional misconduct of the trainee and not the supervisor; and that the trainee did not commit gross negligence or willful misconduct. Such report would note that the physician, dentist, or other health care practitioner is being reported in a supervisory capacity. These provisions are intended to ensure that reporting reflects responsibility for actions.

With respect to malpractice payment reporting, the regulations currently state that it is intended that malpractice reports be filed within 30 days of the date payment is made. However, the regulations acknowledge that VA may not be able to report within 30 days if VA is not notified of such payments within sufficient time to report within the 30-day period. We propose to add an additional example specifically acknowledging that the 30-day period would not be met if the malpractice payment review process were delayed. The examples are designed to ensure that VA officials understand that reporting must still occur even if there is a valid reason for not reporting within the 30-day period.

In addition, we propose to add provisions regarding both malpractice payment reporting and clinical privileges actions reporting. We propose to add provisions stating that NPDB reporting, including copies to State Licensing Boards, may not be the subject of any negotiation in any settlement agreement, employee action,

legal proceedings, or any other negotiated settlement. Also, we propose to note that independent contractors are subject to NPDB reporting under the regulations. We believe these provisions are consistent with the statutory framework for establishing NPDB reporting (42 U.S.C. 11101–11157). Further, this policy will help ensure that NPDB reporting occurs when warranted.

The provisions of § 46.4 set forth a mechanism for reporting based on actions regarding clinical privileges. The current provisions inadvertently indicated that the original report and a copy would be filed with the State Licensing Board in the State in which the facility is located, and a copy filed with the State Licensing Board in the State(s) in which the practitioner is licensed. However, this would be corrected to state that the report will be filed with the National Practitioner Data Bank, with a copy to the State Licensing Board in the State(s) in which the practitioner is licensed and in which the facility is located.

The current regulations at § 46.4(a)(2) provide that one basis for reporting to the NPDB is the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. We propose to specify that the acceptance of the surrender of clinical privileges would include the surrender of clinical privileges inherent in resignation or retirement. We believe that the need for reporting would be the same regardless of how an individual surrendered these clinical privileges. Also, to advise affected individuals of the reporting under § 46.4(a)(2) and to advise them that copies will be sent to State Licensing Boards, we propose to require that, as soon as practicable following the determination to report, VA shall provide written notice to the practitioner that a report shall be filed with the National Practitioner Data Bank with a copy to the State Licensing Board in each State in which the practitioner is licensed and in the State in which the facility is located.

We also propose to make nonsubstantive changes for purposes of clarity, including adding legal definitions of "gross negligence" and "willful professional misconduct."

#### **Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a

collection of information is set forth in proposed 38 CFR 46.3(c). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the proposed collection of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AJ76."

*Title:* Submission of Evidence.

*Summary of collection of information:* Under proposed § 46.3(c), written notice shall be provided to the practitioner whose actions are under review stating that VA is considering whether to report the practitioner to the NPDB because of a specified malpractice payment made, and provide the practitioner with the opportunity within 30 days of receipt to submit a written statement concerning the care which led to the malpractice payment. The peer review panel would also request written information as needed.

*Description of need for information and proposed use of information:* This information would be needed for the malpractice payment review panels to determine whether an affected health care professional should be reported to the NPDB.

*Description of likely respondents:* Health care professionals who are under consideration for reporting to the NPDB and any other individual involved in the care, which led to a claim resulting in a malpractice payment.

*Estimated number of respondents:* 350 per year.

*Estimated frequency of responses:* 1 per year.

*Estimated average burden per collection:* 5 hours.

*Estimated total annual reporting and recordkeeping burden:* 1750 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary

for the proper performance of the functions of the Department, including whether the information will have practical utility;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

#### Executive Order 12866

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

#### Regulatory Flexibility Act

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

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

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

Health professions.

Approved: February 28, 2001.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

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

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

#### Subpart A—General Provisions

Sec.

46.1 Definitions.

46.2 Purpose.

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

46.3 Malpractice payment reporting.

46.4 Clinical privileges actions reporting.

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

46.5 National Practitioner Data Bank inquiries.

#### Subpart D—Miscellaneous

46.6 Medical quality assurance records confidentiality.

46.7 Prohibitions concerning negotiations.

46.8 Independent contractors.

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

#### Subpart A—General Provisions

##### § 46.1 Definitions.

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

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

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

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

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

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

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

(h) *Other health care practitioner* means an individual other than a physician or dentist who is licensed or

otherwise authorized by a State to provide health care services.

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

(j) *Professional review action* means a recommendation by a professional review panel (with at least a majority vote) to affect adversely the clinical privileges of a physician or dentist taken as a result of a professional review activity based on the competence or professional conduct of an individual physician or dentist in cases in which such conduct affects or could affect adversely the health or welfare of a patient, or patients. An action is not considered to be based on the competence or professional conduct of a physician or dentist, if the action is primarily based on:

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

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

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

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

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

(3) Change or modification of such privileges.

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

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

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

**§ 46.2 Purpose.**

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

**Subpart B—National Practitioner Data Bank Reporting****§ 46.3 Malpractice payment reporting.**

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

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

- (i) Name;
- (ii) Work address;
- (iii) Home address, if known;
- (iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974;
- (v) Date of birth;

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

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

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

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

(2) With respect to the reporting VA entity—

(i) Name and address of the reporting entity;

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

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

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

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

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

(iii) Date of judgment or settlement;

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

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

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

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

(b) Payment will be considered to have been made for the benefit of a physician, dentist, or other licensed health care practitioner only if (at least a majority of) a malpractice payment review panel concludes that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the physician, dentist, or other licensed health care practitioner. For purposes of this part, a panel shall have a minimum of three individuals appointed by the Director, Medical-Legal Affairs (including at least one member of the profession/occupation of the practitioner(s) whose actions are under review). The conclusions of the panel shall, at a minimum, be based on review of documents pertinent to the care that led to the claim. These documents include the medical records of the

patient whose care led to the claim, any report of an administrative investigation board appointed to investigate the care, and the opinion of any consultant which the panel may request in its discretion. These documents do not include those generated primarily for consideration or litigation of the claim of malpractice. In addition, to the extent practicable, the documents shall include written statements of the individual(s) involved in the care which led to the claim. The practitioner(s) whose actions are under review will receive a written notice, hand-delivered or sent to the practitioner's last known address (return receipt requested). That notice will indicate that VA is considering whether to report the practitioner to the National Practitioner Data Bank because of a specified malpractice payment made, and provide the practitioner the opportunity, within 30 days of receipt, to submit a written statement concerning the care that led to the claim. Inability to notify or non-response from the identified practitioner(s) will not preclude completion of the review and reporting process. The panel, at its discretion, may request additional information from the practitioner or the VA facility where the incident occurred.

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

Such report will note that the physician, dentist, or other health care practitioner is being reported in a supervisory capacity.

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

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

#### § 46.4 Clinical privileges actions reporting.

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

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

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

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

(1) With respect to the physician or dentist:

- (i) Name;
- (ii) Work address;
- (iii) Home address, if known;
- (iv) Social Security number, if known (and if obtained in accordance with section 7 of the Privacy Act of 1974);
- (v) Date of birth;

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

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

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

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

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

(2) With respect to the VA facility—

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

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

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

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

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

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

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

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

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or other health care entity operated under the auspice of VA; and

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

#### Subpart D—Miscellaneous

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

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

##### § 46.7 Prohibitions concerning negotiations.

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

##### § 46.8 Independent contractors.

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

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

[FR Doc. 01-13989 Filed 6-4-01; 8:45 am]

BILLING CODE 8320-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[CA 242-0281; FRL-6990-8]

##### Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.