

dated June 28, 1993 (Administrative Record No. WV-888);

(ii) December 1, 1992, for the rule changes submitted to OSM by letter dated June 28, 1993 (Administrative Record No. WV-889);

(iii) May 2, 1993, for the rule changes submitted to OSM by letter dated July 30, 1993 (Administrative Record No. WV-893);

(iv) June 11, 1994, for the statutory changes submitted to OSM by letter dated August 18, 1994 (Administrative Record No. WV-933); and

(v) October 4, 1995, for the rule changes submitted to OSM by letters dated September 1, 1994, and May 16, 1995 (Administrative Record Nos. WV-937 and WV 979B).

(2) *Approved revisions.* Except as noted in paragraph (o)(3) of this section, the following provisions of the amendment described in paragraph (o)(1) of this section are approved:

(i) *Revisions to the West Virginia Surface Coal Mining and Reclamation Act.*

§ 22-3-11(a) Bond Requirements.

§ 22-3-11(g) Special Reclamation Fund.

(The provision authorizing annual diversions of up to 10 percent of the fund's assets for administrative costs associated with various State regulatory and reclamation programs is approved only to the extent that these withdrawals do not hamper the State's ability to complete the reclamation of bond forfeiture sites in a timely manner in accordance with the approved reclamation plans.)

§ 22-3-12 ... Site-Specific Bonding.

(ii) *Revisions to the West Virginia Code of State Regulations (CSR).*

§ 38-2-11.2 General Requirements for All Bonds.

§ 38-2-11.3 Collateral Bonds.

§ 38-2-11.4 Incremental Bonding.

§ 38-2-11.5 Open-Acre Limit Bonding.

§ 38-2-11.6 Site-Specific Bonding.

(These regulations are approved with the stipulation that nothing in CSR § 38-2-11.6 or the Director's approval of this subsection may be construed as altering or authorizing a variance or deviation from the permitting requirements and performance standards of the approved West Virginia program.)

§ 38-2-11.7 Environmental Security Account.

§ 38-2-12.2 Requirement to Release Bonds.

§ 38-2-12.3 Bond Adjustments.

§ 38-2-12.4(a) Bond Forfeiture.

§ 38-2-12.4(a)(2)(B). Bond Forfeiture.

§ 38-2-12.4(c) Bond Forfeiture.

§ 38-2-12.4(d), (e). Bond Forfeiture.

§ 38-2-12.5 Water Quality Enhancement.

(These regulations are approved with the stipulation that nothing in CSR § 38-2-12.5 or the Director's approval of this subsection may be construed as compromising the program requirement that all bond forfeiture sites be fully reclaimed in a timely manner.)

(3) *Exceptions.*

(i) Section 22-3-11(g) of the Code of West Virginia is not approved to the extent that it limits special reclamation fund expenditures on water treatment at bond forfeiture sites to 25 percent of the fund's annual fee collections and authorizes collection of the special reclamation tax only when the fund's liabilities exceed its assets.

(ii) Subsection 38-2-12.5(d) of the West Virginia Code of State Regulations is not approved to the extent that it limits expenditures on water treatment at bond forfeiture sites to 25 percent of the special reclamation fund's gross annual revenue.

3. Section 948.16 is revised by removing and reserving paragraph (ww) and by adding paragraphs (jjj), (kkk), and (lll) to read:

§ 948.16 Required regulatory program amendments.

* * * * *

(jjj) By December 1, 1995, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22-3-11(g) of the Code of West Virginia and § 38-2-12.5(d) of the West Virginia Code of State Regulations to remove the limitation on the expenditure of funds for water treatment or to otherwise provide for the treatment of polluted water discharged from all bond forfeiture sites.

(kkk) By December 1, 1995, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the provision of § 22-3-11(g) of the Code of West Virginia that allows collection of the special reclamation tax only when the special reclamation fund's liabilities exceed its assets.

(lll) By December 1, 1995, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to eliminate the deficit in the State's alternative bonding system and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites.

[FR Doc. 95-24580 Filed 10-3-95; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

Privacy Program

AGENCY: Department of the Army, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Army system of records notice A0381-45cDAMI was deleted October 4, 1995. Therefore, the exemption rule is being deleted with this action.

In addition, the Army is amending three existing exemption rules to reflect the exemptions taken in the system of records notices. The amendments to the existing rules change the system identifiers and provide the provisions of 5 U.S.C. 552a from which the system of records may be exempt, and the reasons therefore. The system identifiers are A0381-20bDAMI, entitled Counterintelligence Operations Files; A0614-115DAMI, entitled Department of the Army Operational Support Activities; and A0318-100aDAMI, entitled Intelligence Collection Files.

EFFECTIVE DATE: October 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538-6856 or DSN 879-6856.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Army system of records notice A0381-45cDAMI was deleted October 4, 1995. Therefore, the exemption rule is being deleted with this action.

In addition, the Army is amending three existing exemption rules. The amendments to the existing rules change the system identifiers and provide the provisions of 5 U.S.C. 552a from which the system of records may be exempt, and the reasons therefore. The system identifiers are A0381-20bDAMI, entitled Counterintelligence Operations Files; A0614-115DAMI, entitled Department of the Army Operational Support Activities; and A0318-100aDAMI, entitled Intelligence Collection Files.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, 32 CFR part 505 is amended as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 505.5, is amended by revising the text of paragraphs (e)ac, (e)ad, and (e)af, and removing and reserving paragraph (e)ae as follows:

§ 505.5 Exemptions.

* * * * *

(e) *Exempt Army records.* * * *

ac. System identifier: A0381-20bDAMI.

(1) System name: Counterintelligence/Security Files.

(2) Exemption: All portions of this system of records may be exempt from the provisions of subsections (c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f) of 5 U.S.C. 552a.

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(4) Reasons: (a) From subsection (c)(3) because disclosing the agencies to which information from this system has been released could inform the subject of an investigation of an actual or potential criminal violation, or intelligence operation or investigation; or the existence of that investigation or

operation; of the nature and scope of the information and evidence obtained as to his/her activities or of the identity of confidential sources, witnesses, and intelligence personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel, and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified and sensitive sources, information, and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

(b) From subsection (d)(1) through (d)(5) because granting access to records in this system of records could inform the subject of a counterintelligence operation or investigation of an actual or potential criminal violation or the existence of that operation or investigation; of the nature and scope of the information and evidence obtained as to his/her activities; or of the identity of confidential sources, witnesses and intelligence personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an operation or investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(c) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgement and timing, and it is only after the information is evaluated that the relevance and necessity of such

information can be established. In addition, during the course of the investigation or operation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provide valuable leads for other law enforcement or intelligence agencies.

(d) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system or records is being exempt from subsections (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest procedures because under certain circumstances, the Deputy Chief of Staff for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(e) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad, generic terms.

ad. System identifier: A0614-115DAMI.

(1) System name: Department of the Army Operational Support Activities.

(2) Exemption: All portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) may be exempt from subsections 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(4) Reasons: (a) From subsection (c)(3) because disclosing the agencies to which information from this system has

been released could reveal the subject's involvement in a sensitive intelligence or counterintelligence operation or investigation of an actual or potential criminal violation, or intelligence operation or investigation; or the existence of that investigation or operation. Granting access to such information could seriously impede or compromise an investigation or operation; endanger the physical safety of participants and their families, confidential sources, witnesses, intelligence personnel, and their families; and lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures.

(b) From subsection (d)(1) through (d)(5) because granting access to records could inform the subject of an intelligence or counterintelligence operation or investigation of an actual or potential criminal violation or the existence of that operation or investigation; of the nature and scope of the information and evidence obtained, or of the identity of confidential sources, witnesses and intelligence personnel. Granting access to such information could seriously impede or compromise an operation or investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony; disclose investigative techniques and procedures; invade the privacy of those individuals involved in intelligence programs and their families; compromise and thus negate specialized techniques used to support intelligence programs; and interfere with and negate the orderly conduct of intelligence and counterintelligence operations and investigations. In addition, the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(c) From subsection (e)(1) because it is not always possible to detect the relevance of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be

established. In addition, during the course of the investigation or operation, the investigator or operative may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of law other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provides valuable leads for other law enforcement or intelligence agencies.

(d) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system or records is being exempt from subsections (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest procedures because under certain circumstances, the Deputy Chief of Staff for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(e) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources of information, to protect the privacy and physical safety of participants and their families, confidential sources, and witnesses and to avoid the disclosure of specialized techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad, generic terms.

ae. [Reserved.]

af. System identifier: A0381-100aDAMI.

(1) System name: Intelligence/Counterintelligence Source Files.

(2) Exemption: All portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) may be exempt from subsections 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(4) Reasons: (a) From subsection (c)(3) because disclosing the agencies to which information from this system has been released could reveal the subject's

involvement in a sensitive intelligence or counterintelligence operation or investigation of an actual or potential criminal violation, or intelligence operation or investigation; or the existence of that investigation or operation. Granting access to such information could seriously impede or compromise an investigation or operation; endanger the physical safety of participants and their families, confidential sources, witnesses, intelligence personnel, and their families; and lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures.

(b) From subsection (d)(1) through (d)(5) because granting access to records could inform the subject of an intelligence or counterintelligence operation or investigation of an actual or potential criminal violation or the existence of that operation or investigation; or the nature and scope of the information and evidence obtained, or of the identity of confidential sources, witnesses and intelligence personnel. Granting access to such information could seriously impede or compromise an operation or investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony; disclose investigative techniques and procedures; invade the privacy of those individuals involved in intelligence programs and their families; compromise and thus negate specialized techniques used to support intelligence programs; and interfere with and negate the orderly conduct of intelligence and counterintelligence operations and investigations. In addition, the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(c) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In

addition, during the course of the investigation or operation, the investigator or operative may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of law other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provides valuable leads for other law enforcement or intelligence agencies.

(d) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system of records is being exempt from subsection (d) of the Act concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest procedures because under certain circumstances, the Deputy Chief of staff for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(e) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources of information, to protect the privacy and physical safety of participants and their families, confidential sources, and witnesses and to avoid the disclosure of specialized techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad generic terms.

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Dated: September 28, 1995.

L. M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 95-24664 Filed 10-3-95; 8:45 am]
BILLING CODE 5000-04-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AH18

Eligibility Reporting Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations regarding eligibility verification reports (EVRs) for income-based benefits. This amendment implements legislation which eliminated the mandatory requirement for submission of EVRs on an annual basis from recipients of pension or parents' dependency and indemnity compensation (DIC) and gives VA discretionary authority to require such reports where necessary to determine eligibility. This amendment sets forth the guidelines that the Secretary will use in exercising this discretionary authority.

EFFECTIVE DATE: This amendment is effective October 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: The term "eligibility verification report" means a VA form which requests information needed to determine or verify eligibility for VA's income-based benefit programs (pension and parents' DIC). Until recently VA was required by law (38 U.S.C. 1315(e) and 38 U.S.C. 1506(2)) to secure a completed EVR at least once a year from every pension beneficiary and every parents' DIC beneficiary under the age of 72. Public Law 103-271, the Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994, amended 38 U.S.C. 1315 and 1506 to give the Secretary of Veterans Affairs discretionary authority to require submission of income and resource reports by recipients of income-based benefits.

On May 15, 1995, we published a document in the Federal Register (60 FR 25877) proposing criteria for determining which claimants and beneficiaries must complete an EVR. Interested parties were invited to submit written comments on or before July 14, 1995, and we appreciate the one comment that was received.

The commenter, noting that in the past workload backlogs developed when

all EVRs fell due at the same time, expressed concern over the possibility of similar backlogs developing if all EVRs are sent at the same time.

While we appreciate the commenter's concern, any potential negative impact from concentrating the EVR workload at one time will be ameliorated by the vast reduction in the total number of EVRs we request. We project that with implementation of this final rule the number of annual EVRs will drop from approximately 850,000 to around 350,000.

The commenter also expressed concern that some beneficiaries who are not required to complete an annual EVR will not advise VA of unreimbursed medical expenses that could reduce countable income for VA purposes, and thereby lose potential entitlement to increased benefits.

Each year VA will remind beneficiaries who are not required to submit EVRs that they might be due an adjustment because of unreimbursed medical expenses paid from their own funds during the previous calendar year. Beneficiaries will therefore be reminded of the opportunity to advise VA of medical expenses as they have been in the past, but the ultimate responsibility for doing so lies with the beneficiary.

Based on the rationale set forth in this document and in the proposed rule, the provisions of the proposed rule are adopted as a final rule without change.

The Secretary 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 amendment will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: September 7, 1995.
Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows: