

(d) During December, January, and February, twenty-four hours advance notice is required for openings.

(e) The draw need not be opened at all other times.

Dated: September 1, 1998.

Roger T. Rufe, Jr.,

*Vice Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.*

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 2

RIN 2900-AH98

Release of Information From Department of Veterans Affairs Records

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) regulations governing the confidentiality and release of VA records subject to the Privacy Act, the Freedom of Information Act (FOIA) (including the Electronic Freedom of Information Act Amendments of 1996, and the veterans' records confidentiality statute. The proposed rule sets forth a mechanism for the public to obtain information from the VA. The proposed rule is intended to maximize public availability of VA records to the extent permitted by law and considerations such as personal privacy or law enforcement. Essentially these provisions consist of restatements of statute, interpretations of statute, interpretations of case law, interpretations of Executive Orders, and clarification. The proposed amendments also would implement the Electronic Freedom of Information Act Amendments of 1996, court decisions and Executive Branch guidance issued since the regulations were originally published.

Further, this document proposes to delegate authority to the Assistant General Counsel for Professional Staff Group IV for making final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701 and 5705. This would simplify decision making by allowing the highest level individual with direct responsibility for decision making to issue decisions.

DATES: Comments must be received on or before November 9, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, D.C. 20420. Comments should indicate that they are submitted in response to "RIN 2900-AH98." 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 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Lorrie Johnson, Deputy Assistant General Counsel (024A), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, D.C. 20420, telephone number (202) 273-6358, fax number (202) 273-6388.

SUPPLEMENTARY INFORMATION: Current regulations promulgated pursuant to section 5701 appear in 38 CFR 1.500 through 1.527; current regulations promulgated pursuant to FOIA appear in §§ 1.550 through 1.558; and current regulations promulgated pursuant to the Privacy Act appear in §§ 1.575 through 1.584. These amendments consolidate regulations governing the release of information pursuant to all three statutes (§ 5701, FOIA and the Privacy Act) into one set of regulations, new §§ 1.500 through 1.512. The following current sections have been rewritten to simplify and clarify: §§ 1.500(b)-(d); § 1.502; § 1.507; §§ 1.511(a)-(f); § 1.512; § 1.513(a) and (b)(3); § 1.514 (in part); § 1.519; § 1.522; § 1.524; § 1.525; § 1.526; § 1.527; § 1.550; § 1.552(a); § 1.553; § 1.553a(a), (e) and (f); § 1.554(b); § 1.554a; § 1.555; § 1.556 (in part); § 1.557; § 1.577(b)-(d), (f) and (g); § 1.579(a)-(c); and § 1.580.

Provisions that essentially restate statutory language have been deleted: §§ 1.500(a); § 1.501; § 1.503; § 1.506(a); § 1.509; § 1.510; § 1.512(c)(2) and (e); § 1.513 (in part); § 1.551(b) and (c); § 1.552(c) and (d); § 1.553a(b) and (c); § 1.554(a) and (c); § 1.575(a) and (b); § 1.576(a)-(g); § 1.577(a) and (e); and § 1.579(d).

These amendments implement new statutes (or amendments to statutes), court decisions, and Executive Branch guidance, which have been enacted or issued since the regulations were originally published. The following were implicitly repealed or superseded: § 1.504; § 1.505; § 1.506(a) and (b) (in part); § 1.508; § 1.510 (in part); § 1.513(b)(1)(i)-(vii) and (ix),(x); § 1.513(b)(2); § 1.514 (in part); § 1.514a;

§ 1.515; § 1.516; § 1.518; § 1.521; and § 1.553a (in part).

Regulations governing internal policy matters have been deleted:

§ 1.513(b)(1)(viii); § 1.517; § 1.520; § 1.551(a); and § 1.552(b).

The provisions of § 1.511(g) and § 1.513a have been repealed, since they were superseded by 38 CFR 1.460 *et seq.*

The text of current § 1.582 remains substantially the same, and is redesignated as § 1.512.

The provisions of § 1.527, § 1.557, § 1.580, and § 2.6(e)(11) have been amended to delegate to the Assistant General Counsel for Professional Staff Group IV, the same authority and responsibility to act for the Secretary as was previously granted to the General Counsel and Deputy General Counsel to make final Departmental decisions on appeals under FOIA, the Privacy Act, 38 U.S.C. 5701 and 5705.

The Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the adoption of the 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. Almost all requests for information are submitted by individuals. Further, it would be extremely rare, if ever, that a request for information by a small entity would have a significant impact on the business of the small entity. Therefore, 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.

List of Subjects

38 CFR Part 1

Administrative procedures, Privacy Act, Freedom of Information, Recordkeeping.

38 CFR Part 2

Authority delegations (Government agencies).

Approved: March 9, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set out in the preamble, 38 CFR parts 1 and 2 are proposed to be amended as follows:

PART 1—GENERAL

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

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

2. The undesignated center heading preceding § 1.500 and §§ 1.500 through 1.512 are revised to read as follows:

Requesting Records From the Department of Veterans Affairs

§ 1.500 General.

The Department of Veterans Affairs (VA) ordinarily will process a request for records under these rules (§§ 1.500 through 1.512), which incorporate the requirements of FOIA (the Freedom of Information Act), the Privacy Act, and section 5701 (the VA statute protecting the confidentiality of claims records, 38 U.S.C. 5701). VA policy is to maximize public availability of department records to the extent permitted by law and considerations such as personal privacy or law enforcement.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701)

§ 1.501 Definitions.

(a) A *beneficiary* is a veteran or any other individual who has received benefits (including medical benefits) or, for the purposes of this series of rules (§§ 1,500 through 1.512), has applied for benefits, pursuant to title 38, United States Code.

(b) *Benefits records* are an individual's records—regardless of whether the veteran or other individual is living or dead or is a U.S. citizen—which pertain to programs under any of the benefits laws administered by the VA Secretary, including medical care, compensation, pension, education, loan guaranty, insurance, and cemetery records.

(c) *Component* means any VA entity, including Administrations and staff offices in VA Central Office, and medical centers, satellite clinics, Regional Offices, and National Cemetery Offices, and other facilities in the field.

(d) *Confidential commercial information* means records containing trade secrets or confidential business information, provided to the government by a submitter, that are arguably exempt from release under subsection (b)(4) of FOIA because disclosure could reasonably be expected to cause substantial competitive harm.

(e) A *consent* is an authorization for VA to release an individual's records to a third party.

(1) The consent must:

(i) Be an original writing by the individual,

(ii) Specify that VA is authorized to make the disclosure, and

(iii) Contain the signature of the individual, the date signed, a reasonable description of the records to be released, and identification of the third party, such as the party's name and address.

(2) Revocation of a consent must be done by an original writing and is effective when delivered to the FOIA/

Privacy Act Officer of the component which maintains the records.

(f) *Court order* is a document which has been signed or otherwise specifically approved by a judge in the judicial (not executive or legislative) branch of government. An order signed by an administrative law judge or state board would not qualify as a court order.

(g) *Denial* of a records request includes withholding a record in whole or in part; determining that a record responsive to the request does not exist or cannot be located after a reasonable search; determining that a record is not subject to the Privacy Act, FOIA, or section 5701; disputing a fee determination; refusing to amend records under the Privacy Act; refusing to supply a list of names and addresses; releasing confidential commercial information; refusing a request for expedited treatment; and refusing a request for an accounting under the Privacy Act.

(h) A *dependent* is an individual who is (or at the time the record in question was created, was) a dependent of a beneficiary. A veteran's spouse and children are presumed to be dependents for purposes of this series of regulations (§§ 1.500 through 1.512).

(i) *FOIA* is the abbreviation for the Freedom of Information Act, 5 U.S.C. 552.

(j) *The FOIA Guide*, required by subsection (g) of FOIA, explains how to request records from the VA; it may be found in VA's public reading rooms.

(k) *The FOIA/Privacy Act Officer* is the official at VA Central Office or within a component holding that title, or other official within a component generally responsible for processing a request for records under these rules (§§ 1.500 through 1.512).

(l) *An individual's own records* or an individual's records means information about a living individual—veterans and other individuals—which is retrieved from a system of records by the individual's name or other personal identifier, such as social security number or claims file number. The term does not include other VA records concerning individuals which are not stored in a system of records.

(m) *An original writing* means the actual, signed written communication, and does not include photocopies, e-mail, or telefacsimiles (faxes).

(n) *The Privacy Act* refers to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(o) *Proof of identity* is a credential, establishing the identity of an individual, such as a driver's license

containing a picture, name, current address, date of birth, and signature.

(p) *Public reading rooms* are spaces made available (as needed) in most VA components and VA computer telecommunications sites, which make records available pursuant to FOIA. The VA component providing a public reading room space will often (but not always) be the component which maintains the record.

(q) The term *record(s)* includes portions of a record, and information contained within a record, and can include information derived from a record. Records may be maintained in paper, electronic, and other forms, but records do not include objects, such as tissue slides, blood samples, or computer hardware.

(r) *Regular duty hours* generally means 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays, in most VA components.

(s) The *Secretary* means the Secretary of Veterans Affairs.

(t) *Section 5701* refers to the veterans records confidentiality statute, 38 U.S.C. 5701. Records covered by section 5701 include all records of an identifiable individual, pertaining to VA benefits, including medical care.

(u) *Section 7332* records means records covered by 38 U.S.C. 7332, as implemented in 38 CFR 1.460 through 1.499, which protects the confidentiality of VA medical treatment records relating to drug and alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

(v) *Sensitive records* refers to medical records containing information that, with a reasonable degree of medical certainty, are likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her.

(w) *Submitter* means any person or entity (including corporations, State and foreign governments) who provides confidential commercial information to the government.

(x) *VA* means the federal Department of Veterans Affairs.

(y) *VA Central Office* refers to the headquarters of the Department of Veterans Affairs. The mailing address is 810 Vermont Avenue NW., Washington, DC 20420.

(z) *Written request* or *in writing* means a written communication, including letters, photocopies of letters, and telefacsimiles (faxes) of letters. The term does not include electronic mail.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701, 7332.)

§ 1.502 Public access to records.

(a) How to apply these rules (§§ 1.500 through 1.512). Many VA records are considered for disclosure under these rules. Some, however, are processed under other rules; for example:

(1) Some records are made available by means of publication in the **Federal Register**. These may be obtained in public libraries and other sources outside VA.

(2) Some records are available by visiting a public reading room; these include VA directives and handbooks.

(3) Some requests for certain types of records require application of other rules as well as these rules in §§ 1.500 through 1.512. For example, medical treatment records involving drug/alcohol abuse, sickle cell anemia or infection with HIV (section 7332 records), see 38 CFR 1.460 through 1.499; medical quality assurance records, see 38 CFR 17.500 through 17.511.

(4) Some records are made routinely available to the public without further reference to these rules (§§ 1.500 through 1.512).

(b) Making a request. Anyone may request that VA disclose any record. (An individual who seeks his or her own records should first follow the rules in paragraph (c) of this section.) Except as otherwise provided, a requester:

(1) Must submit a signed, written request, describing the record so it may be located with a reasonable amount of effort, and should address it to the FOIA/Privacy Act Officer of the component which maintains the record or, if not known, as follows:

(i) For medical records, to the Director of the VA medical facility where the individual was last treated or to the FOIA/Privacy Act Officer, Veterans Health Administration, VA Central Office.

(ii) For National Cemetery System records, to the Director, National Cemetery Area Office, or to the FOIA/Privacy Act Officer, National Cemetery System, VA Central Office.

(iii) For other benefits records (including compensation and pension examination records), to the FOIA/Privacy Act Officer at the VA Regional Office serving the individual's jurisdiction or to the FOIA/Privacy Act Officer, Veterans Benefits Administration, VA Central Office.

(iv) For all Inspector General records, to the FOIA/Privacy Act Officer, Office of the Inspector General, VA Central Office.

(v) For all other records, to the FOIA/Privacy Act Officer of the nearest field facility or VA Central Office.

(2) Should write "Attention, FOIA/Privacy Act Officer" on the envelope and on the request.

(3) May provide (if a request involves records about another individual) an original writing which authorizes disclosure of that individual's records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary). Providing such documentation may enable VA to disclose more records than might otherwise be lawful.

(4) Make any personal contacts during the regular duty hours of the component concerned.

(c) Access to an individual's own records. (1) Individuals may ask for their own records orally, in writing, and by e-mail. The request should:

(i) Describe the record so it may be located with a reasonable amount of effort, and

(ii) Be submitted to the FOIA/Privacy Act Officer of the component which maintains the record or, if not known, as described in paragraph (b)(1) (i) through (iv) of this section.

(2) VA will provide an individual access to an individual's own records except for portions that:

(i) Have been exempted pursuant to § 1.512,

(ii) Have been compiled in reasonable anticipation of a civil action, or

(iii) Constitute sensitive records subject to the special procedures contained in paragraph (e) of this section. When one of these exceptions applies, VA will process the request under paragraph (b) as well.

(3) When a veteran and a dependent of a veteran receive VA benefits, VA may maintain records on both in a single benefits file, retrieved by the veteran's personal identifier. Only the records that pertain to the issuance of the veteran's benefits constitute that individual's own records. The records that pertain to the issuance of the dependent's benefits constitute that individual's own records.

(4) An individual may believe that VA maintains records that are not the individual's own records, as defined, but involve the individual nonetheless. If the individual wants these records, he or she must clearly say so, describe the nature of the records, and follow the procedures contained in paragraph (b).

(d) *Processing a request.* A request (which otherwise complies with these rules, §§ 1.500 through 1.512) is effective when it is received by the FOIA/Privacy Act Officer of the component which maintains the record. In processing a request, the following may apply:

(1) *Proof of identity.* VA may require proof of identity in processing a request, if a personal privacy concern is involved.

(2) *Original writing.* VA may require an original writing for any records request.

(3) *Discretionary release.* If VA is authorized by FOIA to withhold a record in order to protect a governmental interest, VA will release it anyway on a discretionary basis to the extent law permits, unless VA can foresee that significant harm would occur to that governmental interest by releasing it.

(4) *Order of receipt.* VA will ordinarily process records requests and appeals according to their order of receipt by the FOIA/Privacy Act Officer of the component which maintains the record, or, for appeals, by the Office of General Counsel.

(5) *Expedited processing.*

(i) Requests and appeals may be taken out of order and expedited when the requester certifies to the best of the requester's knowledge or belief that:

(A) Failure to release the records would pose an imminent threat to an individual's life or safety, or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is a compelling need to inform the public about urgent questions concerning VA's activities.

(ii) The FOIA/Privacy Act Officer will decide requests for expedited processing within 10 days of receiving the request; the Office of General Counsel will decide appeals within 10 days of receiving a letter of appeal from an adverse determination for expedited treatment.

(6) *Referrals.* A VA FOIA/Privacy Act Officer may determine that another component or Federal agency would be better able to process a request. Whenever all or part of a request is referred, the FOIA/Privacy Act Officer will ordinarily notify the requester to whom the request has been referred.

(7) *Records responsive to a request.* In determining whether certain records are responsive to a request, VA will ordinarily include only those records in its possession and control as of the date of the receipt of the request by the FOIA/Privacy Act Officer of the component which maintains the records.

(8) *Electronic records.* A request for records includes a request for electronic records.

(9) *Multitrack processing.* If a component places a notice to the public in the FOIA Guide, a FOIA/Privacy Act Officer may process requests for records

in two or more tracks based upon the amount of work or time (or both) involved in processing the requests. The notice shall inform requesters of the limits of each track, and advise requesters how to qualify for a faster track by limiting the scope of the request.

(e) *Access to sensitive records.* Access to sensitive records is subject to the following special procedures:

(1) When an individual requests that individual's own records, the FOIA/Privacy Act Officer of the component which maintains the records will identify the presence of any potentially sensitive records.

(2) If sensitive records may be involved, the FOIA/Privacy Act Officer will refer the records to a VA physician (other than a rating board physician) for further review.

(3) The VA physician will advise the FOIA/Privacy Act Officer whether all or part of the records in question are sensitive records.

(4) The FOIA/Privacy Act Officer will notify the individual that VA will disclose the sensitive records to a VA physician who will explain the sensitive materials to the individual. Following such a discussion, access to the sensitive records will be provided to the individual. The only exception is when, notwithstanding the discussion, providing access would create a medical emergency. In that exceptional event, VA will provide access to the records once providing access would no longer constitute a medical emergency.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701)

§ 1.503 Amendment of an individual's own records.

(a) An individual may ask VA to amend that individual's own records.

(b) If an individual knows where that individual's records are located, the individual should submit an original writing requesting amendment to the FOIA/Privacy Act Officer at the component which maintains the records. If an individual does not know where VA maintains the records, see § 1.502(b)(1) for the FOIA/Privacy Act Officer to contact.

(c) A request for VA to amend an individual's own record must:

(1) Identify each of the specific portions of the record which the individual wishes VA to amend.

(2) Describe how the individual wishes VA to amend each portion of the record, whether by deletion, substitution, or addition. The individual should provide VA with language he or she wishes to substitute or add to the record.

(3) State concisely the reasons why each amendment should be made, and provide any supporting documentation.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 501)

§ 1.504 Administrative review.

(a) The FOIA/Privacy Act Officer will make the initial decision whether to grant a request for records under FOIA (including a request for expedited treatment), whether to assess fees, and whether to grant access to, or amendment of, an individual's own records.

(b) Upon denial of a records request, VA will: inform the requester in writing, cite the specific reasons for the denial at the place where the information has been redacted, indicate the number of pages withheld in their entirety, set forth the name and title of the responsible official, and advise that the denial may be appealed to the General Counsel (024) at VA Central Office within the time prescribed in paragraph (c) of this section.

(c) The General Counsel, the Deputy General Counsel, or the Assistant General Counsel (024) will make the final VA decision on an appeal from a denial of a records request. An appeal must be an original writing, and it must be received by the Office of General Counsel (024) within 60 work days from the date of the denial; however, an appeal by a submitter of confidential commercial information must be received by the Office of General Counsel within 10 work days of the date of receipt of the initial Department decision to release the records.

(d) The letter of appeal should identify the records at issue, the component that denied the request, and the date of the denial. It is helpful to include related information or materials, such as a copy of the original request, the denial letter, and an explanation concerning why the denial was erroneous.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701.)

§ 1.505 Amount of monetary benefits.

VA shall release, to any person who requests such information, the amount of the most recent recurring monthly VA benefit payment made to a beneficiary (who has been identified by the requester) for pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance. However, if releasing the amount of such payment would in effect disclose other information about the beneficiary, this section will not apply and the request will be processed under § 1.502.

(Authority: 38 U.S.C. 501, 5701(c)(1))

§ 1.506 Request for benefits records in judicial proceedings.

(a) *General.* For an individual's records that are not benefits records, see § 1.509(d).

(1) When VA is not a party to a judicial proceeding, release must also be authorized pursuant to 38 CFR 14.800 through 14.801.

(2) Generally, the FOIA/Privacy Act Officer of the component which maintains the records will decide whether to disclose records requested for use in a judicial proceeding (except in cases before the Court of Veterans Appeals). If the FOIA/Privacy Act Officer determines that the records will be used against the beneficiary or dependent, the process will be referred to the Regional Counsel for disposition.

(3) Federal Tort Claims Act cases. If a claim under the Federal Tort Claims Act has been filed or is anticipated, the appropriate Regional Counsel will determine whether records will be disclosed. The Regional Counsel will limit disclosure of records to that which would be available pursuant to discovery if the matter were in litigation. The General Counsel must provide concurrence for disclosure of any other records.

(b) *Federal court proceeding.* (1) Court order. Upon receipt of a Federal court order, VA will disclose benefits records, except for section 7332 records, to whomever is designated in the court order or to the court. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(2) *Subpoena.* VA will not disclose benefits records pursuant to a Federal court or grand jury subpoena unless the beneficiary or dependent is deceased, is not a citizen of the United States, is an alien not lawfully admitted for permanent residence, or provides consent. If one of these exceptions applies, VA may, after due consideration, disclose such records (except for section 7332 records) to whomever is designated in the subpoena or to the court. If a subpoena is signed or is otherwise specifically approved by a judge, it will qualify as a court order. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(3) *Original records, fees.* If original records are offered and received into evidence, VA will seek permission to substitute copies. Where a party other than the United States issues a Federal court process, such party must prepay the appropriate fees.

(c) *State or local court proceeding.* (1) *Court order.* Upon receipt of a State or

local court order, VA will disclose benefits records (except for section 7332 records) in accordance with paragraphs (c) (3) and (4) of this section. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(2) *Subpoena.* VA will not disclose benefits records pursuant to a State or local court or grand jury subpoena unless the beneficiary or dependent is deceased, is not a citizen of the United States, is an alien not lawfully admitted for permanent residence, or provides consent. If one of these exceptions applies, VA may disclose such records (except for section 7332 records) in accordance with paragraphs (c) (3) and (4) of this section. If a subpoena is signed or is otherwise specifically approved by a judge, it will qualify as a court order. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(3) *Additional requirements.* VA will disclose benefits records pursuant to a State or local court process as follows:

(i) When the requester provides the beneficiary's or dependent's consent; or,
(ii) In the absence of consent, if the Regional Counsel determines that disclosure is necessary to prevent the perpetration of fraud or other injustice in the matter in question. The Regional Counsel may require additional documentation detailing the need for such disclosure, setting forth the character of the pending suit, and the purpose for which the benefits records will be used. If the Regional Counsel determines that disclosure is not warranted, the Regional Counsel or designee will advise the court that benefits records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and explain why the records cannot be disclosed. The Regional Counsel will take action to have the matter removed to Federal court if appropriate.

(4) *Disclosure to whom, original records, fees.* VA will disclose benefits records to whomever is designated in the State or local court process or to the court. The requester must first pay the appropriate fees to VA. If original records are offered and received into evidence, VA will seek permission to substitute copies.

(d) *Notice requirements.* When a court order becomes a matter of public record, the FOIA/Privacy Act Officer of the component which maintains the records will make reasonable efforts to notify the beneficiary or dependent that the benefits records were disclosed. A notice sent to the beneficiary's or dependent's last known address satisfies this requirement.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701, 7332)

§ 1.507. Disclosure of loan guaranty information.

(a) Any person is entitled to obtain, from loan guaranty records, copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems, if names and home addresses of beneficiaries or dependents are deleted. VA will disclose names and home addresses contained in loan guaranty records only in accordance with paragraphs (c) and (d) of this section.

(b) The address of the property involved shall be disclosed regardless of whether it also happens to be the home address of a beneficiary or dependent.

(c) In order to assist any applicant for (or recipient of) loan guaranty benefits, VA may disclose relevant information from loan guaranty records, including names and home addresses of beneficiaries or dependents to: the purchaser of a property; the current owner of a property; an entity that is considering making a loan to an individual with respect to a property; or an agent—such as an attorney or real estate broker—representing any of the above. VA must document any such disclosure in the loan guaranty record.

(d) In order to assess the credit capacity of an applicant for (or recipient of) loan guaranty benefits or a proposed purchaser of VA property, or in order to sell a loan or installment sale contract held by the Secretary, VA may release relevant information, including names and home addresses of beneficiaries or dependents, from loan guaranty records to: credit-reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies.

(Authority: 38 U.S.C. 501, 5701(h))

§ 1.508. Disclosure of lists of names and addresses.

(a) Any nonprofit organization wanting a list of names and addresses of VA beneficiaries must write to the Office of Management, Information Management Service (045A4), VA Central Office (except requests for lists of educationally disadvantaged veterans must be sent to the Director of the nearest VA Regional Office). The request must contain all of the following:

(1) The category of names and addresses sought.

(2) *Proof of nonprofit status.* Satisfactory proof includes evidence of

tax-exempt status pursuant to 26 U.S.C. 501, or that the organization is a governmental body.

(3) The purpose for which the list is sought, programs and resources the organization proposes to devote to this purpose, and how such purpose is directly connected with the conduct of programs and the utilization of benefits under Title 38, United States Code.

(4) A certification that the organization, and all members having access to the list, are aware of the penalty provisions of section 5701(f) and will not use the list for any purpose other than that stated in the application.

(b) The Assistant Secretary for Management, with the concurrence of the General Counsel, is authorized to release lists of names and addresses to organizations that have complied with all of the requirements in paragraph (a) of this section. Lists of names and addresses shall not duplicate lists released to other components of the same organization.

(c) For lists of educationally disadvantaged veterans, if the Director of the VA Regional Office finds that the requester is a nonprofit organization and operates an approved educational program as provided under 38 U.S.C., chapter 34, subchapter V, then the Director may release the list of names and addresses.

(d) If VA has previously compiled the requested list for its own use, and VA determines that the list can be released, the list may be furnished without charge for compilation. Otherwise, VA will charge a fee as set out in § 1.510.

(e) *Forwarding mail.* (1) *Procedures.* When VA does not furnish an address, VA may agree to forward a letter or judicial process. The sender must enclose the letter or process in an unsealed envelope showing no return address, bearing the name of the beneficiary or dependent and sufficient postage to cover full mailing costs, including the cost of certified or registered mail where applicable. (In addition to postage, VA may charge its costs in accordance with § 1.510.) The component will place its own return address on the envelope. When receipts (for certified or registered mail) or undelivered envelopes are returned to the component, VA will notify the original sender; VA will retain the receipt or the envelope.

(2) *Limitations.* This provision applies only if it does not interfere unduly with the functions of the component concerned. VA will not forward letters or judicial processes if the contents could be harmful to the physical or mental health of the recipient, or if they are for the purposes of canvassing,

harassment, propaganda, or debt collection.

(Authority: 38 U.S.C. 501, 5701(f)(1))

§ 1.509 Miscellaneous special rules.

(a) *Powers of attorney and legal guardians.* Persons authorized to exercise the rights of individuals requesting records, amending records, or appealing denial of a records request include persons holding a power of attorney meeting the requirements of 38 CFR 14.631 and legal guardians.

(b) *Genealogy.* VA will release records of a genealogical nature (except for names and addresses of VA beneficiaries and dependents) when disclosure would not invade the privacy of any living person or is not otherwise prohibited by law.

(c) *Requests for non-benefits records in judicial proceedings.* (1) This paragraph applies to a request for an individual's records (which are not benefits records) in judicial proceedings. For a request for benefits records in judicial proceedings, see § 1.506.

(2) When VA is not a party to a judicial proceeding, release must also be authorized pursuant to 38 CFR 14.800 through 14.811.

(3) Upon receipt of a Federal or state court order for non-benefits records, VA may, after due consideration, disclose an individual's records (except for section 7332 records) to whomever is designated in the court order or to the court. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(4) VA will not disclose an individual's records (which are not benefits records) pursuant to a Federal or state court or grand jury subpoena unless the individual is deceased, is not a citizen of the United States, is an alien not lawfully admitted for permanent residence, or provides consent. If one of these exceptions applies, VA may, after due consideration, disclose such records (except for section 7332 records) to whomever is designated in the grand jury subpoena, or, in the Federal or state court subpoena or to the court. If a subpoena is signed or is otherwise specifically approved by a judge, it will qualify as a court order.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701, 7332)

§ 1.510 Fees.

(a) *Definitions.* For the purpose of this section, the following definitions apply:

(1) *Commercial use request* means a request for a purpose that furthers the requester's commercial, trade or profit interests. VA must consider the use to which a requester will put the records,

and where the use is not clear, VA may seek additional information from the requester.

(2) *Direct costs* means all of those expenditures which VA incurs to search for and duplicate (and in the case of Commercial Use Requests, review) records, or to provide other services not required by FOIA. Direct costs include the salary of the employee performing work, i.e., the basic rate of pay, plus 16 percent to cover benefits, and the cost of operating duplicating equipment. Overhead expenses (such as costs of space, heat, or light) are not included in direct costs.

(3) *Duplication* means making a copy of a record; copies may take the form of paper, microform, audiovisual materials or machine readable-documentation (e.g., magnetic tape or disk), among others.

(4) *Educational Institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Requests qualify for this category when they serve a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person actively gathering news for an entity that publishes or broadcasts news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and periodicals when they disseminate "news" for the general public. As traditional methods of news delivery evolve (e.g., dissemination of newspapers through the internet), such media will be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication; a publication contract would be clear proof, but VA may also consider the requester's past publication history. Freelancers who do not qualify under this category may seek a

reduction or waiver of fees under paragraph (f) of this section.

(7) *Review* means, in response to a Commercial Use Request, examining records, determining that records may be withheld, and processing records for disclosure by redacting them and otherwise preparing them for release.

(8) *Search* means all the time spent looking for records that are responsive to a request, including line-by-line identification of material within records. Searches may be done manually and by computer. The most efficient and least expensive manner will be used to minimize costs to VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is less expensive and quicker. The term search does not cover the time spent to review records.

(b) *Fees to be charged.* (1) Except as otherwise provided in paragraphs (c), (d), (f), (g), and (h) of this section, VA will charge fees that recoup the direct costs for responding to each request, in accordance with the schedule in Paragraph (e) and other requirements in these rules (§§ 1.500 through 1.512). VA will use the most efficient and least costly method.

(2) If VA estimates that charges are likely to exceed \$25, VA will notify the requester of the estimate, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with VA personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each component is authorized to contract with private-sector services to locate, reproduce, and disseminate records in response to FOIA requests only if it would be at least as efficient and no more costly than for the component to perform these functions. A component shall not contract out responsibilities which FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When VA records are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service, VA will advise the requester how to obtain records from those sources.

(c) *Restrictions on assessing fees.* With the exception of Commercial Use Requests, VA will not assess charges for duplicating the first 100 one-sided pages, or for the first two hours of

search time. Moreover, VA will not charge fees to any requester, including Commercial Use Requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that VA will not assess fees until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and requires duplication of 105 pages, VA is authorized to charge fees for 10 minutes of search time and for duplicating five pages. If these costs are equal to or less than VA's costs for billing the requester and processing the fee collected, VA will not assess any charges.

(1) For purposes of the restriction on assessing fees, the word "pages" refers to one-sided paper copies of the standard sizes 8½" × 11" or 8½" × 14" or 11" × 14". Requesters will not be entitled to 100 free microfiche or 100 free computer disks. One microfiche containing the equivalent of 100 pages ordinarily would meet the terms of the restriction.

(2) The term search time is based on manual searches. To calculate the computer search time for the purpose of applying the two-hour search restriction, VA will combine the hourly

cost of operating the computer with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, VA will begin to assess charges for a computer search.

(d) *Categories of record requests and fees to be charged each category.* There are five categories of record requests from individuals for the purpose of charging fees. The levels in paragraphs (d) (1) through (5) are ranked from the lowest to the highest fee category. VA will process a request in the lowest category possible and will charge only those fees indicated for that category, subject to the requirements of paragraphs (c), (f), (g), and (h) of this section.

(1) *Requests by a VA beneficiary for his or her own records.* A beneficiary is entitled to receive one free copy of all pages of his or her own benefits records. (The term "pages" means paper records of a standard size, and does not include items such as x-rays, films, and EKG tracings.) In addition, any VA beneficiary who has an action on file

with the Court of Veterans Appeals is entitled to another free set of his or her benefits records.

(2) *Other requests for an individual's own records.* If an individual seeks a copy of his or her own records, and the request does not qualify under paragraph (d)(1), VA will charge a duplication fee after providing the first 100 one-sided standard size pages free.

(3) *Representative of the news media, non-commercial scientific institution, or educational institution requests.* VA will charge for the cost of reproduction only, and will provide the first 100 one-sided standard size pages free. Fee waiver or reduction will be considered in accordance with paragraph (f) of this section.

(4) *All other non-commercial use requests.* If the record request is not covered by any of the other categories in this paragraph (d), VA will charge duplication and search fees, after providing for free the first 100 one-sided standard size pages and the first two hours of search.

(5) *Commercial use requests.* VA will charge duplication, search, and review fees.

(e) *Schedule of fees:*

Activity	Fees
(1) Duplication of standard size (8½" × 11"; 8½" × 14"; 11" × 14") paper records to produce standard sized one-sided paper copies.	\$0.15 per page.
(2) Duplication of non-paper items (e.g., x-rays), paper records which are not of a standard size (e.g., EKG tracings), or other items which do not fall under category (1), in paragraph (d)(1) of this section.	Direct cost to VA.
(3) Record search by manual (non-automated) methods	Basic hourly salary rate of the employee(s), plus 16 percent.
Note to paragraph (e)(3)—If a component uses a single class of personnel for a search, e.g., all administrative/clerical or professional/executive, an average rate for the grades of employees involved in the search may be used.	
(4) Record search using automated methods, such as by computer	Direct cost to perform search.
(5) Record review (for Commercial Use Requesters only)	Basic hourly rate of employees performing review to determine whether to release records and to prepare them for release, plus 16 percent.
(6) Other activities, such as: Attesting under seal or certifying that records are true copies; sending records by special methods; forwarding mail; compiling and providing special reports, drawings, specifications, statistics, lists, abstracts or other extracted information; generating computer output; providing files under court process where the federal government is not a party to, and does not have an interest in, the litigation.	Direct cost to VA.

(f) *Waiving or reducing fees.* (1) VA will waive or reduce fees for records provided in response to a FOIA request when VA determines that furnishing the record is in the public interest and is not primarily in the commercial interest of the requester.

(2) To determine public interest, VA will consider the following factors in sequence:

(i) The contents of the records must concern identifiable "operations of the government."

(ii) The disclosable portions of the records must be "likely to contribute" to an understanding of government operations. For example, records containing information already in the public domain would not satisfy this standard.

(iii) The records must contribute to the understanding of the "public at large," i.e., a reasonably broad audience of persons interested in the subject.

(iv) The records must contribute "significantly" to public understanding of government operations.

(3) To determine commercial interest, VA will consider the following factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the commercial interest is sufficiently large, in comparison with the public interest, that disclosure is primarily in the commercial interest of the requester.

(4) VA will process an appeal from an adverse fee determination pursuant to § 1.504.

(g) *Other fee considerations.* (1) *Interest.* The FOIA/Privacy Act Officer may charge interest (at the rate prescribed in section 3717 of Title 31 United States Code) to requesters who fail to pay fees in a timely manner. Interest begins to accrue thirty-one days after the date on the original bill, and ceases to accrue on the date the payment is received by VA.

(2) *Charges for unsuccessful search.* When search charges are applicable, VA will assess search charges even if records are not located, or if pertinent records are exempt from disclosure.

(3) *Aggregating requests.* When the FOIA/Privacy Act Officer reasonably believes that a requester, or a group of requesters acting in concert, is breaking down a request into a series of requests in order to evade fees, the FOIA/Privacy Act Officer may aggregate (combine) any such requests and charge accordingly.

(4) *Advance payments.* VA may not generally require a requester to make an advance payment, except under the following circumstances:

(i) If fees are likely to exceed \$250, VA will notify the requester of the estimated cost, and either obtain satisfactory assurance of full payment, or require an advance payment of up to the full estimated fee.

(ii) If a requester has previously failed to pay a fee charged within 30 days, before processing the new request, VA may require payment of the full amount owed on the previous request and an advance payment on the new request.

(5) *Debt collection.* VA may use the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365, as amended) to collect unpaid fees. This may include disclosure to consumer reporting agencies and use of collection agencies.

(h) VA may provide free copies of records or free services:

(1) In response to an official request from other government agencies and Congressional offices; and

(2) When a component head or designee determines that doing so will assist in providing medical care to a VA patient or will otherwise further performance of the VA mission.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701)

§ 1.511 Notification procedures prior to disclosing confidential commercial information.

(a) *General.* During the conduct of its business, VA may acquire records that contain confidential commercial information. FOIA requests for such

records will be handled under this section.

(b) *Notice to submitters.* When a FOIA request is received for record(s) that may contain confidential commercial information, the FOIA/Privacy Act Officer will notify the submitter in writing when required by paragraph (c) of this section. The notice will:

(1) Advise the submitter that VA has received a FOIA request for the submitter's records;

(2) Describe the records requested;

(3) Inform the submitter of the opportunity to object to the disclosure in writing within 10 working days and of the requirements for such a written objection, as described in paragraph (e) of this section; and

(4) Be sent by certified mail, return receipt requested.

(c) *The notice requirement.* Notice is required whenever the submitter has in good faith designated that the requested records contain confidential commercial information in accordance with paragraph (d) of this section; or, when the FOIA/Privacy Act Officer believes that disclosing the records could reasonably be expected to cause substantial competitive harm.

(d) *Designation by submitters.* (1) A submitter may designate that disclosure of certain records could reasonably be expected to cause substantial competitive harm, by marking the records with the words "confidential commercial information," or by describing the specific kinds of records that contain confidential commercial information.

(2) A designation will remain in effect for a period of not more than 10 years after receipt by VA, unless the submitter provides acceptable justification for a longer specific period. The submitters may designate a shorter period by including an expiration date.

(3) The submitter must certify that the records are in fact confidential commercial information and have not been made available to the public.

(4) The designation notifies VA that it should follow the procedures set forth in this paragraph (d); however, VA makes the final determination whether or not records contain confidential commercial information.

(e) *Opportunity to object.* (1) The submitter may object to the disclosure of the records in writing, addressed to the FOIA/Privacy Act Officer who provided notice, specifying the records that should not be disclosed and all grounds upon which disclosure is opposed, and explaining why the information is considered a trade secret or confidential commercial information.

(2) Submitters must present any objection to disclosure within 10 working days after receiving notice. If a submitter fails to respond within that time, VA will deem that the submitter has no objection to disclosing the records.

(3) If VA receives a timely objection, VA will consider all specified grounds for nondisclosure prior to making a decision. If VA decides to disclose the requested records, the FOIA/Privacy Act Officer will send the submitter a written decision containing: the reasons why the objections were overruled, a description or copy of the records to be disclosed, and a date the records will be disclosed of not less than 10 business days from the time mailed (to allow the submitter time to take necessary legal action to prevent VA from disclosing the information).

(f) *Notices to requester.* When VA receives a request for confidential commercial information, the FOIA/Privacy Act Officer will notify the requester that it will be processed under these rules (§§ 1.500 through 1.512), the submitter may comment upon the request, and there may be a delay in receiving a response. The notice to the requester should not include any specific information contained in the records being requested. When VA notifies a submitter of a final decision, the FOIA/Privacy Act Officer will notify the requester by separate correspondence.

(g) *Notices of lawsuit.* If a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, VA will promptly notify the submitter.

(h) *Exceptions to the notice requirements.* A notice to the submitter, described in paragraph (b), is not required if the FOIA/Privacy Act Officer determines that:

(1) The records should not be disclosed;

(2) The records have been published or have been officially made available to the public;

(3) Disclosure of the records is required by law (other than FOIA);

(4) The records requested have not been designated by the submitter as exempt, and the submitter had an opportunity to do so when the records were submitted or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure would result in competitive harm; or

(5) The designation made by the submitter appears obviously frivolous. VA must still provide the submitter with advance written notice of the decision to disclose not less than 10

working days prior to the specified disclosure date.

(Authority: 5 U.S.C. 552(b)(4); 38 U.S.C. 501; E.O. 12600 (52 FR 23781))

§ 1.512 Exemptions.

(a) Certain systems of records maintained by VA are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k).

(b) Exemption of Inspector General Systems of Records. VA provides limited access to two Inspector General Systems of Records: Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA and Federal Laws, Regulations, Programs, etc.—VA (11VA51); and Inspector General Complaint Center Records—VA (66VA53).

(1) These systems of records are exempted [pursuant to subsection (j)(2) of the Privacy Act] from Privacy Act subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), (H) and (I), (e)(5) and (8), (f) and (g); in addition, they are exempted [pursuant to subsection (k)(2) of the Privacy Act] from Privacy Act subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(2) These systems of records are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still

plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated in paragraph (b)(2)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) These systems of records are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Inspector General may obtain information concerning violations of laws other than those within the scope of his/her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these systems of records from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the

investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines "maintain" to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(c) Exemption of Loan Guaranty Service. VA provides limited access to two Loan Guaranty Service systems of records: Loan Guaranty Fee Personnel and Program Participant Records—VA (17VA26); and Loan Guaranty Home Condominium and Mobile Home Loan Applicant Records and Paralegic Grant Application Records—VA (55VA26).

(1) These systems of records are exempted [pursuant to Privacy Act subsection (k)(2)] from Privacy Act subsections (c)(3), (d), (e)(1) and (e)(4)(G), (H) and (I) and (f), for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects would provide them with significant information concerning the nature of the investigation, it could result in the

altering or destruction of documentary evidence, improper influencing of witnesses and other activities that could impede or compromise the investigation.

(ii) These systems are exempt from Privacy Act subsections (d), (e)(4)(G) and (H) and (f) for the following reasons: Notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could: interfere with investigative and enforcement proceedings; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated in this paragraph, this exemption is still being cited in the event an individual wanted to know a specific source of information.

(iv) These systems of records are exempt from Privacy Act subsection (e)(1) because: It is not possible to detect relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In interviewing persons or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated.

(2) In addition, the system of records, Loan Guaranty Fee Personnel and Program Participant Records—VA (71VA26), is exempt [pursuant to Privacy Act subsection (k)(5)] from Privacy Act subsections (c)(3), (d), (e)(1),

(e)(4)(G), (H) and (I) and (f), for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects of background suitability investigations to the existence of the investigation and reveal that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in revealing the identity of a confidential source.

(ii) This system is exempt from Privacy Act subsections (d), (e)(4)(G) and (H) and (f) for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such an individual or to grant access to an investigative file would disclose the identity of confidential sources and reveal confidential information supplied by these sources.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose sufficient information to disclose the identity of a confidential source and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct background suitability investigations.

(iv) This system of records is exempt from Privacy Act subsection (e)(1) because: It is not possible to detect relevance and necessity of specific information from a confidential source in the early stages of an investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established regarding suitability for VA approval as a fee appraiser or compliance inspector. In interviewing persons or obtaining other forms of evidence during an investigation for suitability for VA approval, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated and disclosure might jeopardize the identity of a confidential source.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 501, 5701)

§§ 1.513 through 1.584 [Removed]

3. Sections 1.513 through 1.584, the undesignated center heading and the note immediately preceding § 1.550, and the undesignated center heading and note immediately preceding § 1.575 are removed.

PART 2—DELEGATIONS OF AUTHORITY

4. The authority citation for part 2 continues to read as follows:

(Authority: 5 U.S.C. 302; 38 U.S.C. 501, 512; 44 U.S.C. 3702, unless otherwise noted.)

5. In § 2.6, paragraph (e)(11) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(11) The General Counsel, the Deputy General Counsel, and the Assistant General Counsel for Professional Staff Group IV are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701 and 5705.

(Authority: 38 U.S.C. 512)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-6159-4]

Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is extending the public comment period on the Notice of Proposed Rulemaking (NPRM), which proposes new compliance procedures for light-duty vehicles and light duty trucks. The NPRM was published in the **Federal Register** on July 23, 1998 (63 FR 39653). The purpose of this notice is to extend the comment period from September 8, 1998 to September 24, 1998, to allow commenters additional time to respond to the NPRM.

DATES: EPA will accept comments on the NPRM until September 24, 1998.

ADDRESSES: Comments should be submitted in duplicate to the EPA Air