

Authority or designee shall make a determination whether to amend the record and must notify the individual of that determination by mail, not later than 10 working days after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(1) The Appellate Authority or designee shall also notify the individual of the provisions of the Privacy Act of 1974 regarding judicial review of the NIMA Appellate Authority's determination.

(2) If on appeal the denial to amend the record is upheld, the individual shall be permitted to file a statement setting forth the reasons for disagreement with the Appellate Authority's determination and such statement shall be appended to the record in question.

(d) The Appellate Authority or designee may extend up to 30 days the time period in which to make a determination on an appeal from denial to amend a record for the reason that a fair and equitable review cannot be completed within the prescribed time period.

§ 320.9 Disclosure of record to persons other than the individual to whom it pertains.

(a) No officer or employee of NIMA will disclose any record which is contained in a system of records, by any means of communication to any person or agency within or outside the Department of Defense without the request or consent of the individual to whom the record pertains, except as described in 32 CFR 310.41; Appendix C to part 310 of this chapter; and/or a NIMA Privacy Act system of records notice.

(b) Any such record may be disclosed to any person or other agency only upon written request, of the individual to whom the record pertains.

(c) In the absence of a written consent from the individual to whom the record pertains, such record may be disclosed only provided such disclosure is:

(1) To those officers and employees of the DoD who have a need for the record in the performance of their duties.

(2) Required under the Freedom of Information Act (32 CFR part 286).

(3) For a routine use established within the system of records notice.

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13.

(5) To a recipient who has provided the NIMA with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and the record is

transferred in a form that is not individually identifiable and will not be used to make any decisions about the rights, benefits or entitlements of an individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Administrator of the General Services Administration or his designee to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Director, NIMA specifying the particular record and the law enforcement activity for which it is sought.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(9) To either house of Congress, and, to the extent of the matter within its jurisdiction, any committee or subcommittee or joint committee of Congress.

(10) To the Comptroller General or any of the authorized representatives in the course of the performance of the duties of the GAO.

(11) Under an order of a court of competent jurisdiction.

(12) To a consumer reporting agency in accordance with section 3711(f) of title 31.

(d) Except for disclosures made pursuant to paragraphs (c)(1) and (2) of this section, an accurate accounting will be kept of the data, nature and purpose of each disclosure of a record to any person or agency, and the name and address of the person or agency to whom the disclosure was made. The accounting of disclosures will be made available for review by the subject of a record at his request except for disclosures made pursuant to paragraph (c)(7) of this section. If an accounting of disclosure has been made, any person or agency contained therein will be informed of any correction or notation of dispute made pursuant to § 320.6 of this part.

§ 320.10 Fees.

Individuals may request copies for retention of any documents to which they are granted access to NIMA records pertaining to them. Requesters will not

be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with 32 CFR part 310.

§ 320.11 Penalties.

The Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) makes it a misdemeanor subject to the maximum fine at \$5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. The Act also establishes similar penalties for violations by NIMA employees of the Act or regulations established thereunder.

§ 320.12 Exemptions.

(a) Exempt Systems of Record. All systems of records maintained by the NIMA and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to the 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be withheld in the interest of national defense or foreign policy. This exemption is applicable to parts of all system of records, including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19819 Filed 8-08-01; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Regulation 340-21]

Privacy Act; Implementation

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to revise four existing exemption rules. The exemption rules are being revised to add reasons from which information may be exempt, and to update the reasons for taking the exemptions.

DATES: Comments must be received on or before October 9, 2001 to be considered by this agency.

ADDRESSES: Records Management Division, U.S. Army Records

Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 600 6th Street, Ft. Belvoir, VA 22060-5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390 or Ms. Christie King at (703) 806-3711 or DSN 656-3711.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, it is proposed that 32 CFR part 505 be 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 paragraphs (e)(1), (e)(5), (e)(6), and (e)(19) as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records.

(1) *System identifier:* A0020-1a SAIG

(i) *System name:* Inspector General Investigative Files.

(ii) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(4)(G) and (H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the

disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (k)(2) of the Privacy Act of 1974.

(D) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(E) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

(5) *System identifier:* A0027-10a DAJA

(i) *System name:* Prosecutorial Files.

(ii) *Exemptions:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5

U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) Authority: 5 U.S.C. 552a(j)(2).

(iv) Reason: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department to the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part 505), but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, information and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow

disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(6) System identifier: A0027-10b DAJA.

(i) System name: Courts—Martial Records and Reviews.

(ii) Exemptions: Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsection of 5 U.S.C. a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) Authority: 5 U.S.C. 552a(j)(2).

(iv) Reason: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation that requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part

505), but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

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(19) *System identifier:* A0340-21
TAPC

(i) *System name:* Privacy Case Files.

(ii) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are part. Therefore, information within this system of records may be exempt pursuant to 5 U.S.C. 552a, subsection (d).

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above

nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

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Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 130

[WH-FRL-7024-6]

RIN 2040-AD22

Delay of Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes to delay by 18 months the effective date of a rule published in the **Federal Register** on July 13, 2000. The July 2000 rule amends and clarifies existing regulations implementing section 303(d) of the Clean Water Act (CWA), which requires States to identify waters that are not meeting State water quality standards and to establish pollutant budgets, called Total Maximum Daily Loads (TMDLs), to restore the quality of those waters. The rule also lays out specific time frames under which EPA will assure that lists of waters not meeting water quality standards (the 303(d) lists) and TMDLs are completed as scheduled, and necessary National Pollutant Discharge Elimination System (NPDES) permits are issued to implement TMDLs.

The July 2000 rule generated considerable controversy, as expressed in letters, testimony, public meetings, Congressional action, and litigation. Congress prohibited EPA from implementing the final rule through a spending prohibition attached to the