needs of POWs in the areas of disability compensation, health care and rehabilitation.

Affected Public: Individuals or households.

Estimated Annual Burden: 750 hours.
Estimated Average Burden Per Respondent: 1 hour
Frequency of Response: Non-recurring.
Estimated Number of Respondents: 750 respondents.

ADDITIONS: Copies of these submissions may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 565±7407.

Comments and recommendations concerning the submissions should be directed to VA’s OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395±4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA, Clearance Officer (045A4), (202) 565±4412.

By direction of the Secretary:

Donald L. Neilson,
Director, Information Management Service.

[FR Doc. 95±20568 Filed 8±17±95; 8:45 am]
BILLING CODE 8320±01±P

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department’s General Counsel involving veterans’ benefits under laws administered by VA. These interpretations are considered precedent by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans’ benefit claimants and their representatives, with notice of VA’s interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273±6558.
Questions Presented: A. Are VA medical facilities required to follow Michigan state law that establishes the duty of state physicians to either warn known sex and needle-sharing partners of patients infected with the human immunodeficiency virus (HIV), or, in the alternative, to provide the State with the names and addresses of the patient and known partners?

B. Does the analysis in VAOPGCADV 9-90, O.G.C. Advisory Opinion 9-90, which sets out that VA physicians are under no specific duty to follow State law in reporting child and elderly abuse, apply to the Michigan partner notification law?

C. To what extent does VA’s HIV confidentiality statute, 38 U.S.C. § 7332, permit VA physicians to cooperate with the State law and should VA physicians cooperate with the State law to that extent?

Held: A. VA medical facilities are under no legal obligation to follow Michigan state law requiring partner notification, or in the alternative, disclosure of confidential information, in HIV cases to a state public health authority.

B. The Supremacy Clause analysis set forth in VAOPGCADV 9-90, O.G.C. Advisory Opinion 9-90 is applicable in the instant case. Nonetheless, VA has the discretionary authority to comply with state law to the extent that 38 U.S.C. §§ 7332 and 5701, as well as the Privacy Act of 1974, allow. These provisions would allow the VA medical center to disclose the requisite information to the state public health authority if the information is submitted pursuant to an adequate written request from that entity.

C. Under the aforementioned provisions, VA physicians (in accordance with any policy or guidance that may be established by the VA medical center) may disclose HIV test results, but not the patient’s name, to the spouse or sexual partner (“sexual partner” as disclosed by the patient during examination or counseling) if the physician determines, after discussion with the patient, that the patient will not be providing the information and the disclosure is necessary to protect the health of the spouse or sexual partner. If these legal prerequisites have been satisfied, we anticipate a VA physician, in the exercise of sound medical and ethical practice, would utilize that provision. VA physicians do not have the authority to notify needle-sharing partners of possible exposure to HIV.

Effective Date: May 10, 1995.

VAOPGCADV 13-95

Questions Presented: A. Whether a final, unappealed Department of Veterans Affairs (VA) regional office decision is subject to review for clear and unmistakable error (CUE) under 38 C.F.R. § 3.105(a), where, upon subsequent reopening, the Board of Veterans’ Appeals (BVA or Board) denied the claim.

b. Whether a final, unappealed VA regional office decision is subject to review for CUE, where the Board subsequently denied reopening of the claim.

Held: a. A claim of clear and unmistakable error under 38 C.F.R. § 3.105(a) concerning a final, unappealed regional office decision may not be considered where the Board of Veterans’ Appeals has reviewed the entire record of the claim following subsequent reopening and has denied the benefits previously denied in the unappealed decision.

b. If the Board of Veterans’ Appeals concludes that new and material evidence sufficient to reopen a prior, unappealed regional office decision has not been submitted, and denies reopening, the Board’s decision does not serve as a bar to a claim of CUE in the prior regional office decision.

Effective Date: May 12, 1995.

VAOPGCprec 14-95

Questions Presented: a. Whether the change in law under which service connection for the cause of the veteran’s death may have resulted from exposure to Agent Orange?

b. Whether a final, unappealed Department of Veterans Affairs (VA) regional office decision is subject to review for clear and unmistakable error (CUE) under 38 C.F.R. § 3.105(a), where, upon subsequent reopening, the Board of Veterans’ Appeals (BVA or Board) denied the claim.

b. Whether a final, unappealed VA regional office decision is subject to review for CUE, where the Board subsequently denied reopening of the claim.

Held: a. If you conclude that the original dependence and indemnity compensation claim of a veteran’s surviving spouse did not allege that the veteran’s death resulted from a disease which may have been caused by exposure to herbicides containing dioxin during the veteran’s Vietnam-era service in the Republic of Vietnam, and was not denied under former 38 C.F.R. § 3.311(a)(2) (1986), which governed claims based on herbicide exposure, the claim does not fall within the scope of the Final Stipulation and Order entered in Nehmer v. United States Veterans’ Administration. In that case, the effective date of a subsequent award of dependency and indemnity compensation to the surviving spouse following reopening of the claim may not be based on the date of the original claim. However, if such a surviving spouse’s reopened claim involved allegations that the veteran’s death from
lungen cancer may have resulted from exposure to Agent Orange, it would be governed by the provisions of the Stipulation pertaining to claims filed after the district's court's May 3, 1989, order in Nehmer invalidating a portion of the referenced regulations. Under paragraph 5 of the Final Stipulation and Order, the effective date of the award in such a claim must be based on the later of the date of filing of the reopened claim or the date of the veteran's death.

b. The portion of the Final Stipulation and Order in the Nehmer case pertaining to readjudication of claim denials voided by the district court's May 3, 1989, order in that case applies to claims for burial allowance for service-connected death under 38 U.S.C. § 2307, if such claims were denied under former 38 U.S.C. § 3.311a(d).

However, under the circumstances of a particular claim, you may be justified in concluding that a burial allowance claim was not denied under former section 3.311a(d). In that case, the Final Stipulation and Order would not be applicable.

c. If a claim for service-connected burial allowance under what is now 38 U.S.C. § 2307 was denied under former 38 U.S.C. § 3.311a(d) and therefore fell within the group of claim denials voided by the district court's May 3, 1989, order in the Nehmer case, or if entitlement to the nonservice-connected burial benefit was previously established, if service connection for the cause of the veteran’s death is later established on the basis of regulations issued pursuant to the Agent Orange Act of 1988, the post-burial effective date of those regulations would not be an impediment to payment of a burial allowance under section 2307.

d. The maximum amount of burial allowance payable under section 2307 is determined based on the maximum rate authorized at the time the burial took place. Where nonservice-connected burial benefits have already been paid, and it is later determined that entitlement to service-connected burial allowance exists, only the difference between the amount previously paid and the amount payable under section 2307 may be paid.

Effective Date: June 2, 1995.

VAOOGCPREC 17-95

Questions Presented:

a. What is the scope of any obligation imposed on the Secretary of Veterans Affairs under 38 U.S.C. § 7722, or any other legal authority, to inform individuals concerning benefits to which they may be entitled?

b. Does the assumption that the Department of Veterans Affairs (VA) knew or reasonably should have known of an individual’s eligibility for VA benefits have any bearing on the Secretary’s notification obligation?

c. Are the provisions of any applicable notification law or regulation, including section 7722, applicable from the date of their enactment or retroactively?

d. May a failure to provide required notification to a claimant or the basis of a grant of an earlier effective date of an award of VA benefits and, if so, what is the legal authority to deviate from the criteria pertaining to effective dates of awards?

Held: a. The provisions of 38 U.S.C. § 7722, as interpreted by the Court of Veterans Appeals, require VA to inform individuals of their potential entitlement to Department of Veterans Affairs benefits when (1) such individuals meet the statutory definition of “eligible veteran” or “eligible dependent,” and (2) VA is aware or reasonably should be aware that such individuals are potentially entitled to VA benefits. VA’s duty to provide information and assistance to such individuals requires only such actions as are reasonable under the circumstances.

b. The notification requirements currently in 38 U.S.C. § 7722 and previously in 38 U.S.C. § 241 have been in effect since March 26, 1970, and do not apply retroactively to any period prior to that date.

c. A failure by VA to provide the notice required by 38 U.S.C. § 7722 may not provide a basis for awarding retroactive benefits in a manner inconsistent with express statutory requirements, except insofar as a court may order such benefits pursuant to its general equitable authority or the Secretary of Veterans Affairs may award such benefits pursuant to his equitable-relief authority under 38 U.S.C. § 503(a).

Effective Date: June 7, 1995.

VAOOGCPREC 18-95

Question Presented: Is the Department of Veterans Affairs’ (VA) definition of “past-due benefits” in 38 C.F.R. § 20.609(h)(3) inconsistent with the governing statutory provisions in 38 U.S.C. § 5904(d)(3)?

Held: The definition of “past-due benefits” in 38 C.F.R. § 20.609(h)(3) is consistent with the provisions of 38 U.S.C. § 5904(d)(3).

Further, because the language of section 5904(d)(3) may reasonably be construed to prohibit counting as past-due benefits any amounts payable after the date of the decision making, or ordering the making of, the award, we believe that the regulatory amendment sought by petitioner would be inconsistent with the statute.

Effective Date: June 22, 1995.

By Direction of the Secretary.

Mary Lou Keener,
General Counsel.

[FR Doc. 95–20490 Filed 8–17–95; 8:45 am]
BILLING CODE 8320–01–M