

recognized as qualifying educational institution by the Department of Defense to satisfy the educational requirements of 10 U.S.C. 12205, the degree must not have been awarded more than 8 years before the date the officer is to be appointed, or federally recognized, in the grade of Captain in the Army Reserve, Army National Guard, Air Force Reserve, Air National Guard, or Marine Corps Reserve, or in the grade of Lieutenant in the Naval Reserve.

§ 67.6 Procedures.

(a) An unaccredited educational institution may obtain designation as a qualifying educational institution for a specific Reserve component officer who graduated from that educational institution by providing certification from registrars at three accredited educational institutions that maintain ROTC programs that their educational institutions would accept at least 90 percent of the credit hours earned by that officer at the unaccredited educational institution, as of the year of graduation.

(b) For an unaccredited educational institution to be designated as a qualifying educational institution for a specific year, that educational institution must provide the Office of the Assistant Secretary of Defense for Reserve Affairs certification from the registrars at three different accredited educational institutions that maintain ROTC programs listing the major field(s) of study in which that educational institution would accept at least 90 percent of the credit hours earned by a student who was awarded a baccalaureate degree in that major field of study at the unaccredited educational institution.

(c) For an unaccredited educational institution to be considered for designation as a qualifying educational institution, the unaccredited educational institution must submit the required documentation no later than January 1 of the year for which the unaccredited educational institution seeks to be designated a qualifying educational institution.

(d) The required documentation must be sent to the following address: Office of the Assistant Secretary of Defense for Reserve Affairs, Attn: DASD (M&P), 1500 Defense Pentagon, Washington, DC 20301-1500.

(e) Applications containing the required documentation may also be submitted at any time from unaccredited educational institutions requesting designation as a qualifying educational institution for prior school years.

Dated: October 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-A179

Veterans and Reservists Education: Additional Educational Assistance While Serving in the Selected Reserve

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). It makes changes concerning the amount of monthly educational assistance available to certain veterans and reservists training under the Montgomery GI Bill. These changes restate statutory requirements and set forth VA's statutory interpretations of a provision of the National Defense Authorization Act for Fiscal Year 1996. It also makes nonsubstantive changes by removing provisions that no longer apply and by clarifying provisions.

DATES: *Effective Date:* This final rule is effective October 27, 1997.

However, the changes in restatements of statute and in statutory interpretations will be applied retroactively from the effective dates of the statutory provisions. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: This document amends regulations concerning VA-administered educational assistance and educational benefits under the Montgomery GI Bill—Active Duty program (38 CFR part 21, subpart K) and the Montgomery GI

Bill—Selected Reserve program (38 CFR part 21, subpart L).

The National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106) provides that the rate of the educational assistance allowance may be increased by an amount not exceeding \$350 per month for certain persons. To be eligible a person must qualify for educational assistance payable under the Montgomery GI Bill—Active Duty through at least three years active duty service and must also agree to serve at least 6 years in the Selected Reserve, or the person must qualify for educational assistance payable under the Montgomery GI Bill—Selected Reserve. Also, to be eligible the person must have a skill or specialty designated by the Secretary of the appropriate Department of the military as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, to retain personnel. Public Law 104-106 further provides that the actual amounts of increase shall be determined by the Secretary of Defense. This document amends §§ 21.7136 and 21.7137 for the Montgomery GI Bill—Active Duty and § 21.7636 for the Montgomery GI Bill—Selected Reserve to reflect these statutory amendments.

This document also amends §§ 21.7131 and 21.7631 concerning commencing dates to provide that the effective date for an increase will be the latest of: the date that would otherwise be used for such educational assistance; the first date on which the veteran or reservist is entitled to the increase as determined by the Secretary of the military department concerned; or February 10, 1996, the effective date of Public Law 104-106. This document further amends §§ 21.7135 and 21.7635 concerning discontinuance dates to add a provision stating that if the veteran or reservist loses entitlement to the increase, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the veteran or reservist is no longer entitled to the increase. In addition, this document makes amendments to §§ 21.7139 and 21.7639 to clarify that adjustments made for certain incarcerated persons and for failure to work sufficient hours of apprenticeship and other on-job training are applicable to such increases in payments, in the same manner as they are to other payments under the Montgomery GI Bill—Active Duty or the Montgomery GI Bill—Selected Reserve. These amendments, in our view, are required by statute.

The restatements of statute and statutory interpretations contained in this final rule will be applied retroactively from February 10, 1996, which is the effective date of the statutory provision.

Nonsubstantive changes also are made by removing provisions that no longer apply and by clarifying provisions.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule. The additional amount available to veterans and reservists is funded by DOD and the Coast Guard, but is administered by VA.

This final rule merely restates statutory provisions, sets forth statutory interpretations, and makes nonsubstantive changes by removing provisions that no longer apply and by clarifying provisions. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule affects individuals and does not affect small entities. Further, it merely restates statutory changes, sets forth statutory interpretations, and makes nonsubstantive changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for one of the two programs affected by this final rule is 64.120. This final rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 22, 1997.
Hershel W. Gober,
Acting Secretary of Veterans Affairs.

Approved: August 13, 1997.
Al H. Bemis,
Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower and Personnel).

Approved: October 9, 1997.
G.F. Woolever,
Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21, subparts K and L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7131, paragraph (k) is added after the authority citation following paragraph (j), to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(k) *Increase (“kicker”) due to service in the Selected Reserve.* If a veteran is entitled to an increase (“kicker”) in the monthly rate of basic educational assistance because he or she has met the requirements of § 21.7136(g) or § 21.7137(e), the effective date of that increase (“kicker”) will be the latest of the following dates:

- (1) The commencing date of the veteran’s award as determined by paragraphs (a) through (j) of this section;
- (2) The first date on which the veteran is entitled to the increase (“kicker”) as determined by the Secretary of the military department concerned; or
- (3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

3. In § 21.7135, paragraph (bb) is redesignated as paragraph (cc), and a new paragraph (bb) is added, to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(bb) *Reduction following loss of increase (“kicker”) for Selected Reserve service.* If a veteran is entitled to an increase (“kicker”) in the monthly rate of basic educational assistance as provided in § 21.7136(g) or § 21.7137(e), due to service in the Selected Reserve, and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined

by the Secretary of the military department concerned, that the veteran is no longer entitled to the increase (“kicker”).

(Authority: 10 U.S.C. 16131)

4. In § 21.7136, paragraph (d) introductory text is amended by removing “paragraph (e)”, and adding, in its place, “paragraphs (f) and (g)”; paragraph (e)(1) is amended by removing “(c)” and adding, in its place, “(d)” and by removing “(a) or (b)” and adding, in its place, “(b) or (c)”; and paragraph (e) introductory text is revised, and paragraph (g) is added after the authority citation following paragraph (f), to read as follows:

§ 21.7136 Rates for payment of basic educational assistance.

* * * * *

(e) *Less than one-half-time training and rates for servicemembers.* Except as provided in paragraph (g) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of:

* * * * *

(g) *Increase (“kicker”) in basic educational assistance rates payable for service in the Selected Reserve.* (1) The Secretary of the military department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase (“kicker”) is payable to a veteran who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the veteran:

- (i) Establishes eligibility for educational assistance under § 21.7042(a) or § 21.7045; and
- (ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned—

(i) Will, for such an increase (“kicker”), set an amount of the increase (“kicker”) for full-time training, but the increase (“kicker”) may not exceed \$350 per month; and

(ii) May set the amount of the increase (“kicker”) payable, for a veteran pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))

5. In § 21.7137, paragraphs (e) and (f) are redesignated as paragraphs (f) and

(g), respectively; paragraph (b) introductory text is revised; and a new paragraph (e) is added, to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

* * * * *

(b) *Less than one-half-time training.* Except as provided in paragraphs (d) and (e) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

* * * * *

(e) *Increase ("kicker") in basic educational assistance rates for service in the Selected Reserve.* (1) The Secretary of the military department concerned may increase the amount of basic educational assistance payable under paragraph (a), (b), or (d) of this section, as appropriate. The increase ("kicker") is payable to a veteran who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the veteran:

- (i) Establishes eligibility for educational assistance under § 21.7044(a); and
 - (ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.
- (2) The Secretary of the military department concerned—
- (i) Will, for such an increase, set the amount of the increase ("kicker") payable for full-time training, but the increase ("kicker") may not exceed \$350 per month;
 - (ii) May set the amount of the "kicker" payable, for a veteran pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (e)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))

* * * * *

6. In § 21.7139, the introductory text is amended by removing "of this part"; paragraphs (a), (g), and (h) are removed; paragraphs (b), (c), (d), (e), (f), (i), and (j) are redesignated as paragraphs (a), (b), (c), (d), (e), (f), and (g), respectively; newly redesignated (g)(2) is redesignated as (g)(3); the authority citation for newly redesignated paragraph (b) is amended by removing "; Pub. L. 98-525"; the authority citation for newly redesignated paragraph (c) is amended by removing "; Pub. L. 98-525"; newly redesignated paragraph (d)(2)(iii) is amended by

removing "of this part"; the authority citation for newly redesignated paragraph (d) is amended by removing "; Pub. L. 98-525"; newly redesignated paragraph (e)(2)(ii) is amended by removing "of this part" each time it appears and by removing "§ 21.7137(d)", and adding, in its place, "§ 21.7137(d) or (e)", newly redesignated paragraph (e)(2)(iii) is amended by removing "§ 21.7136(c)", and adding, in its place "§ 21.7136(d), (f), or (g)"; newly redesignated paragraph (e)(2)(iii) is amended by removing "of this part" each time it appears; newly redesignated paragraph (e)(3)(iii) is amended by removing "of this part" both times it appears; the authority citation for newly redesignated paragraph (e) is amended by removing "; Pub. L. 98-525"; newly redesignated paragraph (g)(3)(ii) is amended by removing "§ 21.4270(b)" and adding, in its place, "§ 21.4270(c)"; the section heading and newly redesignated paragraph (g)(1) are revised, and a new paragraph (g)(2) is added, to read as follows:

§ 21.7139 Conditions which result in reduced rates or no payment.

* * * * *

(g) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

- (i) The rates specified in §§ 21.7136(b)(2), (c)(2), (d)(3), and (d)(4), and 21.7137(a)(2) and (d)(2); and
- (ii) Any increase ("kicker") set by the Secretary of the military department concerned as described in §§ 21.7136(g) and 21.7137(e).

(2) In making the computations required by paragraph (g)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

7. The authority citation for part 21, subpart L, continues to read as follows.

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

8. In § 21.7631, paragraph (h) is added after the authority citation following paragraph (g), to read as follows:

§ 21.7631 Commencing dates.

* * * * *

(h) *Increase ("kicker") in amount payable.* If a reservist is entitled to an

increase ("kicker") in the monthly rate of educational assistance because he or she has met the requirements of § 21.7636(b), the effective date of that increase ("kicker") will be the latest of the following dates:

- (1) The commencing date of the reservist's award as determined by paragraphs (a) through (g) of this section; or
- (2) The first date on which the reservist is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or
- (3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

9. In § 21.7635, paragraph (x) is redesignated as paragraph (y); and a new paragraph (x) is added, to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(x) *Reduction following loss of increase ("kicker").* If a reservist is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in § 21.7636(b) and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the reservist is no longer entitled to the increase ("kicker").

(Authority: 10 U.S.C. 16131)

* * * * *

10. In § 21.7636, paragraph (b) is redesignated as paragraph (c); and a new paragraph (b) is added, to read as follows:

§ 21.7636 Rates of payment.

* * * * *

(b) *Increase ("kicker") in educational assistance rates.* (1) The Secretary of the military department concerned may increase the amount of educational assistance stated in paragraph (a) of this section that is payable to a reservist who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel.

(2) The Secretary of the military department concerned—

- (i) Will set the amount of the increase ("kicker") for full-time training, but the increase ("kicker") may not exceed \$350 per month; and
- (ii) May set the amount of the increase ("kicker") payable, for a reservist pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount

described in paragraph (b)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(1))

* * * * *

11. In § 21.7639, paragraph (f)(2) is redesignated as paragraph (f)(3); paragraph (c)(2)(ii), the authority citation for paragraph (c), paragraph (f)(1), and the authority citation for paragraph (f) are revised; and a new paragraph (f)(2) is added, to read as follows:

§ 21.7639 Conditions which result in reduced rates or no payment.

* * * * *

(c) * * *

(2) * * *

(ii) The monthly rate as stated in § 21.7636(a) and any increase payable under § 21.7636(b).

* * * * *

(Authority: 10 U.S.C. 16131(i)(1), 16136(b); 38 U.S.C. 3482(g))

* * * * *

(f) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any calendar month in which a reservist pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in § 21.7636(a)(2); and

(ii) Any increase set by the Secretary of the military department concerned as described in § 21.7636(b).

(2) In making the computations required by paragraph (f)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(Authority: 10 U.S.C. 2131(d)(2), 16131(i)(1); sec. 642 (b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

* * * * *

[FR Doc. 97-28364 Filed 10-24-97; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH-7157a-FRL-5906-8]

Approval and Promulgation of Implementation Plans; New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions consist of

the 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring System (PAMS) network.

The inventories were submitted by the State to satisfy a Clean Air Act (CAA) requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA. The PAMS SIP revision was submitted to satisfy the requirements of the CAA and the PAMS regulation. The PAMS regulation required the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993. The intended effect of this action is to approve as a revision to the New Hampshire SIP the state's 1990 base year ozone emission inventories and PAMS network.

DATES: This action is effective on December 26, 1997 unless adverse or critical comments are received by November 26, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the New Hampshire Department of Environmental Services, Air Resources Division, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Group, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565-9266.

SUPPLEMENTARY INFORMATION: New Hampshire submitted a SIP revision to the EPA consisting of 1990 base year emission inventories of ozone precursors on January 26, 1993. The State submitted a SIP revision establishing a PAMS network into the State's overall ambient air quality monitoring network on December 13, 1994. This notice is divided into four parts:

- I. Background Information
- II. Analysis of State Submission

- III. Final Action
- IV. Administrative Requirements

I. Background

1. Emission Inventory

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)-(e) of title I of the CAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale.

Those States containing ozone nonattainment areas classified as