

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Spitzig, Center for Devices and Radiological Health (HFZ-500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-2812.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on May 12, 1998, at 63 FR 26069 is withdrawn.

Dated: August 20, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98-22926 Filed 8-26-98; 8:45 am]

BILLING CODE 4160-01-F

**DEPARTMENT OF DEFENSE****DEPARTMENT OF TRANSPORTATION****Coast Guard****DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 21**

**RIN 2900-AH88**

**Election of Education Benefits**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) educational assistance and educational benefits regulations relating to certain elections between benefits. VA has provided by regulation that after a veteran seeks to make an election to have service in the Selected Reserve credited toward payment under the Montgomery GI Bill—Selected Reserve (MGIB-SR) program or under the Montgomery GI Bill—Active Duty (MGIB-AD) program, the election will take effect when the individual has negotiated a check issued under the program she or he has elected. In order to adapt the regulations to the new system of electronic transfers, these election provisions are changed to make the election effective either upon negotiation of a check or electronic receipt of education benefits. VA has provided by regulation that an election to receive benefits under Survivors' and Dependents' Educational Assistance (DEA) for a program of education rather than pension, compensation, or Dependency and Indemnity

Compensation (DIC) will take effect when the individual has commenced a program of education and negotiated a check issued under the program she or he has elected. In order to adapt the regulations to the new system of electronic transfers and to ensure that decisions are made with knowledge, these election provisions are changed to require a written election to be submitted and to make the election effective either upon negotiation of a check or electronic receipt of education benefits. Nonsubstantive changes are also made for purposes of clarity and to reflect current statutory codification and authority. This final rule also involves collections of information.

**EFFECTIVE DATE:** September 28, 1998.

**FOR FURTHER INFORMATION CONTACT:**

William G. Susling, Jr., Education Adviser, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273-7187.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on November 25, 1997 (62 FR 62736), it was proposed to amend the "SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CHAPTER 35" regulations, the "ALL VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM (MONTGOMERY GI BILL—ACTIVE DUTY)" regulations, and the "EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE" regulations as set forth in the SUMMARY portion of this document. These regulations are set forth at 38 CFR Part 21, Subparts C, K, and L.

Interested persons were given 60 days to submit comments. No comments were received. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the MGIB-SR program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

**Paperwork Reduction Act of 1995**

Information collection and recordkeeping requirements associated with this final rule concerning § 21.3023 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3520) and have been assigned OMB control number 2900-0595. The final rule at

§ 21.3023 requires that an election to receive DEA rather than DIC must be made to VA in writing.

Furthermore, information collection and recordkeeping requirements associated with this final rule concerning §§ 21.7042 and 21.7540 have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3520) and have been assigned OMB control number 2900-0594. The final rule at §§ 21.7042 and 21.7540 requires that a veteran must choose to apply certain Selected Reserve service either to MGIB-SR or MGIB.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to each collection of information in this final rule is displayed at the end of each affected section of the regulations.

**Regulatory Flexibility Act**

The signers of this document hereby certify that this final rule does not have 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 directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), the final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by the final rule are 64.117 and 64.124. The final rule also affects the Montgomery GI Bill—Selected Reserve for which there is 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, Conflicts of interests, Defense Department, Education, Educational institutions, 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, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 19, 1998.  
**Togo D. West, Jr.**,  
Secretary of Veterans Affairs.

Approved: July 15, 1998.

**Normand G. Lezy**,  
Lieutenant General, USAF, Deputy Assistant  
Secretary (Military Personnel Policy),  
Department of Defense.

Approved: July 28, 1998.

**T. J. Barrett**,  
RADM, USCG, Acting Assistant Commandant  
for Human Resources.

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

**PART 21—VOCATIONAL  
REHABILITATION AND EDUCATION**

**Subpart C—Survivors and Dependents  
Educational Assistance Under 38  
U.S.C. Chapter 35**

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

**Authority:** 38 U.S.C. 501(a), 512, 3500–  
3566, unless otherwise noted.

2. In § 21.3023, paragraph (c)(3) is  
amended by removing “educational  
assistance” and adding, in its place,  
“education under DEA”; the section  
heading, paragraph (c) introductory text,  
and paragraph (c)(1) are revised; a  
parenthetical is added at the end of the  
section, and an authority citation for the  
section is added, to read as follows:

**§ 21.3023 Nonduplication; pension,  
compensation, and dependency and  
indemnity compensation.**

\* \* \* \* \*

(c) *Child; election.* An election by a  
child under this section must be  
submitted to VA in writing.

(1) Except as provided in paragraph  
(c)(2) of this section, an election to  
receive Survivors’ and Dependents’  
Educational Assistance (DEA) is final  
when the eligible child commences a  
program of education under DEA (38  
U.S.C. chapter 35). Commencement of a  
program of education under DEA will be  
deemed to have occurred for VA  
purposes on the date the first payment  
of DEA educational assistance is made,  
as evidenced by negotiation of the first  
check or receipt of the first payment by  
electronic funds transfer.

\* \* \* \* \*

(The information collection requirements in  
this section have been approved by the Office  
of Management and Budget under control  
number 2900–0595)

(Authority: 38 U.S.C. 3562)

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

3. 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.

4. In § 21.7042, the section heading  
and paragraphs (d)(2) and (d)(3) are  
revised, paragraph (d)(4) and its  
authority citation are added, and a  
parenthetical is added at the end of the  
section, to read as follows:

**§ 21.7042 Eligibility for basic educational  
assistance.**

\* \* \* \* \*

(d) \* \* \*

(2) An individual must elect, in  
writing, whether he or she wishes  
service in the Selected Reserve to be  
credited towards establishing eligibility  
under 38 U.S.C. chapter 30 or under 10  
U.S.C. chapter 1606 when:

- (i) The individual:
  - (A) Is a veteran who has established  
eligibility for basic educational  
assistance through meeting the  
provisions of paragraph (b) of this  
section; and
  - (B) Also is a reservist who has  
established eligibility for benefits under  
10 U.S.C. chapter 1606 through meeting  
the requirements of § 21.7540; or
  - (ii) The individual is a member of the  
National Guard or Air National Guard  
who has established eligibility for basic  
educational assistance under 38 U.S.C.  
chapter 30 through activation under a  
provision of law other than 32 U.S.C.  
316, 502, 503, 504, or 505.

(3) An election under this paragraph  
(d) to have Selected Reserve service  
credited towards eligibility for payment  
of educational assistance under 38  
U.S.C. chapter 30 or under 10 U.S.C.  
chapter 1606 is irrevocable when the  
veteran either negotiates the first check  
or receives the first payment by  
electronic funds transfer of the  
educational assistance elected.

(4) If a veteran is eligible to receive  
educational assistance under both 38  
U.S.C. chapter 30 and 10 U.S.C. chapter  
1606, he or she may receive educational  
assistance alternately or consecutively  
under each of these chapters to the  
extent that the educational assistance is  
based on service not irrevocably  
credited to one or the other chapter as  
provided in paragraphs (d)(1) through  
(d)(3) of this section.

(Authority: 10 U.S.C. 16132, 38 U.S.C.  
3033(c))

\* \* \* \* \*

(The information requirements in this section  
have been approved by the Office of

Management and Budget under control  
number 2900–0594)

**Subpart L—Educational Assistance for  
Members of the Selected Reserve**

5. The authority citation for part 21,  
subpart L is revised to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C.  
501, unless otherwise noted.

6. In § 21.7540, paragraph (c) and the  
authority citation for paragraph (d) are  
revised, and a parenthetical is added at  
the end of the section, to read as  
follows:

**§ 21.7540 Eligibility for educational  
assistance.**

\* \* \* \* \*

(c) *Limitations on establishing  
eligibility.* (1) An individual must elect  
in writing whether he or she wishes  
service in the Selected Reserve to be  
credited towards establishing eligibility  
under 38 U.S.C. chapter 30 or under 10  
U.S.C. chapter 1606 when:

- (i) The individual is a reservist who  
is eligible for basic educational  
assistance provided under 38 U.S.C.  
3012, and has established eligibility to  
that assistance partially through service  
in the Selected Reserve; or
- (ii) The individual is a member of the  
National Guard or Air National Guard  
who has established eligibility for basic  
educational assistance provided under  
38 U.S.C. 3012 through activation under  
a provision of law other than 32 U.S.C.  
316, 502, 503, 504, or 505 followed by  
service in the Selected Reserve.

(2) An election under this paragraph  
(c) to have Selected Reserve service  
credited towards eligibility for payment  
of educational assistance under 38  
U.S.C. chapter 30 or under 10 U.S.C.  
chapter 1606 is irrevocable when the  
reservist either negotiates the first check  
or receives the first payment by  
electronic funds transfer of the  
educational assistance elected.

(3) If a reservist is eligible to receive  
educational assistance under both 38  
U.S.C. chapter 30 and 10 U.S.C. chapter  
1606, he or she may receive educational  
assistance alternately or consecutively  
under each of these chapters to the  
extent that the educational assistance is  
based on service not irrevocably  
credited to one or the other chapter as  
provided in paragraphs (c)(1) and (c)(2)  
of this section.

(Authority: 10 U.S.C. 16132; 38 U.S.C.  
3033(c))

\* \* \* \* \*

(d) \* \* \*

(Authority: 10 U.S.C. 16132(d), 16134)

(The information collection requirements in  
this section have been approved by the Office

of Management and Budget under control number 2900-0594)  
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## POSTAL SERVICE

### 39 CFR Parts 775, 777, and 778

#### National Environmental Policy Act Implementing Procedures

AGENCY: Postal Service (USPS).

ACTION: Final rule.

**SUMMARY:** This rule changes the procedures and categorical exclusions governing the Postal Service's compliance with the National Environmental Policy Act (NEPA). These amendments are based upon experience with existing regulations and new policies and infrastructure that have been implemented since the restructuring of the Postal Service in 1992. The changes are intended to comply with the requirements of NEPA while improving quality and reducing administrative processes and preparation.

**EFFECTIVE DATE:** This regulation was effective on October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Vidich, Environmental Coordinator, U.S. Postal Service, 8 Griffin Rd. N., Windsor, CT 06006-7030, phone (860) 285-7254, or Gary W. Bigelow, Chief Counsel, Environmental Law, 4200 Wake Forest Rd., Raleigh, NC 27668-1121, phone (919) 501-9439.

**SUPPLEMENTARY INFORMATION:** Historically, the U.S. Postal Service has implemented the provisions of the National Environmental Policy Act (NEPA) through policies and procedures established by the Postal Service's Facilities organization. Certainly, most of the "major federal actions" undertaken by the Postal Service have been associated with the construction or disposal of postal facilities. However, in recent years it has become increasingly evident that other postal organizations also have a role in implementing the provisions of NEPA. The Postal Service has revised its regulations to clarify the scope of the applicability of NEPA.

On August 11, 1997, the Postal Service published in the **Federal Register** a notice of proposed changes in the procedures and categorical exclusions of its NEPA regulations (62 FR 42958). Specifically, the Postal Service proposed revised procedures for implementing the requirements of NEPA in order to improve efficiency, promote compliance and reflect organizational changes within the Postal

Service. Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service requested that comments on the proposal be submitted by September 10, 1997. No comments were received on the proposed regulation.

Technical amendments to § 775.6(a) to clarify language, improve readability, conform to changes in language regarding wetlands permit terminology, and correct a typographical error, have been incorporated into the final rule. Also typographical errors in § 775.6(e)(8) and § 775.7 have been corrected. In light of the foregoing, the Postal Service has decided to adopt the proposed revisions to its NEPA regulations.

#### List of Subjects

##### 39 CFR Part 775

Environmental impact statements.

##### 39 CFR Part 777

Real property acquisition, Relocation assistance.

##### 39 CFR Part 778

Intergovernmental relations.

Accordingly, title 39 CFR parts 775, 777 and 778 are amended as follows:

#### Subchapter K—Environmental Regulations

### PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. The authority citation for 39 CFR part 775 is revised to read as follows:

**Authority:** 39 U.S.C. 401; 42 U.S.C. 4321 et seq.; 40 CFR 1500.4.

2. The heading for subchapter K is revised to read as set forth above.

3. The heading of part 775 is revised to read as set forth above.

4. Section 775.1 is revised to read as follows:

#### § 775.1 Purpose.

These procedures implement the National Environmental Policy Act (NEPA) regulations (40 CFR part 1500) issued by the Council on Environmental Quality (CEQ).

5. Section 775.3 is revised to read as follows:

#### § 775.3 Responsibilities.

(a) The Chief Environmental Officer is responsible for overall development of policy regarding NEPA and other environmental policies. The officer in charge of the facilities or real estate organization is responsible for the development of NEPA policy as it

affects real estate or acquisition, construction and disposal of postal facilities consistent with overall NEPA policy. Each officer with responsibility over the proposed program, project, action, or facility is responsible for compliance with NEPA as the responsible official.

(b) Postal managers will designate environmental coordinators to assist with compliance with NEPA procedures.

**§§ 775.5 through 775.11 [Redesignated as §§ 775.8 through 775.14]; § 775.4(a) [Redesignated as § 775.5] and § 775.4(b) [Redesignated as § 775.6].**

Sections 775.5 through 775.11 are redesignated as §§ 775.8 through 775.14.

7. Section 775.4(a) is redesignated as § 775.5 and § 775.4(b) is redesignated as § 775.6.

8. Section 775.4 is removed, and a new § 775.4 is added to read as follows:

#### § 775.4 Definitions.

(a) The definitions set forth in 40 CFR part 1508 apply to this part 775.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

*Approving official* means the person or group of persons, who authorizes funding as established through the delegations of approval authority issued by the finance organization. That person or group of persons may not have proposed the action for which financial approval is sought.

*Environmental checklist* means a Postal Service form that identifies potential environmental impacts for proposed actions initiated by postal managers.

*Mitigated FONSI* means a FONSI which requires the implementation of specified mitigation measures in order to ensure that there are no significant impacts to the environment.

*Record of environmental consideration* means the Postal Service form that identifies the Postal Service's review of proposed activities under NEPA.

*Responsible official* means the person, or designated representative, who proposes an action and is responsible for compliance with NEPA. For larger projects, that person may not have the financial authority to approve such action. The responsible official signs the NEPA documents (FONSI, ROD) and the REC.

9. Newly redesignated § 775.5 is revised to read as follows:

#### § 775.5 Classes of actions.

(a) *Actions which normally require an environment impact statement.* None,