

Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193-0530; telephone: (817) 321-7716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2009-0115/Airspace Docket No. 09-AGL-3." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace for SIAPs operations at Mount Sterling Municipal Airport, Mount Sterling, IL. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Mount Sterling Municipal Airport, Mount Sterling, IL.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AGL IL E5 Mount Sterling, IL [Amended]**

Mount Sterling Municipal Airport, IL  
(Lat. 39°59'07" N., long. 90°48'15" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mount Sterling Municipal Airport.

\* \* \* \* \*

Issued in Fort Worth, TX, on February 23, 2009.

**Anthony D. Roetzel,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. E9-4937 Filed 3-9-09; 8:45 am]

**BILLING CODE 4901-13-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 21**

**RIN 2900-AM84**

**Vocational Rehabilitation and Employment Program—Periods of Eligibility**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend regulations of the Department of Veterans Affairs (VA) concerning periods of eligibility applicable to VA's provision of Vocational Rehabilitation and Employment benefits and services. The proposed amendments are intended to reflect changes in law, to reflect VA's interpretation of statutory requirements, to make clarifying changes, and to make other changes that are nonsubstantive.

**DATES:** Comments must be received on or before May 8, 2009.

**ADDRESSES:** Written comments may be submitted through <http://>

*www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AM84—Vocational Rehabilitation and Employment Program—Periods of Eligibility.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-9613.

**SUPPLEMENTARY INFORMATION:** We propose to amend VA’s regulations in 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31. These amendments concern periods of eligibility applicable to VA’s provision of Vocational Rehabilitation and Employment (VR&E) benefits and services.

Specifically, we propose to restate and interpret the provisions of 38 U.S.C. 3102 and 3103 in 38 CFR 21.41 by defining the term “basic period of eligibility,” clarifying its significance, identifying the provisions for deferring or extending the basic period of eligibility, and stating that a servicemember’s basic period of eligibility does not begin before his or her discharge or release from active military, naval, or air service.

We propose to revise § 21.42 to make clarifying changes in its provisions. These include specifying who is authorized to determine that the veteran’s participation in a vocational rehabilitation program is reasonably feasible, after the basic period of eligibility had been delayed or interrupted due to any medical condition(s) of the veteran. It would also specify that the basic period of eligibility would begin or resume on the date of written notice to the veteran of that determination.

We propose to revise § 21.44. Pursuant to 38 U.S.C. 3103(c)(3), we would add provisions in a new

paragraph (b) to more clearly state the length of time that an extension of the basic period of eligibility for a veteran with a serious employment handicap may be granted. Proposed § 21.44 also would specify who is authorized to extend the basic period of eligibility for the reasons described in this section and would make other clarifying changes.

We propose to revise and restructure § 21.45 to conform this section to statutory requirements and more clearly state the length of extension of the basic period of eligibility for a veteran in a program of independent living services.

We propose to add a new § 21.46 to reflect and interpret an amendment to 38 U.S.C. 3103 by section 103(c)(2) of Public Law 107-103 for a veteran who VA determines “was prevented from participating” in a vocational rehabilitation program under chapter 31 of title 38, United States Code, because they are recalled to active duty. The section would reflect our interpretation that “prevented from participating” includes those who are prevented from commencing or continuing in a program of vocational rehabilitation. This section would also describe—

- The reasons for recall that allow VA to extend the period of eligibility; and
- The length of extension of the period of eligibility, which under 38 U.S.C. 3103(e) is the length of time the veteran served on active duty plus 4 months.

Finally, we propose to rewrite these sections in reader-focused plain English and make other nonsubstantive changes in their provisions.

#### **Paperwork Reduction Act of 1995**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this 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. This proposed rule would not affect any small entities. Only individuals would be affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **Catalog of Federal Domestic Assistance**

The program that this rule would affect has the following Catalog of Federal Domestic Assistance number and title: 64.116, Vocational Rehabilitation for Disabled Veterans.

#### **List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, 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: February 24, 2009.

**John R. Gingrich,**  
Chief of Staff.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 21 (subpart A) as follows:

## **PART 21—VOCATIONAL REHABILITATION AND EDUCATION**

### **Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31**

1. Revise the authority citation for part 21, subpart A to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

2. Revise the subpart A heading as set forth above.

3. Revise §§ 21.41, 21.42, 21.44, and 21.45 to read as follows:

#### **§ 21.41 Basic period of eligibility.**

(a) *Time limit for eligibility to receive vocational rehabilitation.* (1) For purposes of §§ 21.41 through 21.46, the term *basic period of eligibility* means the 12-year period beginning on the date of a veteran's discharge or release from his or her last period of active military, naval, or air service, and ending on the date that is 12 years from the veteran's discharge or release date, but the beginning date may be deferred or the ending date extended under the sections referred to in paragraph (b) of this section. (See §§ 21.70 through 21.79 concerning duration of rehabilitation programs.)

(2) Except as provided in paragraph (b) or (c) of this section, the period during which an individual may receive a program of vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 is limited to his or her basic period of eligibility.

(b) *Deferral and extension of the basic period of eligibility.* VA may defer the beginning date of a veteran's basic period of eligibility under § 21.42. VA may extend the ending date of a veteran's basic period of eligibility under § 21.42 (extension due to medical condition); § 21.44 (extension for a veteran with a serious employment handicap), § 21.45 (extension during a program of independent living services and assistance), and § 21.46 (extension for a veteran recalled to active duty).

Authority: 38 U.S.C. 3103.

(c) *Servicemember entitled to vocational rehabilitation services and assistance before discharge.* The basic

period of eligibility for a servicemember who is entitled to vocational rehabilitation services and assistance under 38 U.S.C. chapter 31 for a period before discharge does not run while the servicemember remains on active duty, but begins on the date of discharge from the active military, naval, or air service. The period of eligibility requirements of this section are not applicable to provision of vocational rehabilitation services and assistance under chapter 31 during active duty.

Authority: 38 U.S.C. 3102, 3103.

#### **§ 21.42 Deferral or extension of the basic period of eligibility.**

The basic period of eligibility does not run as long as any of the following reasons prevents the veteran from commencing or continuing a vocational rehabilitation program:

(a) *Qualifying compensable service-connected disability(ies) not established.* The basic period of eligibility does not commence until the day VA notifies a veteran of a rating determination by VA that the veteran has a qualifying compensable service-connected disability under § 21.40.

Authority: 38 U.S.C. 3103(b)(3).

(b) *Character of discharge is a bar to benefits.*

(1) The basic period of eligibility does not commence until the veteran meets the requirement of a discharge or release under conditions other than dishonorable. (For provisions regarding character of discharge, see § 3.12 of this chapter.)

(2) If VA has considered a veteran's character of discharge to be a bar to benefits, the basic period of eligibility commences only when one of the following happens:

(i) An appropriate authority changes the character of discharge or release; or

(ii) VA determines that the discharge or release was under conditions other than dishonorable or that the discharge or release was, but no longer is, a bar to benefits.

(3) If there is a change in the character of discharge, or the discharge or release otherwise is determined, as provided in paragraph (b)(2) of this section, not to be a bar to benefits, the beginning date of the basic period of eligibility will be the effective date of the change or VA determination.

Authority: 38 U.S.C. 3103(b)(2).

(c) Commencement or continuation of participation prevented by medical condition(s).

(1) The basic period of eligibility does not run during any period when a

veteran's participation in a vocational rehabilitation program is determined to be infeasible for 30 days or more because of any medical condition(s) of the veteran, including the disabling effects of chronic alcoholism (see paragraphs (c)(2) through (c)(5) of this section).

(2) For purposes of this section, the term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations that:

(i) Have been diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Have been determined to prevent the affected veteran from beginning or continuing in a program of vocational rehabilitation and employment.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, or chronic alcohol abuse, in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injuries sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication are not considered disabling effects of chronic alcoholism. An injury itself, however, may prevent commencement or continuation of a rehabilitation program.

(5) For purposes of this section, after November 17, 1988, the disabling effects of chronic alcoholism do not constitute willful misconduct. See 38 U.S.C. 105(c).

(6) If the basic period of eligibility is delayed or interrupted under this paragraph (c) due to any medical condition(s) of the veteran, it will begin or resume on the date a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) notifies the veteran in writing that the CP or VRC has determined, based on the evidence of record, that participation in a vocational rehabilitation program is reasonably feasible for the veteran.

Authority: 38 U.S.C. 3103(b)(1).

#### **§ 21.44 Extension of the basic period of eligibility for a veteran with a serious employment handicap.**

(a) *Conditions for extension.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the basic period of eligibility of a veteran with a serious employment handicap when the veteran's current employment handicap and need for rehabilitation services and

assistance necessitate an extension under the following conditions:

(1) *Not rehabilitated to the point of employability.* The veteran has not been rehabilitated to the point of employability; or

Authority: 38 U.S.C. 3103(c).

(2) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, but currently meets one of the following three conditions:

(i) One or more of the veteran's service-connected disabilities has worsened, preventing the veteran from working in the occupation for which he or she trained, or in a related occupation;

(ii) The veteran's current employment handicap and capabilities clearly show that the occupation for which the veteran previously trained is currently unsuitable; or

(iii) The occupational requirements in the occupation for which the veteran trained have changed to such an extent

that additional services are necessary to enable the veteran to work in that occupation, or in a related field.

Authority: 38 U.S.C. 3103(c).

(b) *Length of eligibility extension.* For a veteran with a serious employment handicap, a CP or VRC may extend the basic period of eligibility for such additional period as the CP or VRC determines is needed for the veteran to accomplish the purposes of his or her individualized rehabilitation program.

Authority: 38 U.S.C. 3103(c).

*§ 21.45 Extending the period of eligibility for a program of independent living beyond basic period of eligibility.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the period of eligibility for a veteran's program of independent living services beyond the veteran's basic period of eligibility if the CP or VRC determines that an extension is necessary for the veteran to achieve maximum independence in daily living.

The extension may be for such period as the CP or VRC determines is needed for the veteran to achieve the goals of his or her program of independent living. (See § 21.76(b) concerning duration of independent living services.)

Authority: 38 U.S.C. 3103(d).

4. Add § 21.46 to read as follows:

*§ 21.46 Veteran ordered to active duty; extension of basic period of eligibility.* If VA determines that a veteran is prevented from participating in, or continuing in, a program of vocational rehabilitation as a result of being ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, the veteran's basic period of eligibility will be extended by the length of time the veteran serves on active duty plus 4 months.

Authority: 38 U.S.C. 3103(e); sec. 308(h), Public Law 107-330, 116 Stat. 2829.

[FR Doc. E9-4935 Filed 3-6-09; 8:45 am]

**BILLING CODE 8320-01-P**