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Dated: April 27, 2009.

**J.P. Currier,**

*Rear Admiral, U.S. Coast Guard Commander,  
Thirteenth Coast Guard District.*

[FR Doc. E9-10755 Filed 5-7-09; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

#### RIN 2900-AN13

#### Vocational Rehabilitation and Employment Program—Basic Entitlement; Effective Date of Induction Into a Rehabilitation Program; Cooperation in Initial Evaluation

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA). Specifically, it proposes to amend provisions concerning: individuals' basic entitlement to vocational rehabilitation benefits and services; effective dates of induction into a rehabilitation program, including retroactive induction; and cooperation and lack of cooperation in the initial evaluation process. The proposed amendments are intended to update pertinent regulations to reflect changes in law, VA's interpretation of applicable law, and VA's determination of appropriate procedures, and to improve clarity.

**DATES:** Comments must be received on or before July 7, 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-AN13—Vocational Rehabilitation and Employment Program—Basic Entitlement, etc." 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), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-9613.

**SUPPLEMENTARY INFORMATION:** In 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, we propose to revise VA's regulations in 38 CFR 21.40 concerning basic entitlement to vocational rehabilitation benefits and services; in § 21.282 concerning effective dates of induction into a rehabilitation program; and in § 21.50(d) concerning cooperation and lack of cooperation in the initial evaluation process. We note that VA previously addressed changes in the provision of services under 38 U.S.C. chapter 31 that resulted from a court decision and the enactment of Public Law 104-275, the Veterans Benefits Improvement Act of 1996. This included VA's issuance of Circular 28-97-1 in 1997 (last revised in October 2004) to provide guidance regarding the implementation of these changes. The proposed rule would update 38 CFR part 21 consistent with current VA practice. In addition, the proposed rule would make other nonsubstantive changes.

#### Basic Entitlement to Vocational Rehabilitation Benefits and Services

We propose to revise § 21.40 to include criteria, effective October 1, 1993, for vocational rehabilitation basic entitlement determinations resulting from the Veterans' Benefits Act of 1992 (Pub. L. 102-568), enacted October 29, 1992. Public Law 102-568 amended 38 U.S.C. 3102(2) to entitle veterans to vocational rehabilitation if they have a 10 percent service-connected disability and are determined by the Secretary of

Veterans Affairs to be in need of rehabilitation because of a serious employment handicap.

The proposed changes to § 21.40 are also intended to reflect the provisions of section 602(c) of the Veterans Benefits Improvement Act of 1994 (Pub. L. 103-446), which amended section 404(b) of Public Law 102-568 with a technical correction, effective October 29, 1992. VA's interpretation of the effect of these statutory changes is to give individuals basic entitlement to vocational rehabilitation if:

- They have a 10 percent service-connected disability;
- They originally applied for assistance under chapter 31 of title 38, United States Code, before November 1, 1990; and
- VA determines they need rehabilitation because of an employment handicap.

In addition, the proposed changes to § 21.40 are intended to make clarifying changes and to restructure and rewrite this section in reader-focused plain English.

Due to changes that this document proposes in the structure of § 21.40, we are proposing to make a conforming change to refer elsewhere in Subpart A to § 21.40 rather than § 21.40(a).

#### Effective Dates of Induction Into a Rehabilitation Program, Including Retroactive Induction

In § 21.282, we propose to reflect a decision by the United States Court of Appeals for Veterans Claims (then the United States Court of Veterans Appeals) in *Bernier v. Brown*, 7 Vet. App. 434 (1995), which concerned effective dates for induction into a program of rehabilitation benefits and services. The *Bernier* decision set aside two provisions of current § 21.282 that limit retroactive induction into programs of rehabilitation benefits and services under 38 U.S.C. chapter 31. The first provision, in current § 21.282(b)(2)(ii), prohibits retroactive induction for any period for which an individual received another VA education benefit. The other provision, in current § 21.282(c), limits retroactive induction to no more than one year prior to the date of application for chapter 31 benefits and services. We address each of these provisions in our proposed revision of § 21.282.

Under proposed § 21.282, VA would be able to retroactively approve a period of training that occurred within an individual's period of eligibility under 38 CFR 21.41 through 21.46, beginning for a veteran on the effective date of the individual's entitlement to disability compensation, provided that the

individual met the criteria for entitlement to chapter 31 benefits and services for that period. VA must also determine that the training and other rehabilitation services that the individual received during the period of retroactive induction were reasonably needed to achieve the planned goals and objectives identified for the individual. If the individual received other VA-administered education benefits during any portion of that period, VA must offset the previous education benefits received against the payment of chapter 31 vocational rehabilitation benefits for the same period.

We propose to add specific language in § 21.282(b) and (c) to clarify when an individual on active duty can qualify for retroactive induction and when the conditions for retroactive induction may apply to both veterans and servicemembers. For servicemembers, we propose, as one condition for retroactive induction, that the period of retroactive induction must be within a period under proposed § 21.40(c) during which a servicemember was awaiting discharge for disability. In § 21.282(b), we also propose to include clear statements, applicable in the case of an individual who is retroactively inducted, regarding authorization by VA of payment for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with an approved rehabilitation program, and authorization by VA of payments of subsistence allowance for the period of retroactive induction, not including any period for which the individual was on active duty, in order to provide more complete information for the benefit of the reader. In § 21.282(c), we propose to restructure current provisions to more objectively state the conditions that must be met before an individual may be inducted into a rehabilitation program on a retroactive basis in order to comply fully with pertinent statutory authorities.

In response to the invalidation of language in current § 21.282(c) in *Bernier*, we propose to state in § 21.282(d) that the effective date for retroactive induction is the date on which all the entitlement conditions set forth in proposed § 21.282(c) are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating establishing a qualifying level of service-connected disability under § 21.40. We believe this change will bring the effective-date provision in line with the court's decision, and with 38 U.S.C. 5113.

We are also proposing nonsubstantive changes in § 21.282 for purposes of

clarity and a conforming change in the center heading preceding § 21.282.

#### **Cooperation and Lack of Cooperation in the Initial Evaluation Process**

This document also proposes changes with regard to § 21.50, Initial evaluations. In the **Federal Register** of March 26, 2007, (72 FR 14041), VA published amendments to several sections in 38 CFR part 21, including § 21.50. Here, we propose a further amendment, to revise § 21.50(d), Need for cooperation in evaluation. The changes are intended to reflect VA's determination of appropriate procedures and to clarify the action VA will take if an individual fails to cooperate with the counseling psychologist (CP) or vocational rehabilitation counselor (VRC) in the initial evaluation process. In brief, this document's proposed revision would provide that if after reasonable efforts are made to secure an individual's cooperation the individual continues to be uncooperative, VA will "suspend" that evaluation process. The changes proposed in this document would add references to § 21.362, Satisfactory conduct and cooperation, and § 21.364, Unsatisfactory conduct and cooperation. The changes would remove from that paragraph an unnecessary and potentially confusing statement that "[a] redetermination of entitlement as described in § 21.58 will be made in the case of an individual whose program has been discontinued due to failure to cooperate." During the initial evaluation process, it would not be correct to consider the individual to have already been inducted into a program, and therefore it would not be correct to state that his or her "program" has been discontinued. In addition, we believe that § 21.50(d) does not need to refer to the provisions of § 21.58 concerning redeterminations.

#### **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 to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed regulatory amendment 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 amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment 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, Department of Veterans Affairs.

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

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.

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

2. The subpart A heading is revised as set forth above.

3. Revise the undesignated center heading immediately preceding § 21.40 and that section to read as follows:

#### Entitlement

##### § 21.40 Basic entitlement to vocational rehabilitation benefits and services.

An individual meets the basic entitlement criteria for vocational rehabilitation benefits and services under this subpart if VA determines that he or she meets the requirements of paragraph (a), (b), (c), or (d) of this section. For other requirements affecting the provision of vocational rehabilitation benefits and services, see §§ 21.41 through 21.46 (period of eligibility), § 21.53 (reasonable feasibility of achieving a vocational goal), and §§ 21.70 through 21.79 (months of entitlement).

(a) *Veterans with at least 20 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated 20 percent or more under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active

military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(b) *Veterans with 10 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment, for a disability that VA will likely determine to be service-connected. In addition, VA must have determined that:

(1) The hospital or other medical facility providing the hospitalization, care, service, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned;

(2) The individual is in need of rehabilitation because of an employment handicap; and

(3) The individual has a disability or combination of disabilities that will likely be:

(i) At least 10 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; or

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

**Authority:** 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Public Law 101–508, 104 Stat. 1388–347; sec. 404(b), Public Law 102–568, 106 Stat. 4338, as amended by sec. 602, Public Law 103–446, 108 Stat. 4671)

#### § 21.42 [Amended]

4. In § 21.42, remove “§ 21.40(a)” each place that it appears in paragraph (a) and add, in its place, “§ 21.40”.

#### § 21.47 [Amended]

5. In § 21.47, remove “§ 21.40(a)” from paragraph (b)(3) and add, in its place, “§ 21.40”.

6. Revise § 21.50(d) to read as follows:

#### § 21.50 Initial evaluation.

\* \* \* \* \*

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (see § 21.362, regarding satisfactory conduct and cooperation, and § 21.364, regarding unsatisfactory conduct and cooperation).

(Authority: 38 U.S.C. 3111)

7. Revise the undesignated center heading immediately preceding § 21.282 and that section to read as follows:

#### Induction Into a Rehabilitation Program

##### § 21.282 Effective date of induction into a rehabilitation program; retroactive induction.

(a) *Entering a rehabilitation program.* The effective date of induction into a rehabilitation program is governed by the provisions of §§ 21.320 through 21.334, except as provided in this section.

(Authority: 38 U.S.C. 3108, 5113)

(b) *Retroactive induction.* Subject to paragraphs (c) and (d) of this section, an individual may be inducted into a rehabilitation program on a retroactive basis. If the individual is retroactively inducted, VA may authorize payment pursuant to § 21.262 or § 21.264 for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. In addition, VA may authorize payment of subsistence allowance pursuant to §§ 21.260, 21.266, and 21.270 for the period of retroactive induction, except for any period during which the individual was on active duty.

(Authority: 38 U.S.C. 3108, 3113, 3681, 5113)

(c) *Conditions for retroactive induction.* Retroactive induction into a rehabilitation program may be authorized for a past period under a claim for vocational rehabilitation benefits when all of the following conditions are met:

(1) The past period is within—

(i) A period under § 21.40(c) during which a servicemember was awaiting discharge for disability; or

(ii) A period of eligibility under §§ 21.41 through 21.44 or 38 U.S.C. 3103.

(2) The individual was entitled to disability compensation under 38 U.S.C. chapter 11 during the period or would likely have been entitled to that compensation but for active-duty service.

(3) The individual met the criteria for entitlement to vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 in effect during the period.

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (*see* §§ 21.80 through 21.88, and §§ 21.92 through 21.98).

(5) VA has recouped any benefits that it paid the individual for education or training pursued under any VA education program during any portion of the period.

(6) An initial evaluation was completed under § 21.50.

(7) A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal.

(Authority: 38 U.S.C. 3102, 3103, 3108, 5113)

(d) *Effective date for retroactive induction.* The effective date for retroactive induction is the date when all the entitlement conditions set forth in paragraph (c) of this section are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating under 38 U.S.C. chapter 11 establishing a qualifying level under § 21.40 of service-connected disability.

(Authority: 38 U.S.C. 5113)

[FR Doc. E9-10806 Filed 5-7-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2008-0117, FRL-8901-2]

#### Disapproval of Air Quality Implementation Plans; Connecticut; Attainment Demonstration for the Connecticut Portion of the New York-N. New Jersey-Long Island, NY-NJ-CT 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing action on the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by Connecticut to meet Clean Air Act (CAA or Act) requirements for attaining the 8-hour ozone national ambient air quality standard. EPA is proposing to disapprove Connecticut's demonstration of attainment of the 1997 8-hour ozone standard for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area (New York City ozone nonattainment area).

**DATES:** Written comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2008-0117, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

3. *Fax*: (617) 918-0047.

4. *Mail*: "Docket Identification Number EPA-R01-OAR-2008-0117", Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2008-0117. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Management, Department of Environmental