

comments during the rule's 30-day comment period, it would publish a notice of withdrawal in the **Federal Register**.

BOEMRE has determined that it has received significant adverse comments during the comment period and, therefore, is withdrawing the direct final rule. BOEMRE intends to publish a notice of proposed rulemaking within 30 days of the date of this notice in order to reinstate rulemaking. The proposed rule will have a 30-day public comment period. All comments received in response to the original November 26, 2010, notice will be considered in relation to the proposed rule unless they are withdrawn by the commenters, so those who commented on the original November 26, 2010, direct final rule need not re-submit their comments.

However, parties who responded to the November 26, 2010, notice may submit additional comments on the proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Timothy Redding at (703) 787-1219.

Dated: January 18, 2011.

**Michael R. Bromwich,**

*Director, Bureau of Ocean Energy Management, Regulation and Enforcement.*

[FR Doc. 2011-1505 Filed 1-24-11; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3, 17, and 21

RIN 2900-AN27

#### Herbicide Exposure and Veterans With Covered Service in Korea

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule the Department of Veterans Affairs' (VA) proposal to amend VA adjudication, medical, and vocational rehabilitation and employment regulations to incorporate relevant provisions of the Veterans Benefits Act of 2003. Specifically, this document amends VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in their children. It also amends VA's medical regulations by correcting the Health Administration Center's hand-delivery address.

**DATES:** *Effective Date:* This final rule is effective February 24, 2011.

*Applicability Date:* This final rule shall apply to all applications for

benefits that are received by VA on or after February 24, 2011 and to all applications for benefits that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on February 24, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Kniffen, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9366. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On July 24, 2009, VA published a proposal in the **Federal Register** (74 FR 36640), to amend its adjudication, medical, and vocational rehabilitation and employment regulations by incorporating relevant provisions from the Veterans Benefits Act of 2003, Public Law 108-183. More specifically, based on Section 102 of the Act, codified at 38 United States Code (U.S.C.) 1821, VA proposed to amend VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in such veterans' children. Additionally, VA proposed to amend medical regulations by correcting the Health Administration Center's hand-delivery address. We provided a 60-day comment period and interested persons were invited to submit comments on or before September 22, 2009. We received five written comments from the public based on the proposed rule. Two of the responses were comments from Vietnam Veterans of America (VVA) and National Veterans Legal Services Program (NVLSP). The remaining three comments were from the general public.

One commenter supported promulgation of the proposed regulation. The commenter asserted approval when stating, "If passed will be a great help towards helping Korea DMZ Vets with their exposure." The commenter later stated: "This in fact would promote fairness and be beneficial to Vets that served along the DMZ. However, it appears that the new proposed presumption Agent Orange exposure rule, [sic] will not benefit Korea DMZ Veterans that served outside of the 1968/1969 timeframe."

NVLSP also asserted approval of the rule by stating that it "eliminates the need for the claimant to prove a fact that would be difficult to prove on his or her own" \* \* \* such a presumption makes the VA claims adjudication process more efficient by making it easier for VA

to decide these claims;" however, NVLSP also expressed the view that the presumption of exposure set forth in the proposed rule applies to too narrow a period. NVLSP asserted that the period should conform to the statutory window of September 1, 1967 through August 31, 1971, stated in the Veterans Benefits Act of 2003 and that the proposed rule fails to provide for residual exposure to herbicides for periods long after herbicide spraying had ceased.

Similarly, VVA expressed that VA is "taking a step in the right direction" by putting "certain veterans who served in Korea along the Demilitarized Zone (DMZ) on par with veterans who served in Vietnam and were also exposed to herbicides." VVA contended that, based on past and current scientific evidence regarding the long-term effects of herbicides, it is clear that herbicides "can continue to be toxic and hazardous" long after they are applied, and that veterans who served in Korea along the DMZ after July 1969 and have a condition consistent with exposure to herbicides "are being left out in the cold." VVA stated the view that VA's proposal to limit the period covered by the rule is not supported by scientific and medical evidence.

Based upon these comments, VA has determined that revisions to the proposed rule, which defined the presumed exposure period as the period from April 1, 1968 to July 31, 1969, are necessary in order to adequately reflect the statutory provisions in section 102 of the Veterans Benefits Act of 2003, codified at 38 U.S.C. 1821. Section 1821(c) states, "[A] veteran of covered service in Korea is any individual, without regard to the characterization of that individual's service, who—(1) Served in the active military, naval, or air service in or near the Korean demilitarized zone [DMZ], as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971; and (2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to an herbicide agent during such service in or near the Korean demilitarized zone." We believe it is reasonable and consistent with the intent of Congress to concede exposure for veterans who served in or near the Korean DMZ after herbicide application ceased, because of the potential for exposure to residuals of herbicides applied in that area. See 149 Cong. Rec. H11705-01 (2003) (noting that in order to account for residual exposure "it is appropriate to extend the qualifying service period beyond 1969 to account

for residual exposure”), *see also* 149 Cong. Rec. S15133–01 (2003). Therefore, we are changing the presumption ending date of July 31, 1969, to August 31, 1971.

However, we make no change based on NVLSP’s comment that the beginning presumption date should be September 1, 1967. Neither the statute nor the legislative history suggests that herbicides were used prior to 1968. *See* 149 Cong. Rec. H11705–01 (2003) (noting that the Secretary of Defense identified that herbicides were used between 1968 and 1969), *see also* 149 Cong. Rec. S15133–01 (2003). Furthermore, the statute expressly requires that VA, in consultation with the Department of Defense (DoD), determine whether exposure occurred between September 1, 1967 and August 31, 1971, and thus clearly permits a finding as to whether such exposure could have occurred within that period based on DoD information as to dates of herbicide application. As noted in the proposed rule, DoD has advised that herbicides were applied near the Korean DMZ from April 1968 to July 1969. Therefore, we are revising 38 CFR 3.307(a)(6)(iv) and 3.814(c)(2) to presume herbicide exposure for veterans who served in or near the Korean DMZ between April 1, 1968, the earliest date of potential exposure indicated by DoD, and August 31, 1971, the date identified by Congress. If VA receives evidence that herbicides were used in or near the DMZ from an earlier date, VA may rely on that information in individual cases and may revise the presumption as necessary.

While revising § 3.307(a)(6)(iv) and § 3.814(c)(2), we noted that although the first sentence of § 3.814(c)(2) included the phrase “in consultation with the Department of Defense”, neither the second sentence nor § 3.307(a)(6)(iv) contained such language. In order to clarify that VA relies on DoD records to determine whether a unit “operated in or near the Korean DMZ in an area in which herbicides are known to have been applied”, we have added to the second sentence of § 3.814(c)(2) and to § 3.307(a)(6)(iv) the qualifier “as determined by the Department of Defense” after “in a unit that”. Additionally, although § 3.307(a)(6)(iv) noted that exposure within the cited time frame would be presumed “unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service,” § 3.814(c)(2) did not. Under 38 U.S.C. 1821(c), a person shall be considered to have “covered service in Korea” for purposes of providing benefits for spina bifida in such a person’s child if VA

determines that they were exposed to herbicides in or near the Korean DMZ between certain dates. Where affirmative evidence shows that a person was not exposed to herbicides during such service, the statutory standard would not be met. Therefore, we are adding the phrase “unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service” to § 3.814(c)(2) to clarify that the presumption of exposure may be rebutted.

Another commenter suggested that physical testing be added to the criterion for granting service connection, in order to minimize costs to U.S. taxpayers based on the presumption of herbicide exposure. The commenter stated, “[I]f [a] veteran served in Vietnam or Korea during the specified time periods, and laboratory testing for indicators of exposure such as abnormally high levels of dioxins, then service connection can be granted on a presumptive basis.” This comment appears to express concern that a presumption of herbicide exposure based solely on time and location of service may be overly broad. Due to the lapse in time since exposure and the limitations of testing methods, it is not feasible to rely on testing of individual veterans to determine herbicide exposure. As explained above, this rule would presume exposure for veterans who served at the times and places where there was a significant risk of harmful exposure. We believe this approach reasonably balances the concerns identified by the commenter with the purposes of the governing statute and the interests of veterans, their families, and VA. Therefore, we make no change based on this comment.

The final commenter supported the rulemaking, but suggested “strengthening the evidentiary basis for the presumption of exposure by establishing, in consultation with DoD, a means to determine which veterans assigned to a qualifying unit were indeed active with the unit at the qualifying time and place of presumed exposure.” The new language in § 3.307(a)(6)(iv) states that a presumption of herbicide exposure shall be presumed “unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.” Affirmative evidence to establish that the veteran was not exposed to such agent would include the situations mentioned in the comment where a veteran was on leave or otherwise absent from their unit during the period, as defined in this rule, when exposure would be conceded

to have occurred. In practice, VA considers all the evidence of record, and any such determination would be made during the claim adjudication process; therefore, we make no change based on this comment.

Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with the changes discussed above.

### Regulatory Flexibility Act

The Secretary hereby certifies 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 could only affect VA beneficiaries and will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

### Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The information collection requirements for children of veterans with covered service in Korea are approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0572. The information collection requirements for veterans with covered service in Korea are approved by OMB and have been assigned OMB control number 2900–0001.

### 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 “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any 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 final 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. Therefore, the rule was submitted to OMB for review.

#### 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 final rule would have no such effect on State, local, and Tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.019, Veterans Rehabilitation—Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.026, Veterans State Adult Day Health Care; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina

Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on September 30, 2010, for publication.

#### List of Subjects

##### 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

##### 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

##### 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.

Dated: January 19, 2011.

#### Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR chapter 1 is amended as follows:

### PART 3—ADJUDICATION

- 1. The authority citation for part 3, subpart A continues to read as follows:

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

- 2. Amend § 3.27(c) by:

- a. Revising the paragraph heading.
- b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

#### § 3.27 Automatic adjustment of benefit rates.

\* \* \* \* \*

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* \* \* \*

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

\* \* \* \* \*

- 3. Amend § 3.29(c) by:

- a. Removing “who are children of Vietnam veterans” and adding, in its place, “who are children of Vietnam veterans or children of veterans with covered service in Korea”.
- b. Revising the authority citation at the end of the section.

The revision reads as follows:

#### § 3.29 Rounding.

\* \* \* \* \*

(c) \* \* \*

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

- 4. Amend § 3.31:

- a. In the first sentence of the introductory text, by removing “who is a child of a Vietnam veteran” and adding, in its place, “who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea”.
- b. By revising the authority citation at the end of the section.

The revision reads as follows:

#### § 3.31 Commencement of the period of payment.

\* \* \* \* \*

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5111)

- 5. Amend § 3.105(g) by:

- a. Revising the paragraph heading.
- b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

#### § 3.105 Revision of decisions.

\* \* \* \* \*

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* \* \* \*

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5112(b)(6))

\* \* \* \* \*

- 6. Amend § 3.114(a) by:

- a. Removing “who is a child of a Vietnam veteran” both times it appears

and adding, in its place, "who is a child of a Vietnam veteran or child of a veteran with covered service in Korea".

- b. Revising the authority citation at the end of the paragraph.

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) \* \* \*

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5110(g))

\* \* \* \* \*

- 7. Amend § 3.216 by:

- a. Adding "or" preceding "a monetary allowance" in the first sentence.

- b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

\* \* \* \* \*

(Authority: 38 U.S.C. 1832, 5101(c))

§ 3.261 [Amended]

- 8. Amend § 3.261(a)(40) by removing "who are children of Vietnam veterans (38 U.S.C. 1823(c))" and adding, in its place, "who are children of Vietnam veterans or children of veterans with covered service in Korea (38 U.S.C. 1833(c))".

- 9. Amend § 3.262(y) by:

- a. Revising the paragraph heading.

- b. Removing "who is the child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

- c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.262 Evaluation of income.

\* \* \* \* \*

(y) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. \* \* \*

\* \* \* \* \*

(Authority: 38 U.S.C. 1833(c))

\* \* \* \* \*

- 10. Amend § 3.263(g) by:

- a. Revising the paragraph heading.

- b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

- c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.263 Corpus of estate; net worth.

\* \* \* \* \*

(g) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals

who are children of Vietnam veterans or children of veterans with covered service in Korea. \* \* \*

\* \* \* \* \*

(Authority: 38 U.S.C. 1833(c))

\* \* \* \* \*

- 11. Amend § 3.272(u) by:

- a. Revising the paragraph heading.

- b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

The revision reads as follows:

§ 3.272 Exclusions from income.

\* \* \* \* \*

(u) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. \* \* \*

\* \* \* \* \*

- 12. Amend § 3.275(i) by:

- a. Revising the paragraph heading.

- b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

The revision reads as follows:

§ 3.275 Criteria for evaluating net worth.

\* \* \* \* \*

(i) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. \* \* \*

\* \* \* \* \*

- 13. Amend § 3.307 by:

- a. Adding paragraph (a)(6)(iv).

- b. Revising the authority citation at the end of new § 3.307(a)(6)(iv).

The addition and revision read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) \* \* \*

(6) \* \* \*

(iv) A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent

during that service. See also 38 CFR 3.814(c)(2).

(Authority: 38 U.S.C. 501(a), 1116(a)(3), and 1821)

\* \* \* \* \*

- 14. Amend § 3.403 by:

- a. In paragraph (b), removing "An award of the monetary allowance" and adding, in its place, "Except as provided in § 3.814(e), an award of the monetary allowance".

- b. In paragraph (b), removing "date of claim, but" and adding, in its place, "the later of the date of claim or the date entitlement arose, but".

- c. Revising the authority citation for paragraph (b).

- d. Revising the authority citation for paragraph (c).

- e. Adding paragraph (d) and its authority citation.

- f. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§ 3.403 Children.

\* \* \* \* \*

(b) \* \* \*

(Authority: 38 U.S.C. 1805, 1832, 5110)

(c) \* \* \*

(Authority: 38 U.S.C. 1815, 1832, 1834, 5110)

(d) Monetary allowance under 38 U.S.C. 1821 for an individual suffering from spina bifida who is a child of a veteran with covered service in Korea. Except as provided in § 3.814(e), an award of the monetary allowance under 38 U.S.C. 1821 based on the existence of an individual suffering from spina bifida who is a child of a veteran with covered service in Korea will be effective from either the date of birth if claim is received within 1 year of that date, or the later of the date of claim or date entitlement arose, but not earlier than December 16, 2003.

(Authority: 38 U.S.C. 1821, 1832, 5110)

- 15. Amend § 3.503 by:

- a. Revising the heading of paragraph (b).

- b. Removing the authority citation for paragraph (b).

- c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 3.503 Children.

\* \* \* \* \*

(b) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. \* \* \*

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 1832, 5112(b))

- 16. Amend § 3.814 by:

- a. Revising the section heading.
- b. In paragraph (a), first sentence, removing “is or was a Vietnam veteran” and adding, in its place, “is or was a Vietnam veteran or a veteran with covered service in Korea” and by removing from the third sentence “are or were both Vietnam veterans” and adding, in its place, “are or were both Vietnam veterans or veterans with covered service in Korea”.
- c. Redesignating paragraphs (c)(2) and (3) as (c)(3) and (4) respectively.
- d. Adding a new paragraph (c)(2).
- e. In newly redesignated paragraph (c)(3), removing “Vietnam era” and adding, in its place, “Vietnam era, or whose biological father or mother is or was a veteran with covered service in Korea and who was conceived after the date on which the veteran first had covered service in Korea as defined in this section” and by removing “of a Vietnam veteran” and adding, in its place, “of a Vietnam veteran or a veteran with covered service in Korea”.
- f. In paragraph (e) introductory text, removing “claim or” and adding, in its place, “claim (or the date of birth if the claim is received within 1 year of that date) or”.
- g. Revising the authority citation at the end of the section.
- h. Adding a cross reference at the end of the section.

The addition and revisions read as follows:

**§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran or a veteran with covered service in Korea.**

\* \* \* \* \*

(c) \* \* \*

(2) *Covered service in Korea.* For the purposes of this section, the term “veteran with covered service in Korea” means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the Department of Defense, to have been exposed to an herbicide agent during such service. Exposure to an herbicide agent will be conceded if the veteran served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

*Cross Reference:* 38 CFR 3.307(a)(6)(iv).

- 17. Amend § 3.815 by revising the authority citation at the end of the section to read as follows:

**§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.**

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

**PART 17—MEDICAL**

- 18. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as noted in specific sections.

- 19. Revise the undesignated center heading preceding § 17.900 to read as follows:

**Health Care Benefits for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects**

- 20. Amend § 17.900 by:

- a. Adding in alphabetical order, the definition of “Veteran with covered service in Korea”.
- b. Revising the authority citation at the end of the section.

The addition and revision read as follows:

**§ 17.900 Definitions.**

\* \* \* \* \*

*Veteran with covered service in Korea* for purposes of spina bifida means the same as defined at § 3.814(c)(2) of this title.

\* \* \* \* \*

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821, 1831)

- 21. Amend § 17.901 by:

- a. In paragraph (a), first sentence, removing “Vietnam veteran’s” and adding, in its place, “Vietnam veteran or veteran with covered service in Korea’s”, and by removing “with such health care as the Secretary determines is needed by the child for spina bifida” and adding, in its place, “with health care as the Secretary determines is needed”.
- b. In paragraph (b), first sentence, removing “spina bifida or other covered birth defects” and adding, in its place, “covered birth defects (other than spina bifida)”.
- c. In paragraph (d)(3), removing “300 S. Jackson Street. Denver, CO 80209”

and adding, in its place, “3773 Cherry Creek Drive North, Denver, CO 80246”.

- d. Revising paragraph (d)(4) and the authority citation at the end of the section.
- e. Revising the Note at the end of the section.

The revisions read as follows:

**§ 17.901 Provisions of health care.**

\* \* \* \* \*

(d) \* \* \*

(4) The mailing address of the Health Administration Center for claims submitted pursuant to either paragraph (a) or (b) of this section is P.O. Box 469065, Denver, CO 80246–9065.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

**Note to § 17.901:** Under this program, beneficiaries with spina bifida will receive comprehensive care through the Department of Veterans Affairs. However, the health care benefits available under this section to children with other covered birth defects are not comprehensive, and VA will furnish them only health care services that are related to their covered birth defects. With respect to covered children suffering from spina bifida, VA is the exclusive payer for services paid under 17.900 through 17.905, regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. As to children with other covered birth defects, any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to the covered birth defects.

- 22. Amend § 17.902 by:

- a. In the first sentence of paragraph (a), removing “benefits advisor” and adding, in its place, “customer service representative”.
- b. In paragraph (a), removing the second sentence and adding two new sentences in its place.
- c. Revising the authority citation at the end of the section.

The revisions read as follows:

**§ 17.902 Preauthorization.**

(a) \* \* \* Authorization will only be given in spina bifida cases where there is a demonstrated medical need. In cases of other covered birth defects, authorization will only be given where there is a demonstrated medical need related to the covered birth defects.

\* \* \*

\* \* \* \* \*

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

- 23. Amend § 17.903 by revising the authority citation at the end of the section to read as follows:

**§ 17.903 Payment.**

\* \* \* \* \*

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

\* \* \* \* \*

■ 24. Amend § 17.904 by revising the authority citation at the end of the section to read as follows:

§ 17.904 Review and appeal process.

\* \* \* \* \*

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

\* \* \* \* \*

■ 25. Amend § 17.905 by revising the authority citation at the end of the section to read as follows:

§ 17.905 Medical records.

\* \* \* \* \*

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects

■ 26. The authority citation for part 21, subpart M, continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

■ 27. Revise the heading of Subpart M as set forth above.

■ 28. Amend § 21.8010:

■ a. In paragraph (a) in the definition of “Eligible child” by removing “3.814(c)(2)” and adding, in its place, “3.814(c)(3)”.

■ b. In paragraph (a) in the definition of “Spina bifida” by removing “§ 3.814(c)(3)”, and adding, in its place, “§ 3.814(c)(4)”.

■ c. In paragraph (a), by adding in alphabetical order, the definition of “Veteran with covered service in Korea”.

■ d. Revising the authority citation for paragraph (a).

■ e. Revising the authority citation for paragraph (b).

The addition and revisions read as follows:

§ 21.8010 Definitions and abbreviations.

(a) \* \* \*

Veteran with covered service in Korea means a veteran defined at § 3.814(c)(2) of this title.

\* \* \* \* \*

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821, 1831)

(b) \* \* \*

Authority: 38 U.S.C. 1804, 1811, 1814, 1831.

■ 29. Amend § 21.8012 by:

■ a. Revising the section heading.

■ b. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 21.8012 Vocational training program for certain children of Vietnam veterans and veterans with covered service in Korea—spina bifida and covered birth defects.

\* \* \* \* \*

(Authority: 38 U.S.C. 1804, 1812, 1814, 1821)

■ 30. Amend § 21.8014 by:

■ a. In paragraph (a) introductory text, first sentence, removing “Vietnam veteran”, and adding, in its place, “Vietnam veteran or veteran with covered service in Korea”.

■ b. In paragraph (a)(2), removing “Vietnam veteran’s”, and adding, in its place, “Vietnam veteran or veteran with covered service in Korea’s”.

■ c. Revising the authority citation for paragraph (a).

■ d. Revising the authority citation for paragraph (b).

The revisions read as follows:

§ 21.8014 Application.

(a) \* \* \*

(Authority: 38 U.S.C. 1804(a), 1821, 1832, 5101)

(b) \* \* \*

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1831)

■ 31. Amend § 21.8016 by revising the authority citation for paragraphs (a), (b), and (d) to read as follows:

§ 21.8016 Nonduplication of benefits.

(a) \* \* \*

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) \* \* \*

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

\* \* \* \* \*

(d) \* \* \*

(Authority: 38 U.S.C. 1804, 1814, 1834)

■ 32. Amend § 21.8022(b) by revising the authority citation at the end of the paragraph to read as follows:

§ 21.8022 Entry and reentry.

\* \* \* \* \*

(b) \* \* \*

(Authority: 38 U.S.C. 1804, 1814, 1832) [FR Doc. 2011–1342 Filed 1–24–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 179

Operating Certain Railroad Tank Cars in Excess of 263,000 Pounds Gross Rail Load; Approval

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice regarding FRA approval for operating certain railroad tank cars in excess of 263,000 pounds gross rail load.

SUMMARY: On May 14, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the Hazardous Materials Regulations (HMR) to incorporate provisions contained in several widely used or longstanding special permits that have an established safety record. 75 FR 27205 (Final Rule). The Final Rule titled, Hazardous Materials: Incorporation of Special Permits into Regulations, in part, amended the HMR to allow certain rail tank cars, transporting hazardous materials, to exceed the gross weight on rail limitation of 263,000 pounds upon approval of the Federal Railroad Administration (FRA). This document provides notice of FRA’s approval pursuant to the Final Rule of the operation of certain tank cars in hazardous materials service that exceed 263,000 pounds and weigh up to 286,000 pounds gross rail load (GRL).

FOR FURTHER INFORMATION CONTACT: Mr. Karl Alexy (Karl.Alexy@dot.gov or (202) 493–6245) or Mr. William Schoonover (William.Schoonover@dot.gov or (202) 493–6229), Office of Railroad Safety Assurance and Compliance.

SUPPLEMENTARY INFORMATION: Prior to the Final Rule, Title 49 Code of Federal Regulations Section 179.13 of the HMR limited rail tank cars transporting hazardous materials to a maximum capacity of 34,500 gallons (130,597 L) and, with certain exceptions, a GRL of 263,000 pounds (119,295 kg).

As noted in the preamble to the Final Rule, PHMSA has granted several special permits allowing tank cars subject to the 263,000 pound GRL limit of § 179.13 to weigh up to 286,000 pounds (129,727 kg) GRL subject to certain conditions. The Final Rule amended § 179.13 to allow, upon approval by FRA’s Associate Administrator for Railroad Safety, rail tank cars that are not transporting materials poisonous by inhalation (PIH) materials to exceed the 263,000 GRL