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#### Authority and Issuance

■ Accordingly, for the reasons discussed in the preamble, 27 CFR Part 555 is amended as follows:

#### PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

**Authority:** 18 U.S.C. 847.

#### § 555.213 [Amended]

■ 2. Section 555.213 is amended by adding “shock tube,” after “safety fuse,” in paragraph (b)(1).

Dated: January 13, 2010.

Eric H. Holder, Jr.,  
Attorney General.

[FR Doc. 2010-891 Filed 1-19-10; 8:45 am]

BILLING CODE 4410-FY-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:** Final rule.

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

**DATES:** *Effective Date:* This final rule is effective February 19, 2010.

*Applicability Dates:* Except as noted in the Supplementary Information section, the provisions of this final rule apply to claims pending on February 19, 2010.

**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 a document published in the **Federal Register** on May 8, 2009 (74 FR 21565), we proposed to amend VA's vocational rehabilitation and employment regulations. We provided a 60-day comment period for the proposed rule that ended on July 7, 2009. We received no comments.

In 38 CFR part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, we are revising § 21.40 concerning basic entitlement to vocational rehabilitation benefits and services; § 21.282 concerning effective dates of induction into a rehabilitation program; and § 21.50(d) concerning cooperation and lack of cooperation in the initial evaluation process. VA previously addressed and implemented changes to services provided under 38 U.S.C. chapter 31, which 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. This final rule will update 38 CFR part 21 consistent with current practice. In addition, the final rule will make other non-substantive changes.

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

We are revising § 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 due to a serious employment handicap. Further, the changes to § 21.40 are 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. This rule prescribes basic entitlement to vocational rehabilitation if they have a 10 percent service-connected disability, they originally applied for assistance under 38 U.S.C. chapter 31 before November 1, 1990, and VA determines

they need rehabilitation because of an employment handicap.

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

In § 21.282, we address the decision of 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), concerning effective dates for retroactive induction into a program of rehabilitation benefits and services. The *Bernier* decision set aside two provisions of current § 21.282 that limited retroactive induction into programs of rehabilitation benefits and services under 38 U.S.C. chapter 31. Under revised § 21.282, VA will 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 on the effective date of entitlement to disability compensation, provided that the individual met the criteria for entitlement to chapter 31 benefits and services for that period. VA must determine that the training and other rehabilitative services that the individual received during the period of retroactive induction were reasonably needed to achieve the planned goals and objectives identified for that 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 are revising § 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, the period of retroactive induction must be within a period under § 21.40(c) during which a servicemember was awaiting discharge for disability. In § 21.282(b), we are clarifying that if an individual is retroactively inducted into a rehabilitation program, VA may authorize payment of tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. Section 21.282(b) will also authorize VA payment of subsistence allowance for the period of retroactive induction, except for any period during which the individual was on active duty. We are amending § 21.282(c) to comply with pertinent statutory authorities by stating the conditions that must be met before an individual may

be inducted into a rehabilitation program on a retroactive basis.

In response to the invalidation of the language in current § 21.282(c) in *Bernier*, we will state in § 21.282(d) that the effective date for retroactive induction is the date on which all the entitlement conditions set forth in § 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.

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

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. We are revising § 21.50(d) 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 or vocational rehabilitation counselor in the initial evaluation process. Section 21.50(d) provides that if an individual does not cooperate, even after reasonable attempts are made to secure cooperation, VA will suspend the initial evaluation process and that individual will not be considered inducted into a rehabilitation program. Section 21.50(d) will also include references to §§ 21.632 and 21.634 regarding satisfactory and unsatisfactory conduct and cooperation.

For the reasons stated above and as stated in the notice of proposed rulemaking, VA adopts the proposed rule as a final rule without change.

#### 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 final rule will 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 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.

#### 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 rule will not directly affect any small entities. Only individuals will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this 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 will 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: December 30, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons set forth in the preamble, VA amends 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. 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), Pub. L. 101-508, 104 Stat. 1388-347; sec. 404(b), Pub. L. 102-568, 106 Stat. 4338, as amended by sec. 602, Pub. L. 103-446, 108 Stat. 4671.

■ 4. In §§ 21.42 and 21.47, remove “§ 21.40(a)” each place that it appears and add, in its place, “§ 21.40”.

■ 5. 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.

■ 6. 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. 2010-886 Filed 1-19-10; 8:45 am]

**BILLING CODE 8320-01-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:** Final rule.

**SUMMARY:** This document adopts without change the proposed rule published in the **Federal Register** on March 9, 2009, amending regulations of the Department of Veterans Affairs (VA) concerning periods of eligibility applicable to VA's provision of