

The Committee provides for a public comment period during the meeting; written comments may also be sent to: Superintendent, GGNRA, Ft. Mason, Bldg. 201, San Francisco, CA 94123, Attn: Negotiated Rulemaking.

To request a sign language interpreter, please call the park TDD line (415) 556-2766, at least a week in advance of the meeting. Please note that federal regulations prohibit pets in public buildings, with the exception of service animals.

**FOR FURTHER INFORMATION CONTACT:** Go to the <http://www.parkplanning.nps.gov/goga> and select *Negotiated Rulemaking for Dog Management at GGNRA* or call the project information line at 415-561-4728.

**SUPPLEMENTARY INFORMATION:** The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570) to consider developing a special regulation for dogwalking at GGNRA.

Dated: August 15, 2006.

**Bernard C. Fagan,**

*Acting Chief, Office of Policy.*

[FR Doc. E6-14205 Filed 8-25-06; 8:45 am]

**BILLING CODE 4312-FN-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

#### RIN 2900-AM25

### Vocational Rehabilitation and Employment Program—Initial Evaluations

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend regulations of the Department of Veterans Affairs (VA) concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. These proposed regulations are intended to reflect changes in law, VA's interpretation of applicable law and its determinations of procedures appropriate for use in the initial evaluation, to improve readability, and to make other nonsubstantive changes.

**DATES:** Comments must be received on or before October 27, 2006.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or e-mail through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AM25." All 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) 273-9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Catherine Kruger, Senior Policy Analyst, (202) 273-7344, or Mark Hawkins, Vocational Rehabilitation Counselor, (202) 273-6923, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

**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, concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. These proposed regulations are intended to reflect changes in law regarding initial evaluations and VA's interpretation of applicable law and its determinations of procedures appropriate for use in the initial evaluation, and to improve readability. We also propose to make a nonsubstantive conforming change in 38 CFR Part 21, Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects.

In *Davenport v. Brown*, 7 Vet. App. 476 (1995), the United States Court of Appeals for Veterans Claims (then the United States Court of Veterans Appeals) set aside VA regulations that require a veteran's service-connected disability to cause the employment handicap or serious employment handicap that establishes the veteran's entitlement to vocational rehabilitation

and employment benefits. The court held that the requirement of 38 CFR 21.51(c) that a veteran's service-connected disability must "materially contribute" to the veteran's employment handicap is inconsistent with 38 U.S.C. 3102. Thus, the court set aside § 21.51(c)(2), (e), (f)(1)(ii), and (f)(2) to the extent that they require a causal nexus between a veteran's service-connected disability and that veteran's employment handicap. The court found unlawful the noted provisions of § 21.51(c)(2), which require that, while a veteran's service-connected disability need not be the sole or primary cause of an employment handicap or serious employment handicap, it must "materially contribute" to the handicap.

On October 9, 1996, Congress enacted the Veterans' Benefits Improvements Act of 1996 (Pub. L. 104-275), which redefined the terms "employment handicap" and "serious employment handicap" to include a requirement that an individual's vocational impairment be one "resulting in substantial part from" one or more service-connected disabilities, with respect to applications received on or after the date of enactment.

To reflect the dates of applicability of these changes in legal requirements, the proposed rule would provide that for determinations made on any applications filed on or after March 30, 1995, the date of the *Davenport v. Brown* decision, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment or significant vocational impairment.

For clarification, the table below summarizes the standards used to determine entitlement to vocational rehabilitation and employment benefits and services for applicants during these three distinct time periods. These concern entitlement determinations made for:

(1) Claims filed prior to the *Davenport* decision;

(2) Claims filed after the *Davenport* decision but prior to enactment of Public Law 104-275; and

(3) Claims filed following enactment of Public Law 104-275.

Time period	Standard	Explanation
Prior to <i>Davenport</i> decision (claims filed from April 1, 1981 (Public Law 96-466), to March 29, 1995).	The individual's service-connected disability(ies) must materially contribute to the impairment of employment. The serious employment handicap determinations are based on level of service-connected disability(ies) and other criteria as provided in 38 CFR 21.52.	A person found to have an employment handicap who is rated 50 percent or more service-connected is automatically found to have a serious employment handicap. Those rated less than 50 percent service-connected have to meet certain specific percent of service-connected disability(ies) and other criteria to be determined to have a serious employment handicap.
After <i>Davenport</i> decision, but prior to Public Law 104-275 (claims filed from March 30, 1995, to October 8, 1996).	The individual's service-connected disability(ies) need not contribute to the impairment which results in the employment handicap. The issues for determination are the existence of vocational impairment and the extent or significance of the impairment.	The requirements that service-connected disability(ies) contribute to the employment handicap and serious employment handicap are removed, as are the 50 percent, 30-40 percent, and 10-20 percent requirements for finding a serious employment handicap.
After Public Law 104-275 (claims filed on or after October 9, 1996).	The individual's service-connected disability(ies) must contribute "in substantial part" to the impairment of employability.	This standard was provided under Public Law 104-275.

In our view, the phrase "resulting in substantial part" in the statutory definitions of "employment handicap" and "serious employment handicap" has the same meaning that "material contribution" has in current § 21.51(c)(2). We are proposing to amend the regulations to reflect the statutory language. We propose to revise §§ 21.50 through 21.52 in light of these changes in law, and for the additional reasons that we discuss in this preamble.

We propose to revise current § 21.50 to make clear what constitutes an initial evaluation for vocational rehabilitation and employment benefits, who is entitled to an initial evaluation, who conducts it, what questions it seeks to answer, and how a veteran's service-connected disability(ies) must contribute to vocational impairment. The initial evaluation is central to employment handicap and serious employment handicap determinations under § 21.51 and § 21.52, respectively.

We propose to further revise § 21.50 by consolidating and clarifying the factors VA develops and assesses in determining whether an individual has an employment handicap; if so, whether the individual has a serious employment handicap; and, lastly, whether the achievement of a vocational goal by the individual is currently reasonably feasible. Proposed § 21.50(c) would set forth various factors for development and assessment as part of the initial evaluation, with minor modifications to existing provisions to improve readability.

We propose to remove the provisions of current § 21.50(d)(1) as unnecessary and obsolete, because that paragraph concerns determinations made prior to the initial evaluation and the determinations it refers to are no longer made by staff outside the Vocational

#### Rehabilitation and Employment Division.

Current § 21.50(d)(2) identifies who, within VA, is responsible for making initial evaluation determinations. We propose to remove these provisions from § 21.50 and to make appropriate references in § 21.51 and § 21.52, respectively, as to who is responsible for making each determination.

We propose to revise § 21.51 to reflect criteria that VA develops and assesses in determining the existence of an employment handicap. Certain factors for determining that the service-connected disability(ies) "materially contribute" to the impairment to employment set forth in current § 21.51(e) would be set forth in proposed § 21.51 for determining that the service-connected disability(ies) contribute "in substantial part" to the impairment to employment, as discussed above.

Current § 21.52 requires that the determination of serious employment handicap directly relate to differing levels of service-connected disability ratings. Current § 21.52 also requires a finding of serious employment handicap if an individual is found to have an employment handicap along with a neuropsychiatric service-connected disability rated at 30 percent or more or any other service-connected disability rated at 50 percent or more.

Public Law 104-275 redefined the term "serious employment handicap" to make clear that the impairment to employability must meet both of the following conditions:

- It must be a significant impairment of an individual's ability to prepare for, obtain or retain employment consistent with abilities, aptitudes, and interests.
- It must result in substantial part from service-connected disabilities rated at 10 percent or more.

We propose to revise § 21.52 to reflect the factors VA develops and assesses in making the determination of "significant impairment." These factors differ, in part, from the factors used to develop and assess the lower level of "impairment" necessary for employment handicap in § 21.51, to ensure that an individual with a significant vocational impairment receives the rehabilitation services he or she needs.

Lastly, we propose to make a nonsubstantive change in subpart M to § 21.8032(a) by removing a reference to § 21.50(b)(5) and adding, in its place, a reference to § 21.50(b)(3).

#### Paperwork Reduction Act of 1995

This proposed rule contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The Office of Management and Budget has approved collection of information provisions that are related to the provisions of proposed 38 CFR 21.50 under OMB control number 2900-0009 (entitled "Disabled Veterans Application for Vocational Rehabilitation and 38 CFR 21.30") and has approved collection of information provisions that are related to the provisions of proposed §§ 21.50 through 21.52 under OMB control number 2900-0092 (entitled "Counseling Record—Personal Information").

#### 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 an 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 given 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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it raises novel policy issues.

#### 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 Catalog of Federal Domestic Assistance numbers and titles for programs that would be affected by this proposed rule are 64.116, Vocational Rehabilitation for Disabled Veterans, and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

#### 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: May 8, 2006.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

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

### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

#### Subpart A—Vocational Rehabilitation 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), ch. 31, and as noted in specific sections.

2. Revise § 21.50 to read as follows:

#### § 21.50 Initial evaluation.

(a) *Entitlement to an initial evaluation.* VA will provide an initial evaluation to an individual who:

(1) Applies for benefits under 38 U.S.C. chapter 31; and

(2) Meets the service-connected disability requirements of § 21.40.

(Authority: 38 U.S.C. 3101(9), 3106)

(b) *Determinations to be made by VA during the initial evaluation.* A counseling psychologist (CP) or vocational rehabilitation counselor (VRC) will determine:

(1) Whether the individual has an employment handicap as determined in accordance with this section and § 21.51;

(2) Whether an individual with an employment handicap has a serious employment handicap as determined in accordance with this section and § 21.52; and

(3) Whether the achievement of a vocational goal is currently reasonably feasible as described in § 21.53.

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

(c) *Factors for assessment as part of the initial evaluation.* In making the determinations under paragraph (b) of this section, the following factors will be developed and assessed:

(1) The handicapping effects of the individual's service-connected and nonservice-connected disability(ies) on employability and on independence in daily living;

(2) The individual's physical and mental capabilities that may affect employability and ability to function independently in daily living activities in family and community;

(3) The impact of the individual's identified vocational impairments on the individual's ability to prepare for, obtain, and keep suitable employment;

(4) The individual's abilities, aptitudes, and interests;

(5) The individual's personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment); and

(6) Other factors that may affect the individual's employability.

(Authority: 38 U.S.C. 3106(a))

(d) *Need for cooperation in evaluation.* The individual's cooperation is essential during the initial evaluation. 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 discontinue the initial evaluation. 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.

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

3. Revise § 21.51 to read as follows:

#### § 21.51 Determining employment handicap.

For the purposes of § 21.50, an employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(a) *Vocational impairment.* The individual has a vocational impairment; that is, an impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests.

(b) *Effects of impairment not overcome.* The individual has not overcome the effects of the individual's impairment of employability through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This situation includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(c) *Contribution of the service-connected disability(ies) to the individual's overall vocational impairment.* (1) Except as provided in paragraph (c)(3) of this section, the service-connected disability(ies) must contribute in substantial part to the

individual's overall vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap.

(2) When determining the individual's overall vocational impairment, the CP or VRC will consider the factors identified in § 21.50(c).

(3) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment.

(Authority: 38 U.S.C. 3101, 3102)

4. Revise § 21.52 to read as follows:

**§ 21.52 Determining serious employment handicap.**

(a) *Requirements for determining serious employment handicap.* For each individual who is found to have an employment handicap, a CP or VRC must make a separate determination of whether the individual has a serious employment handicap. For the purposes of an initial evaluation under § 21.50, a serious employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(1) *Significant vocational impairment.* The individual has a significant vocational impairment; that is, a significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests, considering the factors described in § 21.50 and paragraph (b) of this section.

(2) *Effects of significant impairment not overcome.* The individual has not overcome the effects of the significant vocational impairment through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational

impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

(Authority: 38 U.S.C. 3101)

(ii) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall significant vocational impairment.

(b) *Factors for assessment during the initial evaluation, when determining whether a significant vocational impairment exists.* The combination of all restrictions and their effects on the individual define the extent of the vocational impairment and its significance. When determining whether the individual has a significant vocational impairment, VA will develop and assess the following factors and their effects:

(1) Number of disabling conditions;  
 (2) Severity of disabling condition(s);  
 (3) Existence of neuropsychiatric condition(s);

(4) Adequacy of education or training for suitable employment;

(5) Number, length, and frequency of periods of unemployment or underemployment;

(6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;

(7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;

(8) Negative attitudes toward individuals with disabilities and other evidence of restrictions on suitable employment, such as labor market conditions; discrimination based on age, race, gender, disability or other factors; alcoholism or other substance abuse; and

(9) Other factors that relate to preparing for, obtaining, or keeping employment consistent with the individual's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3102, 3106)

**Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects**

5. Revise the authority citation for part 21, subpart M to read as follows:

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

**§ 21.8032 [Amended]**

6. In § 21.8032, amend paragraph (a) by removing “§§ 21.50(b)(5)” and adding, in its place, “§§ 21.50(b)(3)”.

[FR Doc. E6-14079 Filed 8-25-06; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2006-0590; FRL-8213-4]

**Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Requests for Rescission**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing, under the Clean Air Act, approval of revisions to the applicable state implementation plan for the State of Nevada and disapproval of other revisions. These revisions involve certain regulations and statutes for which the State of Nevada is requesting rescission. EPA is also proposing approval of certain updated statutes submitted by the State of Nevada as replacements for outdated statutes in the applicable plan. The approval proposed herein is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to rescind unnecessary provisions from the applicable plan, retain necessary provisions, and approve replacement provisions for certain statutes for which rescissions are proposed for disapproval. EPA is taking comments on this proposal and plans to follow with a final action.

**DATES:** Any comments must arrive by *September 27, 2006*.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0590, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.