

September 23, 2006 to 4:30 p.m. on September 24, 2006.

Dated: June 29, 2006.

**L.L. Hereth,**

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

[FR Doc. E6-10982 Filed 7-12-06; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AM37

### Home Schooling and Educational Institution

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation regarding the definition of a child for purposes of establishing entitlement to additional monetary benefits for a child who is home-schooled. VA proposes to define educational institutions to include home-school programs that meet the legal requirements of the States (by complying with the compulsory attendance laws of the States) in which they are located.

**DATES:** Comments must be received by VA on or before September 11, 2006.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or, through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AM37." 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:** Maya Ferrandino, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** A veteran who is entitled to compensation under the provisions of 38 U.S.C. 1114 or 1134 is also entitled, under certain circumstances, to additional compensation for dependents, including

a child. A veteran who is entitled to pension under the provisions of 38 U.S.C. 1521 also is entitled to a higher annual rate of pension because of his or her dependents, including a child. Additional dependency and indemnity compensation and death pension may also be payable based on the number of the surviving spouse's dependent children. In addition, under certain circumstances, a deceased veteran's children may be entitled to these benefits in their own right.

A child is defined in 38 U.S.C. 101(4)(A)(iii) to include a person who is unmarried, and, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution. The implementing regulation is at 38 CFR 3.57(a)(1)(iii).

Section 104(a) of title 38, United States Code, provides that, for the purpose of determining whether benefits are payable (except those under chapter 35, title 38, United States Code) for a child over age eighteen and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university or other educational institution, the Secretary may approve or disapprove such educational institutions.

In a precedent opinion dated March 19, 1998 (VAOPGCPREC 3-98), VA's General Counsel interpreted the term "educational institution" to include only institutions that are similar in type to the institutions specifically enumerated in 38 U.S.C. 104(a). The General Counsel discussed the definition of "institution" and additionally concluded that a person who is receiving instruction in a home-school program is not pursuing a course of instruction at an educational institution and therefore does not qualify as a child within the meaning of 38 U.S.C. 101(4)(A)(iii).

On March 8, 2000, VA published a final rule amending 38 CFR 3.57(a)(1)(iii) to provide a definition of education institution, and specifically excluded home-school programs from the scope of the term "educational institution." In publishing the amendment as a final rule rather than going through notice and comment under the Administrative Procedure Act, VA stated that the rule interpreted statutory provisions and made non-substantive changes.

In *Theiss v. Principi*, 18 Vet. App. 204 (2004), the United States Court of Appeals for Veterans Claims (Court) invalidated VAOPGCPREC 3-98 and the March 8, 2000 rulemaking that excluded

home-school programs from the definition of "educational institution." Although the holding in *Theiss* was based on the Veterans Court's disagreement with VA's decision to publish the amendment to § 3.57(a)(1)(iii) as a final rule without first inviting public comment, the Court also discussed the underlying validity of the rule's exclusion of home-school programs. The Court raised concerns regarding the basis for the General Counsel's interpretation of "educational institution" in VAOPGCPREC 3-98 and the focus in that precedent opinion on the characteristics that differentiated a home-school program from the specifically enumerated educational institutions found in section 104(a) of title 38. According to the Court, home schooling has important aspects in common with the enumerated programs in section 104(a): "They are all educational programs; they all have instructors and instructional material; and they all involve some form of accreditation." 18 Vet. App. at 211.

We propose to amend 38 CFR 3.57 to define educational institution, and to include home-school programs as educational institutions. We propose that the definition will apply to this section and to 38 CFR 3.667, School attendance, which is a corresponding regulation regarding effective dates for awards based on a child's school attendance.

The Court in *Theiss* discussed various dictionary definitions for the term "educational institution." "Educational institution" has been defined as "[a] school, seminary, college, university, or other educational facility." It is also defined as "[a]n institution for the teaching and improvement of its students or pupils; a school, seminary, college, or university \* \* \* Art galleries, museums, public libraries, even labor union buildings have at times been held to be educational institutions." A "facility" is defined as "a building, special room, etc. that facilitates or makes possible some activity." The Court also noted that "institution" has been variously defined as: an established organization or corporation (as a college or university) especially of a public character; something that has been established, particularly a place where an educational or charitable enterprise is conducted; and an "establishment \* \* \* devoted to the promotion of a particular object." The Court noted that certain dictionaries define "establishment" to include "a household", and define "organization" to include a group of persons organized for a particular purpose. The Court

noted that the word “organization” has also been defined to refer to a group of people with more or less constant membership. The Court cited Ballentine’s Law Dictionary at 390 (3rd Ed. 1969), Black’s Law Dictionary 546 (6th Ed. 1990), Black’s Law Dictionary at 532 (7th Ed. 1999), Webster’s Third New International Dictionary 1590 (1976), Webster’s Ninth New Collegiate Dictionary 627 (1990), The American Heritage Dictionary of The English Language at 936, 1275 (3rd Edition), and The Random House Dictionary of the English Language at 737 (1967), as support for these definitions. *Theiss*, 18 Vet. App. 209–211.

The references in the various definitions to “establishments” and “established organizations” and to examples such as schools, colleges, and universities suggest that educational institutions are most commonly characterized by a degree of permanence in time and location and by the provision of education to a group of individuals. As suggested in *Theiss*, however, it also may be reasonable to construe the term “educational institution” to include some programs, such as home-school programs, that do not meet those general standards of permanence or numerosity, but which are established in accordance with State law for the specific purpose of providing educational instruction. We believe it is appropriate that home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law, constitute “educational institutions”.

Accordingly, we propose to establish a two-part definition of “educational institution.” First, we propose to state that the term “educational institution” means “a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria, including schools, colleges, academies, seminaries, technical institutes, and universities.” Second, we propose to state that the term “also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law.” Third, in order to clarify that home schools are distinct entities from post-secondary institutions, such as colleges and universities, we propose to state that the term “home schools” is limited to courses of instruction for grades kindergarten through 12.

Lastly, we note that 38 CFR part 3 does not include a regulation describing VA’s criteria for approving educational

institutions. We plan to promulgate such a rule in the near future and allow notice and comment in accordance with the Administrative Procedures Act.

#### **Paperwork Reduction Act**

All collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) referenced in this proposed rule has an existing OMB approval as a form. The form is VA Form 21–674, Request for Approval of School Attendance, OMB approval number 2900–0049. No changes are made in this proposed rule to the collection of information.

#### **Regulatory Flexibility Act**

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

#### **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 because it raises novel policy issues.

#### **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

one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

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

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104 Pension for Non-Service-Connected Disability for Veterans, 64.105 Pension to Veterans Surviving Spouses, and Children, 64.109 Veterans Compensation for Service-Connected Disability, and 64.110 Veterans Dependency and Indemnity Compensation for Service-Connected Death.

#### **List of Subjects in 38 CFR Part 3**

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

Approved: March 17, 2006.

**Gordon H. Mansfield,**  
*Deputy Secretary of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 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. Revise § 3.57(a)(1)(iii) to read as follows:

#### **§ 3.57 Child.**

(a) \* \* \*

(1) \* \* \*

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an educational institution approved by the Department of Veterans Affairs. For the purposes of this section and § 3.667, the term “educational institution” means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria, including schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term “home schools” is limited to courses of instruction for grades kindergarten through 12.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

\* \* \* \* \*

[FR Doc. E6-10969 Filed 7-12-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2006-0485; FRL-8196-7]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Huntington, WV Portion of the Huntington-Ashland 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision for the Huntington portion of the Huntington-Ashland, WV-KY (herein referred to as the "Huntington-Ashland area") interstate area from nonattainment to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Cabell and Wayne County, West Virginia (Huntington) portion of the Huntington-Ashland area be redesignated as attainment for the 8-hour ozone NAAQS. The interstate Huntington-Ashland 8-hour ozone nonattainment area is comprised of three counties (Cabell and Wayne Counties, West Virginia and Boyd County, Kentucky). EPA is proposing to approve the ozone redesignation request for the Huntington portion of the Huntington-Ashland area. In conjunction with its redesignation request, the WVDEP submitted a SIP revision consisting of a maintenance plan for Huntington that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that Huntington has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003-2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that Huntington has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its

adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Huntington maintenance plan for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before August 14, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0485 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

C. Mail: EPAR03-OAR-2006-0485, Makeba Morris, Chief, Air Quality Planning Branch, D. Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2006-0485. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.epa.gov/edocket> [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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <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 <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 <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 <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, WV 25304.

**FOR FURTHER INFORMATION CONTACT:** Amy Caprio, (215) 814-2156, or by e-mail at [caprio.amy@epa.gov](mailto:caprio.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we", "us", or "our" is used, we mean EPA.

#### Table of Contents

- I. What Actions Is EPA Proposing To Take?
- II. What Is the Background for These Proposed Actions?
- III. What Are the Criteria for Redesignation to Attainment?
- IV. Why Is EPA Taking These Actions?
- V. What Would Be the Effect of These Actions?
- VI. What Is EPA's Analysis of the State's Request?
- VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Huntington Maintenance Plan Adequate and Approvable?
- VIII. Proposed Action
- IX. Statutory and Executive Order Reviews

#### 1. What Actions Is EPA Proposing To Take?

On May 17, 2006, WVDEP formally submitted a request to redesignate Huntington from nonattainment to attainment of the 8-hour NAAQS for ozone. On May 17, 2006, West Virginia submitted a maintenance plan for Huntington as a SIP revision, to ensure continued attainment over the next 12 years. Huntington is comprised of Cabell and Wayne Counties. Huntington is currently designated as a basic 8-hour