

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 21**

RIN 2900-AO10

**Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance****AGENCY:** Department of Veterans Affairs.**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amends Department of Veterans Affairs (VA) regulations to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, effective August 1, 2011, that affect payment of vocational rehabilitation benefits for certain service-disabled veterans. Pursuant to these changes, a veteran, who is eligible for a subsistence allowance under chapter 31 of title 38, United States Code, and educational assistance under chapter 33 of title 38, United States Code, may participate in a rehabilitation program under chapter 31 and elect to receive a payment equal in amount to an applicable military housing allowance payable under title 37, United States Code, instead of the regular subsistence allowance under chapter 31. In addition, payments of subsistence allowances during periods between school terms are discontinued, and payments during periods of temporary school closings are modified. This rulemaking amends VA regulations consistent with this new authority.

**DATES:** This interim final rule is effective August 1, 2011. Comments must be received on or before August 31, 2011.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AO10, Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Section 3108 of title 38, United States Code (U.S.C.), requires the payment of a subsistence allowance to veterans during a period of participation in a rehabilitation program under chapter 31 of title 38, United States Code. Pursuant to 38 U.S.C. 3322(a), a veteran cannot receive assistance under chapter 31 and chapter 33, Post-9/11 Educational Assistance, concurrently; he or she must elect under which chapter to receive assistance. Because the monthly housing allowance authorized under chapter 33 for eligible individuals pursuing programs of education may be considerably higher than the appropriate chapter 31 subsistence allowance, veterans with service-connected disabilities have an incentive to apply for chapter 33 educational assistance rather than enroll in VA's chapter 31 program of vocational rehabilitation and training. By doing so, they would forego certain individualized rehabilitation services, such as counseling and employment assistance, which are available under chapter 31. Congress recognized this and was “concerned that the greater benefit available under the chapter 33 program provides a disincentive for service-connected disabled veterans to enroll in the chapter 31 program, which means they would forego the important and valuable benefits, services, counseling, and employment assistance support that are available under the chapter 31 program of training and rehabilitation.” S. Rep. No. 111-346 at 23 (2010). Congress intended to remove this disincentive by allowing eligible veterans to elect a payment equal in amount to an applicable military housing allowance payable under title 37, United States Code, if they enroll in a chapter 31 rehabilitation program. Id.

Accordingly, Congress amended 38 U.S.C. 3108(b), effective August 1, 2011, to authorize a veteran, eligible for both a chapter 31 subsistence allowance and a chapter 33 educational assistance to participate in a rehabilitation program under chapter 31 and elect to receive a payment in an alternate amount in lieu of the chapter 31 subsistence allowance. The Post-9/11 Veterans Educational Assistance Improvements Act of 2010, Public Law 111-377, sec. 205. The alternate amount must be equal to the

“applicable monthly amount of basic allowance for housing payable under [37 U.S.C. 403] for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution providing the rehabilitation program concerned” (BAH). Id. Under the new law, veterans may receive the individualized supportive services provided under chapter 31 and elect the alternate amount to receive a greater monthly allowance than they would otherwise receive.

We are therefore amending 38 CFR 21.264 to allow a veteran to elect a subsistence allowance in an alternate amount, which we refer to as the *Post-9/11 subsistence allowance*, in lieu of the amount provided for in 38 CFR 21.260(b). We are indicating that, to be eligible to elect the *Post-9/11 subsistence allowance*, a veteran must be found to be eligible for training or education under chapter 31 and educational assistance under chapter 33. We specifically indicate that entitlement to all chapter 31 services and assistance remains when this election is made. For administrative purposes, we will allow a veteran who has elected to receive payment of the *Post-9/11 subsistence allowance* to reelect payment of the chapter 31 subsistence allowance at the rate in § 21.260(b) only after completion of a term, quarter, semester, or defined period of instruction, unless the veteran no longer meets the eligibility criteria for the election or would be unable to continue in a rehabilitation program without immediate approval of the reelection.

We are also amending 38 CFR 21.260(a) to include the *Post-9/11 subsistence allowance* as a type of subsistence allowance that a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 may elect to receive. In addition, we are amending § 21.260 by adding a new paragraph (c) to provide for payment of the *Post-9/11 subsistence allowance* in the event of an election, beginning August 1, 2011, based on the basic allowance for housing payable under 37 U.S.C. 403. In a footnote, we clarify that the *Post-9/11 subsistence allowance* is paid in lieu of the subsistence allowance authorized in § 21.260(b) and is not adjusted for dependents. We interpret Congress' intent in basing the alternate amount a veteran may elect to receive on the basic allowance for housing payable to a member of the military with dependents in pay grade E-5 to mean that all veterans who elect to receive the *Post-9/11 subsistence allowance* should

receive an amount adjusted for dependents. Therefore, we are not further adjusting the *Post-9/11 subsistence allowance* for dependents as we do for chapter 31 subsistence allowance under § 21.260(b).

The rehabilitation program under chapter 31 includes on-job training and non-paid work experience, during which an employer or agency rather than an institution provides the training or rehabilitation. Pub. L. 111-377 authorizes any veteran eligible for both a chapter 31 subsistence allowance and chapter 33 educational assistance, to participate in a rehabilitation program and elect the alternate amount of payment of subsistence allowance, but it does not specify how to calculate the alternate amount in the absence of an institution. To allow payment of the *Post-9/11 subsistence allowance* for veterans who are participating in on-job training or non-paid work experience, in § 21.260(c)(1), we include in the definition of *BAH* that the zip code of the institution, employer, or agency providing the training or rehabilitation may be used in determining the amount of the *Post-9/11 subsistence allowance*.

The applicable rates of payment of the subsistence allowance for veterans participating in a chapter 31 rehabilitation program are set forth in 38 U.S.C. 3108(b) and adjusted based on the rate of pursuit of training, whether full-time, three-quarter-time, or half-time, and increased yearly by the percentage by which the Consumer Price Index increases. Rates of payment for each type of training or rehabilitation program are also found in tables in 38 CFR 21.260(b), with current rates published yearly on the VA's Internet Web site. As stated previously, Pub. L. 111-377, sec. 205, specifies that the alternate amount that may be elected in lieu of the subsistence allowance must be equal to the applicable monthly amount of basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution providing the rehabilitation program concerned. However, the new law does not specify that this alternate amount be paid regardless of whether the training is pursued full-time or part-time. There is no indication by Congress that the *Post-9/11 subsistence allowance* must be paid in a manner different than the way current subsistence allowance is paid. We interpret the lack of specificity in this regard as an indication that we may continue to follow our current practice of adjusting subsistence

allowance rates based on rate of pursuit of training. Furthermore, we continue to believe that veterans who pursue training on a less than full-time basis should not be paid the full amount of subsistence allowance.

Accordingly, we are adjusting rates of the *Post-9/11 subsistence allowance* based on rates of pursuit of training. In a table in new § 21.260(c), we specify the payments of the *Post-9/11 subsistence allowance* for the rehabilitation program that currently qualifies for payment of a subsistence allowance under chapter 31. In a footnote to the table, we explain that payments for courses being taken simultaneously at more than one institution will be based on the *BAH* of the zip code assigned to the parent institution. We retain the rule with respect to payment of the current subsistence allowance for on-job training that the rate paid may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective. We also retain the rule with respect to payment of the current subsistence allowance for improvement of rehabilitation potential that the quarter-time rate may be paid only during a period of extended evaluation.

For veterans pursuing a program of in-home training, including training with an independent instructor or training solely through distance learning, in which case the institution is in a different zip code than where the veteran is located, Public Law 111-377 does not specify how to calculate payments of the alternate subsistence allowance that may be elected under this law. With respect to payments of the monthly living stipend for veterans receiving chapter 33 educational assistance for pursuit of a program of education solely by distance learning, Public Law 111-377 does specify how to calculate payments. For veterans pursuing a program of education on more than a half-time basis, solely by distance learning, Public Law 111-377 provides for payment of the chapter 33 living stipend at the rate of up to 50 percent of the national average of basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5, adjusted based on the rate of pursuit. Congress provided for such rate because it believed that, although "payment of some portion of the living allowance is appropriate . . . since one of the basic purposes of the living allowance is to offset the cost of housing away from home and since most distance learning is pursued from home, the full

allowance does not appear supported at this time." S. Rep. No. 111-346 at 11 (2010). Similarly, for veterans pursuing training or rehabilitation under chapter 31 through a program of in-home training, including solely through distance learning, there is no local institution providing the rehabilitation or training and no housing costs to offset. We believe Congress' statement with regard to the monthly living stipend for veterans pursuing a program of education was intended to apply to the similarly situated veterans pursuing training or rehabilitation under chapter 31.

Accordingly, we will base the rate of the *Post-9/11 subsistence allowance* for veterans pursuing training or rehabilitation full-time through a program of in-home training or solely through distance learning on the national average of basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 and pay the allowance at 50 percent of the national average. In § 21.260(c)(2) we define *BAH National Average* as "the average (i.e., unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the United States". We will continue to make payments, adjusted based on rate of pursuit, for veterans pursuing training or rehabilitation in-home or solely through distance learning. We will therefore calculate the rates of the *Post-9/11 subsistence allowance* for those veterans pursuing training or rehabilitation in home or solely through distance learning at less than full-time (three-quarter time or half-time) in the same manner as we do for veterans pursuing institutional training or rehabilitation. Thus, veterans pursuing training or rehabilitation in-home or solely through distance learning at three-quarter time will receive  $\frac{3}{4}$  of 50 percent of the *BAH National Average*, or  $\frac{3}{8}$  of the *BAH National Average*, and veterans pursuing training or rehabilitation in-home or solely through distance learning half-time will receive  $\frac{1}{2}$  of 50 percent of the *BAH National Average*, or  $\frac{1}{4}$  of the *BAH National Average*. These rates of payment will be found in the table in § 21.260(c). In a footnote to the table, we clarify that payments for training consisting of both distance learning and courses at a local institution are based on the *BAH* of the local institution because the veteran will incur costs away from home that the allowance is intended to offset.

In addition, for veterans pursuing training or rehabilitation under chapter 31 in foreign institutions, in which case there is no institution with a zip code on which to base the rates of payment, Public Law 111–377 does not specify how to calculate payments of the *Post-9/11 subsistence allowance*. For veterans pursuing a program of education under chapter 33 in a foreign country, Public Law 111–377 does specify that payment of the living stipend be based on the national average of basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 and adjusted based on the rate of pursuit. We believe it is reasonable to calculate payments of the Post-911 subsistence allowance for veterans pursuing training or rehabilitation under chapter 31 in foreign institutions in the same manner that Congress provided for similarly situated veterans pursuing a program of education under chapter 33. Therefore, we will base rates of payment of the *Post-9/11 subsistence allowance* for training in foreign institutions on the *BAH National Average* amount. We will continue to make payments of the *Post-9/11 subsistence allowance* for training in foreign institutions adjusted based on rate of pursuit of training.

Under 38 CFR 21.79, VA charges for entitlement usage to determine remaining entitlement. VA bases charges for entitlement usage on the principle that a veteran who pursues a rehabilitation program for one day should be charged one day of entitlement. When a chapter 31 participant elects to receive payment of the *Post-9/11 subsistence allowance* under § 21.260(c) in lieu of a subsistence allowance under § 21.260(b), he or she will continue to receive chapter 31 benefits and services. In such cases, the entitlement usage will be deducted from the veteran's chapter 31 entitlement. No entitlement charges will be made against chapter 33 because the veteran will not be using chapter 33 benefits. We are revising § 21.79 to make clear that we will determine entitlement usage in this manner in the event of an election of the *Post-9/11 subsistence allowance*.

Section 3112 of title 38, United States Code, establishes a revolving fund for VA to use to make advances of no more than twice the amount of the full-time institutional monthly subsistence allowance for a veteran with no dependents to veterans pursuing a rehabilitation program under chapter 31. Section 21.274 of title 38, Code of Federal Regulations, specifies that the fund is to pay veterans who would

otherwise be unable to begin or continue in a rehabilitation program without such assistance. Section 21.274 also specifies that the amount of the advance may not exceed the amount needed or twice the monthly subsistence allowance for a veteran without dependents in full-time institutional training. Section 3112 clearly establishes that the limit on these advances is based on the full-time institutional rate for a veteran with no dependents. The full-time institutional rate for a veteran with no dependents is specified in § 21.260(b), whereas all rates in new § 21.260(c) are based on an allowance that includes dependents. Therefore, the limit on the advances may not be based on the rates of the *Post-9/11 subsistence allowance* in § 21.260(c). Accordingly, we clarify in § 21.274(d)(1)(iii) that the limit placed on the amount advanced from the revolving fund is based on the subsistence allowance in § 21.260(b).

Pursuant to 38 U.S.C. 3680(a)(3)(B), subsistence allowances are authorized to be paid during periods when schools are temporarily closed under an established policy based upon an Executive Order of the President or due to an emergency situation, during periods between consecutive school terms if there is a transfer to enroll in and pursue a similar course at a different educational institution if the period between consecutive terms is 30 days or less, or, in certain circumstances, during periods between school terms, where the educational institution certifies enrollment on an individual term basis. Section 206 of Public Law 111–377 removes the authority to continue to pay allowances between consecutive school terms involving a transfer to another educational institution and between school terms where the educational institution certifies enrollment on an individual term basis. Section 206 also restricts the total number of weeks for which allowances may be paid during periods when schools are temporarily closed under an established policy based upon an Executive Order of the President or due to an emergency situation to 4 weeks in any 12-month period.

Accordingly, we are amending our regulation, § 21.270, “Payment of subsistence allowance during leave and between periods of instruction”, that allows for the payment of subsistence allowance between periods of instruction. We are removing paragraph (b), “Payment for intervals between periods of instruction”, which currently directs the payment of subsistence allowances for periods between

consecutive school terms involving a transfer and between school terms where the educational institution certifies enrollment on an individual term basis. We are also redesignating paragraph (c), “Payment for other periods”, as paragraph (b). The new paragraph will continue to specify that subsistence allowance will be paid for periods in which the school is closed temporarily under emergency conditions described in § 21.4138(f). In a separate rulemaking, VA is preparing a revision to § 21.4138(f) to incorporate the change in law regarding the restriction on the total number of weeks for which allowances for veterans receiving any VA education benefit, including chapter 31 benefits, may be paid during periods of temporary closure. In addition, we are adding an authority citation to the end of the section for clarification, correcting a misspelling, and revising the section heading to replace the words “between periods of instruction” with the words “other periods”.

#### Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary of Veterans Affairs finds that there is good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. The Secretary finds that it is impracticable and contrary to the public interest to delay this regulation for the purpose of soliciting prior public comment. Sections 205 and 206 of Public Law 111–377 require that certain changes to the rehabilitation program take effect on August 1, 2011. This interim final rule is necessary to implement by August 1, 2011, the statutory changes as they relate to chapter 31 subsistence allowances. For instance, Public Law 111–377 does not address how the alternate rate of subsistence allowance will be calculated in different situations. Allowing veterans to elect an alternate rate of subsistence allowance will ensure that such veterans receive the supportive services under chapter 31 to assist them in the transition from military to civilian careers. Because eligible veterans will begin to make the election on August 1, 2011, it is important to have procedures in place by this date to allow veterans to receive the alternate rate of subsistence allowance authorized under the law as soon as they are able. For these reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this

interim final rule is published in the **Federal Register**.

#### 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 given year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act

This interim final rule does not contain any collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### Regulatory Flexibility Act

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

#### Congressional Review Act

Under the Congressional Review Act, 5 U.S.C. 801–88, a major rule is one that would have an annual effect on the economy of \$100 million or more, cause major increases in costs or prices for consumers, or have significant adverse effects on competition or other aspects of the economy. We have determined this rulemaking to be a major rule because it will have an annual effect on the economy in excess of \$100 million. However, this rulemaking falls within an exception to the requirement in 5 U.S.C. 801(a)(3) that a rule may not take effect until at least 60 days after the rule and accompanying report are submitted to Congress. VA will submit a copy of this regulatory action and VA's Regulatory Impact Analysis to the Comptroller General and to Congress, but the rule will become effective upon publication in the Federal Register. The Secretary has determined in accordance with 5 U.S.C. 808(2) that there is good cause to make this regulatory action effective immediately because advance public notice and opportunity to comment thereon are impractical and

contrary to the public interest. Sections 205 and 206 of Public Law 111–377 require that the changes to the rehabilitation program take effect on August 1, 2011. VA regulations must be in effect because Public Law 111–377 does not address how the alternate rate of subsistence allowance will be calculated in different situations. Allowing veterans to elect an alternate rate of subsistence allowance will ensure that such veterans receive the supportive services under chapter 31 to assist them in the transition from military to civilian careers. Because eligible veterans will begin to make the election on August 1, 2011, it is important to have procedures in place by this date to allow veterans to receive the alternate rate of subsistence allowance authorized under the law as soon as they are able.

#### Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the 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 effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), 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. This rule has been designated an “economically” significant regulatory action under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB.

VA has examined the economic, interagency, budgetary, legal, and policy

implications of this regulatory action and followed OMB Circular A–4 to the extent feasible in this Regulatory Impact Analysis. The circular first calls for a discussion of the need for the regulatory action.

#### Statement of Need

This rulemaking will amend VA regulations to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010. We are revising § 21.264 to allow veterans eligible for a chapter 31 subsistence allowance and chapter 33 educational assistance to elect either the allowable chapter 31 subsistence allowance or an alternate amount of subsistence allowance, referred to as the *Post-9/11 subsistence allowance*. In addition, we are amending § 21.260 to include the *Post-9/11 subsistence allowance* rates, which are based on the military housing allowance payable under title 37, United States Code, referred to as the *BAH*. The *BAH* is based on the ZIP code area where the institution providing the rehabilitation program is located.

We are also amending § 21.274 to clarify that the maximum amount allowable for an advance from the revolving fund will stay the same—twice the amount of full-time subsistence allowance for a veteran with no dependents in institutional training. In § 21.274, we are adding the phrase “specified in 21.260(b)” to clarify that the advance from the revolving fund is based on the chapter 31 subsistence allowance rates and not on the *Post-9/11 subsistence allowance* rates specified in § 21.260(c).

In addition, we are amending § 21.270 to prohibit payment of either the chapter 31 subsistence allowance or the *Post-9/11 subsistence allowance* during intervals between school terms. Payments of subsistence allowance between school terms are no longer authorized and payments of subsistence allowance during temporary school closings are limited to 4 weeks in any 12-month period.

#### Summary of Estimated Impact

The estimated costs associated with this regulation are \$111,239,000.00 for Fiscal Year (FY) 2012 and \$854,897,000.00 over a 5 year period. These are estimated costs based on the fact that there are significant costs to VA based on new provisions to § 21.264 and an offset of costs (projected savings) from the new provisions to § 21.270 of this rulemaking.

Fiscal year	Estimated impact of paying increased subsistence allowance based on BAH (\$000)	Projected savings from no longer allowing payment of subsistence allowance during intervals between terms (\$000)	Estimated costs (\$000)
2012 .....	\$162,579	\$51,340	\$111,239
2013 .....	194,298	53,685	140,613
2014 .....	224,957	55,252	169,705
2015 .....	257,256	56,865	200,391
2016 .....	291,533	58,584	232,949
5-Year Total .....	1,130,623	275,726	854,897

Estimated costs and projections are based on the best reasonably obtainable and available economic information. This analysis sets forth the basic assumptions, methods, and data underlying the analysis and discusses the uncertainties associated with the estimates. Assumptions and methodologies for each portion of the analysis are explained in more detail in the Estimate of Potential Program Costs below. VA invites public comments on all of these projections.

**Cost Benefit**

The *Post-9/11 subsistence allowance* rates are greater than the current chapter 31 subsistence allowance rates. Therefore, VA believes that chapter 31 participants who are eligible to receive the greater subsistence allowance will require less dependence on support programs and will be able to devote more attention to their chapter 31 training/rehabilitation program, thus creating better employment opportunities and a better quality of life.

**Alternatives**

VA believes that there are no alternatives to the promulgation of this rulemaking. The provisions of sections 205 and 206 of Public Law 111-377 must be implemented in the Code of Federal Regulations to ensure accurate and consistent application of the law.

**Estimate of Potential Program Costs**

*Section 21.264*

To project the best possible economic impact of § 21.264 in this rulemaking, VA conducted an analysis to determine the average annual difference between the chapter 31 subsistence allowance

rate and the new *Post-9/11 subsistence allowance* rate. Utilizing the FY 2012 President's Budget, the average annual chapter 31 subsistence allowance rate is estimated to be \$4,962.12 in FY 2012, and the average annual *Post-9/11 subsistence allowance* rate is estimated to be \$12,444.94 in FY 2012. With the average annual *Post-9/11 subsistence allowance* rate being \$7,482.82 more than the average annual chapter 31 subsistence allowance rate, VA assumes that all eligible chapter 31 participants will elect to receive the *Post-9/11 subsistence allowance* rate under the new provisions of § 21.264.

VA also conducted an analysis on the total population of participants in the Vocational Rehabilitation and Employment's (VR&E) chapter 31 program. The analysis focused on the number of participants who are currently receiving a monthly chapter 31 subsistence allowance and who also have Operations Enduring Freedom and Iraqi Freedom (OEF/OIF) military service.

Data from VR&E's FY 2012 Workload Projections for Trainees/Participants indicate that there will be approximately a total of 62,078 chapter 31 participants receiving chapter 31 subsistence allowance in FY 2012. Workload projections for the number of participants receiving subsistence allowance were based on FY 2010 actual number of 61,405 from the VA Benefits Delivery Network Computer Output Identification Number Target System Report 6002 with projected increases for FY 2011 and FY 2012. To align with projections from the FY 2012 President's Budget, the number of participants for FY 2012 (63,259) was

then reduced by the number of participants that VA projected would transfer from chapter 31 benefits to the Post-9/11 GI Bill. Data-Matching between the Department of Defense and VA databases indicated that approximately 30% of VR&E participants in FY 2011 had OEF/OIF military service that qualified them to elect the *Post-9/11 subsistence allowance*. Over the next five years, VR&E projects an increase of 5% per year of VR&E participants who have OEF/OIF service based on the influx of more recent veterans leaving active duty and applying for benefits while veterans from previous eras complete participation in VR&E.

This data also identified an estimated 21,727 chapter 31 participants, or 35% of the total chapter 31 participants (62,078), who will receive a monthly subsistence allowance in FY 2012 and have OEF/OIF military service. It is estimated that all of these 21,727 participants will elect and receive the *Post-9/11 subsistence allowance* based on their OEF/OIF service in FY 2012.

The estimated total number of chapter 31 participants (21,727) who will be eligible to elect and receive the *Post-9/11 subsistence allowance* based on their OEF/OIF service in FY 2012 was multiplied by the difference between the two subsistence allowance rates (\$7,482.82), totaling approximately \$163 million in FY 2012.

Projected increases to participants receiving subsistence allowance, average annual payments, and the percentage of chapter 31 participants receiving subsistence allowance were applied in the out-years and shown in the table below.

ESTIMATED IMPACT OF PAYING INCREASED SUBSISTENCE ALLOWANCE BASED ON BAH

FY	Total # of Chapter 31 (CH31) participants receiving Subsistence Allowance (SA)	Total # of CH31 participants receiving SA with OEF/OIF service	* Percent of CH31 participants receiving SA with OEF/OIF service	Average annual difference between current CH31 SA and new post-9/11 SA	Obligations (\$000)
2012 .....	62,078	21,727	35	\$7,482.82	\$162,579

ESTIMATED IMPACT OF PAYING INCREASED SUBSISTENCE ALLOWANCE BASED ON BAH—Continued

FY	Total # of Chapter 31 (CH31) participants receiving Subsistence Allowance (SA)	Total # of CH31 participants receiving SA with OEF/OIF service	* Percent of CH31 participants receiving SA with OEF/OIF service	Average annual difference between current CH31 SA and new post-9/11 SA	Obligations (\$000)
2013	63,892	25,557	40	7,602.54	194,298
2014	64,531	29,038	45	7,746.99	224,957
2015	65,176	32,588	50	7,894.19	257,256
2016	65,828	36,206	55	8,052.07	291,533
5-Year Total					1,130,623

\*VA assumes that the percentage of CH31 participants receiving SA and who have OEF/OIF military service will increase by 5% each year based on the influx of more recent veterans leaving active duty and applying for benefits while veterans from previous eras complete participation in VR&E.

Section 21.270

To project the best possible economic impact of § 21.270 in this rulemaking, VA conducted an analysis to determine the associated costs and/or savings by no longer allowing payment of either chapter 31 or *Post-9/11 subsistence allowance* during intervals between school terms.

This amendment applies to all participants of the chapter 31 program who are currently participating in a training/rehabilitation program for which subsistence allowance is payable.

Based on the FY 2012 President’s Budget, the average annual subsistence allowance payment is estimated to be \$4,962.12 in FY 2012. The average annual payment is based on 9 months of enrollment; therefore, an average monthly subsistence payment would be \$551.35. We assumed that, on average,

participants would have received one-and-a-half months of interval subsistence allowance based on enrollment in training for 9 months of the year. Therefore, the average annual interval subsistence allowance rate for this 1.5 month interval period is estimated to be \$827.03 ( $\$551.35 \times 1.5$ ) in FY 2012.

Data from VR&E’s FY 2012 Workload Projections for Trainees/Participants indicate that there will be approximately 62,078 chapter 31 participants receiving chapter 31 subsistence allowance in FY 2012. Workload projections for the number of participants receiving subsistence allowance were based on FY 2010 actual number of 61,405 from the VA Benefits Delivery Network Computer Output Identification Number Target System Report 6002 with projected increases for FY 2011 and FY 2012. To align with

projections from the FY 2012 President’s Budget, the number of participants for FY 2012 (63,259) was then reduced by the number of participants that VA projected would transfer from chapter 31 benefits to the Post-9/11 GI Bill.

The FY 2012 average annual interval subsistence allowance rate (\$827.03) was multiplied by the FY 2012 total number of CH31 participants receiving subsistence allowance (62,078), totaling approximately \$51,340,000.00 in projected savings to VA in FY 2012. Projected savings are estimated to be \$51.3 million during FY 2012 and \$275.7 million over a five-year period.

Projected increases to participants receiving subsistence allowance and average annual payments were applied in the out-years and are shown in the table below.

PROJECTED SAVINGS FROM NO LONGER ALLOWING PAYMENT OF SUBSISTENCE ALLOWANCE DURING INTERVALS BETWEEN TERMS

FY	Total # of CH31 participants receiving subsistence allowance (SA)	Average annual interval SA rate (1.5 mths. of SA)	Obligations (\$000)
2012	62,078	\$827.03	\$51,340
2013	63,892	840.25	53,685
2014	64,530	856.22	55,252
2015	65,176	872.49	56,865
2016	65,829	889.94	58,584
5-Year Total			275,726

Accounting Statement and Table

As required by OMB Circular A-4, in the table below, VA has prepared an

accounting statement showing the classification of transfers, benefits and

costs associated with the provisions of this rulemaking.

Category	Year dollar	Transfers								
		FY2012	FY2013	FY2014	FY2015	FY2016	Present value		Annualized	
							3%	7%	3%	7%
Federal Annualized Monetized Transfers.	2010 .....	\$111.2	\$140.6	\$169.7	\$200.4	\$232.9	\$774.7	\$684.2	\$164.2	\$156.0
Benefits										
Qualitative benefits .....		The Post-9/11 subsistence allowance rates are greater than the current CH31 subsistence allowance rates. Therefore, VA believes that CH31 participants who are eligible to receive the greater subsistence allowance will require less dependence on support programs and will be able to devote more attention to their CH31 training/rehabilitation program, thus creating better employment opportunities and a better quality of life.								
Costs										
Costs .....		None.								

**Identification of Duplicative, Overlapping, or Conflicting Federal Rules**

There are no duplicative, overlapping, or conflicting Federal rules identified with this regulatory action.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program that would be affected by this interim final rule is 64.116, Vocational Rehabilitation for Disabled Veterans.

**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, Department of Veterans Affairs, approved this document on July 21, 2011, for publication.

**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.

Dated: July 21, 2011.  
**Robert C. McFetridge,**  
*Director, Regulation Policy and Management,  
 Office of the General Counsel, 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. The authority citation for part 21, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 2. Amend § 21.79 by:

■ a. Redesignating paragraphs (f)(2), (f)(2)(i), (f)(2)(ii), and (f)(3) as paragraphs (f)(3), (f)(3)(i), (f)(3)(ii), and (f)(4) respectively.

■ b. Adding a new paragraph (f)(2).

■ c. Adding an authority citation at the end of new paragraph (f)(2).

The additions read as follows:

**§ 21.79 Determining entitlement usage under Chapter 31.**

\* \* \* \* \*

(f) *Special situations.* \* \* \*

(2) When a chapter 31 participant elects to receive payment of the *Post-9/11 subsistence allowance* under § 21.260(c) in lieu of a subsistence allowance under § 21.260(b), the entitlement usage is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against chapter 33. (Authority: 38 U.S.C. 3108(b))

\* \* \* \* \*

■ 3. Amend § 21.260 by:

■ a. Revising paragraph (a).

■ b. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

■ c. Adding a new paragraph (c).

The revisions and addition read as follows:

**§ 21.260 Subsistence allowance.**

(a) *General.* A veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 will receive a monthly subsistence allowance at the rates in paragraph (b) of this section, unless the veteran elects to receive an alternate payment (for the purposes of part 21, subpart A, referred to as the *Post-9/11 subsistence allowance*) as specified in paragraph (c) of this section, or payment at the rate of monthly educational assistance allowance payable under 38 U.S.C. chapter 30 for the veteran's type of training. See § 21.264(a) for election of payment at the chapter 30 rate and § 21.264(b) for election of the *Post-9/11 subsistence allowance*. See §§ 21.7136, 21.7137, and 21.7138 to determine the applicable chapter 30 rate.

(Authority: 38 U.S.C. 3108(a), 3108(b), 3108(f))

\* \* \* \* \*

(c) *Rate of payment of Post-9/11 subsistence allowance.* In lieu of the subsistence allowance payable under paragraph (b) of this section, VA pays the *Post-9/11 subsistence allowance* at the rates in the table at the end of this paragraph, effective August 1, 2011, based on the basic allowance for housing payable under 37 U.S.C. 403. For purposes of the following table:

(1) *BAH* means “the applicable amount of basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution, agency,

or employer providing the rehabilitation program concerned”.  
 (2) *BAH National Average* means “the average (i.e., unweighted arithmetic

mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military

with dependents in pay grade E-5 residing in the United States”.

PAYMENT OF POST-9/11 SUBSISTENCE ALLOWANCE IN ACCORDANCE WITH PUBLIC LAW 111-377  
 [Effective August 1, 2011]<sup>1</sup>

Type of program	Payment
Institutional: <sup>2</sup>	
Full-time .....	Entire <i>BAH</i> of institution ZIP code.
¾ time .....	¾ <i>BAH</i> of institution ZIP code.
½ time .....	½ <i>BAH</i> of institution ZIP code.
Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; vocational course in a rehabilitation facility or sheltered workshop; institutional non-farm cooperative:	
Full-time only .....	Entire <i>BAH</i> of agency or institution ZIP code.
Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency:	
Full-time .....	Entire <i>BAH</i> of agency ZIP code.
¾ time .....	¾ <i>BAH</i> of agency ZIP code.
½ time .....	½ <i>BAH</i> of agency ZIP code.
Farm cooperative, apprenticeship, or other on-job training (OJT): <sup>3</sup>	
Full-time only .....	Entire <i>BAH</i> of employer ZIP code.
Combination of institutional and OJT (Full-time only):	
Institutional greater than ½ time .....	Entire <i>BAH</i> of institution ZIP code.
OJT greater than ½ time <sup>3</sup> .....	Entire <i>BAH</i> of employer ZIP code.
Non-farm cooperative (Full-time only):	
Institutional .....	Entire <i>BAH</i> of institution ZIP code.
On-job <sup>3</sup> .....	Entire <i>BAH</i> of employer ZIP code.
Improvement of rehabilitation potential:	
Full-time .....	Entire <i>BAH</i> of institution ZIP code.
¾ time .....	¾ <i>BAH</i> of institution ZIP code.
½ time .....	½ <i>BAH</i> of institution ZIP code.
¼ time <sup>4</sup> .....	¼ <i>BAH</i> of institution ZIP code.
Training consisting of solely distance learning: <sup>5</sup>	
Full-time .....	½ <i>BAH National Average</i> .
¾ time .....	¾ <i>BAH National Average</i> .
½ time .....	¼ <i>BAH National Average</i> .
Training in the home, including independent instructor:	
Full-time only .....	½ <i>BAH National Average</i> .
Training in an institution not assigned a ZIP code, including foreign institutions:	
Full-time .....	Entire <i>BAH National Average</i> .
¾ time .....	¾ <i>BAH National Average</i> .
½ time .....	½ <i>BAH National Average</i> .

<sup>1</sup> Effective August 1, 2011, the *Post-9/11 subsistence allowance* may be paid in lieu of subsistence allowance authorized in § 21.260(b), and is not adjusted to include dependents.

<sup>2</sup> For measurement of rate of pursuit, see §§ 21.4270 and 21.4272 through 21.4275. Payments for courses being taken simultaneously at more than one institution are based on the *BAH* of the ZIP code assigned to the parent institution.

<sup>3</sup> For on-job training, payment of the *Post-9/11 subsistence allowance* may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

<sup>4</sup> The quarter-time rate may be paid only during extended evaluation.

<sup>5</sup> Payment for training consisting of both distance learning and courses taken at a local institution is based on the *BAH* of the ZIP code assigned to the local institution.

(Authority: 38 U.S.C. 3108, 3115(a)(1))  
 \* \* \* \* \*

- 4. Amend § 21.264 by:
- a. Revising the section heading.
- b. Redesignating paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(3) as paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) respectively.
- c. Adding a new heading to paragraph (a).
- d. Redesignating paragraphs (b) introductory text, (b)(1), and (b)(2) as paragraphs (a)(2), (a)(2)(i), and (a)(2)(ii), respectively.
- e. Redesignating paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3)

as paragraph (a)(3), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii), respectively.

- f. Further redesignating paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) as paragraphs (a)(3)(iii)(A), (a)(3)(iii)(B), and (a)(3)(iii)(C), respectively.
- g. Redesignating paragraph (d) as paragraph (a)(4).
- h. Adding a new paragraph (b).
- i. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

**§ 21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate or election of payment of Post-9/11 subsistence allowance.**

- (a) *Election of chapter 30 educational assistance rate.* \* \* \*
- (b) *Election of payment of Post-9/11 subsistence allowance.*

(1) *Eligibility.* Effective August 1, 2011, a veteran who applies and is eligible for training or education under chapter 31 may elect to receive payment of the *Post-9/11 subsistence allowance* under § 21.260(c) in lieu of a subsistence allowance under § 21.260(b), provided the veteran has remaining eligibility for, and



entitlement to, educational assistance under chapter 33, Post-9/11 GI Bill.

(2) *Reelection of subsistence allowance under § 21.260(b)*. Reelection of payment of benefits at the chapter 31 subsistence allowance rate under § 21.260(b) may be made only after completion of a term, quarter, semester, or other period of instruction unless:

(i) Chapter 33 eligibility or entitlement ends earlier; or  
(ii) Failure to approve immediate reelection would prevent the veteran from continuing in the rehabilitation program.

(3) *Services under chapter 31*. A veteran who elects payment of the *Post-9/11 subsistence allowance* remains entitled to all other services and assistance under chapter 31.

(Authority: 38 U.S.C. 3108(b))

■ 5. Amend § 21.270 by:

- a. Revising the section heading.
- b. Removing paragraph (b).
- c. Redesignating paragraph (c) as paragraph (b).
- d. In newly redesignated paragraph (b), removing “Weeekend” and adding, in its place, “Weekend”.
- e. Adding an authority citation at the end of the section.

The revision and addition read as follows:

**§ 21.270 Payment of subsistence allowance during leave and other periods.**

\* \* \* \* \*

(Authority: 38 U.S.C. 3680(a))

■ 6. Revise § 21.274 (d)(1)(iii) to read as follows:

**§ 21.274 Revolving fund loan.**

\* \* \* \* \*

(d) \* \* \*  
(1) \* \* \*

(iii) The advance does not exceed either the amount needed, or twice the monthly subsistence allowance for a veteran without dependents in full-time institutional training specified in § 21.260(b); and

\* \* \* \* \*

[FR Doc. 2011-19473 Filed 7-29-11; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2011-0471; FRL-9445-9]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Diesel-Powered Motor Vehicle Idling Act**

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP). The revision consists of the Commonwealth’s Diesel-Powered Motor Vehicle Idling Act (hereafter referred to as the Diesel-Powered Motor Vehicle Idling Act or as Act 124 of 2008, or simply Act 124). Act 124, passed by the Pennsylvania General Assembly and signed into state law by Governor Rendell in October 2008 (and effective at the state level in February 2009), reduces the allowable time that heavy-duty, commercial highway diesel vehicles of over 10,000 pounds gross vehicle weight can idle their main propulsion engines. The law restricts idling of these commercial diesel vehicles (mostly heavy trucks and buses) to a period of 5 minutes per continuous 60 minute period (with certain allowable exemptions and exclusions). Act 124 applies statewide in the Commonwealth, and is estimated by Pennsylvania to significantly reduce emissions of nitrogen oxides, volatile organic compounds, and fine particulate matter. While idle time emissions limits are not mandatory under the Clean Air Act (CAA), incorporation of Act 124 into the SIP does strengthen the SIP, makes the state law federally enforceable by EPA, and allows the Commonwealth to take credit for emissions benefits from the rule as part of future Pennsylvania SIP revisions to demonstrate compliance with CAA National Ambient Air Quality Standards (NAAQS). EPA is approving this revision governing idling time limits on commercial heavy duty vehicles into the Pennsylvania SIP. This action is not a federal mandate required by the CAA, but provides emission reductions that aid Pennsylvania in complying with CAA NAAQS. EPA’s approval of this SIP revision is being done in accordance with the requirements of the CAA.

**DATES:** This rule is effective on September 30, 2011 without further notice, unless EPA receives adverse written comment by August 31, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0471 by one of the following methods:

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

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov)

C. *Mail:* EPA-R03-OAR-2011-0471, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *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 Number EPA-R03-OAR-2011-0471. 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.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