

F B & T FINANCIAL CORPORATION \$1.25 par common	No par common MICROTEC RESEARCH, INC. \$.001 par common	No par common STILLWATER MINING COMPANY \$.01 par common
FAMILY GOLF CENTERS, INC. \$.01 par common	MID-STATES PLC American Depositary Receipts	TELE-MATIC CORPORATION \$.01 par common
FIDELITY SOUTHERN CORPORATION No par common	MULTI-MARKET RADIO, INC. Class A, \$.01 par common	TELEMUNDO GROUP, INC. Series A, \$.01 par common
FIRST AMERICAN HEALTH CONCEPTS, INC. No par common	Class A, warrants (expire 03-23-99) Class B, warrants (expire 03-23-99)	TELEWEST COMMUNICATIONS PLC American Depositary Receipts
FIRST SAVINGS BANK OF NEW JERSEY, S.L.A. \$.10 par common	NATIONAL GAMING CORPORATION \$.01 par common	TELTRONICS, INC. \$.001 par common
FIRST FEDERAL FINANCIAL SERVICES CORPORATION Series B, 6½% no par cumulative convertible preferred	NETCOM ON-LINE COMMUNICATION SERVICES, INC. \$.01 par common	THOMPSON PBE, INC. \$.01 par common
FLORES & RUCKS INC. \$.01 par common	NEW ENGLAND COMMUNITY BANCORP, INC. Class A, \$.10 par common	TMBR/SHARP DRILLING, INC. \$.10 par common
FLORSHEIM SHOE COMPANY, THE No par common	NEW ENGLAND REALTY ASSOCIATES LIMITED PARTNERSHIP Depositary Receipts	TOWER SEMICONDUCTOR LTD. Ordinary Shares (NIS 1.00)
FPA MEDICAL MANAGEMENT, INC. \$.001 par common	NORTHWEST SAVINGS BANK (Pennsylvania) \$.01 par common	TRANS WORLD GAMING CORPORATION \$.001 par common
FSB FINANCIAL CORPORATION \$.01 par common	NOVAMETRIX MEDICAL SYSTEMS, INC. Class A, warrants (expire 12-08-97)	Warrants (expire 12-15-99)
GENZYME CORPORATION (Tissue Repair) \$.01 par common	Class B, warrants (expire 12-08-99)	TRANSPORT CORPORATION OF AMERICA, INC. \$.01 par common
GORAN CAPITAL, INC. No par common	OIS OPTICAL IMAGING SYSTEMS, INC. \$.01 par common	UNITECH INDUSTRIES, INC. No par common
GYRODYNE COMPANY OF AMERICA, INC. \$.100 par common	OLD YORK ROAD BANCORP, INC. (Pennsylvania) \$.100 par common	VEECO INSTRUMENTS, INC. \$.01 par common
HARCOR ENERGY COMPANY \$.10 par common	ORBIT SEMICONDUCTOR, INC. \$.001 par common	VIDEONICS, INC. No par common
HASKEL INTERNATIONAL, INC. Class A, no par common	ORTEL CORPORATION \$.001 par common	WAVEPHORE, INC. No par common
HEALTH-MOR INC. \$.100 par common	ORTHODONTIC CENTERS OF AMERICA INC. \$.01 par common	WESCAST INDUSTRIES, INC. Class A, No par common
HERZFELD CARIBBEAN BASIN FUND, INC., THE \$.001 par common	OWOSSO CORPORATION \$.01 par common	WILLIAMS CONTROLS, INC. \$.01 par common
ICC TECHNOLOGIES, INC. \$.01 par common	PANDA PROJECT, INC., THE \$.01 par common	XENOVA GROUP PLC American Depositary Shares
INNOVATIVE TECH SYSTEMS, INC. \$.001 par common	PHAMIS, INC. \$.0025 par common	YOUNG BROADCASTING, INC. Class A, \$.01 par common
INTERNATIONAL VERIFACT, INC. No par common	PHYSICIAN RELIANCE NETWORK INC. No par common	
Warrants (expire 01-05-98)	PINNACLE SYSTEMS, INC. No par common	
INTERSTATE NATIONAL DEALER SERVICES, INC. \$.01 par common	PLASMA-THERM, INC. \$.01 par common	
ISOLYSER COMPANY, INC. \$.001 par common	PRICE ENTERPRISES, INC. \$.0001 par common	
ITI TECHNOLOGIES, INC. \$.01 par common	PULASKI BANK, A SAVINGS BANK \$.100 par common	
IWI HOLDING, LIMITED No par common	QUALITY SEMICONDUCTOR, INC. \$.001 par common	
JP FOODSERVICE, INC. \$.01 par common	REPUBLIC BANK (Florida) \$.200 par common	
KFX INC. \$.001 par common	RIDE SNOWBOARD COMPANY No par common	
KNIGHT TRANSPORTATION, INC. \$.01 par common	SANTA FE FINANCIAL CORPORATION \$.10 par common	
KS BANCORP, INC. (North Carolina) No par common	SECURITY DYNAMICS TECHNOLOGIES, INC. \$.01 par common	
LIN TELEVISION CORPORATION \$.01 par common	SHIVA CORPORATION \$.01 par common	
LTX CORPORATION 13½% convertible debentures	SINGING MACHINE COMPANY, INC., THE \$.01 par common	
MANHATTAN BAGEL COMPANY No par common	Warrants (expire 11-10-99)	
MEDCATH INCORPORATED \$.01 par common	SMC CORPORATION No par common	
MEDPLUS, INC. No par common	SPARTA PHARMACEUTICALS, INC. \$.001 par common	
MICREL, INCORPORATED No par common	SPECIALTY TELECONSTRUCTORS, INC. Warrants (expire 11-02-99)	
MICRION CORPORATION	SPORT-HALEY, INC.	

Deletion From the List of Foreign Margin StocksJEFFERSON SMURFIT GROUP, PLC
Ordinary shares, par value .25L

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 25, 1995.

William W. Wiles,*Secretary of the Board.*

[FR Doc. 95-2301 Filed 1-30-95; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Parts 2 and 21****RIN 2900-AG56****Veterans Training Under the Service Members Occupational Conversion and Training Program****AGENCY:** Department of Veterans Affairs.**ACTION:** Interim final rule with request for public comment.**SUMMARY:** The Service Members Occupational Conversion and Training Act of 1992 established a job training program for recently discharged

veterans. That act authorizes the Secretary of Defense to delegate some of the responsibility for implementing it to either the Secretary of Veterans Affairs, the Secretary of Labor or both. The Secretary of Defense has delegated responsibilities to both officials. These regulations will acquaint the public with the way in which Department of Veterans Affairs (VA) will implement the responsibilities which have been delegated to the Secretary of Veterans Affairs.

DATES: Effective date January 31, 1995. Comments must be received on or before April 3, 1995.

ADDRESSES: Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 810 Eye Street NW., Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900-AG56." All written comments will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: The Service Members Occupational Conversion and Training Act (Pub. L. 101-484, Subtitle G) establishes a program to reimburse employers for part of the cost of training recently discharged veterans in a training program leading to permanent, stable employment. The Service Members Occupational Conversion and Training Act authorizes the Secretary of Defense to enter into an agreement with the Secretary of Veterans Affairs and the Secretary of Labor to implement that program.

On March 11, 1993, the Department of Defense entered into such an agreement with VA and the Department of Labor to implement this program. The Memorandum of Agreement, among other things, places upon VA the responsibility for making payments under the Service Members Occupational Conversion and Training Act and gives VA the authority to issue implementing regulations in order to do so. These regulations are adopted pursuant to that memorandum.

The Service Members Occupational Conversion and Training Act gives the implementing official considerable latitude in implementing certain portions of that Act. The areas in which VA adopted policies which are permitted by law but are not specifically stated in the law are discussed below. Section numbers included in the discussion refer to the section numbers found in Pub. L. 102-484.

While no money was appropriated for the Service Members Occupational Conversion and Training Act for Fiscal Year (FY) 1995, Public Law 103-335, enacted on September 30, 1994, permits unobligated funds designated for the Service Members Occupational Conversion and Training Act that were remaining on September 30, 1994, to be obligated during FY 1995. VA estimates that all of these funds will be obligated by late in the first quarter or early in the second quarter of the fiscal year.

VA notes that money obligated during FY95 and earlier fiscal years will continue to be sent to the veterans' employers as the veterans are trained. Since these programs may be up to 18 months long and the final payment is made to the employer four months after the training program is completed, some of the money obligated early in the second quarter of FY95 will be sent to the employer during the first quarter of FY97.

The Service Members Occupational Conversion and Training Act uses certain terms that are not defined by the Act and are open to a variety of different meanings. Thus, § 21,4802 defines the terms for purposes of the Service Members Occupational Conversion and Training Act in a manner deemed by the Secretary to be consistent with the purpose and intent of the job training program provided by the Act.

The Act requires that, to establish program eligibility based on unemployment, a veteran must have been unemployed for at least 8 of the 15 weeks preceding application (sec. 4485(a)(1)(A)). However, it further states that "part-time or temporary employment" as defined by the Secretary will be disregarded in determining the individual's employment for this purpose (sec. 4485(a)(3)).

Accordingly, § 21.4802(k) defines "part-time" employment as employment when a work schedule requires a lesser number of hours of work than that which is customary in the community for full-time employment in a given position. VA considered a definition applicable to all employers based upon a fixed number of hours of work per week that would be necessary to reach

the full-time rather than part-time employment level. However, since the standard or normal workweek is not consistent among communities, especially where determined by collective bargaining with unions, such a rule could be arbitrary in its application. Further, the definition adopted will maximize the number of veterans who may qualify for training and thus, further the goals of the program.

As noted, "temporary employment," also, is excludable for purposes of determining whether the veteran was employed during the 15-week period preceding application. The Secretary has determined that for this purpose "temporary employment" shall be any employment which is not "permanent." (See § 21.4802(r).) The latter term is defined, in turn, as employment which is clearly continuous in nature and which would not terminate upon the completion by the employer of a particular product, task, obligation, contract or assignment. Thus, a veteran, who was "employed" on a full-time basis during each of the 15 weeks preceding application, but on a job scheduled to end upon completion of the task being performed, e.g., completion of construction of a particular building, will be found to have been "unemployed" for purposes of determining his or her eligibility to participate under the Act. VA could have adopted a more narrow definition of the term "temporary employment", but believes to do so would thwart the intent of the statute to provide veterans the opportunity for stable, long-term employment in a career field through training under the Act. This conclusion is based upon the determination that a person employed on a task-limited job has little likelihood of being able to sustain that type of employment for the long term beyond the project at hand.

In addition to these terms, required to be defined for eligibility purposes, the Act uses other terms in discussing the type and duration of employment for which the participating veteran is to be trained by the employer. Section 4487(b) limits approvable job training programs to those not leading to jobs which are "seasonal," "intermittent," or "temporary." The Secretary is adopting, for the purpose of approval of a job training program, the definitions of these terms found in § 21.4802(n), (i) and (s), respectively. A "temporary job" is defined as time-limited employment which is known or expected, at the time training begins, to be only of short duration (e.g., 1 year or less). VA has determined that while it would be unreasonable to expect the prospective

employer to assure that the employer will be able to provide lifetime employment to the veteran who successfully completes the job training program, the employer should be able to assure that a reasonable likelihood exists of ongoing employment for the veteran in the position for which trained. It would be wasteful and absurd to subsidize an employer for 18 months of training a veteran for a job known or expected to last only 1 year or less after training is completed. VA notes that section of the statute provides for withholding a portion of the payment due the employer until the veteran has been employed for 4 months after training is completed as an incentive to the employer to retain the veteran in employment. However, a mere guarantee of a job for 4 months clearly would not be sufficient to indicate that the training will result in long-term, stable employment. VA could have circumscribed the duration of employment deemed temporary at any greater number of months or years but settled on a range up to 1 year, consistent with the temporary employment concept generally used in Federal hiring, as reasonably reflecting jobs considered to be of short duration.

The definition of the term "intermittent job" recognizes that in most jobs the employee works on a regular schedule. If the nature of the job is such that the employer cannot provide the employee with a regular job schedule, VA has determined that the sporadic nature of the veteran's employment would be intermittent at best and the definition provides accordingly.

The amount of work provided in "seasonal jobs" varies from place to place within the United States. For example, in some states along the northern tier outdoor construction is unavailable for half of the work year, while in other states such as Florida and Hawaii this type of work is available year-round. Rather than define "seasonal job" by listing specific jobs which are seasonal in at least part of the country, VA has chosen to define this in terms of the number of consecutive days for which no employment is provided. VA chose 90 days because this is approximately one-quarter of the year. A job which provides no work for at least this length of time would truly be seasonal.

Finally, the term "related employment" is defined, as more fully explained below, to indicate that the job training to be provided may actually result in long-term employment in a different but "related job" or one at a higher level in the same field.

The Service Members Occupational Conversion and Training Act provides a list of items an employer must certify in order to obtain payments for training a veteran. The last item in this list states that the certification may include other criteria which are essential for the effective implementation of the program (sec. 4486(d)(13)). Consequently, the list of items to be certified contains some which are not specifically enumerated in the statute.

Section 21.4822(a)(3)(xiii) requires the employer to consider any prior training the veteran may have had in the field for which he or she is to be trained and to shorten the training program appropriately. The Act requires that the employer not place in a training program anyone who is fully qualified for the job which is the goal of the program. Shortening the training program for those who are partially qualified, VA believes, is in accord with the intent of this restriction and will preserve the limited monetary resources in this program so that the number of veterans to be trained will be maximized.

Section 21.4822(a)(3)(xv) requires the employer to state the number of employees in the firm if the employer wishes to be paid monthly. The Service Members Occupational Conversion and Training Act states that employers may be paid monthly if being paid quarterly would be unduly burdensome for the employer. VA's experience in administering the Veterans' Job Training Act, a similar program with a similar provision, has shown that the burden on the employer is related to the number of employees, because of the need of employers with few employees to maintain their cash flow. Section 21.4832(a)(2) discussed below limits the number of employees an employer may have and still be paid monthly. Hence, the need for this information.

Section 21.4822(a)(3)(xii) provides that the employer will certify that the trainee will have the opportunity to participate in a personal interview with a case manager if one is assigned to him or her. The Service Members Occupational Conversion and Training Act (sec. 4493) provides that the implementing official will provide case managers to be assigned under certain circumstances to veterans in training. The Act further provides that the trainee will have an in-person interview with the case manager within 60 days of entering into training. Under the provisions of the Memorandum of Agreement the Secretary of Labor will provide these case managers. It is reasonable, given the requirements of the law for an in-person interview, that

the employer certify that the interview may take place during normal working hours.

The Service Members Occupational Conversion and Training Act provides that the implementing official may prohibit payments to an employer on behalf of new trainees when the completion rate for a training program is disproportionately low due to deficiencies in the quality of the program. The law is specific as to the evidence the official must consider when determining when there are deficiencies in the quality of the program, but the law does not state what a disproportionately low percentage is. Section 21.4823(c) specifies the minimum completion rate needed to qualify for payment.

That paragraph provides that unless the program has had at least five trainees only very strong evidence that deficiencies exist will cause VA to consider whether the completion rate is disproportionately low. Four or fewer trainees do not provide sufficient data for a percentage determination to be meaningful.

If there have been five or more trainees, the regulation provides that, in effect, VA will compare the percentage of trainees who have successfully completed the particular training program during the three years which immediately precede the calculation with the percentage of all trainees who have ever successfully completed all training programs. If the percentage of successful completers of a program is less than half the percentage of successful completers of all programs, the percentage is low and will be considered as disproportionately low if the program fails to meet the other qualifications in the regulation. While the legislative history of the Act fails to define or indicate what constitutes a disproportionately low successful completion rate, VA believes that requiring a successful completion rate of at least half the national average will not place too great a burden on employers. Requiring no greater than half the national average adequately takes into account the fact that with less than 10 or 12 trainees the one unsuccessful trainee may have a large effect on the successful completion rate.

Section 21.4824 provides for withdrawal of approval if VA discovers that the program ceases to meet approval requirements, or the required employer's certifications were false in any material respect, or the employer refuses to make available the progress records for the trainees in a training program. While the Service Members Occupational Conversion and Training

Act does not specifically provide for a withdrawal of program approval, withdrawal of approval is implicit in the law. Since program approval is predicated upon the employer's meeting certain approval requirements, it clearly follows that such approval cannot be maintained if the approval requirements for the employer's program were not or are not met.

Continued compliance with approval requirements is required. For example, one requirement is that there be enough space available to train the trainees. It is conceivable that, after having obtained approval, the employer may move to a new place of business where space is inadequate, thus bringing the employer into noncompliance.

Similarly, VA may discover that an employer's certification was false. For example, an employer may falsely certify that there are sufficient instructor personnel available to train the trainees. Compliance monitoring may reveal that this is not the case. In that event approval should be withdrawn. To continue approval would make meaningless the compliance monitoring provided for in the law.

The Service Members Occupational Conversion and Training Act (sec. 4487(a)(2)) and § 21.4822(a)(3)(xv) provide that employers may be paid monthly if being paid quarterly would be burdensome. Section 21.4832(a) provides for monthly payments if the employer has less than 75 employees and wants to be paid monthly.

As noted above, VA has had experience administering a similar Act, the Veterans' Job Training Act, which had a similar provision, and the department found that the burden was related to the number of employees the employer had, because of the need of these employers to maintain their cash flow. VA believes from its administrative experience that employers with fewer than 75 employees may well find it burdensome to be paid quarterly.

The Service Members Occupational Conversion and Training Act provides that no periodic payment may be made to an employer until the veteran certifies that he or she was employed full time in the training program during the period to be certified, and the employer confirms the certification and states the number of hours the employee worked. However, § 21.4832(a)(3) provides for an exception for the employee's certification if the employee quit or died during the payment period or is similarly unavailable to make the certification. VA does not believe it equitable to withhold a payment which would otherwise be due an employer if

circumstances beyond the employer's control make it difficult or impossible for the employer to obtain the certification, particularly if the employee refuses to cooperate.

Similarly, the Service Members Occupational Conversion and Training Act forbids reimbursement of an employer for expenses for tools and other work-related materials until the employer and the employee certify the need for the tools and work-related materials, that the veteran bought them, and that the employer reimbursed the veteran for them. Section 21.4832(c) contains two provisions not made explicit in the Act. First, it provides for payment in certain circumstances if the employee is unavailable to make the certification. Again VA does not believe it is equitable to withhold payment to which an employer otherwise would be entitled, if the employee is unavailable to make the certification.

Second, the regulation requires the employer and veteran to submit a copy of the receipt or other proof of purchase and cost which the employer used to determine the amount for which the veteran was reimbursed. Although not expressly required by the Service Members Occupational Conversion and Training Act, VA believes that its successful monitoring of this program requires documentation for this certification.

Section 21.4832(d)(2) provides that if the employer reduces a trainee's pay below that of his or her starting wage, reimbursement will be made to the employer on the basis of the new lower wage rather than on the basis of the starting wage. This is not stated specifically in the Service Members Occupational Conversion and Training Act but it is implicit in the law.

Occasionally, a trainee begins job training at a project where the Davis-Bacon Act applies. The Davis-Bacon Act provides a two-tier system of wages, a journeyman wage and a training wage, both of which may be higher than the starting wage which the employer usually pays employees. When the project is completed, the trainee may revert to the usual starting wage. Section 21.4802(j) defines normal starting wage in such a way that reimbursement to the employer in this situation would be based on the Davis-Bacon training wage while such a wage was being paid to the eligible person and would be based on the usual starting wage when the eligible person's training wage was not governed by that Act.

VA believes paying the employer at the Davis-Bacon training wage rate even though the employer may be paying the journeyman rate is implicit in the law.

The Service Members Occupational Conversion and Training Act provides that job training programs approved under 38 U.S.C. chapter 36 will be considered to meet the approval requirements of the Act. These programs require a graduated wage scale. VA has always considered that someone who has reached the journeyman wage rate may not be considered to be a trainee entitled to educational assistance for training.

The Service Members Occupational Conversion and Training Act requires that employers keep records adequate to show the progress of the veteran and make these records available to authorized representatives of the government. However, that Act does not state the length of time the records must be kept. Section 21.4850(b) would require the employer to keep those records for 3 years following the last month or quarter for which the employer received payment on behalf of the veteran.

Another record retention period could be adopted. However, VA believes that given the limited resources for program oversight, a period of less than 3 years will make it difficult to monitor compliance effectively. On the other hand, the department realizes that retention of records for an indefinite time may well be unduly costly for the employer. Accordingly, the interim rule requires a 3-year retention as a compromise between VA's need to properly monitor compliance and the need to minimize expenses for the employer.

Section 21.4832(b) would allow VA to pay an employer a lump-sum incentive payment after the trainee had worked full-time for 4 months in the job for which the training program was designed to provide training or in a related job. A related job is defined in § 21.4820(m) as one which is found in the Dictionary of Occupational Titles as being in the same occupational work group.

In permitting payment for employment in a related job, VA is reacting to concerns that in some instances a trainee may be promoted before the four months have expired or changing business conditions may force an employer to place the eligible person in a related job. VA believes that this is tantamount to placing the eligible person in the job for which the training program is designed to provide training. The employer should not be placed in a position of losing the payment for essentially carrying out the purpose of the Service Members Occupational Conversion and Training Act. Neither should the eligible person be placed in

a position where she or he would have to forgo a promotion.

Administrative Procedure Act

A substantial portion of the changes made by this interim final rule merely consists of restatements of statutory material and, as such, is not subject to rule making requirements. The rule making changes consist of interpretative rules, general statements of policy, and rules of agency organization, procedure, and practice. As such, they are exempt from the notice and comment provisions of 5 U.S.C. 553.

The changes subject to rule making requirements are also made effective immediately without a 30 day delay since, insofar as they consist of substantive rules, they are interpretative rules and statements of policy.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this interim rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

No Catalog of Federal Domestic Assistance number has been assigned to the program affected by these regulations.

List of Subjects

38 CFR Part 2

Authority delegation (Government agencies), Veterans Affairs Department.

38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 29, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Parts 2 and 21 are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for Part 2 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. Sections 2.100 and 21.101 are added to read as follows:

§ 2.100 Delegation of authority to the Under Secretary for Benefits or his or her designee to enter into Memoranda of Agreement with authorized representatives of Department of Defense or Department of Labor or both to implement programs authorized by §§ 21.4800 through 21.4856.

This delegation is described in § 21.4854 of this chapter.

(Authority: 38 U.S.C. 512)

§ 2.101 Delegation of authority to the Under Secretary for Benefits, and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by him or her, to make findings and decisions of the Department of Veterans Affairs under the Service Members Occupational Conversion and Training Act, and the applicable regulations, precedents and instructions, relating to programs authorized by §§ 21.4800 through 21.4854.

This delegation is described in § 21.4856 of this chapter.

(Authority: 38 U.S.C. 512)

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

3. The authority citation for part 21 continues to read as follows:

Authority: 38 U.S.C. 501.

4. Subpart F-3 is added to read as follows:

Subpart F-3—Service Members Occupational Conversion and Training Program

Sec.

General

21.4800 Service Members Occupational Conversion and Training Program.

21.4801 [Reserved]

21.4802 Definitions.

21.4803-21.4809 [Reserved]

Eligibility

21.4810 Eligibility requirements for participation.

21.4811 [Reserved]

21.4812 Application and certification.

21.4813-21.4819 [Reserved]

Approval of Employer Programs

21.4820 Job training program approval.

21.4821 [Reserved]

21.4822 Employer applications for approval.

21.4823 Disapproval of entry into programs having unsatisfactory completion rates.

21.4824 Withdrawal of approval.

21.4825-21.4829 [Reserved]

Payments

21.4830 Entrance into training.

21.4831 [Reserved]

21.4832 Payments to employers.

21.4833 [Reserved]

21.4834 Overpayments and forfeits.

21.4835-21.4839 [Reserved]

Counseling

21.4840 Employment counseling services.

21.4841-21.4843 [Reserved]

21.4844 Failure to cooperate.

21.4845-21.4849 [Reserved]

Administrative

21.4850 Inspection of records.

21.4851 [Reserved]

21.4852 Monitoring and investigations.

21.4853 [Reserved]

21.4854 Delegation of authority to the Under Secretary for Benefits.

21.4855 [Reserved]

21.4856 Delegation of authority to the Veterans Benefits Administration.

Subpart F-3—Service Members Occupational Conversion and Training Program

Authority: Subtitle G, Pub. L. 102-484, 106 Stat. 2757-2769

General

§ 21.4800 Service Members Occupational Conversion and Training Program.

Sections 21.4800 through 21.4856 regulate a Service Members Occupational Conversion and Training Program. The purpose of this program is to assist members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces and to provide the Secretary of Defense with another tool to manage that drawdown. The program assists eligible persons in entering the civilian workforce through training for employment in a stable and permanent position that involves significant training, VA makes payments to employers who employ and train eligible veterans in these jobs. The payments assist employers in defraying the costs of necessary training.

(Authority: Subtitle G, Pub. L. 102-484, 106 Stat. 2757-2769, 10 U.S.C. 1143 note)

§ 21.4801 [Reserved]

§ 21.4802 Definitions.

For the purpose of the Service Members Occupational Conversion and Training Program described in §§ 21.4800 through 21.4856 the following definitions apply.

(a) *Active duty.* The term *active duty* means:

(1) Full-time duty in the Armed Forces, other than active duty for training,

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration;

(4) Service as a cadet at the United States Military, Air Force or Coast Guard Academy, or as a midshipman at the United States Naval Academy, and

(5) Authorized travel to or from such service.

(Authority: 106 Stat. 2757, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(b) *Active duty for training.* (1) The term *active duty for training* means:

(i) Full-time duty in the Armed Forces performed by Reserves for training purposes.

(ii) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service,

(iii) In the case of members of the Army National Guard or the Air National Guard of any State, full-time duty under section 316, 592, 593, 594 or 505 of title 32, U.S. Code,

(iv) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10, U.S. Code for a period of not less than four weeks and which must be completed by the member before the member is commissioned, and

(v) Authorized travel to or from such duty.

(2) The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 106 Stat. 2757, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(c) *Active military, naval or air service.* The term *active military, naval or air service* includes active duty, any period of active duty for training during which the individual concerned was disabled from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled from an injury incurred or aggravated in line of duty.

(Authority: 106 Stat. 2757, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(d) *Compensation.* The term *compensation* means a monthly payment made by the Department of Veterans Affairs to a veteran because of a service-connected disability.

(Authority: 106 Stat. 2757, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(e) *Eligible person.* The term *eligible person* means a veteran who—

(1) Was discharged after August 1, 1990, and

(2) Either—

(i) Served in the active military, naval or air service for a period of more than 90 days, or

(ii) Was discharged or released from active duty because of a service-connected disability.

(Authority: 106 Stat. 2758, Pub. L. 102-464, sec. 4485(a)(2), 10 U.S.C. 1143, note)

(f) *Employer.* The term *employer* means a person or business or other entity which—

(1) Hires the veteran,

(2) Provides work, wages, and supervision,

(3) Either provides or arranges for training for the veteran, and

(4) Can make the certification required by § 21.4822(a).

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4487, 10 U.S.C. 1143, note)

(g) *Full-time employment.* The term *full-time employment* means employment which requires the employee to work a regular schedule of hours per day and days per week established as the standard full-time workweek at the employee's training establishment.

(Authority: 106 Stat. 2758, Pub. L. 102-484, sec. 4485(a)(3), 10 U.S.C. 1143, note)

(h) *Inactive duty training.* (1) The term *inactive duty training* means:

(i) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;

(ii) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned,

(iii) Training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5, U. S. Code), in the Senior Reserve Officers' Training Corps prescribed under chapter 103, of title 10, U. S. Code, and

(iv) In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504 or 505 of title 32, U. S. Code.

(2) The term does not include:

(i) Work or study performed in connection with a correspondence course,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 106 Stat. 2757, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(i) *Intermittent job.* The term *intermittent job* means a less than full-time job in which the employee is given

no advance regular work schedule due to the unpredictable and sporadic nature of the work needed for the job.

(Authority: 106 Stat. 2760, Pub. L. 102-484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(j) *Normal starting hourly wage.* (1) The term *normal starting hourly wage* means, except as provided in paragraph (j)(2) of this section, the wage paid per hour (exclusive of overtime, premium pay or fringe benefits) on the first day of the job training program to an eligible person whose training program has not been shortened as a result of the employer's evaluation of an eligible person's prior training. This definition applies as to the eligible person whose job training program actually has been shortened, and who, therefore, begins training at a higher hourly wage.

(2) For any eligible person to whom the Davis-Bacon Act applies the term *normal starting hourly wage* means:

(i) The training wage payable under the Davis-Bacon Act (exclusive of overtime, premium pay or fringe benefits) to the eligible person on days during the job training program when the Davis-Bacon Act applies, and

(ii) On days when the Davis-Bacon Act does not govern the wages paid to the eligible person, the wage as determined by paragraph (j)(1) of this section.

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4487, 10 U.S.C. 1143 note)

(k) *Part-time employment.* The term *part-time employment* means permanent employment in a position in which the employee works a regularly scheduled number of hours each workweek that is less than the number of hours customarily required for full-time employment in that position.

(Authority: 106 Stat. 2758, Pub. L. 102-484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(l) *Permanent employment.* The term *permanent employment* means employment which is clearly continuous in nature. Thus, the term does not include employment which is seasonal, time-limited, or expected to terminate upon completion of a particular product, task, obligation, contract, or assignment.

(Authority: 106 Stat. 2758, Pub. L. 102-484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(m) *Related job.* The term *related job* means a job which has the following characteristics when compared to another job.

(1) The *Dictionary of Occupational Titles*, 4th edition, revised 1991, shows that—

(i) Both jobs are in the same occupational group, and

(ii) The second job requires the same or higher specific vocational preparation level as the job to which it is being compared, and

(2) The salary being paid to employees with comparable experience and training in the second job is the same or greater than the salary paid in the job to which it is being compared.

(Authority: 106 Stat. 2762, Pub. L. 101-484, sec. 4487(b)(3), 10 U.S.C. 1143, note)

(n) *Seasonal job*. The term *seasonal job* means a job which is subject to a seasonal need or availability resulting in no work for the employed person for 90 or more consecutive calendar days.

(Authority: 106 Stat. 2760, Pub. L. 102-484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(o) *Secretary*. The term *Secretary* means the Secretary of Veterans Affairs unless otherwise indicated by the text of the sentence in which the term appears.

(Authority: 106 Stat. 2760, Pub. L. 102-484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(p) *Service-connected*. The term *service-connected* means, with respect to disability, that the disability was incurred or aggravated in line of duty in the active military, naval or air service.

(Authority: 106 Stat. 2758, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(q) *State*. The term *State* means each of the several States, Territories, and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(Authority: 106 Stat. 2758, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143, note)

(r) *Temporary employment*. The term *temporary employment* means employment other than permanent employment.

(Authority: 106 Stat. 2759, Pub. L. 102-484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(s) *Temporary job*. The term *temporary job* means a time-limited job, particularly one of known, expected, or intended short duration (generally, not to exceed one year and, frequently, shorter).

(Authority: Pub. L. 102-484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(t) *Unemployed*. The term *unemployed* means that a person is without full-time, permanent employment and wants and is available for full-time, permanent employment.

(Authority: 106 Stat. 2760, Pub. L. 102-484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(u) *Veteran*. The term *veteran* means a person who—

(1) Served in the active military, naval or air service, as defined in paragraph (c) of this section, and

(2) Was discharged or released therefrom under conditions other than dishonorable.

(Authority: 106 Stat. 2757, Pub. L. 102-484, sec. 4483(2), 10 U.S.C. 1143 note, 38 U.S.C. 101(2))

§§ 21.4803—21.4809 [Reserved]

Eligibility

§ 21.4810 Eligibility requirements for participation.

To establish eligibility for participation in the Service Members Occupational Conversion and Training program, an eligible person, on the date of application, must—

(a) (1) Be unemployed, and

(2) Have been unemployed for at least 8 of the 15 weeks immediately preceding the date of his or her application for participation in a job training program under this subpart, or

(b) Be separated from the active military, naval or air service and must have had a primary or secondary occupational specialty in the Armed Forces which (as determined under regulations prescribed by the Secretary of Defense and in effect before the date of the eligible person's separation) is not readily transferable to the civilian workforce; or

(c) Be entitled to compensation (or but for the receipt of military retired pay would be entitled to compensation) under laws administered by VA for a service-connected disability rated at 30 percent or more.

(Authority: 106 Stat. 2758, Pub. L. 102-484, sec. 4485(a)(1)(B) and (C) 10 U.S.C. 1143 note)

§ 21.4811 [Reserved]

§ 21.4812 Application and certification.

(a) *Application*. An individual must apply to a facility of the Veterans Benefits Administration for participation in a job training program using the form prescribed by VA.

(Authority: 106 Stat. 2759, Pub. L. 102-484, sec. 4485(b)(1), 10 U.S.C. 1143 note)

(b) *Approval*. VA will approve an application to participate in a job training program if:

(1) The applicant is an eligible person who meets the participation requirements of § 21.4810, and

(2) Funds are available to pay employers under this subpart.

(Authority: 106 Stat. 2759, Pub. L. 102-484, sec. 4485(b)(2); 10 U.S.C. 1143 note)

(c) *Certificates*. (1) Upon approving an eligible person's application, VA will furnish the eligible person with a certificate for presentation to an employer with an existing approved job

training program or an employer who is willing to develop and seek approval for a job training program. The certificate will state:

(i) The individual's eligibility to participate;

(ii) The date of the certificate's issuance to the eligible person and the period of its validity, and

(iii) Approval of entrance into a job training program is subject to the availability of funds.

(2) A certificate expires 180 days from the date on which it is furnished to the eligible person. However, VA may renew a certificate for an eligible person when the provisions of § 21.4812(b) are met. A renewed certificate expires 180 days from the date on which it is furnished to the eligible person, and may itself be renewed.

(Authority: 106 Stat. 2759, Pub. L. 102-484, sec. 4485(b)(3), 10 U.S.C. 1143 note)

(d) *Disapproval*. If an individual's application is disapproved, VA will give the individual written notice of the decision, including the reasons therefor, a summary of the evidence considered and an opportunity for a hearing. The individual may appeal VA's denial of his or her application under the same process as is provided in Part 19, Subpart B of this chapter.

(Authority: 106 Stat. 2759, Pub. L. 102-484, sec. 4485(b)(3), 10 U.S.C. 1143 note)

§§ 21.4813—21.4819 [Reserved]

Approval of Employer Programs

§ 21.4820 Job training program approval.

(a) *Eligible persons*. An employer may be paid assistance on behalf of a participating eligible person only for providing a program of job training approved by VA as meeting the requirements of this section and § 21.4822.

(1) The training provided under an employer's job training program must be in a field of employment providing a reasonable probability of stable, long-term employment and, except as provided in paragraph (a)(3)(ii) of this section, such training must be provided for a period of not less than 6 nor more than 18 months.

(2) An employer may provide all or part of a job training program under an agreement with an educational institution offering the training through a course or courses which have been approved under § 21.4253 or § 21.4254 for the enrollment of veterans.

(3) Notwithstanding the provision of paragraph (a)(1) that prohibits a training program from being more than 18 months long—

(i) An apprenticeship or other on-job training program approved under 38 U.S.C. 3687 will, upon the employer's submission of an application in accordance with § 21.4822 containing the certification required by § 21.4822(a)(3)(iii), be considered to have met all requirements for approval under this subpart, and will be approved unless found ineligible under paragraph (b) of this section, and

(ii) If a job training program described in paragraph (a)(3)(i) of this section requires more than 18 months of training to complete, the period of training approvable for purposes of this subpart will be limited to the first 18 months of training under the program, or a period of training not to exceed 18 months from the point at which the eligible person enters the program in the case where the employer grants credit for prior training. (See § 21.4832(a)(3)).

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4486(h); 10 U.S.C. 1143 note)

(b) *Ineligible programs.* VA will not approve a job training program for employment—

- (1) Which consists of seasonal, intermittent or temporary jobs,
- (2) Under which commissions are the primary source of income,
- (3) Which involves political or religious activities,
- (4) With any department, agency, instrumentality or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or
- (5) Which will not be performed in a State.

(Authority: 106 Stat. 2760, Pub. L. 102-484, sec. 4486(b); 10 U.S.C. 1143 note)

§ 21.4821 [Reserved]

§ 21.4822 Employer applications for approval.

(a) *Applications for approval of job training programs.* (1) The employer must apply for approval of a job training program to the Director of the VA facility having jurisdiction over the place where the eligible person will be trained.

(2) The employer's application for approval of a job training program under this subpart must be in the form prescribed by the Secretary of Veterans Affairs and, except for a program of apprenticeship or other on-job training approved under 38 U.S.C. 3687, must include the employer's certification of the matters set forth in paragraphs (a)(3) and (a)(4) of this section.

(3) The employer must make and submit the following general certifications with the application.

(i) The employer plans that—

(A) Upon the eligible person's completion of the job training program, the employer will employ the eligible person in the position for which he or she has been trained, and

(B) This position will be a full-time, permanent employment position available to the eligible person at the end of the training period.

(ii) The wages and benefits to be paid to an eligible person participating in the job training program—

(A) Will be the same as the wages and benefits normally paid to other employees participating in the same or a comparable job training program, and

(B) If there are no nonveterans training in the program, will be comparable to wages paid in similar programs in the community in which the employee will be trained.

(iii) Employment of the eligible person under the program—

(A) Will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits), and

(B) Will not be in a job while another person is laid off from the same or substantially equivalent job, or will not be in a job the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its workforce with the intention of hiring an eligible person in the job.

(iv) The employer will not employ in the job training program an eligible person already qualified by training and experience for the job for which the training is to be provided.

(v) The job which is the objective of the job training program involves significant training.

(vi) The training content of the job training program is adequate to accomplish the training objective of the program considering—

(A) The nature of the occupation for which training is to be provided, and

(B) The content of comparable, available training programs which lead to the same occupation.

(vii) Each participating eligible person will be employed full-time while in the job training program.

(viii) The training period of the program will not be longer than the training periods that other employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which the training is provided.

(ix) The training establishment or place of employment will have available, as needed to accomplish the

training objective of the program, the following:

(A) Sufficient space,

(B) Equipment,

(C) Instructional material, and

(D) Instructor personnel.

(x) The employer will keep adequate records.

(A) To show the progress made by each eligible person participating in the program, and

(B) To demonstrate compliance by the employer and eligible person with all requirements of law governing the Service Members Occupational Conversion and Training Act.

(xi) The employer, before the eligible person's entry into training, will—

(A) Furnish the eligible person with a copy of the certification described in this paragraph, and

(B) Obtain and retain the eligible person's signed acknowledgment of having received the certification.

(xii) The employer will provide to each participating eligible person for whom a case manager has been assigned by the Department of Labor full opportunity to participate in one personal interview with the case manager during the eligible person's normal work day.

(xiii) The employer will evaluate the eligible person's prior training in the field for which he or she is being trained and will shorten his or her training program appropriately.

(xiv) Whether tools or other work-related materials, or both, are necessary for the eligible person's participation in the program of job training, and if so, a list of those tools and work-related materials which the eligible person and all other trainees in the program, both eligible persons and others, will be required to purchase and for which the employer will reimburse the eligible person.

(xv) The program meets such other criteria which are essential for effective implementation of the Service Members Occupational Conversion and Training Act and as to which VA, after having given notice to the employer, requires the employer's certification.

(4) The employer must submit with the application on a form prescribed by the VA, information concerning:

(i) The total number of hours of participation in the job training program to be offered the eligible person,

(ii) The length of the job training program,

(iii) The starting hourly rate of wages to be paid to a participant in the program,

(iv) The training content of the program, including the name and address of the educational institution, if

any, with which the employer has an agreement to provide all or part of the job training program (supported by a copy of that agreement included with the application);

(v) If all or part of a job training program is provided by an educational institution, a statement that VA will have access to the training records,

(vi) The objective of the program,

(vii) The address of the location where the records described in paragraph (a)(3)(x) of this section will be kept, and

(viii) If the employer desires to be paid monthly, the number of the training establishment's employees.

(5) The certifications required in paragraphs (a)(3)(i) through (xi) shall be considered to be a requirement established under subtitle G of the Service Members Occupational Conversion and Training Act, and for purposes of § 21.4832(c) regarding payment for tools and other work-related materials and paragraphs (a)(3)(i) through (x) shall be considered to be a requirement established under subtitle G of the Service Members Occupational Conversion and Training Act.

(Authority: 106 Stat. 2760, Pub. L. 102-484, secs. 4486(e), 4487(b); 10 U.S.C. 1143 note)

(b) *VA action upon receipt of the application.* (1) Upon receipt of the application, the Director of the VA facility of jurisdiction will approve the job training program if:

(i) The application contains all requisite information and certifications needed to enable the Director to determine whether the proposed job training program meets the approval requirements of the Service Members Occupational Conversion and Training Act.

(ii) The Director finds no basis for conducting an investigation under § 21.4852 that would warrant withholding approval of the employer's proposed program of job training pending the outcome of that investigation.

(2) In determining whether the certifications required in paragraphs (a)(3) and (a)(4) of this section are complete and accurate, the Director of the VA facility of jurisdiction—

(i) Will consider that the provisions have been met and that the certification is accurate if the job training program for which the employer is seeking approval has already been approved for training under § 21.4261 or § 21.4262, or the entire job training program consists of a course or courses offered at an educational institution and approved under § 21.4253 or § 21.4254;

(ii) Will consider any information the Department of Labor or the State

Employment Security Agency may have concerning the employer and the job training program;

(iii) Will consider any other evidence which may show whether or not the certification is accurate and whether or not the provisions of § 21.4820(a) are met; and

(iv) May withhold approval pending an investigation.

(3) The Director of the VA facility will notify the employer in writing of the approval or disapproval of the employer's program. If the program is disapproved, the notice will state the reasons therefor and the employer's right to seek review of the decision as provided in paragraph (c) of this section. If no review is sought, the decision of the Director of the VA facility of jurisdiction will be final.

(c) *Review of a decision not to approve a program.* (1) If an employer disagrees with a decision of a Director of a VA facility not to approve the program, the employer, within 60 days after receipt of notice of the decision, may ask that the decision be reviewed by the Director, Education Service.

(2) A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision not to approve a program was made. It will not be de novo in nature and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(Authority: 38 U.S.C. 512(a))

§ 21.4823 Disapproval of entry into programs having unsatisfactory completion rates.

(a) *Disapproval of payments on behalf of new participants.* The Director of a VA field facility may disapprove entry into an employer's approved job training program under this subpart when the Director finds that the rate of veterans' successful completion of the job training program is disproportionately low as a result of deficiencies in the quality of the job training program.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(a), 10 U.S.C. 1143 note)

(b) *Notice: effective date of disapproval.* An eligible person who has not begun a job training program to which a disapproval under paragraph (a) of this section applies, will be barred from entering that program effective on the date the employer receives the

notification provided pursuant to paragraph (e) of this section.

(Authority: 106 Stat. 2764; Pub. L. 101-484, sec. 4490(b); 10 U.S.C. 1143 note)

(c) *Successful completion rate for job training programs.* VA will determine whether the successful completion rate for a job training program is disproportionately low as follows.

(1) If fewer than five eligible persons either successfully completed the particular job training program or terminated that program (voluntarily or involuntarily) during the three-year period immediately preceding the calculation, VA will consider that the completion rate of the job training program is not disproportionately low unless there is strong evidence to the contrary.

(2) If five or more eligible persons either successfully completed the particular job training program or terminated that program, or if the number is less than five and there is compelling evidence of deficiencies in the quality of the program that may have adversely affected the completion rate, VA will—

(i) Calculate a percentage by dividing the number of eligible persons who have successfully completed the job training program during the three-year period immediately preceding the calculation by the number of eligible persons who have either successfully completed or otherwise terminated that program during the three-year period immediately preceding the calculation;

(ii) Calculate a second percentage by dividing the number of eligible persons who have ever successfully completed any job training program approved for veterans' training under the Service Members Occupational Conversion and Training Act by the number of eligible persons who have ever either successfully completed or otherwise terminated such a job training program, and

(iii) Compare the two percentages. If the percentage determined in paragraph (c)(2)(i) of this section is less than one-half the percentage determined in paragraph (c)(2)(ii) of this section, the successful completion rate of the job training program is disproportionately low, and shall be considered with the data described in paragraphs (b) through (d) of this section and the results of any investigation VA or the Department of Labor may conduct in determining whether the disproportionately low completion rate is a result of deficiencies in the quality of the program.

(Authority: 106 Stat. 2764, Pub. L. 102-484, sec. 4490(b), 10 U.S.C. 1143 note)

(d) *Deficiencies in the quality of the job training program.* In determining whether any disproportionately low completion rate of a job training program is the result of deficiencies in the quality of the program, VA will take into account appropriate data, including:

(1) Quarterly data provided by the Secretary of Labor with respect to the number of veterans who:

(i) Receive counseling in connection with training under the Service Members Occupational Conversion and Training Act."

(ii) Are referred to employers under the Service Members Occupational Conversion and Training Act,

(iii) Participate in job training under the Service Members Occupational Conversion and Training Act, and

(iv) Complete that training or do not complete that training, and the reasons for the noncompletion, and

(2) Data from the compliance surveys of the employer which indicate the number of eligible persons who have undertaken a job training program, the number of such persons who failed to complete it, and the reasons for the noncompletion.

(Authority: 106 Stat. 2764, Pub. L. 102-484, sec. 4490(b); 10 U.S.C. 1143 note)

(e) *Notification.* If, after considering the data described in paragraphs (c) and (d) of this section, the Director of the VA field facility of jurisdiction determines that the completion rate for a job training program is disproportionately low due to deficiencies in the quality of the program, the Director will disapprove further initial entry by eligible persons into the program and shall notify the employer of that disapproval. The notice shall be by certified mail or registered letter, return receipt requested, and shall include:

(1) A statement of the reasons for disapproval, including a summary of the evidence considered,

(2) Notice of the opportunity to submit documentary evidence and to have a hearing before the Director of the VA field facility of jurisdiction or his or her designee, and

(3) Notice of the employer's right to request, within 60 days after receipt of the notice, a review by the Director, Education Service, of the disapproval decision by the Director of the VA field facility of jurisdiction.

(4) A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision to disapprove new program entrants was made. It will not be de novo in nature

and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(b), 10 U.S.C. 1143 note)

(f) *Period of disapproval.* (1) A disapproval of further program entry as described in paragraph (a) of this section shall remain in effect until the Director of the VA field facility of jurisdiction determines that the employer has remedied the program deficiencies which resulted in the disapproval.

(2) Upon reinstatement of approval of program entry, payments will be made on behalf of new participating eligible persons only for training received after the date remedial action was taken, as determined by the Director of the VA field facility.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(b)(3), 10 U.S.C. 1143 note)

§ 21.4824 Withdrawal of approval.

(a) *Approval may be withdrawn.* The Director of a VA field activity may immediately disapprove the further participation by all eligible persons in a job training program which previously has been approved when:

(1) The program ceases to meet any of the requirements of § 21.4820 or § 21.4822.

(2) The Director finds that the employer's certification provided pursuant to § 21.4822(a) was false; or

(3) The employer, or an educational institution with which the employer has contracted to provide all or part of the training, refuses to make available to an authorized representative of the Federal Government those records which the employer (and the educational institution) is required to keep under § 21.4850.

(b) *Notification.* The Director of the VA field facility of jurisdiction shall notify the employer and all eligible persons participating in the program that approval is being withdrawn. The notices shall be by certified mail return receipt requested, and shall include:

(1) A statement of the reasons for the withdrawal of approval, including a summary of the evidence considered;

(2) Notice of the right of the employer or eligible person to submit documentary evidence and have a hearing before the Director of the VA field facility of jurisdiction or his or her designee concerning the withdrawal of program approval;

(3) In the case of an employer notice of the employer's right to request a

review by the Director, Education Service, of the disapproval decision by the Director of the VA field facility of jurisdiction. To exercise that right, the employer must request within 60 days either after the date of notice of the initial decision of the Director of the VA field facility of jurisdiction or the date of notice of any confirming decision by that Director following a timely requested hearing or timely submission of new evidence, or both, and

(4) In the case of a notice sent to eligible persons, notice of the right of the eligible person to appeal the decision to the Board of Veterans Appeals and to have a hearing under the same process as is provided in Part 19, Subpart B of this title.

(Authority: 106 Stat. 2761-2763, Pub. L. 102-484, sec. 4486, 4487, 38 U.S.C. 501(a); 10 U.S.C. 1143 note)

(c) *Review of a decision to withdraw approval of a program.* A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision to disapprove new program entrants was made. It will not be de novo in nature and no hearing on review will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented, unless an adversely affected eligible person prevails in an appeal of the decision to the Board of Veterans Appeals.

(Authority: 38 U.S.C. 512(a))

§§ 21.4825-21.4829 [Reserved]

Payments

§ 21.4830 Entrance into training.

(a) *Notice of intent to hire before employee's entrance into training.* Before an eligible person enters an approved job training program, the employer shall submit to the VA at the address on the form prescribed by the VA information concerning whether the employer intends to hire the eligible person.

(Authority: 106 Stat. 2764, Pub. L. 102-484, sec. 4488(a); 10 U.S.C. 1143 note)

(b) *Lack of funds may prevent training.* (1) If VA determines that funds are not available to make payments to the employer on behalf of the eligible person, VA may withhold or deny approval of the eligible person's entry into a job training program.

(2) The eligible person may enter the job training program two weeks after the

date of the notice of intent to hire described in paragraph (a)(1) of this section, unless VA notifies the employer, within that two-week period, by certified mail that approval of the eligible person's entry into the job training program must be withheld or denied due to lack of funds. The two-week period shall begin on the date the employer's notice to VA is postmarked.

(Authority: 106 Stat. 2764, Pub. L. 102-484, sec. 4488(a); 10 U.S.C. 1143 note)

§ 21.4831 [Reserved]

§ 21.4832 Payments to employers.

Payments made to employers for training eligible persons and employing them in the respective positions for which they trained shall be made in accordance with the provisions of this section.

(a) *Periodic wage reimbursement payments for training provided the eligible person.* Subject to the certification requirements of paragraph (a)(3) of this section and the limitations and restrictions stated in paragraphs (d) and (e) of this section, VA will make quarterly wage-reimbursement payments to the employer based upon training provided to an eligible person. An employer with fewer than 75 employees when the eligible person enters training may, upon request, receive such payments on a monthly basis.

(1) *Amount of periodic payment.* VA will determine the amount of periodic payment to the employer by multiplying 50 percent of the normal starting hourly wage paid by the employer to the eligible person (without regard to overtime, premium pay or fringe benefits), by the number of hours the veteran worked during the period for which payment is due, withholding 25 percent of this amount to be paid to the employer as an incentive payment as provided in paragraph (b) of this section.

(2) *Periods for which payments may be made.* Payments may be made for an eligible person's training through the last date of training received in the training program but not after completion of the eighteenth month of the training program.

(3) *Certification of training.* VA will issue no payments to an employer for any period of training of an eligible person unless the following certification requirements are met.

(i) Unless VA waives certification, the eligible person must submit, and VA must receive, a certification that such person was employed full-time by the employer in an approved job training program during the applicable training

period. VA will waive this certification upon receipt of evidence that the eligible person is deceased, has terminated employment and moved without a forwarding address, or otherwise cannot or will not comply through no fault of the employer.

(ii) VA must receive from the employer on a form prescribed by the VA a certification concerning the following:

(A) Employment of the eligible person during the period in an approved job training program,

(B) Performance and progress of the eligible person during the period were satisfactory,

(C) The number of hours the eligible person worked during the period for which the certification is made, and

(D) For employer's first certification, the normal starting hourly rate of wages paid to the veteran, without regard to overtime or premium pay.

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487, 10 U.S.C. 1143 note)

(b) *Lump sum deferred incentive payment to employers.* VA will make a lump-sum incentive payment to the employer of the total amount withheld from periodic payments made to the employer pursuant to paragraph (a)(1) of this section provided the following conditions are met.

(1) The incentive payment may be made only when VA determines, and both the employer and (except as provided in paragraph (b)(2) of this section) eligible person certify, that the eligible person was employed full-time by that employer in the job for which the training program was designed to provide training or in a related job, and that such employment was for at least four continuous months beginning on the date the eligible person completed training for which periodic payments were made under this subpart.

(2) VA may waive the requirement that the eligible person certify as provided in paragraph (b)(1) of this section if VA finds that the requisite employment occurred and either the eligible person is deceased or otherwise cannot or will not comply through no fault of the employer.

(Authority: 106 Stat. 2782, Pub. L. 101-484, sec. 4487(b)(3); 10 U.S.C. 1143, note)

(1) A certification signed by the employer and the eligible veteran stating that:

(i) The identified tools and other work-related materials are necessary for the eligible person's participation in the job training program;

(ii) The eligible person bought the tools and other work-related materials, and

(iii) The employer reimbursed the eligible person for the cost of the tools and other work-related materials, and

(2) A copy of the receipt or other proof of purchase which the employer used to calculate the amount for which the veteran was reimbursed.

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4487(c), 10 U.S.C. 1143 note)

(d) *Limitations on amount of payments.* (1) In no case will the sum of the periodic payments and the lump-sum incentive payment made to an employer on behalf of an eligible veteran exceed:

(i) \$12,000 for a person with a service-connected disability rated as 30 percent or more disabling, or

(ii) \$10,000 for all other eligible veterans.

(2) If an employer reduces the wages paid to a trainee for a portion of the training period so that the trainee is paid at a rate less than the certified, normal starting wage rate, VA shall not make periodic payments in excess of 50 percent of the wages (exclusive of overtime and premium pay) paid to the trainee for that portion of the training period less the 25 percent that must be withheld under § 21.4832(a).

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4487(a)(1)(B); 10 U.S.C. 1143 note)

(e) *Restrictions on payments.* (1) VA will not pay an employer:

(i) On behalf of any veteran who initially applies for a job training program after September 30, 1995,

(ii) For any job training program which begins after March 31, 1996,

(iii) For any training given to the veteran before VA certifies the individual is eligible to participate,

(iv) During any period of time for which the veteran receives educational assistance under 38 U.S.C. chs. 30, 31, 32, 35 or 36 or 10 U.S.C. ch. 106;

(v) For any period during which the employer received any assistance on account of the veteran's training or employment, including:

(A) Assistance under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*),

(B) A credit under section 51 of the Internal Revenue Code of 1986, or

(C) Employer's incentive payments under § 21.256 of this part,

(vi) For any hours of training the veteran completes in excess of the hours approved by VA for his or her job training program.

(2) VA will withhold payment to an employer who fails or refuses to maintain records or fails to make them available to authorized representatives of the Federal Government as required by § 21.4850. The withholding will

continue until VA determines that the employer has fully complied with recordkeeping and disclosure requirements.

(Authority: 106 Stat. 2757, Pub. L. 102-484, Subtitle G, 10 U.S.C. 1143 note)

§ 21.4833 [Reserved]

§ 21.4834 Overpayments and forfeits.

(a) *False certification by employer.* Whenever VA finds that an overpayment has been made to an employer on behalf of a veteran as a result of a certification or information contained in the employer's application to VA which was false in any material respect—

(1) The amount of the overpayment shall constitute a liability of the employer to the United States, and

(2) The employer shall forfeit any unpaid amounts withheld from those payments for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(1)(A), 10 U.S.C. 1143 note)

(b) *Noncompliance by employer.* Whenever VA finds that an employer has failed in any substantial respect to comply for a period of time with a requirement of § 21.4820 or § 21.4822 or both (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered an overpayment.

(1) The amount of the overpayment shall constitute a liability of the employer to the United States.

(2) The employer shall forfeit any unpaid amounts withheld from those payments for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(1)(B), 10 U.S.C. 1143 note)

(c) *False certification by an individual.* Whenever VA finds that an overpayment has been made to an employer on behalf of an individual as a result of certification by the individual, or as a result of information provided to an employer or contained in an application submitted by the individual to VA which was willfully or negligently false in any material respect—

(1) The amount of the overpayment shall constitute a liability of the individual to the United States, and

(2) The employer shall forfeit any unpaid amounts withheld from those payments for the purpose of making a

lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(2); 10 U.S.C. 1143 note)

(d) *Payment contrary to limitation or restriction.* Whenever VA finds that payment has been made to an employer on behalf of an individual in an amount which exceeds or is otherwise contrary to the limitations set forth in § 21.4832 (d) or (e)—

(1) Such amount shall constitute an overpayment for which the employer shall be liable to the United States,

(2) The employer shall forfeit any unpaid amounts withheld from that overpayment for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2757, Pub. L. 102-484, Subtitle G, 10 U.S.C. 1143 note)

(e) *Waivers of overpayments.* VA may waive any overpayment established under this section, in whole or in part, as provided by §§ 1.955 through 1.970 of this chapter. Any amount withheld for the purpose of making a lump-sum incentive payment forfeited under this section is not subject to waiver.

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(4), 10 U.S.C. 1143 note)

(f) *Recovery of overpayments.* (1) Any overpayments referred to in paragraph (a), (b), (c) or (d) of this section may be recovered in the same manner as any other debt due the United States.

(2) To the extent that an individual and employer are found liable to the United States under this section for the same overpayment, they will be held jointly and severally liable.

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4487, 10 U.S.C. 1143 note)

(g) *Disagreements concerning overpayments.* (1) If an employer disagrees with a decision of a Director of a VA facility to hold the employer liable for all or part of an overpayment, the employer, within 60 days after receipt of notice of the decision, may ask that the decision be reviewed by the Director, Education Service.

(2) A review by the Director, Education Service, of an overpayment liability decision of the Director of the VA field facility will be based upon evidence of record when the original decision not to approve a program was made. It will not be *de novo* in nature and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(3) If the eligible person is held liable for all or part of an overpayment, he or she has the right of appeal to the Board of Veterans Appeals and to have a hearing under the same process as is provided in Part 19, Subpart B of this title.

(Authority: 38 U.S.C. 511(a))

§§ 21.4835—21.4839 [Reserved]

Counseling

§ 21.4840 Employment counseling services.

(a) *Eligibility.* An eligible person who meets the requirements of § 21.4810 to participate in the Service Members Occupational Conversion and Training Act program may ask VA to provide employment counseling services to assist him or her in selecting a suitable job training program under this subpart.

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(4), 10 U.S.C. 1143 note, 38 U.S.C. 3697A)

(b) *Purpose.* The purpose of this counseling is to assist the eligible person to select an employment objective likely to provide satisfactory employment opportunities in light of his or her personal circumstances,

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(4), 10 U.S.C. 1143 note, 38 U.S.C. 3697A)

(c) *Additional counseling services.* To the extent feasible, VA and the Department of Labor may provide an additional program of counseling or other services designed to resolve difficulties that may be encountered by eligible persons during training under this subpart. If provided, the counseling or other services will be similar in nature to:

(1) Outreach and assistance (38 U.S.C. 7723, 7724), readjustment counseling (38 U.S.C. 1712A), and educational and vocational counseling (38 U.S.C. 3696A) offered by VA, and

(2) Disabled veterans' outreach (38 U.S.C. 4103A), employment assistance (38 U.S.C. 4104), and employment counseling, job training counseling, and other transitional assistance (10 U.S.C. 1144) services offered by the Department of Labor.

(Authority: 106 Stat. 2763, Pub. L. 102-484, sec. 4487(d)(4), 10 U.S.C. 1143 note, 38 U.S.C. 1712A, 3797A, 7723, 7724)

§§ 21.4841—21.4843 [Reserved]

§ 21.4844 Failure to cooperate.

VA will take no further action on an eligible person's application for assistance when he or she:

(a) Fails to report for his or her counseling appointment,

(b) Fails to cooperate in the counseling process.

(c) Does not complete counseling to the extent required under paragraph § 21.4840(c).

(Authority: 106 Stat. 2763, Pub. L. 102-16, Pub. L. 102-484)

§§ 21.4845—21.4849 [Reserved]

Administrative

§ 21.4850 Inspection of records.

(a) *Availability of records.* The records and accounts of employers pertaining to eligible persons on behalf of whom assistance shall be paid, as well as other records that VA determines to be necessary to ascertain compliance with the requirements established in §§ 21.4820 through 21.4832 shall be available at reasonable times for examination by authorized representatives of the Federal Government. If the records are maintained by an educational institution training the employee on behalf of the employer, the latter shall be responsible for insuring their availability.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(a), 10 U.S.C. 1143 note)

(b) *Retention of records.* (1) Except as provided in paragraph (b)(2) of this section, an employer must keep the records mentioned in paragraph (a) of this section intact and in good condition for at least three years following:

(i) The last month or quarter for which the employer received a periodic payment on behalf of the eligible person as described in § 21.4832(a), or

(ii) The date on which VA paid the employer a lump-sum incentive payment provided that the employer received such a payment on behalf of the eligible person.

(2) Retention of records for a period longer than that described in paragraph (b)(1) of this section is not required unless the employer receives a written request from the General Accounting Office or VA not later than 30 days before the end of the 3-year period.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(a), 10 U.S.C. 1143 note)

§ 21.4851 [Reserved]

§ 21.4852 Monitoring and investigations.

(a) *Monitoring and investigations.* VA with the assistance of the Department of Labor may determine compliance with the provisions of §§ 21.4820 through 21.4832 by:

(1) Monitoring employers and eligible persons participating in job training programs,

(2) Investigating any matter necessary to determine compliance, and

(3) Requiring the submission of information deemed necessary by the Secretary of Veterans Affairs or by the Secretary of Labor before, during or after training.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(b), (c) and (d), 10 U.S.C. 1143 note)

(b) *Scope of investigations.* VA, with the assistance of the Department of Labor will carry out the monitoring and investigative functions contained in paragraph (a) of this section by:

(1) Examining records (including making certified copies of records),

(2) Questioning employees, and

(3) Entering into any premises or onto any site where:

(i) Any part of the job training program is conducted, or

(ii) Any of the employer's records are kept.

(Authority: 106 Stat. 2765, Pub. L. 102-484, sec. 4491(b), (c) and (d), 10 U.S.C. 1143 note)

§ 21.4853 [Reserved]

§ 21.4854 Delegation of authority to the Under Secretary for Benefits.

Authority is delegated by the Secretary to the Under Secretary for Benefits of VA or his or her designee to enter into such agreements with the Departments of Defense and Labor or either of those, as may be necessary to implement the Service Members Occupational Conversion and Training Act.

(Authority: 38 U.S.C. 512)

§ 21.4855 [Reserved]

§ 21.4856 Delegation of authority to the Veterans Benefits Administration.

In a Memorandum of Agreement among the Departments of Defense, Veterans Affairs, and Labor, the Secretary was designated as the implementing official for the Service Members Occupational Conversion and Training Act. In § 2.101 of this title the Secretary has delegated authority given to the Secretary in the Memorandum to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by him or her, to make findings and decisions under the Service Members Occupational Conversion and Training Act and the applicable regulation, precedents and instructions relating to programs authorized by §§ 21.4800 through 21.4852 of this part.

(Authority: 38 U.S.C. 512)

[FR Doc. 95-2229 Filed 1-30-95; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Revisions to Weight and Preparation Standards for Barcoded Letter Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This amends the final rule published on December 22, 1994, to detail the rate applicable to pieces that cannot qualify for a Barcoded First-Class rate because of presort. Basically, this amendment allows such pieces to qualify for the Nonpresorted ZIP+4 rate on an exceptional basis.

EFFECTIVE DATE: January 16, 1995.

FOR FURTHER INFORMATION CONTACT: Anthony M. Pajunas, (202) 268-3669.

SUPPLEMENTARY INFORMATION: On December 22, 1994, the Postal Service published in the **Federal Register** (59 FR 65967-65971) a final rule to amend the Domestic Mail Manual (DMM) standards for the physical characteristics of automation-compatible barcoded letter-size mail. For a period of up to 1 year, beginning January 16, 1995, the Postal Service will conduct a test of live barcoded bulk third-class regular rate letter mail weighing between 3.0 and 3.3071 ounces, and barcoded bulk third-class nonprofit rate, First-Class and second-class letter mail weighing between 3.0 and 3.3376 ounces.

The revised DMM standards implemented for this test of "heavy letter mail" included that each such mailpiece be part of a mailing that is 100 percent delivery point barcoded; have the barcode in the address block; be in an envelope that has no open windows; and not be bound or have stiff enclosures.

Although Barcoded rates would apply to all pieces in such mailings at second- and third-class rates (level A, B3, and B5 Barcoded second-class rates, and basic, 3-, and 5-digit Barcoded third-class rates), pieces in the residual portion of First-Class mailings (i.e., those that could not qualify for the 3- or 5-digit Barcoded rates because of presort). Accordingly, under the final rule, these First-Class heavy letter mailpieces would not be eligible for another "basic" Barcoded rate. (The First-Class nonpresorted Barcoded rates are available only for flats and cards.)

The amendment to the final rule appearing below corrects this oversight by adding language in the DMM that makes it clear that the rate applicable to such pieces is the nonpresorted ZIP+4 rate, the same rate available to other barcoded letter-size First-Class Mail in