

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 323**

[DoD-2006-OS-0022]

RIN 0790-A100

**Defense Logistic Agency Privacy Program****AGENCY:** Department of Defense.**ACTION:** Amendment of final rule.

**SUMMARY:** The Defense Logistic Agency recently altered an existing Privacy Act system of records notice identified as S500.60, entitled "DLA Hotline Program." As part of the alteration, the system identifier and the system name were revised; therefore, the existing exemption rule for this particular system of records is being amended to reflect the new system identifier and the new system name. No other changes have been made to the existing rule.

**DATES:** *Effective Date:* March 26, 2007.**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.**SUPPLEMENTARY INFORMATION:****Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 323 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

**Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)**

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility

Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, "Federalism"**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 323 Privacy.**

■ Accordingly, 32 CFR part 323 is amended as follows:

**PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM**

■ 1. The authority citation for 32 CFR Part 323 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. In Appendix H to part 323, the headings of paragraphs e. and e.1., are revised to read as follows:

**Appendix H to Part 323, DLA Exemption Rules**

\* \* \* \* \*

e. ID: S500.60 (Specific exemption).

1. System name: DLA Hotline Program Records. \* \* \*

\* \* \* \* \*

March 16, 2007.

**L.M. Bynum,***Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. E7-5233 Filed 3-23-07; 8:45 am]

**BILLING CODE 5001-06-P****DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 21**

RIN 2900-AM25

**Vocational Rehabilitation and Employment Program—Initial Evaluations****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) adopts as a final rule in this document a proposed rule concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. This final rule is intended to reflect changes in law regarding initial evaluations, to reflect VA's interpretation of applicable law and its determinations of procedures appropriate for use in the initial evaluation, and to improve readability.

**DATES:** *Effective Date:* This final rule is effective April 25, 2007.**FOR FURTHER INFORMATION CONTACT:**

Mark Hawkins, Vocational Rehabilitation Counselor, (202) 273-6923, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on August 28, 2006 (71 FR 50872), VA proposed to amend the regulations in 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. In this document, VA is amending those Vocational Rehabilitation regulations to reflect changes in law regarding initial evaluations and VA's interpretation of applicable law and its determination of procedures appropriate for use in the initial evaluation. We are also making changes in those regulations to improve readability. In addition, we are making a nonsubstantive conforming change in 38 CFR Part 21, Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects.

We provided a 60-day comment period that ended October 27, 2006. No comments were received. Based on the rationale set forth in the proposed rule and this document, we now adopt the provisions of the proposed rule as a final rule without change.

**Paperwork Reduction Act of 1995**

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

provisions of §§ 21.50 through 21.52 under OMB control number 2900-0092 (entitled "Counseling Record—Personal Information").

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, 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.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to not be a significant regulatory action under Executive Order 12866.

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule will not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to

5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

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

#### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 20, 2007.

#### Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

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

#### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

##### Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

■ 1. Revise the authority citation for part 21, subpart A to read as follows:

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

■ 2. Revise § 21.50 to read as follows:

##### § 21.50 Initial evaluation.

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

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

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

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

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

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

(2) Whether an individual with an employment handicap has a serious

employment handicap as determined in accordance with this section and § 21.52; and

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

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

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

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

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

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

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

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

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

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

(d) *Need for cooperation in evaluation.* The individual's cooperation is essential during the initial evaluation. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will discontinue the initial evaluation. A redetermination of entitlement as described in § 21.58 will be made in the case of an individual whose program has been discontinued due to failure to cooperate.

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

■ 3. Revise § 21.51 to read as follows:

##### § 21.51 Determining employment handicap.

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

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

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

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

(c) *Contribution of the service-connected disability(ies) to the individual's overall vocational impairment.* (1) Except as provided in paragraph (c)(3) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap.

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

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

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

■ 4. Revise § 21.52 to read as follows:

**§ 21.52 Determining serious employment handicap.**

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

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

(2) *Effects of significant impairment not overcome.* The individual has not

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

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

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

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

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

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

- (1) Number of disabling conditions;
- (2) Severity of disabling condition(s);
- (3) Existence of neuropsychiatric condition(s);
- (4) Adequacy of education or training for suitable employment;
- (5) Number, length, and frequency of periods of unemployment or underemployment;
- (6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;
- (7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;

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

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

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

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

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

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

**§ 21.8032 [Amended].**

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

[FR Doc. E7-5432 Filed 3-23-07; 8:45 am]

**BILLING CODE 8320-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R06-OAR-2006-0386; FRL-8291-6]

**Approval and Promulgation of Implementation Plans; Texas; El Paso County Carbon Monoxide Redesignation to Attainment, and Approval of Maintenance Plan**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On January 23, 2007 (72 FR 2776), EPA published a direct final rule approving the redesignation of the El Paso, Texas, carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and the CO maintenance plan with its associated Motor Vehicle Emission Budgets (MVEBs). EPA also found the MVEBs adequate. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received relevant adverse comment by February 22, 2007, EPA would publish a timely withdrawal in the **Federal Register**. EPA