

One commenter asserted that under § 17.133(a) of the proposed rule, the examples provided are, indeed, examples and are not all inclusive. We agree. We have revised the text to more clearly emphasize that, unless other reconsideration procedures apply, the reconsideration procedures of this rule apply to VHA decisions that are appealable to the Board of Veterans' Appeals. Also, we have clarified the procedures to state that they do not apply to decisions made outside VHA, such as rating decisions made by the Veterans Benefits Administration and adopted by VHA for decisionmaking.

#### **Paperwork Reduction Act of 1995**

The Office of Management and Budget (OMB) has cleared the information collection and has assigned an OMB control number 2900-0600.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that the adoption of this final rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Although the adoption of the final rule could affect small businesses, it would not have a significant impact on any small business. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance program numbers.

#### **List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 28, 1999.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 17 is amended to read as follows:

#### **PART 17—MEDICAL**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and § 17.133 are added to read as follows:

#### **Reconsideration of Denied Claims**

##### **§ 17.133 Procedures.**

(a) *Scope.* This section sets forth reconsideration procedures regarding claims for benefits administered by the Veterans Health Administration (VHA). These procedures apply to claims for VHA benefits regarding decisions that are appealable to the Board of Veterans' Appeals (e.g., reimbursement for non-VA care not authorized in advance, reimbursement for beneficiary travel expenses, reimbursement for home improvements or structural alterations, etc.). These procedures do not apply when other regulations providing reconsideration procedures do apply (this includes CHAMPVA (38 CFR 17.270 through 17.278) and spina bifida (38 CFR 17.904) and any other regulations that contain reconsideration procedures). Also, these procedures do not apply to decisions made outside of VHA, such as decisions made by the Veterans Benefits Administration and adopted by VHA for decisionmaking. These procedures are not mandatory, and a claimant may choose to appeal the denied claim to the Board of Veterans' Appeals pursuant to 38 U.S.C. 7105 without utilizing the provisions of this section. Submitting a request for reconsideration shall constitute a notice of disagreement for purposes of filing a timely notice of disagreement under 38 U.S.C. 7105(b).

(b) *Process.* An individual who disagrees with the initial decision denying the claim in whole or in part may obtain reconsideration under this section by submitting a reconsideration request in writing to the Director of the healthcare facility of jurisdiction within one year of the date of the initial decision. The reconsideration decision will be made by the immediate supervisor of the initial VA decision-maker. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for the dispute will be returned to the sender without further consideration. The request for reconsideration may include a request for a meeting with the immediate supervisor of the initial VA decision-maker, the claimant, and the claimant's representative (if the claimant wishes to have a representative present). Such a meeting shall only be for the purpose of discussing the issues and shall not include formal procedures

(e.g., presentation, cross-examination of witnesses, etc.). The meeting will be taped and transcribed by VA if requested by the claimant and a copy of the transcription shall be provided to the claimant. After reviewing the matter, the immediate supervisor of the initial VA decision-maker shall issue a written decision that affirms, reverses, or modifies the initial decision.

**Note to § 17.133:** The final decision of the immediate supervisor of the initial VA decision-maker will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0600)

(Authority: 38 U.S.C. 511, 38 U.S.C. 7105)

[FR Doc. 99-21249 Filed 8-16-99; 8:45 am]

BILLING CODE 8320-01-P

#### **DEPARTMENT OF DEFENSE**

#### **DEPARTMENT OF VETERANS AFFAIRS**

#### **38 CFR Part 21**

#### **RIN 2900-AJ40**

#### **Veterans Education: Increased Allowances for the Educational Assistance Test Program**

**AGENCIES:** Department of Defense and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1998-99 academic year should be increased by 5% over the rates payable for the 1997-98 academic year. The regulations dealing with these rates are amended accordingly.

**DATES:** This rule is effective August 17, 1999.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, (202) 273-7187.

**SUPPLEMENTARY INFORMATION:** The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the

amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 5% in the 1997-98 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 5% increase in the rates payable in the 1998-99 academic year. These changes to § 21.5820 include removing provisions for adjustments to compensate for rounding, which were not applicable because this year the resulting numerical values did not involve rounding. Other nonsubstantive changes are made for the purpose of clarification.

#### Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary and contrary to the public interest and there is good cause for dispensing with a 30-day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification.

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final 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 final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

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

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense

Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, 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 10, 1999.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

Approved: May 19, 1999.

**Curtis B. Taylor,**

*Colonel U.S. Army, Principal Director, (Military Personnel Policy), Department of Defense.*

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below.

### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

#### Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H, is revised to read as follows:

**Authority:** 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96-342, 94 Stat. 1111-1114, unless otherwise noted.

2. In § 21.5820, paragraph (b)(1) is amended by removing "1997-98" and adding, in its place, "1998-99" and by removing "\$3,103" and adding, in its place, "\$3,258"; paragraph (b)(2)(ii) introductory text is amended by removing "1997-98" and adding, in its place, "1998-99"; paragraph (b)(2)(ii)(A) is amended by removing "\$344.78" and adding, in its place, "\$362" and by removing "\$172.39" and adding, in its place, "\$181"; paragraph (b)(2)(ii)(B) is amended by removing "\$11.49" and adding, in its place, "\$12.07" and by removing "\$5.75" and adding, in its place, "\$6.03"; paragraph (b)(3)(ii) introductory text is amended by removing "1997-98" and adding, in its place, "1998-99"; paragraph (b)(3)(ii)(A) is amended by removing "\$344.78" and adding, in its place, "\$362" and by removing "\$172.39" and adding, in its place, "\$181"; paragraph (b)(3)(ii)(B) is amended by removing "\$11.49" and adding, in its place, "\$12.07" and by removing "\$5.75" and adding, in its place, "\$6.03"; and paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C) are revised to read as follows:

#### § 21.5820 Educational assistance.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(C) Adding the two results.

(3) \* \* \*

(ii) \* \* \*

(C) Adding the two results; and

\* \* \* \* \*

#### § 21.5822 [Amended]

3. In § 21.5822, paragraph (a) introductory text is amended by removing "payable to" and adding, in its place, "payable to"; paragraph (b)(1)(i) is amended by removing "\$773" and adding, in its place, "\$812", by removing "1997-98" and adding, in its place, "1998-99", and by removing "year," and adding, in its place; "year."; paragraph (b)(1)(ii) is amended by removing "\$386.50" and adding, in its place, "\$406", by removing "1997-98" and adding, in its place, "1998-99", and by removing "year," and adding, in its place, "year."; paragraph (b)(2)(i) is amended by removing "1997-98" and adding, in its place, "1998-99", by removing "\$773" and adding, in its place, "\$812", and by removing "day:" and adding, in its place, "day."; and paragraph (b)(2)(ii) is amended by removing "1997-98" and adding, in its place, "1998-99", by removing "\$386.50" and adding, in its place, "\$406", and by removing "day;" and adding, in its place, "day.".

[FR Doc. 99-21248 Filed 8-16-99; 8:45 am]

BILLING CODE 8320-01-P

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 981014259-8312-02; I.D. 081099A]

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota harvest.

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations