

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AL44

Survivors' and Dependents' Educational Assistance Program Period of Eligibility for Eligible Children and Other Miscellaneous Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing the Survivors' and Dependents' Educational Assistance (DEA) program to implement statutory provisions in the Veterans Benefits and Health Care Improvement Act of 2000, the Veterans' Survivor Benefits Improvements Act of 2001, the Veterans Education and Benefits Expansion Act of 2001, the Veterans Benefits Act of 2002, and the Veterans Benefits Act of 2003. As a result of these statutory provisions, certain eligible children may choose the beginning date of their period of eligibility and eligible children who serve on active duty or in the National Guard may receive extensions to the ending date of their period of eligibility. These statutory provisions also allow VA to consider certain qualifying beneficiaries' original claims as having been filed retroactively to their eligibility dates. In addition, they allow certain eligible DEA beneficiaries to be paid for preparatory courses for tests required or used for admission to an institution of higher education or a graduate school. Further, these provisions permit eligible children to receive benefits for such preparatory courses even if the courses are taken before their 18th birthday. This document implements these provisions of law by amending pertinent regulations.

DATES: *Effective Date:* This final rule is effective May 28, 2008.

Applicability Date: Amendments in this final rule are applied retroactively to conform to the effective date of statutory provisions. For more information concerning the dates of applicability, see the supplementary information section of this notice.

FOR FURTHER INFORMATION CONTACT: Diane M. Walters, Management and Program Analyst, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (225C), 810 Vermont Ave. NW., Washington DC 20420, (202) 461-9849. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document amends 38 CFR 21.3021, 21.3041, and 21.4131 to include provisions implementing the Veterans Benefits and Health Care Improvement Act of 2000, the Veterans' Survivor Benefits Improvements Act of 2001, the Veterans Education and Benefits Expansion Act of 2001, the Veterans Benefits Act of 2002, and the Veterans Benefits Act of 2003. These provisions allow certain beneficiaries under the Survivors' and Dependents' Educational Assistance (DEA) program to elect the beginning date of their period of eligibility, to receive an adjusted effective date of payment by considering their claim to have been filed on their eligibility date, to extend their period of eligibility for qualifying periods of active duty service or National Guard duty, and to use DEA benefits for certain preparatory courses. This document also makes clarifying and technical revisions to these regulations, as well as to 38 CFR 21.3040 and 21.3135.

For consistency with other regulations, VA is amending § 21.3135(g) to clarify in paragraph (g)(2) that VA considers a stepchild to be a member of the veteran's household even when the stepchild is temporarily not living with the veteran, so long as the actions and intentions of the stepchild and veteran establish that normal family ties have been maintained during the temporary absence. In addition, the information relating to when a stepchild loses his or her eligibility if the stepchild is no longer a member of the veteran's household has been removed from existing paragraph (d) of § 21.3041 and placed more appropriately in paragraph (g) of § 21.3135 concerning reduction or discontinuance dates for awards of educational assistance allowance.

VA is defining the acronym "P&T" in 38 CFR 21.3021(p) (for purposes of 38 CFR 21, subpart C) as variously meaning permanent and total "disability," permanently and totally "disabled," or permanent and total "rating," when any of these terms are used in reference to a veteran with a service-connected disability determined by VA to be total for the purposes of VA disability compensation where the impairment is reasonably certain to continue throughout the life of the disabled veteran. Other definitions added to § 21.3021 simply restate definitions provided by statute.

I. Children's DEA Period of Eligibility Beginning Date (Pub. L. 106-419, 107-14, and 107-330)

Under 38 U.S.C. 3512(a), an eligible child's period of eligibility generally

begins when the child attains age 18, or on the successful completion of the child's secondary schooling, whichever first occurs, and ends on the child's 26th birthday. Prior to the enactment of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106-419), the beginning date of an eligible child's period of eligibility for DEA benefits was defined by statute. There were no circumstances in which the child could elect a beginning date. Effective November 1, 2000, Congress amended 38 U.S.C. 3512(a)(3) to allow certain eligible children to have an opportunity to elect the beginning date of their period of eligibility. The Veterans' Survivor Benefits Improvements Act of 2001 (Pub. L. 107-14) clarified within what time period these children are permitted to elect their beginning date, and the Veterans Benefits Act of 2002 (Pub. L. 107-330) clarified the dates the child could elect and also instituted a default date if the child did not make an election within the prescribed time period. Both of these clarifying amendments to 38 U.S.C. 3512(a)(3) are effective retroactive to November 1, 2000. As provided in 38 U.S.C. 3512(a)(3), a child may elect his or her beginning date if—

- The service-connected death of the veteran-parent occurs after the child's 18th birthday and before the child's 26th birthday; or
- The effective date of the veteran-parent's P&T disability rating, or the notification to the veteran of such rating, is after the child's 18th birthday and before the child's 26th birthday.

Under 38 U.S.C. 3512(a)(3), VA is required to provide written notice to children who are entitled to elect the beginning date of their period of eligibility. The written notice must advise eligible children of their right to choose their beginning date and inform them that the deadline to make an election is 60 days from the date of VA's written notice. A child whose eligibility is based on the veteran-parent's death may elect as a beginning date any date between the date of the veteran's death and the date of VA's decision that the death was service-connected. A child whose eligibility is based on the veteran's P&T disability may elect the effective date of the P&T disability rating, the date of notification to the veteran of such rating, or any date in between those two dates. We have amended § 21.3041 to include a new paragraph (i), which describes VA's statutory duty to notify children of these rights. As required by the statute, VA will accept the child's election if it is received no later than 60 days from the date of VA's written notice to the child

and if it is in accordance with the choices VA identified in that notice as permissible under the statute. Pursuant to revised § 21.3041(a)(2) and (b)(2), if VA approves the date selected by the child, the child's period of eligibility will be extended beyond the child's 26th birthday to allow for a full 8 years of eligibility after the date selected. Under § 21.3041(i)(2), if an eligible child does not elect a beginning date within 60 days from the date of VA's written notice, the beginning date of his or her period of eligibility will default (in accordance with statutory provisions) to either the date of VA's decision that the veteran's death is service-connected or the date of VA's P&T rating decision, whichever is applicable.

To permit an otherwise eligible and entitled child an immediate award of educational assistance under 38 U.S.C. chapter 35, we added § 21.3041(i)(3) to provide that VA will award benefits by selecting as a beginning date the date of VA's decision that the—

- Veteran has a P&T disability in the case of a child whose eligibility is derived from a veteran with a P&T disability; or
- Veteran's death is service-connected in the case of a child whose eligibility is derived due to the veteran's death.

This procedure allows us to award benefits while concurrently notifying the child that he or she may elect another beginning date as described in the preceding paragraphs and specified in the written notice to the child. VA is doing this to expedite payment to eligible children already enrolled at an educational institution and incurring educational expenses. The beginning dates we select are the statutorily required dates when the child does not elect a beginning date within 60 days of our written notice informing the child that he or she may elect the beginning date. If the child does elect a beginning date within 60 days after our written notice, we will adjust the beginning date in accordance with the child's election.

II. Extended Period of Eligibility for Certain Eligible Children Ordered to Active Duty or Full-Time National Guard Duty After September 10, 2001 (Pub. L. 107–103 and 108–183)

In this final rule, 38 CFR 21.3041(h) implements 38 U.S.C. 3512(h) as amended by the Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107–103) and the Veterans Benefits Act of 2003 (Pub. L. 108–183). These statutory provisions are effective November 1, 2000, and apply to educational assistance under DEA for months after October 2000. The

amendments provide that an eligible child's period of eligibility will be extended for the length of time equal in length to the time the child, during the period of eligibility otherwise applicable to such child, serves on active duty or is involuntarily ordered to full-time National Guard duty, plus an additional 4 months for each qualifying period of active duty service. This extension applies to children who are ordered to active duty after September 10, 2001, under sections 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or who are involuntarily ordered to full-time National Guard duty after September 10, 2001, under 32 U.S.C 502(f).

III. Adjusted Effective Date for Certain Eligible Persons (Pub. L. 106–419)

Based on the provisions in 38 U.S.C. 5113, as amended by the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419), 38 CFR 21.4131(e) is amended to authorize an adjusted effective date for an award of DEA benefits when specific conditions exist. Generally, educational assistance cannot be awarded retroactively for any period earlier than 1 year prior to the date VA receives an original claim; however, this amendment provides for an exception effective as of November 1, 2000. If the following conditions are met, VA may consider the individual's original DEA application as having been filed on his or her eligibility date for the purpose of awarding retroactive benefits:

- An individual's DEA eligibility date is more than 1 year before the date of the initial rating decision establishing DEA eligibility;
- VA receives the individual's original claim within 1 year of the date VA made the rating decision establishing DEA eligibility;
- The individual claims educational assistance for pursuit of an approved program during a period that is more than 1 year prior to the date VA receives his or her original claim; and
- The original application is received by VA on or after November 1, 2000, or is pending action or available remedies as of that date.

IV. DEA Eligible Persons May Receive DEA Benefits for Preparatory Courses for Admission to Institutions of Higher Education and for Graduate School Entrance Exams (Pub. L. 106–419)

Effective November 1, 2000, the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419) amended the definition of “program of education” in 38 U.S.C. 3501(a)(5) to permit DEA eligible

persons to use DEA benefits for preparatory courses for admission to institutions of higher education and for graduate school entrance exams. In addition, the Act amended 38 U.S.C. 3512 to provide that eligible children may pursue these types of courses before their 18th birthday. This document amends the definition of “program of education” in 38 CFR 21.3021(h) to include preparatory courses for admission to institutions of higher education and for graduate school entrance exams as authorized programs of education for DEA eligible persons. The provision to permit eligible children under 18 to pursue these courses is included in 38 CFR 21.3041(a)(1)(ii) and (b)(1)(ii).

V. Technical Amendment

Current 38 CFR 21.3041(d)(3) prescribes a modified period of eligibility ending date for a child who served on active duty in the Armed Forces. Specifically, it provides that such a child's ending date is 8 years after the child's “first unconditional discharge or release” from duty in the Armed Forces. However, the governing statute, 38 U.S.C. 3512(a)(5), provides that the 8-year period of eligibility shall end after the child's “first discharge or release” from duty with the Armed Forces. The definition of “discharge or release” in 38 U.S.C. 101(18), as amended by Public Law 95–126 on October 8, 1977, makes retaining the word “unconditional” before “discharge or release” unnecessary. Thus, to make the current regulation conform to the statute, we have removed the word “unconditional” from “unconditional discharge or release” in this provision, which is now located in § 21.3041(c). We also removed 38 CFR 21.3042(c) because the paragraph is not necessary if the word “unconditional” is removed from “unconditional discharge or release.”

Administrative Procedure Act

Substantive changes made by this final rule merely restate or interpret statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and a delayed effective date under the provisions of 5 U.S.C. 553.

Paperwork Reduction Act of 1995

Provisions in 38 CFR 21.3041(i)(1) constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Office of Management and Budget (OMB) approved this collection of information under control number 2900–0703.

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 final rule will have no such effect on State, local, and tribal governments, or 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 planned or taken 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, economic, legal, and policy implications of this final rule have been examined and it has been determined that it is not a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies 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 primarily affects only individuals. This rule reflects the statutory expansion of Survivors' and Dependents' Educational Assistance program eligibility by:

- Permitting certain eligible children to elect the beginning date of their DEA period of eligibility;

- Extending the period of eligibility for certain eligible children ordered to active duty or full-time National Guard duty;
- Allowing certain beneficiaries to receive DEA benefits retroactive to their eligibility date; and
- Allowing eligible beneficiaries to be paid for preparatory courses for tests required or used for admission to institutions of higher education and graduate schools.

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. Pursuant to 5 U.S.C. 603 and 604, an additional reason that those regulatory flexibility analyses requirements are not applicable to this final rule is that no notice of proposed rulemaking was required by law for this rulemaking.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance number and title for the program affected by this final rule is 64.117, Survivors and Dependents Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interests, Defense Department, 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: May 20, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

- For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 (subparts C and D) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

- 1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

- 2. Amend § 21.3021 by:

- a. Adding an introductory paragraph.

- b. Revising paragraph (h).

- c. Adding new paragraphs (m), (n), (o), (p), (q), (r), and (s).

The revision and additions read as follows:

§ 21.3021 Definitions.

For the purposes of subpart C and the payment of basic educational assistance under 38 U.S.C. chapter 35, the following definitions apply.

* * * * *

(h) *Program of education.* The term *program of education* means any curriculum or any combination of unit courses or subjects pursued at an educational institution that is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. The term *program of education* also includes—

(1) A preparatory course for a test that is required or used for admission to an institution of higher education;

(2) A preparatory course for a test that is required or used for admission to a graduate school; and

(3) A licensing or certification test, the successful completion of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided such tests and the licensing or credentialing organizations or entities that offer such tests are approved by VA.

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

* * * * *

(m) *Institution of higher education.* The term *institution of higher education* has the same meaning as provided in § 21.7020(b)(45).

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

(n) *Graduate school.* The term *graduate school* has the same meaning as provided in § 21.7020(b)(46).

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

(o) *Eligibility date.* The term *eligibility date* means the date on which an individual becomes an eligible person (as defined in paragraph (a) of this section).

(Authority: 38 U.S.C. 5113)

(p) *P&T* means permanent and total "disability," permanently and totally "disabled," or permanent and total "rating," when any of these terms are used in reference to a veteran with a service-connected disability rating determined by VA to be total for the purposes of VA disability compensation where the impairment is reasonably certain to continue throughout the life of the disabled veteran.

(Authority: 38 U.S.C. 3501(a)(8))

(q) *Initial rating decision.* The term *initial rating decision* means, with respect to an eligible spouse or child, a decision made by VA that establishes for the person from whom such eligibility is derived—

(1) Service connection for the cause of the person's death;

(2) A service connected P&T disability; or

(3) For a member of the Armed Forces, a P&T disability incurred or aggravated in the line of duty in the active military, naval, or air service if the member is hospitalized or receiving outpatient medical care, services, or treatment, and is likely to be discharged or released from such service for such disability.

(Authority: 38 U.S.C. 5113)

(r) *Effective date of the P&T rating.* The term *effective date of the P&T rating* means the date from which VA considers that the veteran's P&T disability commenced for purposes of VA benefits, as determined by the initial rating decision.

(Authority: 38 U.S.C. 3512(d))

(s) *First finds.* The term *first finds* means the effective date of the P&T rating or the date VA first notifies the veteran of that rating, whichever is more advantageous to the child.

(Authority: 38 U.S.C. 3512(d))

* * * * *

§ 21.3040 [Amended]

■ 3. Amend paragraph (d) of § 21.3040 by removing “§ 21.3041(e)(2).” and adding, in its place, “§ 21.3041(g)(2).”

■ 4. Revise § 21.3041 to read as follows:

§ 21.3041 Periods of eligibility; child.

(a) *Eligibility derived from a veteran with a P&T disability.* An eligible child's period of eligibility generally begins on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs. The period of eligibility generally ends on the earlier of the date of the child's 26th birthday or the date the veteran is no longer P&T disabled. VA will extend an eligible child's period of eligibility for the reasons listed in paragraphs (g) and (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible child after his or her 18th birthday and before his or her 26th birthday. If the veteran dies while the P&T rating is in effect and before the eligible child's 26th birthday, see paragraph (b) of this section to determine the new period of eligibility.

Exceptions to this general period of eligibility are as follows:

(1) *Period of eligibility may begin before the child's 18th birthday.* The period of eligibility may begin before the eligible child's 18th birthday for one of the reasons in paragraphs (a)(1)(i), (ii), or (iii) of this section. The period of eligibility ends on the earlier of the date the veteran is no longer rated P&T disabled or the date of the child's 26th birthday. See § 21.3135(h) if the veteran is no longer rated P&T disabled.

(i) The child completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b));

(ii) The child is pursuing a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school; or

(iii) The child is beyond his or her 14th birthday and has a physical or mental handicap (see § 21.3040(a)).

(Authority: 38 U.S.C. 3512(a))

(2) *Period of eligibility may begin after the child's 18th birthday.* A child's period of eligibility may begin after his or her 18th birthday if VA first finds the veteran has a P&T disability after the child's 18th birthday but before the child's 26th birthday. See paragraph (e) of this section if an adopted child becomes eligible through qualifying as the veteran's child after VA first finds the veteran has a P&T disability. See paragraph (f) of this section if a stepchild becomes eligible through qualifying as the veteran's child after VA first finds the veteran is P&T disabled.

(i) *Beginning date if the effective date of the initial P&T rating is before the child's 18th birthday and notification to the veteran occurs after the child's 18th birthday and before his or her 26th birthday.* If the effective date of the P&T rating is before the child's 18th birthday, and the date of notification to the veteran occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) If the child elects a beginning date that is before his or her 18th birthday, the period of eligibility ends the earlier of the date that the veteran is no longer rated P&T disabled, or the date of the child's 26th birthday. If the child elects a beginning date after his or her 18th birthday, the period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no

longer rated P&T disabled.) The child can elect as a beginning date either—

(A) The date of his or her 18th birthday;

(B) The date he or she completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b)), if that date is on or after the effective date of the P&T rating and before his or her 18th birthday;

(C) The date he or she begins a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school, if that date is on or after the effective date of the P&T rating and before the date of notification to the veteran of the P&T rating. If the child elects the beginning date of enrollment in such course, he or she may not receive educational assistance for pursuit of secondary schooling unless secondary school pursuit is otherwise authorized (see § 21.3040);

(D) The date VA notifies the veteran of the P&T rating; or

(E) Any date between the applicable date described in paragraphs (a)(2)(i)(A) through (C) of this section and the date in paragraph (a)(2)(i)(D) of this section.

(ii) *Beginning date if the effective date of the P&T rating is after the child's 18th birthday and before child's 26th birthday.* If the effective date of the P&T rating occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) The period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled, or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no longer rated P&T disabled.) The child can elect as a beginning date—

(A) The effective date of the P&T rating;

(B) The date VA notifies the veteran of the veteran's P&T rating; or

(C) Any date in between.

(Authority: 38 U.S.C. 3512)

(b) *Eligibility derived as the result of veteran's death.* An eligible child's period of eligibility begins on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs. The period of eligibility ends on the child's 26th birthday. VA will extend an eligible child's period of eligibility for reasons shown in paragraphs (g) and (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible child after his or her 18th birthday and before his

or her 26th birthday. Exceptions to this general period of eligibility are as follows:

(1) *Period of eligibility may begin before the child's 18th birthday.* The period of eligibility may begin before the eligible child's 18th birthday for one of the reasons in paragraphs (i), (ii), or (iii) of this paragraph. The ending date of the period of eligibility is the child's 26th birthday.

(i) The child completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b));

(ii) The child is pursuing a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school; or

(iii) The child is beyond his or her 14th birthday and has a physical or mental handicap (see § 21.3040(a)).

(Authority: 38 U.S.C. 3512(a))

(2) *Period of eligibility may begin after the child's 18th birthday.* If the veteran's death occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. The period of eligibility ends 8 years after the beginning date the child elects. See paragraph (i) of this section for election requirements. VA may extend the period of eligibility for one of the reasons shown in paragraph (g) or (h) of this section. See paragraph (c) of this section if the child serves in the Armed Forces as an eligible person after his or her 18th birthday and before his or her 26th birthday. The child can elect as a beginning date any date between the—

(i) Date of the veteran's death; or

(ii) Date of VA's decision that the veteran's death was service-connected.

(Authority: 38 U.S.C. 3512(a)(3))

(c) *Period of eligibility for a child who serves on duty in the Armed Forces as an eligible person.* If the child serves on duty in the Armed Forces as an eligible person (as defined in § 21.3021(a)(1)) after the child's 18th birthday and before the child's 26th birthday, the child is eligible for a modified ending date based on the provisions of this paragraph. Under the provisions of this paragraph, the period of eligibility ends 8 years after the date of the child's first discharge or release from such duty, or the child's 31st birthday, whichever is earlier. VA may extend the ending date for one of the reasons shown in paragraph (g) of this section. See paragraph (h) of this section if the child is ordered to active duty as a reservist.

(Authority: 38 U.S.C. 3512(a)(5))

(d) *Eligibility derived from a parent who is listed by the Armed Forces as missing in action, captured in the line of duty, or forcibly detained or interned in line of duty by a foreign government or power.* (1) If a child establishes eligibility through the provisions of § 21.3021(a)(1)(iv) after his or her 18th birthday but before his or her 26th birthday, the period of eligibility will end on the earliest of the following dates:

(i) When the parent is no longer listed as described in § 21.3021(a)(1)(iv);

(ii) Eight years after the date on which the child becomes eligible under such provisions; or

(iii) The child's 31st birthday.

(2) VA may extend the ending date for one of the reasons shown in paragraphs (g) or (h) of this section. See § 21.3135(i) if the child is enrolled in an educational institution and the child's ending date is based on paragraph (d)(1)(i) of this section. See paragraph (c) of this section if the child serves in the Armed Forces as an eligible person after his or her 18th birthday and before his or her 26th birthday.

(Authority: 38 U.S.C. 3512(a)(5))

(e) *Adopted child qualifies after VA first finds the veteran P&T disabled.* If an adopted child becomes eligible through qualifying as the veteran's child (see 38 CFR 3.57(c)) and the date the child so becomes eligible is after VA first finds the veteran is P&T disabled, the beginning date of eligibility is the date determined pursuant to paragraphs (a) through (d) of this section, but in no event before the date the adopted child qualifies as the veteran's child under § 3.57(c) of this chapter. The ending date is the child's 26th birthday. VA may extend the period of eligibility for one of the reasons in paragraph (g) or (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible person.

(Authority: 38 U.S.C. 3501)

(f) *Stepchild qualifies after VA first finds the veteran P&T disabled.* If a stepchild becomes eligible through qualifying as the veteran's child and a member of the veteran's household after VA first finds the veteran is P&T disabled, the beginning date of the period of eligibility is the date determined pursuant to paragraphs (a) through (d) of this section, but in no event before the date he or she becomes the veteran's stepchild and a member of the veteran's household. The ending date of the period of eligibility is the stepchild's 26th birthday. VA may extend the ending date for one of the reasons in paragraphs (g) or (h) of this

section. See paragraph (c) of this section for the ending date of the period of eligibility if the stepchild serves on active duty in the Armed Forces as an eligible person. See § 21.3135(g) for award discontinuance dates if the veteran and the stepchild's natural or adopted parent divorce or the stepchild ceases to be a member of the veteran's household.

(g) *Extensions to ending dates.* (1) If an eligible child suspends pursuit of his or her program due to conditions that VA determined were beyond the child's control, VA may extend the period of eligibility ending date (see § 21.3043). VA cannot grant an extension beyond age 31 to those children whose period of eligibility ending date (as determined under paragraphs (a) through (f) of this section) is subject to an age limitation.

(2) If an eligible child's period of eligibility ending date (as determined under paragraphs (a) through (f), or (h) of this section) occurs while the child is enrolled in an educational institution, VA may extend the period of eligibility (extensions may be made beyond age 31)—

(i) To the end of the quarter or semester, for a child enrolled in an educational institution that regularly operates on the quarter or semester system; or

(ii) To the end of the course, not to exceed 12 weeks, for a child who completed a major portion of a course while enrolled in an educational institution that operates under other than a quarter or semester system.

(3) If an eligible child's period of eligibility ending date (as determined under paragraphs (a) through (f), or (h) of this section) occurs while the child is pursuing training in a training establishment (as defined in § 21.4200(c)), VA cannot extend the ending date.

(Authority: 38 U.S.C. 3512(a)(7)(c)).

(h) Notwithstanding any other provision of this section, if during an eligible child's period of eligibility, as determined in paragraphs (a) through (g) of this section, but after September 10, 2001, an eligible child is ordered to active duty or involuntarily ordered to full-time National Guard duty VA will grant an extension of the child's period of eligibility. The extension will be equal to the length of the period served plus an additional 4 months for each qualifying period and applies if after September 10, 2001, the eligible child is—

(i) Ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, United States Code; or

(ii) Involuntarily ordered to full-time National Guard duty under section 502(f) of title 32, United States Code.

(Authority: 38 U.S.C. 3512(h))

(i) **Elections.** (1) VA must provide written notice to certain eligible children informing them of their right to elect the beginning date of their period of eligibility. The written notice must identify the beginning dates the child may choose from and must contain a statement that the child must make the election within 60 days of the date of the written notice. An eligible child may elect his or her beginning date if—

(i) The effective date of the P&T rating is before the child's 18th birthday, and date of the notification to the veteran from whom the child derives eligibility occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (a)(2)(i) of this section);

(ii) The effective date of the P&T rating, or the date of notification to the veteran from whom the child derives eligibility, occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (a)(2)(ii) of this section);

(iii) The veteran's death occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (b)(2) of this section);

(iv) The child makes such election within 60 days of VA's written notice to the child informing him or her of the right to elect his or her beginning date; and

(v) The child's election is in accordance with the choices VA identified in the written notice described in paragraph (i)(1) of this section.

(2) If the child does not elect a beginning date within 60 days of VA's written notice informing him or her of the right to elect a beginning date, the period of eligibility beginning date will be whichever of the following applies—

(i) The date of VA's decision that the veteran has a P&T disability; or

(ii) The date of VA's decision that the veteran's death is service-connected.

(3) If upon review of the child's application VA determines the child is entitled to and eligible for an immediate award of educational assistance under 38 U.S.C. chapter 35, VA will for purposes of such award—

(i) Consider the beginning date of the child's period of eligibility to be the date of VA's decision that the—

(A) Veteran has a P&T disability in the case of a child whose eligibility is derived from a veteran with a P&T disability; or

(B) Veteran's death is service-connected in the case of a child whose

eligibility is derived due to the veteran's death.

(ii) Notify the child of his or her right to elect a beginning date in accordance with paragraph (i)(1) of this section.

(iii) Adjust the child's beginning date based on the child's election if the child makes an election within 60 days after VA's written notice in accordance with paragraph (i)(1) of this section.

(Authority: 38 U.S.C. 3512(A)(3), (A)(4))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0703).

§ 21.3042 [Amended]

■ 5. Amend § 21.3042 by removing paragraph (c).

■ 6. Amend § 21.3135 by revising paragraph (g) to read as follows:

§ 21.3135 Reduction or discontinuance dates for awards of educational assistance allowance.

* * * * *

(g) *Eligible stepchild ceases to be a stepchild or stepchild ceases to be a member of the veteran's household.* (1) If the child ceases to be the veteran's stepchild because the veteran and the stepchild's natural or adoptive parent divorce, the eligibility ending date is as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's period of eligibility is the date on which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is training in a school organized on a term, semester, or quarter basis, the ending date of the child's eligibility is the last day of the term, semester, or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is training in a school not organized on a term, semester, or quarter basis, the ending date of the child's eligibility is the end of the course, or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier.

(2) If the stepchild ceases to be a member of the veteran's household, he or she is no longer eligible. For purposes of this paragraph, VA considers a stepchild a member of the veteran's household even when the stepchild is temporarily not living with the veteran, so long as the actions and intentions of the stepchild and veteran establish that normal family ties have been maintained during the temporary

absence. VA will determine the stepchild's eligibility ending date as follows:

(i) If the stepchild ceases to be a member of the veteran's household while the stepchild is not in training, the eligibility ending date is the date on which the stepchild ceases to be a member of the veteran's household.

(ii) If the stepchild ceases to be a member of the veteran's household while the stepchild is training in a school organized on a term, semester, or quarter basis, the ending date of the stepchild's eligibility is the last day of the term, semester, or quarter during which the stepchild ceases to be a member of the veteran's household.

(iii) If the stepchild ceases to be a member of the veteran's household while the stepchild is training in a school not organized on a term, semester, or quarter basis, the ending date of the stepchild's eligibility is the end of the course, or 12 weeks from the date on which the stepchild ceases to be a member of the veteran's household. See § 21.3041(f).

(Authority: 38 U.S.C. 101(4)(a), 3501)

* * * * *

Subpart D—Administration of Educational Assistance Programs

■ 7. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, and as noted in specific sections.

■ 8. Amend § 21.4131 in paragraph (d)(1)(i)(A) by removing “by § 21.3041(a) or (b) or by” and adding, in its place, “under § 21.3041 or under” and by adding paragraph (e) to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(e) *Adjusted effective date for award of educational assistance under 38 U.S.C. chapter 35 based on an original claim.* When determining the commencing date under § 21.4131(d)(1), the Secretary will consider an eligible person's application for Survivors' and Dependents' Educational Assistance under 38 U.S.C. chapter 35 as having been filed on his or her eligibility date if—

(1) The eligibility date is more than 1 year before the date of the initial rating decision that establishes either:

(i) The veteran's death is service-connected, or

(ii) The veteran has a P&T disability;

(2) The eligible person files his or her original application for benefits under

38 U.S.C. chapter 35 with VA within 1 year of the initial rating decision;

(3) The eligible person claims educational assistance for pursuit of an approved program of education for a period that is more than 1 year before the date VA receives his or her original claim;

(4) VA either:

(i) Received the original application on or after November 1, 2000; or

(ii) Received the original application and, as of November 1, 2000, either—

(A) Had not acted on it; or

(B) Had denied it in whole or in part, but the claimant remained entitled to pursue available administrative and judicial remedies as to the denial; and

(5) The eligible person would have been eligible to educational assistance under 38 U.S.C. chapter 35 if he or she had filed a claim on his or her eligibility date.

(Authority: 38 U.S.C. 5113; Pub. L. 106–419, 114 Stat. 1832)

* * * * *

[FR Doc. E8–11726 Filed 5–27–08; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0339; FRL–8363–7]

Fluopicolide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluopicolide in or on vegetable, root, subgroup 1A, except sugar beet and carrot; vegetable, leaves of root and tuber, group 2; vegetable, bulb, group 3–07; and Brassica, head and stem, subgroup 5A. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). In connection with a request for new uses of the active ingredient, fluopicolide, the Agency has also evaluated the toxicity and exposure databases for 2,6-dichlorobenzamide (BAM) which is a common metabolite/degradate of dichlobenil and fluopicolide. Further characterization of fluopicolide and its metabolite BAM, will be discussed herein of this document.

DATES: This regulation is effective May 28, 2008. Objections and requests for hearings must be received on or before July 28, 2008, and must be filed in accordance with the instructions

provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0339. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0339 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 28, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0339, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.