

or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by revising the definition of Rare Diseases as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Rare Diseases. TRICARE/CHAMPUS defines a rare disease as any disease or condition that has a prevalence of less than 200,000 persons in the United States.

* * * * *

Dated: July 17, 2009.

Patricia Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E9–17650 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD73

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The National Park Service (NPS) announces the reopening of the comment period on the proposed rules to manage winter visitation and recreational use in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway. The proposed rule was published in the **Federal Register** on November 5, 2008.

DATES: The comment period for the proposed rule published on November 5, 2008 (73 FR 65784), is reopened. Comments must be received by September 8, 2009.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD73 (RIN), by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190

All submissions received must include the agency name and RIN. For additional information see “Public Comments” under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Management Assistant’s Office, Headquarters Building, Yellowstone National Park, 307–344–2019 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The proposed rule was originally published with a 15-day comment period. The NPS has now determined that there is sufficient time to provide for an additional 45-day comment period to ensure that the public has had an opportunity for review and comment.

The NPS intends for final rules to be published on or before November 15, 2009, and to be in effect for the winter season commencing on December 15, 2009. Under the proposed rule, up to 318 snowmobiles would be allowed in Yellowstone each day.

The proposed regulatory provisions regarding the duration of this rule remain as published last year. The NPS intends that this rule would be in effect in Yellowstone National Park for the winter seasons ending with the 2010–2011 winter season. During the period this rule is in effect, the NPS will work with all interested parties to complete a new environmental impact statement using the best information available, a new long-term plan, and permanent regulations governing winter use in Yellowstone National Park. The proposed rules for Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway, if adopted, will be permanent for these two units.

If you have already commented on the rule, you do not have to resend your comment. We will consider it in preparing the final rule. We will also consider any comments that may have been received between the close of the comment period on November 20, 2008 and the re-opening of this comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 21, 2009.

Will Shafroth,

Principal Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks.

[FR Doc. E9–17778 Filed 7–23–09; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 17, and 21

RIN 2900–AN27

Herbicide Exposure and Veterans With Covered Service in Korea

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication, medical, and vocational rehabilitation and employment regulations to incorporate relevant provisions from the Veterans Benefits Act of 2003. Specifically, this document proposes to amend VA’s regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in their children. It also proposes to amend VA’s medical regulations by correcting the Health Administration Center’s hand-delivery address.

DATES: Comments must be received by VA on or before *September 22, 2009*.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Office of General Counsel (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “RIN 2900–AN27—Herbicide Exposure and Veterans with Covered Service in Korea.” Copies of comments received will be available for public inspection in the Office of General Counsel, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information on the provisions regarding monetary allowance, contact Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9725; for information on the provisions regarding health care benefits, contact Richard M. Trabert, Policy Management Division, VA Health Administration Center, P.O. Box 469065, Denver, CO 80246-9065, (303) 331-7549; for information regarding provisions on vocational rehabilitation and employment, contact Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9613. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Veterans Benefits Act of 2003, Public Law 108-183, amended sections of Title 38 of the United States Code, which address veterans' benefits law. To ensure compliance with statutory changes, VA proposes to amend its regulations pertaining to benefits based on herbicide exposure to include veterans who served in or near the Korean demilitarized zone (DMZ) during certain periods and children of such veterans born with spina bifida.

I. Herbicide Exposure

Section 102 of the Veterans Benefits Act of 2003 amended 38 U.S.C. chapter 18 to provide benefits (health care, monetary allowance, vocational training, and education) for spina bifida in children of certain veterans who served in Korea. The statutory provisions, codified at 38 U.S.C. 1821, apply to the children of veterans who are determined by VA, in consultation with the Secretary of Defense, to have been exposed to an herbicide agent during that service. Section 1821 describes parameters governing the time and location of a veteran's service that may result in a child's eligibility for benefits. Section 1821 further provides that VA will consult with the Secretary of Defense to determine whether herbicide exposure occurred within those prescribed time periods and geographic parameters. The statutory provisions apply to all forms and manifestations of spina bifida, except spina bifida occulta.

The statutory change at 38 U.S.C. 1821 authorizes recognition of herbicide exposure for "certain Korea service veterans" for purposes of providing

benefits to a child born to them with spina bifida. Under the statute, those veterans must have served "in or near" the Korean DMZ as determined by VA in consultation with the Department of Defense (DoD) between September 1, 1967, and August 31, 1971, and must be found by VA, in consultation with DoD, to have been exposed to an herbicide agent during such service. Even if a veteran served in or near the DMZ within the specified time period, the statute requires VA to determine whether the veteran was exposed to herbicides during such service. Accordingly, the statute does not establish or require VA to establish a presumption of herbicide exposure based on service in or near the Korean DMZ. However, we believe that the statute, along with VA's general authority under 38 U.S.C. 501 to establish all necessary and appropriate regulations, provides VA with authority to establish presumptions of exposure where a reasonable basis exists for such presumptions. As explained below, VA proposes to presume herbicide exposure for certain veterans who served within the time periods and geographic locations described by the statute.

To implement the requirements of the statute, VA consulted with DoD regarding the times and locations of herbicide use in or near the Korean DMZ. The Korean demilitarized zone (DMZ) is a strip of land running across the Korean Peninsula that separates North Korea from South Korea and serves as a buffer zone between the two countries. The DMZ cuts the Korean Peninsula roughly in half following the geographic 38th parallel north latitude and is approximately 155 miles long and 2.5 miles wide. It became a de facto border following World War II as the demarcation line between the northern Soviet-controlled Democratic People's Republic of Korea and the southern United Nations-controlled Republic of Korea. When an attacking North Korean military force crossed the DMZ on June 25, 1950, United States and United Nations troops came to the aid of South Korea and the Korean War commenced. A ceasefire agreement was signed on July 27, 1953, which established the current DMZ buffer zone between North and South Korea. No peace treaty was ever signed and the two Koreas remain technically at war. The United States established a permanent contingent of troops on the DMZ to support South Korea. As military involvement in Vietnam escalated during the late 1960s, tensions along the DMZ increased and additional United States troops were sent to South Korea. Sporadic combat

between the opposing forces occurred, primarily within the DMZ buffer zone. Following the Vietnam era, tensions decreased between the two Koreas, but the DMZ remains the most heavily armed border area in the world.

DoD has advised that herbicides were not applied within the DMZ, but were applied in some adjacent areas. Specifically, DoD has reported that herbicides were applied between April 1968 and July 1969 along a strip of land 151 miles long and up to 350 yards wide along the southern edge of the DMZ north of the civilian control line. The herbicide agents were applied through hand spraying and hand distribution of pelletized herbicides. There was no aerial spraying. DoD also has provided VA a list of the military units that are currently known to have operated in that area during the period that herbicides were applied.

Based on this information, we propose to presume herbicide exposure for any veteran who served between April 1968 and July 1969 in a unit determined by VA and DoD to have operated in an area in or near the Korean DMZ in which herbicides were applied.

There is no record that herbicide agents were sprayed in the DMZ itself. Nevertheless, we propose to include the word "in" before "or near" in these regulations, for two reasons. First, we want to ensure that our regulations are consistent with § 1821, as amended. Second, if evidence arises in the future indicating that herbicide agents were applied in the DMZ, this rule would allow VA to provide benefits without having to amend its regulations.

The criterion we propose to use for purposes of the presumption of exposure is that the veteran was assigned to a particular listed military unit within the prescribed time frame. Recognition of being exposed to herbicides "in or near" the DMZ, for an individual veteran, is based on service in one of the particular units acknowledged by DoD and VA as having performed missions near the DMZ during the period herbicides were used (April 1968 through July 1969). These units were assigned or rotated to areas near the DMZ during that time period. These included Infantry, Armor, and Artillery units. Because DoD and VA may recognize additional units in the future based on additional information or evidence, we will not list the units in the regulation. VA has provided a list of currently recognized units to VA adjudicators in VA's procedural manual as an administrative reference. Additionally, if a veteran asserts that he or she was in or near the DMZ during

the specified time period and VA has not already determined the veteran's unit to be one that was in or near the DMZ sometime between April 1, 1968, and July 31, 1969, VA will develop further evidence to verify that assertion.

The specific units that DoD identified that served in areas along the DMZ in Korea where herbicides were used between April 1968 and July 1969 are: Combat Brigades of the 2nd and 7th Infantry Divisions: 1st Battalion, 9th Infantry; 2nd Battalion, 9th Infantry; 1st Battalion, 17th Infantry; 2nd Battalion, 17th Infantry; 1st Battalion, 23rd Infantry; 2nd Battalion, 23rd Infantry; 3rd Battalion, 23rd Infantry; 1st Battalion, 31st Infantry; 2nd Battalion, 31st Infantry; 1st Battalion, 32nd Infantry; 2nd Battalion, 32nd Infantry; 3rd Battalion, 32nd Infantry; 1st Battalion, 38th Infantry; 2nd Battalion, 38th Infantry; 4th Battalion, 7th Cavalry; 2nd Battalion, 10th Cavalry; 1st Battalion, 72nd Armor; 2nd Battalion, 72nd Armor; 1st Battalion, 12th Artillery; 1st Battalion, 15th Artillery; 7th Battalion, 17th Artillery; 6th Battalion, 37th Artillery; 5th Battalion, 38th Artillery.

Service records may show that the above units were assigned to either the 2nd or 7th Infantry Division.

Additional units: 13th Engineer Battalion; United Nations Command Security Battalion-Joint Security Area (UNCSB-JSA); Crew of the USS Pueblo.

If a veteran served in or near the Korean DMZ during the period between September 1, 1967, and August 31, 1971, but not within the time periods and geographic locations that would qualify for a presumption of exposure under this proposed rule, such service would qualify for benefits under 38 U.S.C. 1821 only if VA determines that the veteran was actually exposed to herbicides during such service. Based on the information provided by DoD to date, it appears unlikely that exposure would have occurred outside the dates and locations that would be covered by the presumption of exposure under this proposed rule. Nonetheless, the proposed rule would incorporate the statutory provisions in section 1821 in order to make clear that the presumption of exposure does not foreclose claims based on other service that is within the dates and locations covered by the statute.

Currently, 38 CFR 3.814 specifies the criteria for eligibility for a monetary allowance to children of Vietnam veterans who are suffering from spina bifida. Regulations in parts 17 and 21 of title 38, Code of Federal Regulations, authorize health care and vocational rehabilitation and training to

individuals who meet the eligibility requirements of § 3.814. We propose to revise § 3.814 to provide criteria for eligibility for children of veterans with covered service in Korea who are suffering from spina bifida. As explained above, we propose to define "covered service in Korea" consistent with the statutory criteria set forth in 38 U.S.C. 1821(c), requiring that the veterans have served in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and have been determined by VA, in consultation with DoD, to have been exposed to an herbicide agent during such service. To implement the proposed presumption of exposure discussed above, we propose to state that exposure to an herbicide agent will be conceded if the veteran served between April 1, 1968, and July 31, 1969, in a unit determined by VA and DoD to have operated in the area where herbicides are known to have been applied during that period.

Section 3.307 is VA's regulation regarding presumptive service connection for purposes of disability compensation to veterans and dependency and indemnity compensation to their survivors. We propose to add at new § 3.307(a)(6)(iv) a presumption of herbicide exposure based on service in or near the Korean DMZ identical to the presumption proposed for purposes of benefits to a veteran's child under 38 U.S.C. 1821. Because VA is providing statutorily authorized benefits to children with spina bifida of such veterans, we believe it is logical and fair to provide benefits to these veterans themselves based on their exposure to herbicide agents. We, therefore, propose that these veterans be eligible for the presumption of exposure to herbicide agents.

There is currently no specific statutory authority for providing a presumption of exposure to herbicide agents to veterans who served in Korea. However, such a presumption would comport with known facts and congressional intent and is within VA's general rulemaking authority under 38 U.S.C. 501. It would be illogical to conclude that the children with spina bifida of the covered veterans have the disability due to the veteran's exposure to herbicide agents, but not to presume that the veteran himself was exposed to herbicide agents and merits VA benefits for any disabilities associated with that exposure. We have determined that the proposed presumption will be beneficial to veterans and will promote fairness, consistency, and efficiency in VA decision making.

II. Monetary Allowance

Spina Bifida Benefits

The statutory provisions regarding spina bifida at section 1821 state that the child should be provided a monetary allowance "as if such child of a veteran with covered service in Korea were a child of a Vietnam veteran who is suffering from spina bifida under [subchapter I of chapter 18]." Section 1805 of title 38, United States Code, authorizes a monthly monetary allowance to the child of a Vietnam veteran suffering from spina bifida. The current regulation regarding payment for an individual suffering from spina bifida under 38 U.S.C. chapter 18, subchapter I, is 38 CFR 3.814, Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran. We propose to amend the title of § 3.814 to include the children of veterans of covered service in Korea and amend § 3.814(a) to include those individuals suffering from spina bifida whose biological father or mother had covered service in Korea. We propose to redesignate the definitions in § 3.814(c) to add a description of "Covered service in Korea" in § 3.814(c)(2). Section 3.814(c)(1) is the definition of "Vietnam veteran;" therefore, it is logical to include covered service in Korea as the next definition, (c)(2). We propose to redesignate current § 3.814(c)(2), "Individual," and (c)(3), "Spina bifida," as § 3.814(c)(3) and (c)(4) respectively. Current § 3.814(c)(2), "Individual," which we have proposed to redesignate as § 3.814(c)(3), refers to Vietnam veterans only. We propose to amend redesignated § 3.814(c)(3) by expanding the language to include veterans with covered service in Korea.

Conforming Amendments

We also propose to amend several regulations that contain references to benefits under 38 U.S.C. chapter 18 for children with spina bifida of Vietnam veterans. We propose to amend these regulations to include the children of veterans with covered service in Korea, so that they are eligible for the same benefits as children of Vietnam veterans. In the regulations related to benefits for spina bifida, we will continue to use the language "certain individuals who are children of * * *" as the statutes in chapter 18 refer to benefits for "individuals" and provide the definition that child refers to an individual regardless of age or marital status. We, additionally, have a similar definition in 38 CFR 3.814 and 3.815.

The regulations we are amending to conform with the amendments to 38 U.S.C. chapter 18 include: 38 CFR 3.27 (which addresses the automatic adjustment of VA benefit rates); § 3.29(c) (which addresses rounding of VA benefit rates); § 3.31 (which addresses commencement of a period of payment); § 3.105(g) (which covers revision of decisions); § 3.114(a) (which addresses the effective date of certain awards based on a change of law or VA issue); § 3.261(a)(40) (which covers character of income and whether the income is included or excluded for VA dependency and pension purposes); § 3.262(y) (which covers evaluation of income for VA dependency and pension purposes); § 3.263(g) (which addresses what is considered in determining the corpus of an estate for VA dependency purposes and the net worth of a veteran, surviving spouse, or child for VA pension purposes); § 3.272(u) (which addresses exclusions for countable income for the purposes of determining entitlement to VA improved pension); and § 3.275(i) (which addresses the criteria for evaluating net worth for the purposes of determining the corpus of estate or net worth of a veteran, surviving spouse, or child for VA pension purposes).

Title 38 CFR 3.403 addresses the effective date of awards of benefits for children, including monetary allowances under 38 U.S.C. chapter 18. Section 3.403(b) covers monetary allowances under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran as specified in that statute and includes the effective date of when these benefits were first available, October 1, 1997. Section 3.403(c) covers monetary allowances under 38 U.S.C. 1815 for an individual suffering from a covered birth defect who is a child of a woman Vietnam veteran as specified in that statute and includes the effective date when these benefits were first available, December 1, 2001. Therefore, we propose to add new § 3.403(d), for children covered under new section 1821. We will use the same general effective date language as in § 3.403(b) and (c), which follow VA's statute addressing effective dates for benefits, 38 U.S.C. 5110, and we will add that the award of benefits can be no earlier than the effective date of the statute, December 16, 2003.

As discussed below, certain sections of section 5110 apply to chapter 18 benefits, under 38 U.S.C. 1832(b). In relevant part, these are as follows: section 5110(a) (describing the general effective date rule, which is that an award is effective in accordance with

facts found, but not earlier than the date of receipt of application); section 5110(b)(2) (noting that the effective date of an award for increased compensation is the earliest date the increased disability occurred, if the application is received within 1 year from such date); and section 5110(i) (noting that the effective date for reopened claims allowed on the basis of correction of military records will be the date the application was filed for correction or the date the disallowed claim was filed, whichever is later, but the retroactive benefits will be no more than 1 year prior to the date of the reopened claim).

Not specifically applicable to chapter 18 benefits, but included in § 3.403(b) and (c), is section 5110(n), which states that the effective date of the award of any benefits based on marriage, birth, or adoption of a child, shall be the date of the event if proof of such event is received by the Secretary within 1 year of the date of the marriage, birth, or adoption. Since chapter 18 benefits are for children, we presume it is the intent of the statutes that section 5110(n) applies for chapter 18 awards. Therefore, we propose to include this relevant effective date provision in new § 3.403(d) for awards for children with spina bifida of veterans with covered service in Korea, based on the wording of § 3.403(c).

Unrelated to the provisions of the Veterans Benefits Act of 2003, Public Law 108-183, we noted while preparing this rulemaking that certain effective date provisions in § 3.403(c) are not included in § 3.403(b), and we propose to correct these omissions here. Therefore, we propose to amend § 3.403(b) to add the relevant provisions and to provide a reference to § 3.814(e). We also propose in new § 3.403(d) to use language about effective dates that VA uses in its effective date regulations, to be consistent with those regulations. This regulatory language is plainer than the statutory language; for example, we propose to use the term "date entitlement arose" instead of the statutory language "in accordance with the facts found." Additionally, we noted that § 3.814(e) does not include the information regarding the effective date of birth, if the claim is received within 1 year of that date. Therefore, we propose to add it to be consistent with the other effective date provision for children with birth defects (§ 3.815(i)).

Section 3.503(b) addresses the effective date of reduction and discontinuance of monetary allowance under 38 U.S.C. chapter 18 for certain individuals. We propose to amend it to add the children with spina bifida of veterans with covered service in Korea.

Authority Citations

We, additionally, propose to use this rulemaking to revise several authority citations in 38 CFR part 3 to chapter 18 sections that have been repealed and redesignated. Public Law 106-149, the Veterans Benefits and Health Care Improvement Act of 2000, November 1, 2000, repealed 38 U.S.C. 1806. Section 1806 addressed effective dates for chapter 18. This section was recodified by the Public Law at section 1822. Section 1822 provided that 38 U.S.C. 5110, regarding effective dates, applies to chapter 18 benefits.

Subsequently, Public Law 108-183, which we are implementing in this rulemaking, added new section 1821, and redesignated prior sections 1821, 1822, 1823, and 1824, as new sections 1831, 1832, 1833, and 1834, respectively.

Therefore, we propose to remove the references to old section 1821 and replace them with a reference to section 1831; remove the references to section 1822 and replace them with a reference to section 1832; remove the references to section 1823 and replace them with a reference to section 1833; and remove the references to section 1824 and replace them with a reference to 1834 in the authority citations in §§ 3.31, 3.105, 3.114, 3.216, 3.261, 3.262, 3.263, 3.403, 3.503, 3.814, and 3.815 as applicable.

In addition, we propose to add references to new section 1821 in the authority citations in §§ 3.27, 3.29, 3.31, 3.105, 3.114, 3.307, 3.403, and 3.814 as applicable.

There is additionally an extraneous authority citation at the end of 38 CFR 3.403, which reads, "(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104-204, 110 Stat. 2926)". For the following reasons, we now propose to remove that citation. The citation to 38 U.S.C. 1806 is inappropriate because that section has been repealed. The citation to 38 U.S.C. 5110(n) is unnecessary because it is already cited as authority to paragraph (a)(3). The citation to Public Law 104-204 is unnecessary because it has already been codified in 38 U.S.C. 1832 and 5110, both of which we propose to add in the authority citations for § 3.403(b), (c), and proposed (d). For the same reason, we propose to remove the citation to Public Law 104-204 from the authority citation to paragraph (b).

III. Health Care Benefits

In addition to amending VA regulations concerning the monetary allowance, this document also proposes to amend VA regulations in 38 CFR part 17 concerning health care benefits for

children with spina bifida. By the terms of 38 U.S.C. 101(2), 1802–1803, 1811–1813, and 1821, VA will provide the child of a Vietnam veteran or veteran with covered service in Korea, who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is necessary.

In 38 CFR 17.900, Definitions, we propose to add a reference to the children of veterans with covered service in Korea. Further, we propose to amend § 17.901 and the Note following this section to conform to the requirements of section 408 of Public Law 110–387, the “Veterans’ Mental Health and Other Care Improvements Act of 2008,” by removing all language that limits the health care benefit available to covered children born with spina bifida to only health care that is needed to treat spina bifida and associated conditions. As revised, § 17.901(a) will allow VA to furnish comprehensive health care to beneficiaries born with spina bifida. We also propose to make a technical correction to § 17.901(b) by removing an errant reference to spina bifida in the first sentence. We also propose to update mailing information for the Health Administration Center for claims submitted by or on behalf of spina bifida beneficiaries and beneficiaries with other covered birth defects.

The 2008 statutory amendments referenced above likewise necessitate making conforming amendments to § 17.902. We also propose to change “benefits advisor” in the first paragraph to reflect a recent change in the position title.

Authority Citations

We, additionally, propose to revise several authority citations in 38 CFR part 17 to chapter 18 sections that have been repealed and redesignated. Public Law 108–183, which we are implementing in this rulemaking, added new section 1821 and redesignated then sections 1821, 1822, and 1824, as new sections 1831, 1832, and 1834, respectively.

Therefore, we propose to remove the references to old section 1821 and replace them with a reference to section 1831 in the authority citations in §§ 17.900, 17.901, 17.902, 17.903, 17.904, and 17.905, as applicable. In addition, references to new section 1821 have been added in the authority citations in §§ 17.900 and 17.901, as applicable.

IV. Vocational Rehabilitation and Employment

In addition to amending VA regulations concerning the monetary allowance and health care, we also

propose to amend certain sections of subpart M of part 21 of title 38 CFR that govern VA’s provision of vocational training and rehabilitation to certain veterans’ children to conform with the revisions proposed to be made in part 3 of that title affecting other benefits and services authorized under 38 U.S.C. chapter 18. In § 21.8010, we propose to cross reference 38 CFR 3.814 to define the term “Veteran with covered service in Korea” and make other conforming amendments to that section consistent with the revisions proposed to be made in part 3.

Conforming Amendments

We also propose to amend other part 21 regulations that contain references to benefits under 38 U.S.C. chapter 18 for children of Vietnam veterans.

The regulations we are amending to conform with the amendments to 38 U.S.C. chapter 18 include 38 CFR 21.8010(a) (which lists the definitions for “eligible child” and “spina bifida”), § 21.8012 (which covers evaluation of a child with spina bifida for vocational training purposes), and § 21.8014 (which covers the procedure and time limit for filing an application to apply for participation in a vocational training program for a child with spina bifida).

Authority Citations

We additionally propose to revise several authority citations in 38 CFR part 21 to chapter 18 sections that have been repealed and redesignated.

Public Law 108–183, which we are implementing in this rulemaking, added new section 1821, and redesignated then sections 1821, 1822, and 1824, as new sections 1831, 1832, and 1834, respectively.

Therefore, we propose to remove the references to old section 1821 and replace them with a reference to section 1831; remove the references to section 1822 and replace them with a reference to section 1832; and remove the references to section 1824 and replace them with a reference to 1834 in the authority citations in §§ 21.8010, 21.8014, 21.8016, and 21.8022, as applicable.

In addition, references to new section 1821 have been added in the authority citations in §§ 21.8010, 21.8012, and 21.8014, as applicable.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

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 the Office of Management and Budget (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 proposed rule has been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.019, Veterans Rehabilitation-Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.026, Veterans State Adult Day Health Care; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

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.

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: April 1, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR chapter I as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

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

2. Amend § 3.27(c) by:

a. Revising the paragraph heading.
b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

* * * * *

3. Amend § 3.29(c) by:

a. Removing “who are children of Vietnam veterans” and adding, in its place, “who are children of Vietnam veterans or children of veterans with covered service in Korea”.

b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.29 Rounding.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

4. Amend § 3.31:

a. In the introductory paragraph, by removing “who is a child of a Vietnam veteran” and adding, in its place, “who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea”.

b. By revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5111)

5. Amend § 3.105(g) by:

a. Revising the paragraph heading.
b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5112(b)(6))

* * * * *

6. Amend § 3.114(a) by:

a. Removing “who is a child of a Vietnam veteran” both times it appears and adding, in its place, “who is a child of a Vietnam veteran or child of a veteran with covered service in Korea”.

b. Revising the authority citation at the end of the paragraph.

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5110(g))

* * * * *

7. Amend § 3.216 by:

a. Adding “or” preceding “a monetary allowance.”

b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1832, 5101(c))

§ 3.261 [Amended]

8. Amend § 3.261(a)(40) by removing “who are children of Vietnam veterans (38 U.S.C. 1823(c))” and adding, in its place, “who are children of Vietnam veterans or children of veterans with covered service in Korea (38 U.S.C. 1833(c))”.

9. Amend § 3.262(y) by:

a. Revising the paragraph heading.
b. Removing “who is the child of a Vietnam veteran” and adding, in its place, “who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea”.

c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

10. Amend § 3.263(g) by:

a. Revising the paragraph heading.

b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

11. Amend § 3.272(u) by:

a. Revising the paragraph heading.

b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

The revision reads as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. * * *

* * * * *

12. Amend § 3.275(i) by:

a. Revising the paragraph heading.

b. Removing "who is a child of a Vietnam veteran" and adding, in its place, "who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea".

The revision reads as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea. * * *

* * * * *

13. Amend § 3.307(a)(6) by:

a. Adding a new § 3.307(a)(6)(iv) and a cross reference after § 3.307(a)(6)(iii).

b. Revising the authority citation at the end of new § 3.307(a)(6)(iv).

The addition and revision read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) * * *

(iv) A veteran who, during active, military, naval, or air service, served between April 1, 1968, and July 31, 1969, in a unit that operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

Cross Reference: 38 CFR 3.814(c)(2).

(Authority: 38 U.S.C. 501(a), 1116(a)(3), 1821)

* * * * *

14. Revise § 3.403 by:

a. In § 3.403(b), removing "An award of the monetary allowance" and adding, in its place, "Except as provided in § 3.814(e), an award of the monetary allowance".

b. In § 3.403(b), removing "date of claim, but" and adding, in its place, "the later of the date of claim or the date entitlement arose, but".

c. Revising the authority citation for § 3.403(b).

d. Revising the authority citation for § 3.403(c).

e. Adding new § 3.403(d) including the authority citation for this paragraph (d).

f. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§ 3.403 Children.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1805, 1832, 5110)

(c) * * *

(Authority: 38 U.S.C. 1815, 1832, 1834, 5110)

(d) Monetary allowance under 38 U.S.C. 1821 for an individual suffering from spina bifida who is a child of a veteran with covered service in Korea. Except as provided in § 3.814(e), an award of the monetary allowance under 38 U.S.C. 1821 based on the existence of an individual suffering from spina

bifida who is a child of a veteran with covered service in Korea will be effective from either the date of birth if claim is received within 1 year of that date, or the later of the date of claim or date entitlement arose, but not earlier than December 16, 2003.

(Authority: 38 U.S.C. 1821, 1832, 5110)

15. Amend § 3.503 by:

a. Revising the heading of paragraph (b).

b. Removing the authority citation for paragraph (b).

c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 3.503 Children.

* * * * *

(b) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.

* * * * *

(Authority: 38 U.S.C. 501, 1832, 5112(b))

16. Amend § 3.814 by:

a. Revising the section heading.

b. In paragraph (a), removing "is or was a Vietnam veteran" and adding, in its place, "is or was a Vietnam veteran or a veteran with covered service in Korea" and by removing "are or were both Vietnam veterans" and adding, in its place, "are or were both Vietnam veterans or veterans with covered service in Korea".

c. Redesignating paragraphs (c) (2) and (3) as (c)(3) and (4) respectively.

d. Adding a new paragraph (c)(2).

e. In paragraph (c)(3), as redesignated, removing "Vietnam era." and adding, in its place, "Vietnam era, or whose biological father or mother is or was a veteran with covered service in Korea and who was conceived after the date on which the veteran first had covered service in Korea as defined in this section." and by removing "of a Vietnam veteran." and adding, in its place, "of a Vietnam veteran or a veteran with covered service in Korea.".

f. In paragraph (e), removing "claim or" and adding, in its place, "claim (or the date of birth if the claim is received within 1 year of that date) or".

g. Adding a cross reference immediately following paragraph (f).

h. Revising the authority citation at the end of the section.

The addition and revisions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran or a veteran with covered service in Korea.

* * * * *

(c) * * *

(2) *Covered service in Korea.* For the purposes of this section, the term “veteran with covered service in Korea” means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the Department of Defense, to have been exposed to a herbicide agent during such service. Exposure to a herbicide agent will be conceded if the veteran served between April 1, 1968, and July 31, 1969, in a unit that operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period.

* * * * *

Cross Reference: 38 CFR 3.307(a)(6)(iv).

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

17. Amend § 3.815 by revising the authority citation at the end of the section to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

* * * * *

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

19. Revise the undesignated center heading preceding § 17.900 to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects

20. Amend § 17.900 by:

a. Adding in alphabetical order, the definition of “Veteran with covered service in Korea”.

b. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.900 Definitions.

* * * * *

Veteran with covered service in Korea for purposes of spina bifida means the

same as defined at § 3.814(c)(2) of this title.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821, 1831)

21. Amend § 17.901 by:

a. In paragraph (a), removing “Vietnam veteran’s” and adding, in its place, “Vietnam veteran or veteran with covered service in Korea’s”, and by removing “with such health care as the Secretary determines is needed by the child for spina bifida” and adding, in its place, “with health care as the Secretary determines is needed”.

b. In paragraph (b), removing “spina bifida or other covered birth defects” and adding, in its place, “covered birth defects (other than spina bifida)”.

c. In paragraph (d)(3), removing “300 S. Jackson Street, Denver, CO 80209” and adding, in its place, “3773 Cherry Creek North Drive, Denver, CO 80246”.

d. Revising paragraph (d)(4) and the authority citation at the end of the section.

e. Revising the Note at the end of the section.

The revisions read as follows:

§ 17.901 Provisions of Health care.

* * * * *

(d) * * *

(4) The mailing address of the Health Administration Center for claims submitted pursuant to either paragraph (a) or (b) of this section is P.O. Box 469065, Denver, CO 80246–9065.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

Note to § 17.901: Under this program, beneficiaries with spina bifida will receive comprehensive care through the Department of Veterans Affairs. However, the health care benefits available under this section to children with other covered birth defects are not comprehensive, and VA will furnish them only health care services that are related to their covered birth defects. With respect to covered children suffering from spina bifida, VA is the exclusive payer for services paid under 17.900 through 17.905, regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. As to children with other covered birth defects, any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to the covered birth defects.

22. Amend § 17.902 by:

a. In the first sentence of paragraph (a), removing “benefits advisor” and adding, in its place, “customer service representative”.

b. In paragraph (a), removing the second sentence and adding two new sentences in its place.

c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.902 Preauthorization.

(a) * * * Authorization will only be given in spina bifida cases where there is a demonstrated medical need. In cases of other covered birth defects, authorization will only be given where there is a demonstrated medical need related to the covered birth defects.

* * *

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

23. Amend § 17.903 by revising the authority citation at the end of the section to read as follows:

§ 17.903 Payment.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

* * * * *

24. Amend § 17.904 by revising the authority citation at the end of the section to read as follows:

§ 17.904 Review and appeal process.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

* * * * *

25. Amend § 17.905 by revising the authority citation at the end of the section to read as follows:

§ 17.905 Medical records.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans and Veterans With Covered Service in Korea—Spina Bifida and Covered Birth Defects

26. The authority citation for part 21, subpart M continues to read as follows:

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

27. Revise the heading of subpart M as set forth above.

28. Amend § 21.8010:

a. In paragraph (a), by adding in alphabetical order, the definition of “Veteran with covered service in Korea”.

b. In paragraph (a) in the definition of “Eligible child” by removing “3.814(c)(2)” and adding, in its place, “3.814(c)(3)”.

c. In the definition of "Spina bifida" by removing "§ 3.814(c)(3)", and adding, in its place, "§ 3.814(c)(4)".

d. Revising the authority citation for paragraph (a).

e. Revising the authority citation for paragraph (b).

The addition and revisions read as follows:

§ 21.8010 Definitions and abbreviations.

(a) * * *

Veteran with covered service in Korea means a veteran defined at § 3.814(c)(2) of this title.

* * * * *

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821, 1831)

(b) * * *

(Authority: 38 U.S.C. 1804, 1811, 1814, 1831)

29. Amend § 21.8012 by:

a. Revising the section heading.

b. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 21.8012 Vocational training program for certain children of Vietnam veterans and veterans with covered service in Korea—spina bifida and covered birth defects.

* * * * *

(Authority: 38 U.S.C. 1804, 1812, 1814, 1821)

30. Amend § 21.8014 by:

a. In paragraph (a), removing "Vietnam veteran", and adding, in its place, "Vietnam veteran or veteran with covered service in Korea".

b. In paragraph (a)(2), removing "Vietnam veteran's", and adding, in its place, "Vietnam veteran or veteran with covered service in Korea's".

c. Revising the authority citation for paragraph (a).

d. Revising the authority citation for paragraph (b).

The revisions read as follows:

§ 21.8014 Application.

(a) * * *

(Authority: 38 U.S.C. 1804(a), 1821, 1832, 5101)

(b) * * *

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1831)

31. Amend § 21.8016 by revising the authority citation for paragraphs (a), (b), and (d) to read as follows:

§ 21.8016 Nonduplication of benefits.

(a) * * *

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) * * *

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 1804, 1814, 1834)

32. Amend § 21.8022(b) by revising the authority citation at the end of the paragraph to read as follows:

§ 21.8022 Entry and reentry.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1804, 1814, 1832)

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