

Test:	Chargeable fee per test
Arquid content	\$27
Butanol content	55
Candicidin potency (special turbidimetric)	55
Capreomycin I content	242
Color identity	10
Column chromatographic isomer content	109
Crystallinity	4
Cycloserine color assay	37
Dactinomycin potency (special plate)	55
Disc potency	31
Doxycycline purity (paper chromatography)	110
Free chloride	81
Gas chromatography	55
Gentamicin C	185
Heavy metals test	18
Histamine test	35
Infrared identity	23
Infrared quantitative	47
Karl Fisher moisture	10
LD ₅₀ toxicity	216
Loss on drying	14
Melting range	9
Metal particles (ophthalmic ointments)	27
Microbiological assay, plate	25
Microbiological assay, turbidimetric	13
Micro-organism count	59
Minocycline content	109
Nonaqueous titrations (and compleximetric)	11
Paper chromatographic identity	55
Penicillin chemical assay	12
Penicillin contamination	27
Penicillin G content	27
pH	4
Procaine colorimetric	10
Pyrogens test: 3 rabbits	115
Pyrogens test: 8 rabbits	229
Residual streptomycin	13
Residue on ignition	32
Safety test	24
Specific rotation	18
Specific surface area	27
Sterility test	59
Sulfate content	11
Tablet disintegration	6
Thin layer chromatographic identity	27
Total chlorine	81
Undecylenic acid content	23
Ultraviolet identity	23
Ultraviolet potency	23
Vancomycin identity	162
Zinc titration	36

(2) In the case of a supplemental request submitted pursuant to the provisions of § 144.3 of this chapter, the fee shall be \$8.

Since the amendments established by this order are necessary to provide, equip, and maintain an adequate antibiotic drug certification service; notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date.—This order shall be effective July 1, 1973.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357.)

Dated June 1, 1973.

SAM D. FINE,
Associate Commissioner for
Compliance.

[FR Doc.73-11391 Filed 6-6-73;8:45 am]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-73-227]

PART 42—RELOCATION PAYMENTS AND ASSISTANCE AND REAL PROPERTY ACQUISITION UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Establishment of Grievance Procedures Relating to Adequacy of Replacement Housing

Pursuant to the authority vested in him by section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), the Secretary of Housing and Urban Development is amending title 24, part 42 of the Code of Federal Regulations by adding a new subpart G entitled "Grievance Procedures Relating to Adequacy of Replacement Housing". This subpart is intended to prescribe the Department's procedure for granting administrative relief to any person aggrieved by proposed or effected displacement accomplished under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), with regard to the obligation of the State agency to refer such person to an adequate replacement dwelling. The subpart sets forth the procedures for review of complaints by the State agency, and review by the appropriate HUD area office if desired.

On March 23, 1973 (38 FR 7570) the Department first published the grievance procedures for public comment as a notice of proposed rulemaking. The Department has now considered the comments received and promulgates these grievance procedures to be effective on June 7, 1973. Principal changes and the Department's response to significant comments are set forth below.

A number of State agencies expressed the concern that the proposed procedures will be unnecessarily time consuming and will result in unreasonable delays in project activities. Two significant changes have been made in order to be responsive to these comments. First, we have reduced the types of complaints which can be filed so as to remove grievances relating merely to relocation services from the scope of the regulation. Thus, the grievance procedures as now issued are limited to complaints with respect to the adequacy of replacement housing offered to persons. Second, the time limits for the State agency and for the HUD area office to consider complaints have been shortened, and the time for filing a request for HUD review has been cut from 30 days to 10 days. In addition, handling of complaints under these procedures will be carefully monitored so as to determine whether unreasonable delays are taking place, and if necessary, further modifications will be made.

Several comments urged that it is inappropriate to permit the bringing of class actions. Grievances regarding the

adequacy of replacement housing are by their very nature highly individualized matters. If class actions were permitted, it would be unclear as to what persons should be deemed members of the class. It has accordingly been determined to eliminate any provision for class actions. No change has been made in the provision of § 42.305(b) permitting joint complaints. In addition, it should be noted that § 42.360 provides that principles established in determinations under these procedures shall be applied by the State agency in all similar cases.

Several suggestions have been received which would create or approximate a more formal procedure than the present regulation envisions. It has been proposed to apply the formal rules of evidence, permit a right to confrontation and cross-examination, to impose a requirement for legal representation and to guarantee the right to rebut all evidence presented by a State agency in support of its decision adverse to any complainant. While the Department is sympathetic to the considerations which prompted these suggestions, it was determined that the review procedures should be a basically informal presentation before both the State agency and the HUD area office. The review process is regarded as a means for stimulating the exchange of views and information between the complainant and the State agency with the object of resolving the dispute in a quick and informal manner. The procedure as proposed would allow for the consideration of all relevant evidence without subjecting the claimant to the formalities involved in a quasi-judicial proceeding. For these reasons, we have determined not to accept the suggestion for the adoption of a more formalized procedure.

The suggestion that claimant be allowed to review the files relating to his complaint is accepted. Accordingly, we have provided for this in § 42.320.

Section 42.320 of the proposed procedures, entitled "Recommendations by third party," has been deleted because of adverse comments which have been received. It has been determined after consideration of these comments that grievances with respect to adequacy of replacement housing are in many cases not appropriate for referral to third parties.

It has also been suggested that it is inappropriate to require State agencies to review their own determinations. We are not persuaded by this view. Since the programs covered by these procedures are basically local programs carried out with HUD financial assistance, the Department believes that it is important to give the State agency the first opportunity to review grievances and to provide prompt relief to persons with a proper complaint.

Several comments expressed the concern that the criteria to evaluate adequacy of replacement housing are too vague. While some subjective judgment is no doubt involved, we have concluded that the standards set forth in § 42.120 of subpart C of these regulations (which

have been in effect since May 13, 1971), are reasonable and as specific as feasible under the circumstances.

Several comments raised questions about the oral presentation provided for in § 42.310. With respect to the efficacy of the oral presentation, it is our expectancy that this procedure will be a useful device to resolve problems at the most informal level. It should be noted further that the filing of a request for an oral presentation does not permit any added delay, in that the filing of such a request does not entitle the complainant to a stay of displacement. This is made clear in §§ 42.310(a) and 42.335.

Accordingly, part 42 is amended to add a new subpart G to read as follows:

Subpart G—Grievance Procedures Relating to Adequacy of Replacement Housing

- Sec.
42.300 Purpose.
42.305 Right of appeal.
42.310 Request for State agency review.
42.315 State agency review of the written request.
42.320 Review of files by complainant.
42.325 Request for HUD review.
42.330 HUD review.
42.335 Stay of displacement pending review.
42.340 Remedies for persons displaced.
42.345 Extension of time limits.
42.350 Construction of rules and regulations.
42.355 Right to counsel.
42.360 Effect of determination on other complaints.
42.365 Right to judicial review.

AUTHORITY.—Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4633.

Subpart G—Grievance Procedures Relating to Adequacy of Replacement Housing

§ 42.300 Purpose.

The purpose of this subpart is to set forth guidelines for processing complaints from persons who believe themselves aggrieved by the failure of the State agency to refer them to adequate replacement housing as provided by § 42.120 of subpart C of the regulations in this part.

§ 42.305 Right of appeal.

(a) *General.*—A complainant, meaning a person who believes himself aggrieved by a failure of a State agency to refer him to adequate replacement housing as provided by § 42.120 of subpart C of these regulations, may file a complaint with the head of the State agency or his authorized designee. Advice on the right to file a complaint under these procedures shall be a part of the information statement required by § 42.165 of subpart C of the regulations in this part. Where such person is not satisfied with the results of the State agency's determination, he is entitled to have his complaint reviewed by HUD.

(b) *Joint complainants.*—Two or more complainants may join in filing a single written request for review with the State agency provided that each is aggrieved

by the failure of the State agency to refer him to adequate replacement housing as provided in § 42.120 of subpart C of the regulations in this part. A determination should be made by the State agency for each of the complainants.

§ 42.310 Request for State agency review.

(a) *Oral presentation.*—Upon request of the complainant, the State agency shall, within 15 days of the request, afford him an opportunity to make an oral presentation prior to filing a written request for review pursuant to paragraph (c) of this section. This oral presentation shall enable the complainant in the company of an advisor, attorney or other representative, if he so wishes, to discuss his complaint with the head of the State agency or his authorized designee. Such designee shall be someone other than the person who has been providing relocation services. The request of a complainant for an oral presentation shall not entitle him to any stay of displacement.

(b) *Time limits for requesting oral presentation.*—This right to an oral presentation shall be available to a complainant at any time prior to the date of displacement and no later than 6 months after displacement, unless closeout of the project occurs prior to that time, in which case the oral presentation must be requested prior to project closeout or within 90 days following displacement, whichever is later. If the State agency rejects the complainant's contentions in whole or in part, it must notify the complainant, with a copy to HUD, that he has a right to file a written request for State agency review. The State agency shall make a summary of the matters discussed in the oral presentation and it should be included as part of its file.

(c) *The written request for review.*—The complainant may file a written request for review with the head of the State agency within the time limits prescribed by paragraph (d) of this section and such written request may include any statement of fact within complainant's knowledge or belief, or other material which has a bearing on his appeal. If the complainant requests more time to gather and prepare additional information for consideration or review and demonstrates a reasonable basis therefor, he may be granted additional time. If the complainant is unable to prepare the written complaint, the State agency shall offer to provide assistance to the complainant and further notify the complainant of other available sources of assistance. The State agency, however, shall consider every complaint regardless of form. The making of an oral presentation pursuant to paragraph (a) of this section shall not be deemed a condition precedent to the filing of a written request for review.

(d) *Time limits for filing written request for review.*—A complainant may file a written request for review with the

State agency at any time prior to the date of displacement. Such request for review may also be filed with the State agency no later than 6 months after displacement, unless final closeout of the project occurs prior to that time, in which case the written request must be made prior to project closeout or within 90 days following displacement, whichever date is later: *Provided*, That in any case in which an oral presentation is requested after displacement pursuant to paragraph (a) of this section, the time period specified in this paragraph shall be extended if necessary so that a complainant shall have no less than 30 days from the date he is advised of the determination on the oral presentation.

§ 42.315 State agency review of the written request.

(a) *General.*—The State agency shall review the written request for review and shall make a determination as to whether adequate replacement housing has been offered to a complainant as provided by § 42.120 of subpart C of these regulations. The State agency shall issue to the complainant a copy of the determination and shall notify the complainant of his right to seek HUD review. A copy of the determination shall also be sent to HUD. The review shall not be made by the official who provides the relocation services, nor anyone subordinate to that official.

(b) *Scope of review.*—In making its determination, the State agency shall consider the following:

(1) All material upon which the State agency based its original determination, including all applicable rules and regulations;

(2) The reasons given by the complainant in support of his complaint;

(3) Whatever additional written material has been submitted by the complainant for the purpose of this review; and

(4) Any further information the State agency may, in its discretion, obtain by request, investigation or research to insure a fair and full review of the complaint.

(c) *Determination on review.*—The written determination on review shall include, but is not limited to:

(1) The agency's decision upon review of the complaint;

(2) The factual and legal basis upon which this decision is based, including any pertinent explanation or rationale for the decision;

(3) The relief to which the complainant is entitled, and a brief statement on how this will be achieved; and

(4) A statement of complainant's right to seek further review by HUD and an explanation of what steps the complainant must take to obtain this review.

(d) *State agency determinations not based on merits.*—A State agency's refusal to provide an oral presentation after one has been requested or review a written complaint on the merits (e.g., because of complaint's failure to request an

oral presentation or file for written review within the required time or because the matter is not deemed ripe for determination, shall upon complainant's request, be reviewed by HUD in the manner described in §§ 42.325 and 42.330. However, in any case where a State agency refuses to provide an oral presentation or review a written complaint, prior to displacement, because the matter is not ripe for determination, the complainant shall also be notified that he may request an oral presentation or file a written complaint at a later time if adequate housing is not provided.

(e) *Time limits.*—(1) The State agency shall issue its determination on review within 15 days from receipt of the last material submitted for consideration by the complainant in accordance with § 42.310.

(2) In the case of requests for oral presentations or written complaints dismissed for untimeliness or because the matter is not ripe for review or for any other reason not based on the merits, the State agency shall issue a statement to the complainant as to why the request for an oral presentation or written complaint was dismissed. The statement, with a copy to HUD, should be sent within 10 days of receipt of the last material submitted by the complainant or within 10 days of the complainant's request for an oral presentation.

§ 42.320 Review of files by complainant.

Except for confidential material, and except to the extent specifically prohibited by law, a State agency shall permit the complainant to inspect all files and records bearing upon the actions of the State agency in referring him to replacement housing or the prosecution of his grievance. The State agency may, however, impose reasonable conditions on the complainant's right to inspect.

§ 42.325 Request for HUD review.

(a) *General.*—A complainant who believes himself aggrieved as a result of the final determination of his written request for review by the State agency may request HUD to make a redetermination on his complaint. The request for HUD review shall be submitted in writing to the director of the appropriate HUD area office or, where there is no HUD area office, to the Regional Administrator of the appropriate HUD regional office. (Unless the context indicates otherwise, "Area Director" shall be used in this subpart to refer to the Regional Administrator where there is no area office.) The complainant shall also send a copy of his request for HUD review to the head of the State agency. The State agency shall then submit its complete file on the complaint to the Area Director as soon as possible, but in no event later than 5 days.

(b) *Submissions by complainant.*—The complainant may include in the request for review by the Area Director any state-

ment of facts within his knowledge or belief or other material which will have a direct bearing on the complaint. The complainant need not, however, repeat arguments nor submit material previously provided to the State agency for its review: *Provided*, That where the complainant submits material to HUD which was not submitted to the State agency for review, HUD will provide the State agency with an opportunity to review such new material and to submit any comments which it wishes to make.

(c) *Time limit.*—The complainant shall file the written request for HUD review of his complaint with the Area Director (and the copy with the State agency) within 10 days from the date of receipt of the determination on review issued by the State agency.

§ 42.330 HUD review.

(a) *General.*—The Area Director shall review the complaint as submitted by the complainant together with the material submitted to him by the State agency and shall issue to the complainant a copy of the determination within 15 days from the receipt of the complete file of complainant's case from the State agency.

(b) *Scope of review.*—In making his determination, the Area Director shall consider the following:

(1) All the material upon which the State agency based its determination, including all applicable rules and regulations;

(2) The reasons given by the complainant for requesting reconsideration and review of his complaint;

(3) Whatever written material has been submitted by the complainant for the purposes of this review; and

(4) Any further information which HUD may, in its discretion, obtain by request, investigation or research to insure a fair and full review of the complaint.

(c) *Determination on review by HUD.*—The written determination by HUD shall include, but need not be limited to:

(1) The Area Director's decision on reconsideration of the complaint;

(2) The factual and legal findings upon which the decision is based, including any pertinent explanation or rationale for the decision;

(3) The relief, if any, to which the complainant is entitled, and directions to the State agency on how this shall be achieved;

(4) Notification to the complainant of his right to seek further HUD assistance if the relief specified in paragraph (c) (3) of this section is not provided;

(5) Notification to the complainant of his right to seek judicial review in the event the determination is adverse.

(d) *Review of State agency determinations not based on the merits.*—If the Area Director finds that the State agency's refusal to review the complaint

on its merits was unreasonable, the complaint shall be remanded to the State agency for review on its merits within 15 days of the State agency's receipt of the remanded complaint. If the State agency's refusal to hear the complaint is not found to have been unreasonable, the Area Director shall so notify the complainant and inform him that he may have a right to judicial review: *Provided*, That in the case of complaints dismissed by a State agency as not ripe for determination, and upheld by the Area Director, the complainant should again be notified that he may request an oral presentation or file a written complaint at a stage which would warrant an oral presentation or review.

§ 42.335 Stay of displacement pending review.

If the written request is filed before displacement, the State agency shall not require the complainant to move until at least 20 days after it has made a determination and the complainant has had an opportunity to seek HUD review. If the complainant seeks HUD review, no displacement shall occur pending HUD's determination. If the HUD determination is adverse to the complainant, he may not be displaced until at least 20 days after receipt of notice of the HUD determination. In all cases, the State agency must notify the complainant in writing 20 days prior to the proposed new date of displacement, and in no case may a complainant be displaced unless he is offered comparable replacement housing as provided in § 42.120 of subpart C of the regulations in this part.

§ 42.340 Remedies for persons displaced.

Whenever it is determined by the State agency or by HUD that a complainant has been referred to replacement housing which fails to meet the criteria provided in subpart C of these regulations, the State agency shall take immediate steps to offer to the complainant replacement housing pursuant to § 42.120 of subpart C of the regulations in this part. The State agency will pay for the reasonable costs of the move to such replacement housing, either by arranging for the move and paying the mover directly, or by reimbursing the complainant for the reasonable costs of the move. Such expenditures are deemed eligible costs in connection with the administration of relocation.

§ 42.345 Extension of time limits.

The time limits specified in §§ 42.310, 42.325 and 42.330 (a) and (d) may be extended for good cause by the State agency or by the Area Director, respectively.

§ 42.350 Construction of rules and regulations.

This subpart, and all applicable rules and regulations on which State agency and HUD determinations are based, shall be so construed as to fulfill the statutory

purpose as declared in section 201 of the act of "fair and equitable treatment" in order that displaced persons "not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole".

§ 42.355 Right to representation.

Any aggrieved party has a right to representation by legal counsel and to be accompanied by an advisor, attorney or other representative in any personal ap-

pearance held pursuant to this subpart, but solely at his own expense.

§ 42.360 Effect of determination on other complaints.

The principles established in all determinations by a State agency (unless modified upon review by HUD), or by HUD shall be applied to all similar cases.

§ 42.365 Right to judicial review.

Nothing in this subpart shall in any

way preclude or limit a complainant from seeking judicial review of his complaint on the merits upon exhaustion of such administrative remedies as are available to him under this subpart.

Effective date.—These regulations are effective on June 7, 1973.

JAMES T. LYNN,
Secretary of Housing and
Urban Development.

[FR Doc.73-11410 Filed 6-6-73;8:45 am]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-141]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of part 1914 of subchapter B of chapter X of title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Colorado	Alamosa	Unincorporated areas				June 6, 1973, Emergency.
Do.	do	Alamosa, City of				Do.
Minnesota	Wilkin	Unincorporated areas				Do.
New York	Jefferson	Orleans, Town of				Do.
Pennsylvania	Adams	Oxford, Township of				Do.
Do.	Allegheny	McKeesport, City of				Do.
Do.	Centre	Patton, Township of				Do.
Do.	do	Harris, Township of				Do.
Do.	Columbia	Hemlock, Township of				Do.
Do.	Fayette	Upper Tyrone, Township of				Do.
Do.	Lackawanna	Dalton, Borough of				Do.
Do.	Lancaster	East Hempfield, Township of				Do.
Do.	Lycoming	Cummings, Township of				Do.
Do.	do	McIntyre, Township of				Do.
Do.	Montgomery	Pottstown, Borough of				Do.
Do.	Schuylkill	McAdoo, Borough of				Do.
Do.	York	East Manchester, Township of				Do.
Do.	do	Goldsboro, Borough of				Do.
Do.	do	Lower Chancetford, Township of				Do.
Do.	do	Paradise, Township of				Do.
Do.	do	Wrightsville, Borough of				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued May 31, 1973.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.73-11243 Filed 6-6-73;8:45 am]

Title 26—Internal Revenue

CHAPTER 1—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7278]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Depreciation Based on Class Lives for Property First Placed in Service Before January 1, 1971

By a notice of proposed rulemaking appearing in the *FEDERAL REGISTER* for Saturday, April 22, 1972, amendments to the "Income Tax Regulations" were proposed in order to provide an elective class life system, similar to the asset depreciation range system for computing depreciation allowances for taxable years ending after December 31, 1970, with respect to assets placed in service before January 1, 1971. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments subject to the changes indicated below are adopted by this document.

The final regulations provide an elective class life system for determining the reasonable allowance for depreciation of certain classes of assets for taxable years ending after December 31, 1970. The system applies only to assets placed in service before January 1, 1971. Depreciation for such assets during periods prior to January 1, 1971, may have been determined in accordance with Revenue Procedure 62-21. Accordingly, rules are provided which permit taxpayers to apply the system in taxable years ending after December 31, 1970, to such assets without the necessity of changing or regrouping their depreciation accounts other than as previously required by Revenue Procedure 62-21. The system is designed to minimize disputes between taxpayers and the Internal Revenue Service as to the useful life of assets, salvage value, and repairs. See § 1.167(a)-11 for a similar system for property placed in service after December 31, 1970. See paragraph (d) (2) of § 1.167(a)-11 for treatment of expenditures for the repair, maintenance, rehabilitation, or improvement of certain property. The system provided by the regulations is optional with the taxpayer. An election under the regulations applies only to qualified property in an asset guideline class for which an election is made and only for the taxable year of election. The taxpayer's election is made with the income tax return for the taxable year. The regulations also revoke the reserve ratio test for taxable years ending after December 31, 1970, and provide transitional rules for taxpayers who after January 1, 1971, adopt Revenue Procedure 62-21 for a taxable year ending prior to January 1, 1971.

The final regulations include in the definition of qualified property (§ 1.167(a)-12(a)(3)) certain property placed in service before January 1, 1971, but acquired and first placed in service by the taxpayer after December 31, 1970.

Such property, if acquired as a result of a mere change in form, or as a result of a corporate transaction described in section 381(a), is not eligible for an election under the class life asset depreciation range system. Such property may qualify for an election under the final regulations adopted by this document.

The final regulations add a new provision (§ 1.167(a)-12(a)(4)(iii)) which may require normalization in the case of certain public utility property where the depreciation life used for ratemaking purposes is longer than the life used for tax purposes. In such a case, a public utility may be required to normalize the deferral resulting from the use of the shorter life permitted under Revenue Procedure 72-10.

The final regulations expressly state the manner of determining the allowance for depreciation in the year of election where the class life differs from the life previously used for depreciation. The proposed regulations did not expressly specify the manner of computation. The provisions of the final regulations follow the rules generally applicable to changes in depreciation method and depreciation life.

The final regulations also clarify the rules of § 1.167(a)-12(a)(5)(iv), relating to regrouping accounts. The proposed regulations provided that no depreciation accounts may be combined which could not be combined under part III of Revenue Procedure 65-13. Since certain taxpayers electing under the final regulations have not previously been subject to the restrictions of Revenue Procedure 65-13, the final regulations provide that in such cases, the depreciation amount in the taxable year of election may not exceed the amount which the taxpayer would have been allowed if the provisions of Revenue Procedure 65-13 had been followed. The final regulations make certain clarifying changes in the treatment of salvage value. Under the final regulations, salvage value must be established in the year of election based upon the facts and circumstances at or as of the close of the year in which the property is acquired. The salvage established will not be changed or adjusted if it is reasonable. However, since the provisions of Revenue Procedure 62-21 do not apply to taxable years ending after December 31, 1970, adjustments in the depreciation allowance for such taxable years, which result from substantially inaccurate salvage estimates, will be made without regard to the provisions of Revenue Procedure 62-21 relating to the estimation of salvage value. The final regulations, as did the proposed regulations, provide that adjustments will not be made in the depreciation allowance for any taxable year ending before January 1, 1971, as a result of the estimation of salvage value required by the final regulations.

The final regulations modify the provisions of § 1.167(a)-12(f)(1)(iii) which relate to the adoption of Revenue Procedure 62-21 for prior taxable years and provide a limitation on refunds. Under the proposed regulations, any provision

of Revenue Procedure 62-21 may be applied to justify the depreciation life used by the taxpayer or to offset a deficiency asserted upon an audit. However, Revenue Procedure 62-21 could not be used to generate a tax refund or increase a loss carryover or carryback for a prior year unless the taxpayer had adopted the Revenue Procedure before January 12, 1971. Under the final regulations, an election of Revenue Procedure 62-21 after January 11, 1971, may result in a refund if the reserve ratio for the taxable year is met.

A new example (6) is added by the final regulations to § 1.167(a)-12(f)(2)(ii). The new example illustrates that a taxpayer may be considered to have adopted Revenue Procedure 62-21 for a taxable year based upon his actions in a subsequent taxable year.

Adoption of amendments to the regulations.—On April 22, 1972, notice of proposed rulemaking with respect to the amendment of the "Income Tax Regulations" (26 CFR, pt. 1) under section 167 to provide an elective guideline class life system, similar to the class life asset depreciation range system, for assets placed in service before January 1, 1971, for taxable years ending after December 31, 1970, was published in the *FEDERAL REGISTER* (37 FR 7981). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment as proposed is hereby adopted, subject to the changes which follow:

PARAGRAPH 1. Section 1.167(a)-12(a) is changed by revising the fourth sentence of subparagraph (1), by revising subparagraph (3), by adding a new subparagraph (4)(iii), and by revising subparagraph (5) (i), (ii) (b), (iv), and (v), to read as set forth below:

PAR. 2. Section 1.167(a)-12(b) is changed by revising the second sentence of that portion of subparagraph (1) as follows subdivision (ii), and by revising the first sentence, adding two new sentences after the first sentence, and revising the third sentence of subparagraph (2), to read as set forth below:

PAR. 3. Section 1.167(a)-12(c) is changed by revising the first sentence of subparagraph (1)(i), by revising subparagraph (2) (i) and (iii), by revising the third sentence of subparagraph (3), and revising example (1), the first sentence of example (2), and example (4) of subparagraph (4). As revised the provisions read as set forth below:

PAR. 4. Section 1.167(a)-12(e) is changed by deleting "120" from subparagraph (2) and inserting in lieu thereof a date 150 days after publication in the *FEDERAL REGISTER*, by deleting subparagraph (3)(vi) and redesignating subparagraph (3)(vii) as (3)(vi), and by revising the second and third sentences of that portion of subparagraph (3) as follows (vi) thereof, to read as set forth below:

PAR. 5. Section 1.167(a)-12(f) is changed by revising the first, second, and third sentences of that portion of subparagraph (1)(i) as follows (f) thereof, by revising subparagraph (1)(iii), by

adding two new sentences immediately after the title to subparagraph (1) (iv), and by adding example (6) to subparagraph (2) (ii), to read as set forth below: (Sec. 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954.)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved June 1, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary
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In order to provide an elective guideline class life system, similar to the class life asset depreciation range system, for assets placed in service before January 1, 1971, for taxable years ending after December 31, 1970, the Income Tax Regulations (26 CFR Part 1) under section 167 of the Internal Revenue Code of 1954 are amended as follows:

The following new section is added immediately after § 1.167(a)-11 to read as follows:

§ 1.167(a)-12 Depreciation based on class lives for property first placed in service before January 1, 1971.

(a) *In general.*—(1) *Summary.* This section provides an elective class life system for determining the reasonable allowance for depreciation of certain classes of assets for taxable years ending after December 31, 1970. The system applies only to assets placed in service before January 1, 1971. Depreciation for such assets during periods prior to January 1, 1971, may have been determined in accordance with Revenue Procedure 62-21. Accordingly, rules are provided which permit taxpayers to apply the system in taxable years ending after December 31, 1970, to such assets without the necessity of changing or regrouping their depreciation accounts other than as previously required by Revenue Procedure 62-21. The system is designed to minimize disputes between taxpayers and the Internal Revenue Service as to the useful life of assets, salvage value, and repairs. See § 1.167(a)-11 for a similar system for property placed in service after December 31, 1970. See paragraph (d) (2) of § 1.167(a)-11 for treatment of expenditures for the repair, maintenance, rehabilitation or improvement of certain property. The system provided by this section is optional with the taxpayer. An election under this section applies only to qualified property in an asset guideline class for which an election is made and only for the taxable year of election. The taxpayer's election is made with the income tax return for the taxable year. This section also revokes the reserve ratio test for taxable years ending after December 31, 1970, and provides transitional rules for taxpayers who after January 11, 1971, adopt Revenue Procedure 62-21 for a taxable year ending prior to January 1, 1971.

(2) *Revocation of reserve ratio test and other matters.* Except as otherwise expressly provided in this section and in paragraph (b) (5) (vi) of § 1.167(a)-11,

the provisions of Revenue Procedure 62-21 shall not apply to any property for any taxable year ending after December 31, 1970, whether or not the taxpayer elects to apply this section to any property. See paragraph (f) of this section for rules for the adoption of Revenue Procedure 62-21 for taxable years ending prior to January 1, 1971.

(3) *Definition of qualified property.* The term "qualified property" means tangible property which is subject to the allowance for depreciation provided by section 167(a), but only if—

(i) An asset guideline class and asset guideline period are in effect for such property for the taxable year, and

(ii) The property is first placed in service by the taxpayer before January 1, 1971.

(iii) The property is placed in service before January 1, 1971, but first placed in service by the taxpayer after December 31, 1970, and is not includible in an election under § 1.167(a)-11 by reason of § 1.167(a)-11(b) (7) (property acquired as a result of a mere change in form) or § 1.167(a)-11(e) (3) (i) (certain property acquired in a transaction to which section 381(a) applies), or

(iv) The property is acquired and first placed in service by the taxpayer after December 31, 1970, pursuant to a binding written contract entered into prior to January 1, 1971, and is excluded in accordance with paragraph (b) (5) (iv) of § 1.167(a)-11 from an election to apply § 1.167(a)-11.

The provisions of paragraph (e) (1) of § 1.167(a)-11 apply in determining whether property is first placed in service before January 1, 1971. See subparagraph (4) (ii) of this paragraph for special rules for the exclusion of property from the definition of qualified property.

(4) *Requirements of election.*—(i) *In general.* An election to apply this section to qualified property must be made within the time and in the manner specified in paragraph (e) of this section. The election must specify that the taxpayer consents to and agrees to apply all the provisions of this section. The election may be made separately for each asset guideline class. Thus, a taxpayer may for the taxable year elect to apply this section to one, more than one, or all asset guideline classes in which he has qualified property. An election to apply this section for a taxable year must include all qualified property in the asset guideline class for which the election is made.

(ii) *Special rules for exclusion of property from application of this section.*

(a) If for the taxable year of election, the taxpayer computes depreciation under section 167(k) or computes amortization under sections 169, 185, 187, 188, or paragraph (b) of § 1.162-11 with respect to property, such property is not qualified property for such taxable year. If for the taxable year of election, the taxpayer computes depreciation under any method of depreciation (other than a method described in the preceding

sentence) not permitted by subparagraph (5) (v) of this paragraph for any property in an asset guideline class (other than subsidiary assets excluded from an election under (b) of this subdivision), no property in such asset guideline class is qualified property for such taxable year.

(b) The taxpayer may exclude from an election to apply this section all (but not less than all) subsidiary assets. Subsidiary assets so excluded are not qualified property for such taxable year. For purposes of this subdivision the term "subsidiary assets" includes jigs, dies, molds, returnable containers, glassware, silverware, textile mill cam assemblies, and other equipment includable in Group One, Class 5, of Revenue Procedure 62-21 which is usually and properly accounted for separately from other property and under a method of depreciation not expressed in terms of years.

(iii) *Special rule for certain public utility property.*—(a) In the case of public utility property described in section 167(l) (3) (A) (iii) for which no guideline life was prescribed in Revenue Procedure 62-21 (or for which reference was made in Revenue Procedure 62-21 to lives or rates established by governmental regulatory agencies) of a taxpayer which—

(1) Is entitled to use a method of depreciation other than a "subsection (1) method" of depreciation (as defined in section 167(l) (3) (F)) only if it uses the "normalization method of accounting" (as defined in section 167(l) (3) (G)) with respect to such property, or

(2) Is entitled for the taxable year to use only a "subsection (1) method" of depreciation,

such property shall be qualified property (as defined in subparagraph (3) of this paragraph) only if the taxpayer normalizes the tax deferral resulting from the election to apply this section.

(b) The taxpayer will be considered to normalize the tax deferral resulting from the election to apply this section only if it computes its tax expense for purposes of establishing its cost of service for ratemaking purposes and for reflecting operating results in its regulated books of account using a period for depreciation no less than the period used for computing its depreciation expense for ratemaking purposes and for reflecting operating results in its regulated books of account for the taxable year, and the taxpayer makes adjustments to a reserve to reflect the deferral of taxes resulting from the use of a period for depreciation under section 167 in accordance with an election to apply this section different from the period used for computing its depreciation expense for ratemaking purposes and for reflecting operating results in its regulated books of account for the taxable year. A determination whether the taxpayer is considered to normalize under this subdivision the tax deferral resulting from the election to apply this section shall be made in a manner consistent

with the principles for determining whether a taxpayer is using the "normalization method of accounting" (within the meaning of section 167(1)(3)(G)). See § 13.13 of the temporary regulations prescribed by T.D. 7049 approved June 25, 1970.

(c) If a taxpayer, which has elected to apply this section to any qualified public utility property and is required under (a) of this subdivision to normalize the tax deferral resulting from the election to apply this section to such property, fails to normalize such tax deferral, the election to apply this section to such property shall terminate as of the beginning of the taxable year for which the taxpayer fails to normalize such tax deferral. Application of this section to such property for any period prior to the termination date will not be affected by this termination.

(5) *Determination of reasonable allowance for depreciation.*—(i) *In general.*—The allowance for depreciation of qualified property to which the taxpayer elects to apply this section shall be determined in accordance with this section. The annual allowance for depreciation is determined by using the method of depreciation adopted by the taxpayer and a rate based upon a life permitted by this section. In the case of the straight-line method of depreciation, the rate of depreciation shall be based upon the class life (or individual life if the taxpayer assigns individual depreciable lives in accordance with subdivision (iii) of this subparagraph) used by the taxpayer with respect to the assets in the asset guideline class. Such rate will be applied to the unadjusted basis of the asset guideline class (individual assets or depreciation accounts if the taxpayer assigns individual depreciable lives). In the case of the sum of the years-digits method of depreciation, the rate of depreciation will be determined based upon the remaining life of the class (or individual remaining lives if the taxpayer assigns such lives in accordance with subdivision (iii) of this subparagraph) and is applied to the adjusted basis of the class (or individual accounts or assets) as of the beginning of the taxable year of election. The remaining life of a depreciation account is determined by dividing the unrecovered cost or other basis of the account, as computed by straight-line depreciation, by the gross cost or unadjusted basis of the account, and multiplying the result by the class life used with respect to the account. In the case of the declining balance method of depreciation, the rate of depreciation for the asset guideline class shall be based upon the class life (or individual life if the taxpayer assigns such lives in accordance with subdivision (iii) of this subparagraph). Such rate is applied to the adjusted basis of the class (or individual accounts or assets) as of the beginning of the taxable year of election.

(ii) *Reasonable allowance by reference to class lives.* The amount of depreciation for all qualified property in an asset guideline class to which the taxpayer elects to apply this section will

constitute the reasonable allowance provided by section 167(a) and the depreciation for the asset guideline class will not be adjusted if—

(a) The taxpayer's qualified property is accounted for in one or more depreciation accounts which conform to the asset guideline class, and the depreciation for each such account is determined by using a rate based upon a life not less than the class life, or

(b) The taxpayer's qualified property is accounted for in one or more depreciation accounts (whether or not conforming to the asset guideline class) for which depreciation is determined at a rate based upon the taxpayer's estimate of the lives of the assets (instead of the class life) and the total amount of depreciation so determined for the asset guideline class for the taxable year of election is not more than would be permitted under (a) of this subdivision for such year using the method of depreciation adopted by the taxpayer for the property.

See subdivision (vii) of this subparagraph for determination of reasonable allowance if depreciation exceeds the amount permitted by this subdivision. See paragraph (b) of this section for rules regarding the determination of "class life". For rules for regrouping depreciation accounts to conform to the asset guideline class, see subdivision (iv) of this subparagraph.

(iii) *Consistency when individual lives are used.* If the taxpayer assigns individual depreciable lives to assets in accordance with subdivision (ii) (b) of this subparagraph, even though the total amount of depreciation for the asset guideline class will not be adjusted, the lives assigned to the various assets in the asset guideline class must be reasonably in proportion to their relative expected periods of use in the taxpayer's business. Thus, although the taxpayer who uses individual asset lives normally has latitude in thereby allocating the depreciation for the asset guideline class among the assets, if the lives are grossly disproportionate (as where a short life is assigned to one asset and a long life to another even though the expected periods of use are the same), the taxpayer's allocation of depreciation to particular assets or depreciation accounts may be adjusted. For example, the taxpayer's allocation may be adjusted for purposes of determining adjusted basis under section 1016(a) or in allocating depreciation to the 50-percent limitation on percentage depletion provided by section 613(a). See paragraph (d) of this section for rules regarding the use of individual asset lives for purposes of classifying retirements as normal or abnormal.

(iv) *Regrouping depreciation accounts.*—Without the consent of the Commissioner, the taxpayer may for any taxable year for which he elects to apply this section to an asset guideline class, regroup his accounts for that and all succeeding taxable years to conform to the asset guideline class. Other changes in

accounting, including a change from item accounts to multiple-asset accounting, may be made with the consent of the Commissioner. No depreciation accounts for which the straight line or sum of the years-digits method of depreciation is adopted may be combined under this section which would not be permitted to be combined under part III of Revenue Procedure 65-13, as in effect on January 1, 1971. Accordingly, whether or not the taxpayer adopted the guideline system of Revenue Procedure 62-21 for a taxable year to which part III of Revenue Procedure 65-13 is applicable, the depreciation allowance for any taxable year of election under this section may not exceed that amount which would have been allowed for such year if the taxpayer had used item accounts or year of acquisition accounts. Thus, for example, if a calendar year taxpayer acquired a \$90 asset on the first day of each year from 1966 through 1970, placed such assets in a single multiple asset account, adopted the sum of the years-digits method of depreciation and used a 5-year depreciable life for such assets, and in 1971 uses the 5-year class life determined under paragraph (b) of this section, the depreciation allowance for such assets in 1971 under this section may not exceed \$60, that is, the amount which would be allowed if the taxpayer had used year of acquisition accounts for the assets for the years 1966 through 1970.

For purposes of this subparagraph, a taxpayer's depreciation accounts conform to the asset guideline class if each depreciation account includes only assets of the same asset guideline class.

(v) *Method of depreciation.*—The same method of depreciation must be applied to all property in a single depreciation account. The method of depreciation is subject to the limitations of section 167 (c) and (j). Except as otherwise provided in this subdivision, the taxpayer must apply a method of depreciation described in section 167(b) (1), (2), or (3) for qualified property to which the taxpayer elects to apply this section. A method of depreciation permitted under section 167(b) (4) may be used under this section if the method was used by the taxpayer with respect to the property for his last taxable year ending before January 1, 1971, the method is expressed in terms of years, the taxpayer establishes to the satisfaction of the Commissioner that the method is both a reasonable and consistent method, and if the taxpayer applies paragraph (b) (2) of this section (relating to class lives in special situations) to determine a class life, that the method of determining such class life is consistent with the principles of Revenue Procedure 62-21 as applied to such a method. If the taxpayer has applied a method of depreciation with respect to the property which is not described in section 167(b) (1), (2), (3), or (4) (as permitted under the preceding sentence), he must change under this section to a method of depreciation de-

scribed in section 167(b) (1), (2), or (3) for the first taxable year for which an election is made under this section. Other changes in depreciation method may be made with the consent of the Commissioner (see sec. 446 and the regulations thereunder). (See also sec. 167 (e).)

(vi) *Salvage value.* In applying the method of depreciation adopted by the taxpayer, the annual allowance for depreciation is determined without adjustment for the salvage value of the property, except that no depreciation account may be depreciated below a reasonable salvage value for the account. See paragraph (c) of this section for definition and treatment of salvage value.

(vii) *Reasonable allowance when depreciation exceeds amount based on class life.* In the event that the total amount of depreciation claimed by the taxpayer on his income tax return, in a claim for refund, or otherwise, for an asset guideline class with respect to which an election is made under this section for the taxable year, exceeds the maximum amount permitted under subdivision (ii) (a) of this subparagraph—

(a) If the excess is established to the satisfaction of the Commissioner to be the result of a good faith mistake by the taxpayer in determining the maximum amount permitted under subdivision (ii) (a) of this subparagraph, the taxpayer's election to apply this section will be treated as valid and only such excess will be disallowed, and

(b) In all other cases, the taxpayer's election to apply this section to the asset guideline class for the taxable year is invalid and the reasonable allowance for depreciation will be determined without regard to this section. (See § 1.167(a)-1 (b) for rules regarding the estimated useful life of property.)

(b) *Determination of class lives.*—(1) *Class lives in general.* The class life determined under this paragraph (without regard to any range or variance permitted with respect to class lives under § 1.167(a)-1) will be applied for purposes of determining whether the allowance for depreciation for qualified property included in an election under this section is subject to adjustment. The taxpayer is not required to use the class life determined under this paragraph for purposes of determining the allowance for depreciation. Except as provided in subparagraph (2) of this paragraph, the class life of qualified property to which the taxpayer elects to apply this section is the shorter of—

(i) The asset guideline period for the asset guideline class as set forth in Revenue Procedure 72-10 as in effect on March 1, 1972 (applied without regard to any special provision therein with respect to property predominantly used outside the United States), or

(ii) The asset guideline period for the asset guideline class as set forth in any supplement or revision of Revenue Procedure 72-10, but only if and to the extent by express reference in such supplement or revision made applicable for the pur-

pose of changing the asset guideline period or classification of qualified property to which this section applies.

See paragraph (e) (3) (iii) of this section for requirement that the election for the taxable year specify the class life for each asset guideline class. Generally, the applicable asset guideline class and asset guideline period for qualified property to which the taxpayer has elected to apply this section will not be changed for the taxable year of election to reflect any supplement or revision thereof after the taxable year. However, if expressly provided in such a supplement or revision, the taxpayer may, at his option in the manner specified therein, apply the revised or supplemented asset guideline classes or periods to such property for such taxable year and succeeding taxable years. The principles of this subparagraph may be illustrated by the following example:

Example. (1) Corporation X, a calendar year taxpayer, has assets in asset guideline class 20.4 of Revenue Procedure 72-10 which were placed in service by corporation X in 1967, 1968, and 1970. Corporation X also has assets in asset guideline class 22.1 of Revenue Procedure 72-10 which were placed in service at various times prior to 1971. Corporation X has no other qualified property. Corporation X elects to apply this section for 1971 to both classes. Assume that the class lives are determined under this subparagraph and not under subparagraph (2) of this paragraph.

(ii) The class lives for asset guideline classes 20.4 and 22.1 are their respective asset guideline periods of 12 years and 9 years in Revenue Procedure 72-10.

(iii) Accordingly, in the election for the taxable year, in accordance with paragraph (e) (3) (iii) of this section, corporation X specifies a class life of 12 years for asset guideline class 20.4 and a class life of 9 years for asset guideline class 22.1.

(2) *Class lives in special situations.*—Notwithstanding subparagraph (1) of this paragraph, for the purposes of this section the class life for the asset guideline class determined under this subparagraph shall be used if such class life is shorter than the class life determined under subparagraph (1) of this paragraph. If property described in paragraph (a) (2) (iii) of this section in an asset guideline class is acquired by the taxpayer in a transaction to which section 381(a) applies, for purposes of this subparagraph such property shall be segregated from other property in the class and treated as in a separate asset guideline class, and the class life for that asset guideline class under this subparagraph shall be the shortest class life the transferor was entitled to use under this section for such property on the date of such transfer. In all other cases, the class life for the asset guideline class for purposes of this subparagraph shall be the shortest class life (within the meaning of sec. 4, part II, of Revenue Procedure 62-21) which can be justified by application of §§ 3.02(a), 3.03(a), or 3.05, part II, of Revenue Procedure 62-21 (other than the portion of such § 3.05 dealing with justification of a class life by reference to facts and circumstances) for the

taxpayer's last taxable year ending prior to January 1, 1971.

A class life justified by application of section 3.03(a), Part II, of Revenue Procedure 62-21 shall not be shorter than can be justified under the Adjustment Table for Class Lives in Part III of such Revenue Procedure. For purposes of this subparagraph and paragraph (f) (1) (iii) of this section, the reserve ratio test is met only if the taxpayer's reserve ratio does not exceed the upper limit of the appropriate reserve ratio range or in the alternative during the transitional period there provided does not exceed the appropriate "transitional upper limit" in section 3, Part II, of Revenue Procedure 65-13. References to Revenue Procedure 62-21 include all modifications, amendments, and supplements thereto as of January 1, 1971. The guideline form of the reserve ratio test, as described in Revenue Procedure 65-13, may be applied for purposes of this subparagraph in a manner consistent with the rules contained in section 7, Part II, of Revenue Procedure 65-13 and sections 3.02, 3.03, and 3.05, Part II, of Revenue Procedure 62-21. The principles of this subparagraph may be illustrated by the following examples:

Example (1). Corporation X, a calendar year taxpayer, has all its assets in asset guideline class 20.4 of Revenue Procedure 72-10 which were placed in service by corporation X prior to 1971. Corporation X elects to apply this section for 1971. For taxable years 1967 through 1969, corporation X had used a class life (within the meaning of section 4, Part II, of Revenue Procedure 62-21) for asset guideline class 20.4 of 12 years. The asset guideline period in Revenue Procedure 72-10 in effect for 1971 is also 12 years. Assume that for 1969 corporation X's reserve ratio was below the appropriate reserve ratio lower limit. However, corporation X could not justify a class life shorter than the asset guideline period of 12 years for 1970 since corporation X had not used the 12-year class life for a period at least equal to one-half of 12 years. (See section 3.03(a), Part II, of Revenue Procedure 62-21.) Accordingly, the class life for asset guideline class 20.4 in 1971 is the asset guideline period of 12 years in accordance with subparagraph (1) of this paragraph.

Example (2). The facts are the same as in example (1) except that corporation X had used a class life of 10 years for guideline class 20.4 since 1967. Corporation X had not used the class life of 10 years for a period at least equal to one-half of 10 years. However, in 1968 corporation X's 10-year class life was accepted on audit by the Internal Revenue Service and corporation X met the reserve ratio test in 1970 for guideline class 20.4 using a test life of 10 years. (See section 3.05, Part II, of Revenue Procedure 62-21.) Accordingly, the class life of 10 years is justified for 1970 and the class life for 1971 is 10 years in accordance with this subparagraph. If the taxpayer's class life had not been audited and accepted for 1968, and in the absence of other circumstances, the taxpayer could not justify a class life shorter than the asset guideline period of 12 years since it had not used the 10-year class life for a period at least equal to one-half of 10 years. (See section 3.02, Part II, of Revenue Procedure 62-21.)

Example (3). Corporation Y, a calendar year taxpayer, has all its assets in asset guideline class 13.3 of Revenue Procedure 72-10

which were placed in service from 1960 through 1970. Corporation Y elects to apply this section for 1971. The asset guideline period in Revenue Procedure 72-10 in effect for 1971 is 16 years. Since 1963 corporation Y had used a class life of 16 years for asset guideline 13.3. At the end of 1969 corporation Y's reserve ratio for guideline class 13.3 was 36 percent. With a growth rate of 8 percent and a test life of 16 years the appropriate reserve ratio lower limit was 37 percent. Corporation Y's reserve ratio of 36 percent was below the lower limit of the appropriate reserve ratio range. Corporation Y had used the 16-year class life for at least eight years. A class life of 13.5 years for 1970 was justified by application of section 3.03(a), Part II, of Revenue Procedure 62-21 and the Adjustment Table for Class Lives in Part III, of Revenue Procedure 62-21. The class life for 1971 is 13.5 years in accordance with this subparagraph.

(3) *Classification of property*—(i) *In general.* Property to which this section applies shall be included in the asset guideline class for the activity in which the property is primarily used in the taxable year of election. See paragraph (d) (5) of this section for rule regarding the classification of leased property.

(ii) *Insubstantial activity.* The provisions of Revenue Procedure 62-21 with respect to classification of assets used in an activity which is insubstantial may be applied under this section.

(iii) *Special rule for certain public utilities.* An electric or gas utility which in accordance with Revenue Procedure 64-21 used a composite guideline class basis for applying Revenue Procedure 62-21 for its last taxable year prior to January 1, 1971, may apply Revenue Procedure 72-10 and this section on the basis of such composite asset guideline class determined as provided in Revenue Procedure 64-21. For the purposes of this section all property in the composite guideline class shall be treated as included in a single asset guideline class.

(c) *Salvage value.*—(1) *In general.*—(i) *Definition of gross salvage value.*—"Gross salvage" value is the amount (determined at or as of the time of acquisition but without regard to the application of Revenue Procedure 62-21) which is estimated will be realized upon a sale or other disposition of qualified property when it is no longer useful in the taxpayer's trade or business or in the production of his income and is to be retired from service, without reduction for the cost of removal, dismantling, demolition, or similar operations. "Net salvage" is gross salvage reduced by the cost of removal, dismantling, demolition, or similar operations. If a taxpayer customarily sells or otherwise disposes of property at a time when such property is still in good operating condition, the gross salvage value of such property is the amount expected to be realized upon such sale or disposition, and under certain circumstances, as where such property is customarily sold at a time when it is still relatively new, the gross salvage value may constitute a relatively large proportion of the unadjusted basis of such property.

(ii) *Definition of salvage value.*—"Salvage value" for purposes of this section

means gross or net salvage value less the amount, if any, by which reduced by application of section 167(f). Generally, as provided in section 167(f), a taxpayer may reduce the gross or net salvage value for an account by an amount which does not exceed 10 percent of the unadjusted basis of the personal property (as defined in section 167(f)(2)) in the account.

(2) *Estimation of salvage value*—(i) *In general.*—For the first taxable year for which he elects to apply this section, the taxpayer must (in accordance with paragraph (e) (3) (iv) (c) of this section) establish salvage value for all qualified property to which the election applies. The taxpayer may (in accordance with subparagraph (1) of this paragraph) determine either gross or net salvage, but an election under this section does not constitute permission to change the manner of estimating salvage. Permission to change the manner of estimating salvage must be obtained by filing form 3115 with the Commissioner of Internal Revenue, Washington, D.C. 20224, within the time otherwise permitted for the taxable year or before September 6, 1973. Salvage value in succeeding taxable years of election will be determined by adjustments of such initial salvage value for the account, as retirements occur. This salvage value established by the taxpayer for the first taxable year of election will not be redetermined merely as a result of fluctuations in price levels or as a result of other circumstances occurring after the close of such taxable year. See paragraph (e) (3) (iv) of this section for requirements that the taxpayer specify in his election the aggregate amount of salvage value for an asset guideline class and that the taxpayer maintain records reasonably sufficient to identify the salvage value established for each depreciation account in the class.

(ii) *Salvage as limitation on depreciation.* In no case may an account be depreciated under this section below a reasonable salvage value, after taking into account any reduction in gross or net salvage value permitted by section 167(f). For example, if the salvage value of an account for 1971 is \$75, the unadjusted basis of the account is \$500, and the depreciation reserve is \$425, no depreciation is allowable for 1971.

(iii) *Special rule for first taxable year.*—If for a taxable year ending prior to January 1, 1971, the taxpayer had adopted Revenue Procedure 62-21 prior to January 12, 1971 (see paragraph (f) (2) of this section), no adjustment in the amount of depreciation allowable for any taxable year ending prior to January 1, 1971, shall be made solely by reason of establishing salvage value under this paragraph for any taxable year ending after December 31, 1970. The principles of this subdivision may be illustrated by the following example:

Example.—Taxpayer A had adopted Revenue Procedure 62-21 prior to January 12, 1971, for taxable years prior to 1971. Taxpayer A had not taken into account any salvage value for account No. 1 which is one of four depreciation accounts A has in the class. The

reserve ratio test has been met for all years prior to 1971 and in accordance with Revenue Procedure 62-21 no adjustments in depreciable lives or salvage values were made. At the end of A's taxable year 1970, the unadjusted basis of account No. 1 was \$10,000 and the reserve for depreciation was \$9,800. Pursuant to this paragraph, A establishes a salvage value of \$400 for account No. 1 (determined at or as of the time of acquisition). This salvage value is determined to be correct. No depreciation is allowable for account No. 1 in 1971. No depreciation is disallowed for any taxable year prior to 1971, solely by reason of establishing salvage value under this paragraph.

(3) *Limitation on adjustment of reasonable salvage value.* The salvage value established by the taxpayer for a depreciation account will not be redetermined if it is reasonable. Since the determination of salvage value is a matter of estimation, minimal adjustments will not be made. The salvage value established by the taxpayer will be deemed to be reasonable unless there is sufficient basis for a determination of an amount of salvage value for the account which exceeds the salvage value established by the taxpayer for the account by an amount greater than 10 percent of the unadjusted basis of the account at the close of such taxable year. If the salvage value established by the taxpayer for the account is not within the 10-percent range or if the taxpayer follows the practice of understating his estimates of salvage to take advantage of this subdivision, and if there is a determination of an amount of salvage value for the account for the taxable year which exceeds the salvage value established by the taxpayer for the account for such taxable year, an adjustment will be made by increasing the salvage value established by the taxpayer for the account by an amount equal to the difference between the salvage value as determined and the salvage value established by the taxpayer for the account. For the purposes of this subdivision, a determination of salvage value shall include all determinations at all levels of audit and appellate proceedings, and as well as all final determinations within the meaning of section 1313(a) (1). This subparagraph shall apply to each such determination.

(4) *Examples.* The principles of this paragraph may be illustrated by the following examples in which it is assumed that the taxpayer has established salvage value in accordance with this paragraph and has not followed a practice of understating his estimates of salvage value:

Example (1).—Taxpayer B elects to apply this section for 1971. Assets Y and Z are the only assets in a multiple asset account of 1967, the year in which the assets were acquired. The unadjusted basis of asset Y is \$50,000 and the unadjusted basis of asset Z is \$30,000. B estimated a gross salvage value of \$55,000 at the time of acquisition. The property qualified under section 167(f)(2) and B reduced the amount of salvage taken into account by \$8,000 (that is, 10 percent of \$80,000, under sec. 167(f)). Thus, in accordance with this paragraph and paragraph (e) (3) (iv) (c) of this section, B establishes a salvage value of \$47,000 for the account for 1971. Assume

that there is not sufficient basis for determining a salvage value for the account greater \$52,000 (that is \$60,000 minus the \$8,000 reduction under sec. 167(f)). Since the salvage value of \$47,000 established by B for the account is within the 10 percent range, it is reasonable. Salvage for the account will not be redetermined.

Example (2). The facts are the same as in example (1) except that B estimated a gross salvage value of \$50,000 and establishes a salvage value of \$42,000 for the account (that is, \$50,000 minus the \$8,000 reduction under section 167(f)). There is sufficient basis for determining an amount of salvage value greater than \$50,000 (that is, \$58,000 minus the \$8,000 reduction under section 167(f)). The salvage value of \$42,000 established by B for the account can be redetermined without regard to the limitation in subparagraph (3) of this paragraph, since it is not within the 10 percent range. Upon audit of B's tax return for 1971 (a year in which the redetermination would affect the amount of depreciation allowable for the account), salvage value is determined to be \$52,000 after taking into account the reduction under section 167(f). Salvage value for the account will be adjusted to \$52,000.

Example (3). The facts are the same as in example (1) except that upon audit of B's tax return for 1971 the examining officer determines the salvage value to be \$58,000 (that is, \$66,000 minus the \$8,000 reduction under section 167(f)), and proposes to adjust salvage value for the account to \$58,000 which will result in disallowing an amount of depreciation for the taxable year. B does not agree with the finding of the examining officer. After receipt of a "30-day letter," B waives a district conference and initiates proceedings before the Appellate Division. In consideration of the case by the Appellate Division it is concluded that there is not sufficient basis for determining an amount of salvage value for the account in excess of \$55,000 (that is, \$63,000 minus the \$8,000 reduction under section 167(f)). Since the salvage value of \$47,000 established by B for the account is within the 10 percent range, it is reasonable. Salvage value for the account will not be redetermined.

Example (4). For 1971, taxpayer C elects to apply this section to factory building X which is in an item account of 1965, the year in which the building was acquired. The unadjusted basis of factory building X is \$90,000. C estimated a gross salvage value for the account of \$10,000. The property did not qualify under section 167(f)(2). Thus, C establishes a salvage value of \$10,000 for the account for 1971. Assume that there is not sufficient basis for determining a salvage value for the account greater than \$14,000. Since the salvage value of \$10,000 established by C for the account is within the 10-percent range, it is reasonable. Salvage value for the account will not be redetermined.

(d) Accounting for qualified property—(1) In general. Qualified property for which the taxpayer elects to apply this section may be accounted for in any number of item or multiple asset accounts.

(2) Retirements of qualified property—(i) In general. The provisions of this subparagraph and § 1.167(a)-8 apply to retirements of qualified property to which the taxpayer elects to apply this section for the taxable year. See subdivision (iii) of this subparagraph for special rule for normal retirements.

(ii) Adjusted basis of assets retired. In the case of a taxpayer who depreciates qualified property in a multiple-asset ac-

count conforming to the asset guideline class at a rate based on the class life in accordance with paragraph (a)(5)(ii) of this section, § 1.167(a)-8(c) (relating to basis of assets retired) shall be applied by assuming that the class life is the average expected useful life of the assets in the account. See § 1.167(a)-8, generally, for the basis of assets retired.

(iii) Definition of normal retirements. Notwithstanding § 1.167(a)-8(b), the determination whether a retirement of qualified property is normal or abnormal shall be made in light of all the facts and circumstances, primarily with reference to the expected period of use of the asset in the taxpayer's business without regard to paragraph (a)(5)(ii) of this section. A retirement is not abnormal unless the taxpayer can show that the withdrawal of the asset was not due to a cause which would customarily be contemplated (in light of the taxpayer's practice and experience) in setting a depreciation rate for the assets without regard to paragraph (a)(5)(ii) of this section. Thus, for example, a retirement is normal if made within the range of years which would customarily be taken into account in setting such depreciation rate and if the asset has reached a condition at which, in the normal course of events, the taxpayer customarily retires similar assets from use in his business. A retirement may be abnormal if the asset is withdrawn at an earlier time or under other circumstances, as, for example, when the asset has been damaged by casualty or has lost its usefulness suddenly as the result of extraordinary obsolescence.

(3) Special rules—(i) In general. The provisions of this subparagraph shall apply to qualified property in a taxable year for which an election to apply this section is made.

(ii) Repairs. For the purpose of sections 162 and 263 and the regulations thereunder, whether an expenditure prolongs the life of an asset shall be determined by reference to the expected period of use of the asset in the taxpayer's business without regard to paragraph (a)(5)(ii) of this section.

(iii) Sale and lease. For the purpose of comparison with the term of a lease of such property, the remaining life of qualified property shall be determined by reference to the expected period of use of the asset in the taxpayer's business without regard to paragraph (a)(5)(ii) of this section.

(4) Expected period of use. For the purposes of subparagraphs (2) and (3) of this paragraph, the determination of the expected period of use of an asset shall be made in light of all the facts and circumstances. The expected period of use of a particular asset will not necessarily coincide with the class life used for depreciation (or with the individual asset life for depreciation under the alternative method in paragraph (a)(5)(ii)(b) of this section for applying the class life). Thus, for example, if the question is whether an asset has been leased for a period less than, equal to or greater than its remaining life, the determina-

tion shall be based on the remaining expected period of use of the individual asset without regard to the fact that the asset is depreciated at a rate based on the class life in accordance with paragraph (a)(5)(ii)(a) of this section.

(5) Leased property. In the case of a lessor of qualified property, unless there is an asset guideline class in effect for such lessors, the asset guideline class for such property shall be determined by reference to the activity in which such property is primarily used by the lessee. See paragraph (b)(3) of this section for general rule for classification of qualified property according to primary use. However, in the case of an asset guideline class based upon the type of property (such as trucks or railroad cars), as distinguished from the activity in which used, the property shall be classified without regard to the activity of the lessee.

(e) Election under this section—(1) Consent to change in method of accounting. An election to apply this section for a taxable year ending after December 31, 1970, is a method of accounting but the consent of the Commissioner will be deemed granted to make an annual election.

(2) Time and manner of election. An election to apply this section to qualified property for a taxable year shall be made with the income tax return for the taxable year. If the taxpayer does not file a timely return (taking into account extensions of time for filing) for the taxable year, the election shall be filed at the time the taxpayer files his first return for the taxable year. The election may be made with an amended return only if such amended return is filed no later than the later of (a) the time prescribed by law (including extensions thereof) for filing the return for the taxable year or (b) November 5, 1973. See subparagraph (3) of this paragraph for information required.

(3) Information required. The election to apply this section for a taxable year must specify:

(i) That the taxpayer makes such election and consents to, and agrees to apply, all the provisions of this section;

(ii) Each asset guideline class for which the taxpayer makes the election;

(iii) The class life for each asset guideline class for which the taxpayer makes an election and whether the class life is determined under paragraph (b)(1) or (2) of this section;

(iv) For each asset guideline class, as of the end of the taxable year of election, (a) the total unadjusted basis of all qualified property, (b) the aggregate of the reserves for depreciation of all accounts in the asset guideline class, and (c) the aggregate of the salvage value established for all accounts in the asset guideline class;

(v) Whether the taxpayer elects to apply Revenue Procedure 72-10 on a composite asset guideline class basis in accordance with paragraph (b)(3)(iii) of this section; and

(vi) Such other information as may reasonably be required, including all or

any part of the type of information specified in paragraph (f) (4) of § 1.167(a)-11.

A taxpayer who makes an election to apply this section for an asset guideline class shall maintain books and records reasonably sufficient to identify the unadjusted basis, reserve for depreciation and salvage value established for each depreciation account in the asset guideline class. Form 5006 will be provided for making the election and submission of the information required. An election may be made and the information submitted only in accordance with such forms. An election will not otherwise be rendered invalid under this paragraph so long as there is substantial compliance, in good faith, with the requirements of this paragraph.

(f) *Depreciation for taxable years ending before January 1, 1971.*—(1) *Adoption of Revenue Procedure 62-21.*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, a taxpayer may elect to be examined under the provisions of Revenue Procedure 62-21 for a taxable year ending before January 1, 1971, only in accordance with the rules of this paragraph. The election must specify:

(a) That the taxpayer makes such election and consents to, and agrees to apply, all the provisions of this paragraph;

(b) Each guideline class and taxable year for which the taxpayer elects to be examined under Revenue Procedure 62-21;

(c) The class life claimed for each such guideline class;

(d) The class life and the total amount of the depreciation for the guideline class claimed on the last income tax return for such taxable year filed prior to January 12, 1971 (or in case no income tax return was filed prior to January 12, 1971, on the first income tax return filed for such taxable year);

(e) The class life claimed and the total amount of depreciation for the guideline class under the election to apply Revenue Procedure 62-21, in accordance with this paragraph, for the taxable year; and

(f) If the class life or total amount of depreciation for the guideline class is different in (d) and (e) of this subdivision, a reasonable description of the computation of the class life in (e) of this subdivision, the amount of difference in tax liability resulting therefrom, and the amount of any refund or reduction in any deficiency in tax. The election shall be made in an amended tax return or claim for refund (or by a supplement to the tax return or claim) for the taxable year, and if the class life or total amount of depreciation for the guideline class is different in accordance with (f) of this subdivision, such difference shall be reflected in the amended tax return or claim for refund. Forms may be provided for making the election and submission of the information. In the case of an election made after issuance of such forms and more than 30 days after publication of notice thereof in the Internal Revenue Bulletin, the election may be made and the information sub-

mitted only in accordance with such forms. An election will not otherwise be invalid under this paragraph so long as there is substantial compliance, in good faith, with the requirements of this paragraph.

(ii) *Special rule.* The provisions of this subparagraph shall not apply to a guideline class in any taxable year for which the taxpayer has prior to January 12, 1971, adopted Revenue Procedure 62-21 for such class. See subparagraph (2) of this paragraph for determination of adoption of Revenue Procedure 62-21 prior to January 12, 1971.

(iii) *Justification of class life claimed and limitations on refunds.*—If the taxpayer elects for a taxable year to be examined under the provisions of Revenue Procedure 62-21 in accordance with subdivision (i) of this subparagraph, any of the provisions of Revenue Procedure 62-21 may be applied to justify a class life claimed on the income tax return filed for such year or to offset an increase in tax liability for such year. Unless it meets the reserve ratio test, no class life will be accepted on audit which (after all other adjustments in tax liability for such year) results in a reduction (or further reduction) in the amount of tax liability shown on the income tax return (specified in subdivision (i) (d) of this subparagraph) for such taxable year, or results in an amount of loss carryback or carryover to any taxable year, but if it is justified under Revenue Procedure 62-21 and meets the reserve ratio test, a class life will be accepted on audit without regard to the foregoing limitations and, for example, may produce a refund or credit against tax. For example, if a class life of 9 years is otherwise justified under Revenue Procedure 62-21 for 1969, but the taxpayer does not meet the reserve ratio test for 1969 using a test life of 9 years, a class life of 9 years (or any class life justified under Revenue Procedure 62-21) will be accepted on audit under Revenue Procedure 62-21 pursuant to an election in accordance with this paragraph provided it does not result in the reduction or further reduction in tax liability or in an amount of loss carryback or carryover as described in the preceding sentence. On the other hand, for example, if a class life of 10 years is justified under Revenue Procedure 62-21 for 1969 and the taxpayer meets the reserve ratio test for 1969 using a test life of 10 years, a class life of 10 years will be accepted on audit under Revenue Procedure 62-21 pursuant to an election in accordance with this paragraph even though it results in a reduction or further reduction in tax liability or in an amount of loss carryback or carryover as described above and produces a refund of tax. For purposes of this section, the term "audit" includes examination of claims for refund or credit against tax.

(iv) *Definitions.*—For purposes of this paragraph, the determination whether the reserve ratio test is met shall be made in accordance with that portion of paragraph (b) (2) of this section which is by express reference therein made ap-

plicable to this paragraph. In addition, the guideline form of the reserve ratio test, as described in Revenue Procedure 65-13, may be applied. * * * For purposes of this paragraph, references to Revenue Procedure 62-21 include all modifications, amendments, and supplements thereto as of January 11, 1971. The terms "class life" and "guideline class" have the same meaning as in Revenue Procedure 62-21.

(2) *Determination whether Revenue Procedure 62-21 adopted prior to January 12, 1971.*—(i) *In general.* For the purposes of this paragraph, a taxpayer will be treated as having adopted prior to January 12, 1971, Revenue Procedure 62-21 for a guideline class for a taxable year ending before January 1, 1971, only if—

(a) For the guideline class and taxable year, the taxpayer adopted Revenue Procedure 62-21 by expressly so indicating on the income tax return filed for such taxable year prior to January 12, 1971;

(b) For the guideline class and taxable year, the taxpayer adopted Revenue Procedure 62-21 prior to January 12, 1971, by expressly so indicating in a proceeding before the Internal Revenue Service (such as upon examination of the income tax return for such taxable year) and there is reasonable evidence to that effect; or

(c) There is other reasonable evidence that prior to January 12, 1971, the taxpayer adopted Revenue Procedure 62-21 for the guideline class and taxable year.

If not treated under (b) or (c) of this subdivision as having done so for the last taxable year ending before January 1, 1971, and if the taxpayer files his first income tax return for such taxable year after January 11, 1971, the taxpayer will be treated as having adopted Revenue Procedure 62-21 prior to January 12, 1971, for a guideline class for such taxable year if he expressly so indicated on that return, or is treated under this subparagraph as having adopted Revenue Procedure 62-21 prior to January 12, 1971, for that guideline class for the immediately preceding taxable year.

(ii) *Examples.* The principles of this subparagraph may be illustrated by the following examples:

Example (1). Taxpayer A, an individual who uses the calendar year as his taxable year, has property in Group Three, Class 16(a), of Revenue Procedure 62-21. On A's income tax return for 1968, filed prior to January 12, 1971, he adopted Revenue Procedure 62-21 for the guideline class by so indicating under "Summary of Depreciation" in the appropriate schedule of Form 1040 for 1968. Under subdivision (i) (a) of this subparagraph, A is treated as having adopted Revenue Procedure 62-21 for the guideline class for 1968 prior to January 12, 1971.

Example (2). Taxpayer B, an individual who uses the calendar year as his taxable year, has property in Group Two, Class 5, of Revenue Procedure 62-21. B filed timely income tax returns for 1966 through 1968 but did not adopt Revenue Procedures 62-21 on any of such returns. In 1969 upon audit of B's taxable years 1966 through 1968, B exercised his option to be examined under the provisions of Revenue Procedure 62-21. The

Revenue Agent's report shows that B was examined under Revenue Procedure 62-21 for taxable years 1966 through 1968. B will be treated under subdivision (1)(b) of this subparagraph as having adopted Revenue Procedure 62-21 for such years prior to January 12, 1971.

Example (3). The facts are the same as in example (2) except that B did not upon examination by the Revenue Agent in 1969 exercise his option to be examined under Revenue Procedure 62-21. B has six accounts in the guideline class, Nos. 1 through 6. The Revenue Agent proposed to lengthen the depreciable lives on accounts Nos. 2 and 3 from 8 years to 12 years. In proceedings before the Appellate Division in 1970, B exercised his option to be examined under the provisions of Revenue Procedure 62-21. This is shown by correspondence between B and the Appellate Conferee as well as by other documents in the case before the Appellate Division. The case was settled on that basis before the Appellate Division without adjustment of the depreciable lives for B's accounts Nos. 2 and 3. B will be treated under subdivision (1)(b) of this subparagraph as having adopted Revenue Procedure 62-21 for taxable years 1966 through 1968 prior to January 12, 1971.

Example (4). Corporation X uses the calendar year as its taxable year and has assets in Group Two, Class 5, of Revenue Procedure 62-21. Beginning in 1964, corporation X used the guideline life of 10 years as the depreciable life for all assets in the guideline class. In 1967, corporation X's taxable years 1964 through 1966 were examined and corporation X exercised its option to be examined under the provisions of Revenue Procedure 62-21. Corporation X did not adopt Revenue Procedure 62-21 on any of its income tax returns, for the years 1964 through 1970. Corporation X has not been examined since 1967, but has continued to use the guideline life of 10 years for all property in the guideline class including additions since 1966. Corporation X will be treated under subdivision (1)(c) and (d) of this subparagraph as having adopted Revenue Procedure 62-21 prior to January 12, 1971, for taxable years 1964 through 1970.

Example (5). Corporation Y uses the calendar year as its taxable year and has assets in Group Two, Class 5, of Revenue Procedure 62-21. Since 1964, corporation Y has used various depreciable lives, based on the facts and circumstances, for different accounts in the guideline class. Corporation Y was examined in 1968 for taxable years 1965 through 1967. Corporation Y was also examined in 1970 for taxable years 1968 and 1969. Corporation Y did not exercise its option to be examined under the provisions of Revenue Procedure 62-21. Corporation Y has not adopted Revenue Procedure 62-21 on any income tax return. For taxable years 1964 through 1970, corporation Y's class life (within the meaning of section 4, Part II, of Revenue Procedure 62-21) was between 12 and 14 years. In August of 1971, corporation Y filed amended income tax returns for 1968 and 1969, and an income tax return for 1970, using a depreciable life of 10 years (equal to the guideline life) for all assets in the guideline class. Corporation Y will not be treated as having adopted Revenue Procedure 62-21 prior to January 12, 1971.

Example (6). Corporation Z uses the calendar year as its taxable year and has assets in group 2, class 5, of Revenue Procedure 62-21. Corporation Z adopted Revenue Procedure 62-21 for this guideline class by expressly so indicating on its tax return for 1966, which was filed before January 12, 1971. Corporation Z computed its allowable depreciation for 1966 as if it adopted Revenue Procedure 62-21 for this guideline class for

its taxable years 1962 through 1965, although it had earlier filed its tax returns for those years without regard to Revenue Procedure 62-21. The depreciation thus claimed in 1966 was less than what would have been allowable if corporation Z first adopted Revenue Procedure 62-21 in 1966. This was the result of certain accounts becoming fully depreciated through use of Revenue Procedure 62-21 in computing depreciation for 1962 through 1965. In addition, in deferred tax accounting procedures employed before January 12, 1971, for financial reporting purposes, corporation Z calculated its tax deferrals on the basis that it had adopted Revenue Procedure 62-21 for the years 1962 through 1965. Corporation Z will be treated under subdivision (1)(c) of this subparagraph as having adopted Revenue Procedure 62-21 for taxable years 1962 through 1965 prior to January 12, 1971.

[FR Doc.73-11322 Filed 6-6-73; 8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

APPORTIONMENTS

On page 10280 of the FEDERAL REGISTER of April 26, 1973, there was published a notice of proposed regulatory development to amend § 3.461 to provide a specific amount to be added to the widow's basic rate of dependency and indemnity compensation for each child under 18 years of age and eliminate the limitation on the amount payable. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation.

No written objections have been received and the proposed regulation is hereby adopted without change and is set forth below.

Effective date.—This VA regulation is effective December 1, 1969.

Approved June 1, 1973.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
Associate Deputy Administrator.

To reflect the amendment of 38 U.S.C. 411(d), paragraph (b) (4) (ii) of § 3.461, part III, Code of Federal Regulations, is amended to read as follows:

§ 3.461 Dependency and indemnity compensation.

• • • • •

(b) Rates payable. • • •

(4) Where the widow has elected to receive dependency and indemnity compensation instead of death compensation and there is a child or children over the age of 18 years, the amount of dependency and indemnity compensation payable to or for such child will be included in determining the total dependency and indemnity compensation payable. The share of dependency and indemnity compensation for such child will be whichever is the greater.

• • • • •
(ii) The share which would have been payable as death compensation subject to

the limitation that the total payable in the case will not exceed the total dependency and indemnity compensation which is authorized for a widow and a child or children, if any, under 18 years of age and a child who is a school child.

[FR Doc.73-11381 Filed 6-6-73; 8:45 am]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Miscellaneous Amendments

On pages 8523 through 8533 of the FEDERAL REGISTER of April 3, 1973, there was published a notice of proposed rule-making to amend sections in part 21 to provide for increases in monthly rates and other liberalizations in the educational assistance and vocational rehabilitation programs. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

Three comments were received. The suggested changes in these comments generally would require changes in the law. Therefore, these proposed regulations were not amended based on the comments received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date.—There are seven effective dates pertaining to these changes. The effective date for the rate changes is October 1, 1972 except for those veterans and eligible persons in training on the date of enactment, October 24, 1972, the effective date is the date of commencement of the current enrollment period, but not earlier than September 1, 1972. The effective date for correspondence program changes shall be, as to eligible wives and widows, January 1, 1973, and as to eligible veterans shall apply only to those enrollment agreements entered into after December 31, 1972. For all contracts signed before January 1, 1973, the \$175 rate and current program provisions will remain in effect. The advance payment provision is effective August 1, 1973, unless the Administrator certifies an earlier date to Congress. The prepayment provision is effective November 1, 1972. The effective date for the apportionment provision is January 22, 1973, which is 90 days after the date of enactment. All other provisions covered in these regulatory changes are effective the date of enactment of the law, October 24, 1972.

(Catalog of Federal Domestic Assistance Program Nos.: 64.111, Veterans Educational Assistance (GI Bill); 64.116, Vocational Rehabilitation for Disabled Veterans (Vocational Rehabilitation); and 64.117, War Orphans and Widows Educational Assistance.)

Approved June 1, 1973.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
Associate Deputy Administrator.

1. In § 21.130, paragraph (a) is amended to read as follows:

§ 21.130 Subsistence allowance.

(a) Payments. Each veteran under chapter 31 will be paid a subsistence allowance at the rates specified in § 21.133.

After the initial payment, subsequent payments for institutional courses will be made each month in advance. Final payment may be withheld until proof of continued enrollment is received and the account adjusted. Allowance will be paid while:

- (1) He is in training status.
- (2) He is in approved leave status. (A veteran will continue to be paid subsistence allowance even though he is hospitalized while in a leave status; receiving drill pay, flight pay or commuted rations as a member of a Reserve force; or while not on active duty, is receiving service department retirement or retainer pay.)

2. In § 21.131, paragraph (c) is amended to read as set forth below, and paragraph (e) is revoked.

§ 21.131 Commencing dates.

(c) *Correction of military records.* Where eligibility of a veteran arises as the result of correction of military records under 10 U.S.C. 1552 or a change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, the commencing date

of subsistence allowance which is otherwise payable will be the latest of the following dates:

- (1) Date the application for change, correction or modification was filed with the service department, in either an original or a disallowed Veterans Administration application;
- (2) Date of receipt of Veterans Administration application; or
- (3) One year prior to reopening of disallowed claim.

(e) [Revoked]

3. In § 21.132, paragraph (g) is amended and paragraph (i) is revoked to read as follows:

§ 21.132 Reduction or discontinuance.

(g) *Reduction in rate of pursuit of course.* End of month in which reduction occurred.

(i) [Revoked]

4. Section 21.133 is revised to read as follows:

§ 21.133 Rates.

Subsistence allowance is payable at the following monthly rates:

Type of training	Monthly rate of subsistence allowance			
	No dependent	One dependent	Two dependents	More than two dependents
Institutional:				
Full time.....	\$170	\$211	\$248	\$18
3/4 time.....	128	159	187	14
1/2 time.....	85	106	124	9
Institutional onfarm (IOF), apprentice or other onjob (OJT) ¹ (full time only).....	148	179	207	14
Combination (institutional and OJT) (Full time only):				
Institutional 3/4 time or more.....	170	211	248	18
Institutional less than 3/4 time.....	148	179	207	14
Cooperative (Full time only):				
Institutional full time.....	170	211	248	18
Business/industry full time.....	148	179	207	14

38 U.S.C. 1504(b)

¹ For onjob training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

5. Section 21.136 is revised to read as follows:

§ 21.136 Two-veteran cases; dependents.

The payment of additional subsistence allowance under § 21.133 to a veteran for a wife who is also a veteran and for a child will not bar the payment of additional subsistence allowance or educational assistance allowance under § 21.4136 to the wife for her husband and the same child.

6. Section 21.138 is added to read as follows:

§ 21.138 Advance payment.

(a) *Eligibility.* Subsistence allowance at the rates specified in § 21.133 shall be paid to an eligible veteran enrolled in an approved educational institution on a half-time or more basis.

(b) *Payment.* The amount of the payment is not to exceed the subsistence allowance for the month or fraction thereof in which the course will commence plus the subsistence allowance for the following month. Upon application and completion of arrangements for en-

rollment and if there is no evidence in the veteran's file showing that he is not eligible for such an advance, the check, made payable to the veteran, shall be mailed to the institution for delivery to the veteran upon registration. No delivery shall be made more than 30 days in advance of commencement of his program. Subsequent payments shall be made each month in advance subject to information furnished by the Veterans Administration staff or the training facility. Final payment may be withheld until certification is received that the veteran pursued his course and any necessary adjustments made.

(c) *Certification.* Payment will be authorized upon receipt of the proper certification which contains the following information:

- (1) The veteran is eligible for educational benefits;
- (2) He has been accepted by the institution or is eligible to continue his training there;
- (3) He has notified the institution of his intention to attend that institution or to reenroll in it;

- (4) The number of semester or clock hours to be pursued by the veteran; and
- (5) The beginning and ending dates of the enrollment period.

7. In § 21.253(b), subparagraph (2) is amended to read as follows:

§ 21.253 Additional considerations incident to supervision.

(b) *Loans from vocational rehabilitation revolving fund.* * * *

(2) No advancement from the revolving fund of more than \$200 shall be made at one time, and in no case shall the total outstanding advancements exceed \$200. Advancements to be made in multiples of \$10 shall be made only upon a showing of necessity and then only to the extent of such need. No interest will be charged on the funds advanced and no additional advancement shall be made to a veteran until the money previously advanced has been repaid in full, except in meritorious cases. (38 U.S.C. 1507; Public Law 92-540, 86 Stat. 1074)

8. Section 21.1030 is revised to read as follows:

§ 21.1030 Claims.

A specific claim in the form prescribed by the Administrator must be filed by the veteran in order for an educational assistance allowance to be paid. In addition servicemen must consult with their service education officer before applying for educational assistance. (38 U.S.C. 1671)

9. Immediately following § 21.1032, the cross references are amended to read as follows:

CROSS REFERENCES: Due process; procedural and appellate rights with regard to disability and death benefits and related relief. See § 3.103 of this chapter.

Computation of time limit. See § 3.110 of this chapter.

10. In § 21.1041, paragraphs (a)(4) and (d)(2) are amended as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* * * *

(4) The 36-months limitation may be exceeded where an extension is authorized under paragraph (d) of this section, or where no charge against entitlement is made based on a course or courses pursued at a secondary school level, as provided in § 21.1045(a), pursued by a veteran under the program of special assistance for the educationally disadvantaged or by a serviceman under the predischARGE education program, or pursued by a wife or widow under the special assistance for the educationally disadvantaged program.

(d) *Extension.* The period of entitlement, including the 36-months period, may be extended, but not beyond the 8-year delimiting date specified in § 21.1042:

- (2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement

ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that \$616 will provide, whichever is less. (38 U.S.C. 1661)

11. In § 21.1045(a), subparagraphs (2) and (4) are amended and subparagraph (5) is added; and paragraph (b) is amended so that the amended and added material reads as follows:

§ 21.1045 Entitlement charges.

(a) *Residence courses.*
(2) *Flight training courses; Chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each \$220 which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b); Public Law 92-540, 86 Stat. 1074)

(4) *Chapter 35.* Except as provided in subparagraph (5) of this paragraph, charges against a period of entitlement will be made in terms of full months and fractions of a month for periods during which the eligible person is enrolled in an approved course. Where a program of education is pursued on a full-time basis the total elapsed time will be charged. Where a program is pursued on a three-fourths, one-half time or less than half-time basis, a proportionate rate of the elapsed time will be charged. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month.

(5) *Secondary school training; Chapter 35 wife or widow.* No charge will be made against the entitlement of a wife or widow based on a course pursued under the circumstances outlined in § 21.4237, special assistance for the educationally disadvantaged. (38 U.S.C. 1733; Public Law 92-540, 86 Stat. 1074)

(b) *Correspondence courses—(1) High school courses.* The provisions of paragraph (a) (1) of this section, except to servicemen on active duty, and paragraph (a) (5) of this section are applicable to correspondence courses at a secondary school level.

(2) *Other courses.* Except as provided in paragraph (b) (1) of this section, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each \$175 paid to the veteran as an educational assistance allowance for such course for contracts entered into before January 1, 1973. For agreements entered into after December 31, 1972, the

period of entitlement of any eligible veteran, wife, or widow who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each \$220 paid to the veteran, wife, or widow as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter (38 U.S.C. 1786(a) (2)).

12. In § 21.3020, paragraph (b) is amended to read as follows:

§ 21.3020 Educational assistance.

The program of educational assistance under 38 U.S.C. Chapter 35, captioned War Orphans' and Widows' Educational Assistance, may be referred to as Dependents' Educational Assistance.

(b) *36-months limitation.* Educational assistance may not exceed a period of 36 months, or the equivalent in part-time training, unless it is determined that a longer period is required for special restorative training under the circumstances outlined in § 21.3300(c) or except as specified in § 21.3044(c). (38 U.S.C. 1711(a), 1733, 1741(b); Public Law 92-540, 86 Stat. 1074)

13. In § 21.3041(d), the introductory portion preceding subparagraph (1) is amended and subparagraph (8) is added; and paragraph (e) (3) is amended so that the amended and added material reads as follows:

§ 21.3041 Periods of eligibility; child.

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be 5 years from the applicable ending date specified in paragraphs (d) (1) to (7) of this section and 8 years in paragraph (d) (8) of this section. Where the ending date is subject to modification under more than one of paragraph (d) (3), (4), (5), (6) or (7) of this section, the more favorable date will apply.

(8) If eligibility for chapter 35 benefits arises before October 24, 1972, educational assistance for a course of apprentice or other on-the-job training approved under the provisions of § 21.4261 or § 21.4262 may be extended to October 24, 1980 or until age 31, whichever is earlier.

(e) *Extensions to ending dates.*

(3) Period of eligibility as specified in paragraph (c) or (d) of this section ends while enrolled during last half of quarter or semester, or during last half of course not operating on quarter or semester system: Extended to end of quarter or semester for schools operating on quarter or semester system, or end of course or for 9 weeks, whichever is earlier, for schools not operating on quarter or semester system. In a course pursued exclusively by correspondence, the period of eligibility will be extended

to the end of the course or for the total additional amount of instruction that \$462 will provide, whichever is less. Extension may be authorized beyond age 31, but may not exceed maximum entitlement. See § 21.3044(a). No extension of the period of eligibility will be made where training is pursued in a training establishment as defined in § 21.4200(c).

14. In § 21.3044, paragraph (c) is added to read as follows:

§ 21.3044 Entitlement.

(c) The 36-months limitation may be exceeded where no charge against entitlement is made based on a course or courses pursued by a wife or widow under the Special Assistance for the Educationally Disadvantaged program. (See § 21.4237.)

15. In § 21.3046, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 21.3046 Periods of eligibility; wives and widows.

The period of eligibility cannot exceed 8 years and can be extended only as provided in paragraph (c) of this section. If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-the-job training, or correspondence approved under the provisions of §§ 21.4256, 21.4261, and 21.4262 will not be afforded later than October 23, 1980. The period of eligibility of a wife computed under the provisions of paragraph (a) of this section, however, will be recomputed under the provisions of paragraph (b) of this section if her status changes to that of widow.

16. In § 21.3300, paragraph (c) is amended to read as follows:

§ 21.3300 Special restorative training.

(c) Special restorative training may be provided in excess of 36 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 36 months, may be expended through an accelerated program requiring a rate of payment in excess of \$69 per calendar month. See §§ 21.3303 and 21.3333(b) (38 U.S.C. 1741(b)).

17. In § 21.3333, paragraphs (a) and (b) are amended to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training.	\$220	If costs for tuition and fees average in excess of \$69 per month rate may be increased by such amount in excess of \$69.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each \$7.35 that the special training allowance exceeds the basic monthly rate of \$220. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742)

18. In § 21.4005, paragraphs (a) (1) and (2) and (b) (2) (iv) and (v) are amended to read as follows:

§ 21.4005 Conflicting interests.

(a) *General.* (1) Every officer or employee of the Veterans Administration who has, while such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any school operated for profit in which a veteran or eligible person was pursuing a course of education under 38 U.S.C. chapter 34, 35, or 36 will be immediately dismissed from his office or employment.

(2) If the Administrator finds that any person who is an officer or employee of a State approving agency has, while he was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, a school operated for profit in which a veteran or eligible person was pursuing a course of education or training under Chapter 34, 35, or 36, payments under § 21.4153 to such State approving agency will be discontinued unless such agency takes, without delay, such steps as may be necessary to terminate the employment of such person and payments will not be resumed while such person is an officer or employee of the State approving agency, or State Department of Veterans' Affairs or State Department of Education.

(b) *Waiver.* Where a request is made for waiver of application of paragraph (a) (1) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee, if the officer or employee:

(2) Meets all of the following conditions:

(iv) His position does not require him to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 38 U.S.C. ch. 34, 35, or 36.

(v) His position is not connected with the processing of claims by, or payments to, schools, or student enrolled therein under the provisions of 38 U.S.C. ch. 34, 35, or 36.

19. In § 21.4006, the introductory portion of paragraph (a) preceding subparagraph (1) is amended to read as follows:

§ 21.4006 False or misleading statements.

(a) Except as provided in this section payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States (38 U.S.C. 1790).

20. Section 21.4020 is revised to read as follows:

§ 21.4020 Two or more programs.

The aggregate period for which any person may receive assistance under two or more of the laws listed below:

(a) Parts VII or VIII, Veterans Regulation numbered 1(a), as amended;

(b) Title II of the Veterans' Readjustment Assistance Act of 1952;

(c) The War Orphans' Educational Assistance Act of 1956;

(d) 38 U.S.C. chs. 31, 34, 35, and 36 and the former Chapter 33

may not exceed 48 months (or the part-time equivalent thereof), but this section shall not be deemed to limit the period for which assistance may be received under Chapter 31 alone (38 U.S.C. 1795).

21. In § 21.4101, paragraph (b) is amended to read as follows:

§ 21.4101 Requirement; 38 U.S.C. ch. 34.

(b) Except as required by § 21.4106, counseling may be required before a second or subsequent change of program is approved, or before a change of program or reentrance is approved where an earlier course was discontinued because of unsatisfactory conduct or progress. (See § 21.4277.)

22. Section 21.4102 is revised to read as follows:

§ 21.4102 Requirement; 38 U.S.C. ch. 35.

(a) *Child.* Counseling is required for an eligible child before approval of an initial course except when the child has been accepted for, or is pursuing, courses which lead to a standard college degree at an approved institution. Counseling is required for all eligible children for reentrance after discontinuance because of unsatisfactory conduct or progress, or a change of program as provided in § 21.4106. The counselor will assist in preparing an educational plan if requested by the eligible person, his parent, or guardian (38 U.S.C. 1720; Public Law 92-540, 86 Stat. 1074).

(b) *Wife or widow.* Counseling is not required for a wife or widow for approval of an initial course or for a change from such course unless the earlier course was discontinued because of unsatisfactory conduct or progress or the change constituted a second or subsequent change. See § 21.4106.

23. Section 21.4106 is revised to read as follows:

§ 21.4106 Counseling; change or reentrance.

(a) *When required.* Counseling, or additional counseling, will be required under the following circumstances unless it is found by the counselor that the change requested is from a program that was not considered suitable in the initial counseling to a program which is supported by the counseling data, and need for additional counseling is not shown.

(1) 38 U.S.C. ch. 34. For a change from the initial program if interrupted or discontinued due to the veteran's own misconduct, neglect, or lack of application, for any subsequent changes of program after the initial change, or for resumption of a course of education which had been discontinued because of unsatisfactory conduct or progress under § 21.4277.

(2) 38 U.S.C. ch. 35; *child.* For any change of program or for resumption of a course of education which had been discontinued because of unsatisfactory conduct or progress under § 21.4277.

(3) 38 U.S.C. ch. 35; *wife or widow.* For a change from the initial program if interrupted or discontinued due to the eligible person's own misconduct, neglect, or lack of application for any subsequent changes of program after the initial change, or for resumption of a course of education which has been discontinued under § 21.4277 because of unsatisfactory conduct or progress.

(b) *Approval.* The counselor will recommend approval of a change of program or reentrance into the same program, if he finds that the program which the veteran or eligible person proposes to pursue is suitable to his aptitudes, interests, and abilities; and where the veteran's or eligible person's program has been interrupted, or he has failed to progress in, his program due to his own misconduct, neglect, or lack of application, the cause for the unsatisfactory conduct or progress has been removed and there exists a reasonable likelihood that there will not be a recurrence of such an interruption or failure to progress. Subject to this approval criteria, approval for changes of program subsequent to the second change may be recommended. Negative determinations involving unsatisfactory conduct or progress will be made by the Vocational Rehabilitation Board.

24. In § 21.4130, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 21.4130 Educational assistance allowance.

Educational assistance allowance will be paid at the rate specified in § 21.4136 or § 21.4137 while the veteran or eligible person is pursuing a course of education. Except for apprenticeship and on-the-job training programs, no payment will be made based on a course not leading to a standard college degree for excessive absences as determined under § 21.4205 (b). (See §§ 21.4136(i) and 21.4137(f) for proportionate reduction where less than 120 hours are completed during

month in apprenticeship and on-the-job training programs). After the initial payment, subsequent payments for institutional courses will be made each month in advance. Final payment may be withheld until proof of continued enrollment is received and the account adjusted.

25. In § 21.4131(a), subparagraph (4) is revoked.

§ 21.4131 Commencing dates.

The commencing date of an award or increased award of educational assistance allowance will be determined under this section.

(a) *Entrance or reentrance including change of program or school* (§ 21.4234).

(4) [Revoked]

26. Section 21.4134 is revised to read as follows:

§ 21.4134 Withholding and discontinuance.

Notwithstanding the approval of a course by a State approving agency, educational assistance allowance may be discontinued if it is determined that the course of education in which the individual is enrolled fails to meet, or the school has violated, any of the requirements of Chapter 34, 35, or 36 (38 U.S.C. 1790). Where preliminary evidence indicates that it would be to the best interests of the Government, the station head may withhold further payments to persons enrolled in the school until a determination has been made as to whether approval should be withdrawn and whether overpayments exist. Payments will be promptly released whenever the facts developed justify such action.

27. In § 21.4135, paragraphs (e) and (h) are amended to read as follows:

§ 21.4135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance allowance will be specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(e) *Course discontinued—course interrupted.* Last day of attendance, or at institutions of higher learning the official date of change in status under the practices of the institution, or if enrollment certified for ordinary school year or complete course and veteran or eligible person has completed one or more terms, but does not return for the next term, discontinuance will be effective the end of the term completed.

(h) *Required certifications not received after certification of enrollment* (§§ 21.4203 and 21.4204). (1) If required

initial certification is not timely received, payments will be suspended. If not received within 2 months (two quarters for correspondence) after month due, discontinuance date of enrollment. If certification is later received, adjustment will be made based on facts found.

(2) If required subsequent certification is not timely received, payment will be suspended. If not received within 2 months (two quarters for correspondence) after month due, discontinuance at end of the last certified period. If cer-

tification is later received, adjustment will be made based on facts found.

28. In § 21.4136, paragraphs (a), (c), (g), and (h) are amended and paragraph (j) is added so that the amended and added material reads as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. ch. 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates.

Type of courses	Monthly rate			
	No dependent	One dependent	Two dependents	Additional for each additional dependent
Institutional:				
Full time.....	\$220	\$261	\$298	\$18
¾ time.....	165	196	224	14
½ time.....	110	131	149	9
Less than ½, but more than ¼ time.....	110			
¼ time or less.....	55			
Cooperative, other than farm cooperative (full time only). Apprentice or onjob (full time only but see footnote 2 below). Payment designated training assistance allowance:	177	208	236	14
First 6 months.....	160	179	196	8
Second 6 months.....	120	130	150	8
Third 6 months.....	80	99	116	8
Fourth 6 months and succeeding periods.....	40	50	76	8
Correspondence.....	90 per centum of the established charge for number of lessons completed by veteran and serviced by school. ¹ Allowance paid quarterly.			
Flight training.....	90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay— Allowance paid monthly based on actual flight training received.			
Farm cooperative:				
Full time.....	177	208	236	14
¾ time.....	133	156	177	11
½ time.....	89	104	118	7

(38 U.S.C. 1677, 1682, 1786, 1787)

¹ See paragraph (b) of this section.
² See footnote 2 of section 21.4270(c) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.
³ Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before Jan. 1, 1973 will receive 100 per centum of the established charges.

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a) (1) "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar course to have. Where there is no same program, the cost of the course will be established by the Veterans' Administration based on a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. Subject to these limitations, the rate will be:

Measurement:	Rate
Full time.....	\$220
¾ time.....	165
½ time.....	110
Less than ½, but more than ¼ time.....	110
¼ time or less.....	55

(38 U.S.C. 1682; Public Law 92-540, 86 Stat. 1074)

(g) *Allowance for dependents—(1) Concurrent benefits.* Additional educa-

tional assistance allowance may be paid to a veteran concurrently with additional disability pension or compensation for the same dependent.

(2) *Two-veteran cases.* The payment of additional educational assistance allowance to a veteran for a wife who is also a veteran and for a child will not bar the payment of additional educational assistance allowance or additional subsistence allowance under § 21.133 to the wife for her husband and the same child. The term "child" includes a veteran who meets the requirements of § 3.57 of this chapter, even though the "child" is receiving subsistence allowance or educational assistance allowance under 38 U.S.C. Chapters 31, 34, or 36 based on his own service (38 U.S.C. 1682, 1787).

(h) *Payment.* Educational assistance allowance at the rates specified in paragraphs (b) and (c) of this section for servicemen on active duty, other than those training under the predischARGE education program, who are training on a less than half-time basis, will be paid to or on behalf of the trainee enrolled in an institution operating on a term, quarter, or semester basis in a lump sum for the entire quarter, semester, or term. These payments will be made during the month immediately following the month in which certification is received from

the educational institution that the veteran has enrolled in and is pursuing a program at the institution.

(j) *Advance payment*—(1) *Eligibility*. Educational assistance allowance at the rates specified in § 21.4136(a) shall be paid to an eligible veteran or serviceman on active duty enrolled in an approved educational institution on a half-time or more basis and to all servicemen training under the predischARGE education program.

(2) *Payment*. Upon receipt of an application and if there is no evidence in the veteran's or serviceman's file showing that he is not eligible for such an advance, the check for the allowance, made payable to the veteran or serviceman, shall be mailed to the institution for delivery to the veteran or serviceman upon registration. No delivery by the institution shall be made more than 30 days in advance of commencement of his program.

(i) *Veterans*. The amount of the payment is not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Subsequent payments shall be made each month in advance subject to certification regulations set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. Final payment may be withheld until certification is received that the veteran pursued his course and any necessary adjustments made.

(ii) *Servicemen on active duty*. The payment will be in a lump sum based upon the amount payable for the entire quarter, semester, or term, as applicable. The application must be endorsed by the school to verify information needed to determine the lump-sum payment.

(3) *Application*. Payment will be authorized upon receipt of an application which in the case of an eligible serviceman has been endorsed by the educational institution. The application will contain a certification showing the following information:

(i) The veteran or serviceman is eligible for educational benefits;

(ii) He has been accepted by the institution or is eligible to continue his training there;

(iii) He has notified the institution of his intention to attend that institution or to reenroll in it;

(iv) The number of semester, clock or Carnegie hours to be pursued by the veteran or serviceman and the cost of the course for the serviceman; and

(v) The beginning and ending dates of the enrollment period.

(4) *Certification for the predischARGE education program*. In addition to the information required in subparagraph (3) of this paragraph, the enrollment certificate shall specify the following:

(i) The program to be pursued has been approved;

(ii) The anticipated cost;

(iii) Where the program to be pursued is other than a high school credit course, the need of the person to pursue the course or courses to be taken.

29. In § 21.4137, paragraph (a) is amended and paragraphs (e), (f), and (g) are added so that the amended and added material reads as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. ch. 35.

(a) *Rates*. Educational assistance allowance is payable at the following monthly rates.

Type of courses	Monthly rate
Institutional:	
Full time.....	\$220
¾ time.....	165
½ time.....	110
Less than ½, but more than ¼ time.....	110
¼ time or less.....	55
Cooperative (full time only).....	177
Apprentice or on-job (full time only but see footnote, below):	
Payment designated training assistance allowance:	
1st 6 months.....	160
2d 6 months.....	120
3d 6 months.....	80
4th 6 months and succeeding periods.....	40
Correspondence: 90 percent of the established charge for number of lessons completed by eligible wife or widow and serviced by the school—allowance paid quarterly. (38 U.S.C. 1732, 1786, 1787)	

(e) *Payment*. Educational assistance allowance at the rates specified in paragraph (b) of this section will be paid to or on behalf of the eligible person enrolled in an institution operating on a term, quarter, or semester basis in a lump sum for the entire quarter, semester, or term. These payments will be made during the month immediately following the month in which certification is received from the educational institution that the eligible person has enrolled in and is pursuing a program at the institution.

(f) *Proportionate reduction in monthly training assistance allowance less than 120 hours*. For any month in which an eligible person pursuing an apprenticeship or on-job training program fails to complete 120 hours of training the rate specified in paragraph (a) of this section shall be reduced proportionately in the proportion that the

¹ See footnote 5 of § 21.4270(g) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

² Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible wife or widow whichever is lesser.

number of hours worked bears to 120 hours. This 120-hour requirement is for training hours worked and may not include hours of related training also required as part of the program. In this computation the number of hours worked is to be rounded to the nearest multiple of eight. (See Footnote 5 to § 21.4270 as to the requirements for full-time training.)

(g) *Advance payment*—(1) *Eligibility*. Educational assistance allowance at the rates specified in § 21.4137(a) shall be paid to an eligible person enrolled in an approved educational institution on a half-time or more basis.

(2) *Payment*. The amount of the payment is not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Upon receipt of an application and if there is no evidence in the eligible person's file showing that he is not eligible for such an advance, the check, made payable to the eligible person, shall be mailed to the institution for delivery to the eligible person upon registration. No delivery shall be made more than 30 days in advance of commencement of his program. Subsequent payments shall be made each month in advance subject to certification requirements set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. Final payment may be withheld until certification is received that the eligible person pursued his course and any necessary adjustments made.

(3) *Certification*. Payment will be authorized upon receipt of the application. The application will contain a certification showing the following information:

(i) The eligible person is eligible for educational benefits;

(ii) The eligible person has been accepted by the institution or is eligible to continue training there;

(iii) The eligible person has notified the institution of his intention to attend that institution or to reenroll in it;

(iv) The number of semester, clock or Carnegie hours to be pursued by the eligible person; and

(v) The beginning and ending dates of the enrollment period.

30. Section 21.4138 is revised and a cross-reference is added following § 21.4138 to read as follows:

§ 21.4138 *Certifications*.

Educational assistance allowance will be paid to or on behalf of a veteran or eligible person under Chapter 34 or 35 on the basis of a certification as required in §§ 21.4136, 21.4137, 21.4203, 21.4204, and 21.4205 concerning enrollment in or the pursuit of a course during the reporting period. For institutional courses not leading to a standard college degree:

(a) Where a course is pursued in an institution operating on a term, quarter, or semester basis on a less than half-time basis or while on active duty, other than

for training under the predischARGE education program, a certification by the institution that the eligible individual has enrolled will be sufficient for release of a lump-sum payment to or on behalf of the individual computed for the entire quarter, semester or term.

(b) Where a course is pursued by an eligible person or an eligible veteran not on active duty and on a half-time or greater basis, an application from such eligible person or veteran certifying that he will be enrolled will be sufficient to release payment of educational assistance allowance representing the initial payment of an enrollment period, not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Subsequent payments shall be made each month in advance subject to submission of reports from the eligible person or veteran and the school as required by §§ 21.4203, 21.4204, and 21.4205. Payment for the last month of the enrollment period will be released upon receipt of the final certification required by §§ 21.4203 and 21.4205.

(c) Where a course is pursued by a serviceman on active duty on a half-time or greater basis, or by a serviceman training under the predischARGE education program, a certification by the school that the serviceman will be enrolled will be sufficient to release payment in a lump sum not earlier than 30 days prior to the date the serviceman's program of training will begin.

CROSS REFERENCES: Payments. See §§ 21.4136(h), 21.4137(e).

31. Section 21.4140 is revised to read as follows:

§ 21.4140 Apportionment.

(a) General. Where in order, that portion of the educational assistance allowance payable to a veteran training under Chapter 34 because of dependents will be subject to apportionment in accordance with § 3.451 of this chapter, subject to the limitations of § 3.458 of this chapter.

(b) Effective date. The effective date of apportionment will be as prescribed in § 3.400(e) of this chapter.

32. In § 21.4153(c), subparagraph (3) is amended to read as follows:

§ 21.4153 Reimbursement of expenses.

(c) Reimbursable expenses. . . .

(3) Administrative expenses. An allowance for administrative expenses for which payment may be authorized will be determined in accordance with the formula contained in this subparagraph. Salary cost includes basic salary plus fringe benefits such as Social Security, retirement, and health, accident or life insurance which is provided all similarly circumstanced State employees.

Total salary cost reimbursable	Allowance for administrative expense
\$5,000 or less-----	\$500.
Over \$5,000 but not exceeding \$10,000.	\$900.
Over \$10,000 but not exceeding \$35,000.	\$900 for the first \$10,000 plus \$800 for each additional \$5,000 or fraction thereof.
Over \$35,000 but not exceeding \$40,000.	\$5,250.
Over \$40,000 but not exceeding \$75,000.	\$5,250 for the first \$40,000 plus \$700 for each additional \$5,000 or fraction thereof.
Over \$75,000 but not exceeding \$80,000.	\$10,450.
Over \$80,000-----	\$10,450 for the first \$80,000 plus \$600 for each additional \$5,000 or fraction thereof.

33. In § 21.4200, paragraphs (a) (2) and (c) are amended to read as follows:

§ 21.4200 Definitions.

(a) School, educational institution, institution. . . .

(2) For Chapter 35 these terms mean any public or private secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university or scientific or technical institution or any other institution if it furnishes education at the secondary school level or above. They include institutions which provide specialized vocational courses for the mentally or physically handicapped generally recognized as on the secondary school level or above. It also includes training establishments as defined in paragraph (c) of this section (38 U.S.C. 1701(a) (6)).

(c) Training establishment. The term means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training (38 U.S.C. 1652(e), 1701(a) (9); Public Law 92-540, 86 Stat. 1074).

34. Section 21.4201 is revised to read as follows:

§ 21.4201 Schools listed by Attorney General.

Enrollment may not be approved for a course in a school while it is listed by

the Attorney General under section 12, Executive Order 10450 (18 FR 2489) (38 U.S.C. 1793).

35. In § 21.4202, paragraph (a) is amended to read as follows:

§ 21.4202 Overcharges; restrictions on enrollments.

(a) Overcharges. When it is found that a school has charged or received from any veteran or eligible person any amount in excess of the established charges for tuition and fees which the school requires from similarly circumstanced nonveterans or noneligible persons enrolled in the same course, the school may be disapproved for enrollment of any person not already enrolled in the school. A school disapproved for Chapter 35 purposes before March 3, 1966, is considered disapproved for Chapter 34 purposes for enrollment of any veteran not already enrolled (38 U.S.C. 1790). See § 21.4207.

36. In § 21.4203, paragraphs (b) (1) and (2), (d) (1), (e), and (f) (1) and (2) are amended to read as follows:

§ 21.4203 Reports by schools; requirements.

(b) Entrance or reentrance. The certification must clearly specify the program objective. Upon receipt of a certification of enrollment, an official authorization will be issued showing the beginning and ending dates of each period for which an allowance may be paid. The authorization will be for the period of enrollment or the extent of the eligible person's entitlement, whichever is the lesser.

(1) Schools organized on a term, quarter, or semester basis may generally report enrollment for the term, quarter, or semester or the complete course to the expected date of graduation. Certifications for the ordinary school year may include the summer session. Certifications for the complete course will include a report of the dates between school years if the school does not offer a summer session that includes all or a part of each month between the spring and fall term, or the veteran or eligible person does not intend to attend the summer session. No allowances are payable for these intervals. Enrollment certifications for the complete course are encouraged, except where the student is a veteran or eligible person pursuing a program on a less than half-time basis or is a serviceman. For these students a separate enrollment certification will be required for each term, quarter, or semester.

(2) Schools organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the school closes for any interval designated in the school's approval data

as breaks between school years. No allowances are payable for these intervals.

(d) *Interruptions and terminations.* When a veteran or eligible person interrupts or terminates his training for whatever reason, including unsatisfactory conduct or progress, this fact must be reported promptly to the Veterans Administration.

(1) Where the school offering courses not leading to a standard college degree is required to submit a certification, the information required by this paragraph and paragraph (c) of this section should be included in the endorsement to the veteran's or eligible person's certification. The certification will include a report of absences since the last regular reporting period.

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. Chapter 34 or a wife or widow is enrolled under 38 U.S.C. Chapter 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible wife's or widow's certification the number of lessons completed by the veteran, wife, or widow and serviced by the school. Such reports will be submitted quarterly (38 U.S.C. 1780).

(f) *Monthly certification.*—(1) *Courses not leading to a standard college degree.* A certification must be submitted monthly, except for those courses pursued by servicemen while on active duty or on less than one-half time basis, and except as provided in paragraphs (e) and (g) of this section, for each veteran and eligible person enrolled in a course which does not lead to a standard college degree. (See § 21.4204.) A report also will be required before release of the final allowance check. The report will consist of a certification containing the information required for release of payment, signed by the veteran or eligible person and the school on or after the final date of the reporting period. The date on which each person signed must be clearly shown. The only exception to the requirement of two signatures is a certification of interruption of training when the veteran or eligible person is not available for signature.

(2) *Courses leading to a standard college degree.* Schools which have veterans or eligible persons enrolled in courses which lead to a standard college degree are not required to submit periodic certifications for students enrolled in such courses. Certifications are, however, required under paragraphs (b), (c), and (d) of this section.

37. In § 21.4204, paragraphs (a), (c) (1), and (d) are amended to read as follows:

§ 21.4204 Periodic certifications.

Educational assistance allowance is payable on the basis of a required certification concerning the pursuit of a course during the reporting period.

(a) *Reports by schools, veterans and eligible persons.* A veteran or eligible person enrolled in a course which leads to a standard college degree, excepting those on active duty and veterans or eligible persons pursuing the course on a less than half-time basis, must submit a report as required by the Veterans Administration, certifying as to continued enrollment in and pursuit of his course for the entire enrollment period. The report shall be completed and signed by the veteran or eligible person in April each year. In the case of a veteran or eligible person who completed, interrupted, or terminated his course, any communication from an authorized official of the school notifying the Veterans Administration of the veteran's or eligible person's completion of course as scheduled or earlier termination date, will be accepted to release and terminate payments accordingly. In the case of a scheduled termination at other than the end of the spring term, semester, or quarter, a report will be required during the last month of the certified period of enrollment. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203 (e), (f), or (g).

(c) *Term, quarter, or semester.* For a course which does not lead to a standard college degree, if a school organized on a term, quarter, or semester basis has reported enrollment:

(1) For the ordinary school year or the complete course, the periodic certification will show the intervals between terms, quarters, or semesters as absences.

(d) *Year-round courses.* The periodic certifications will show any vacation period or interval between periods of instruction as absences. The periodic certification will not cover the period between school years.

38. In § 21.4206, paragraph (c) is added to read as follows:

§ 21.4206 Reporting fee.

(c) An additional \$1 will be paid to those institutions who have delivered to the veteran or eligible person at registration the educational assistance check representing his advance payment. In order to receive this fee, the institution shall submit to the Veterans Administration a certification of delivery of the check. If the check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Veterans Administration (38 U.S.C. 1780).

39. In § 21.4207, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 21.4207 Failure of school to meet requirements.

When the Veterans Administration discovers facts which appear to warrant a finding that the school is in violation of specific criteria of 38 U.S.C. Chapters

34, 35, or 36, including failure to meet requirements for approval of a course offered to a veteran or eligible person and institution of policies regarding payment of tuition and fees so as to deny the benefits of the advance payment program, the facts will be referred to the field station Committee on Educational Allowances.

40. In § 21.4209, paragraphs (a) and (c) are amended to read as follows:

§ 21.4209 Examination of records.

(a) *Availability.* The records and accounts of educational institutions pertaining to veterans and eligible persons enrolled in programs of education or special restorative training under 38 U.S.C. Chapter 34 or 35 will be available for examination by duly authorized representatives of the Government (38 U.S.C. 1790).

(c) *Below college level, apprentice, and other on-the-job.* The school having veterans or eligible persons enrolled in a course or courses which do not lead to a standard college degree will make available, in addition to the records and accounts required in paragraph (b) of this section, the records of leave, absences, class cuts, makeup work, and tardiness. Each training establishment which has enrolled veterans under Chapter 34 or eligible persons under Chapter 35 will also make available payroll records.

41. In § 21.4230, paragraph (d) is amended to read as follows:

§ 21.4230 Requirements.

(d) *Provisional; Chapter 35; child.* When application for educational assistance under Chapter 35 is approved provisionally the eligible child and, if a minor, the parent or guardian also will be informed of the need to develop a program of education consistent with paragraphs (a) and (b) of this section. In those cases where the eligible child has been accepted for, or is pursuing, courses which lead to a standard college degree at an approved institution, an educational plan may be submitted and approved without counseling if it meets the requirements of paragraphs (a) and (b) of this section (38 U.S.C. 1713, 1720; Public Law 92-540, 86 Stat. 1074).

42. In § 21.4231(b), subparagraph (2) is amended to read as follows:

§ 21.4231 Educational plan; 38 U.S.C. ch. 35; child.

(b) Final approval of the educational plan will be given when it is determined that:

(2) The educational plan is consistent with Veterans Administration regulations on providing a program of education and does not include any courses

which are precluded under 38 U.S.C. ch. 35 (38 U.S.C. 1720).

43. In § 21.4232, paragraph (a) is amended to read as follows:

§ 21.4232 Specialized vocational training; 38 U.S.C. ch. 35.

(a) A program consisting of a specialized course of vocational training may be provided to an eligible person who is not in need of special restorative training and who requires such a program because of a mental or physical handicap (38 U.S.C. 1736). The Vocational Rehabilitation Board will determine whether such a course is in the best interest of the eligible person. If the determination is in the affirmative the board will assist in developing the program and a suitable educational plan. If it is determined that such a program is not in the best interest of the eligible person the application for the program will be denied. Specialized vocational training may be authorized for an eligible child only if the child has passed his 14th birthday.

44. In § 21.4234, the introductory portion preceding paragraph (a), and paragraphs (b) (2) and (c) are amended to read as follows:

§ 21.4234 Change of program.

A request for a change of program may be made by a veteran or eligible person by any form of communication, however, if sufficient information is not furnished to process his request, the prescribed form for a change of program may be furnished him for completion. An eligible child needs the concurrence of his parent or guardian and appropriate counseling by the Veterans Administration before a change of program is approved. More than two changes of program may be approved if it is found that such additional changes are necessitated by circumstances beyond the control of the veteran or eligible person (38 U.S.C. 1791; Public Law 92-540, 86 Stat. 1074).

(b) Chapter 34. The veteran may make one optional change of program if his previous course was not interrupted or discontinued due to his own misconduct, neglect or lack of application. He may make a second change or an initial change after interruption or discontinuance due to his own misconduct, neglect or lack of application if it is found that:

(2) In any instance where the veteran has interrupted, or failed to progress in, his program due to his own misconduct, neglect or lack of application, there exists a reasonable likelihood with respect to the program which the veteran proposes to pursue that there will not be a recurrence of such an interruption or failure to progress (38 U.S.C. 1791).

(c) Chapter 35; child. After further counseling one change will be approved and a second change may be approved, if

the criteria of paragraph (b) (1) and (2) of this section are satisfied. The approval of such change will also be subject to the requirement that the educational plan for the new program must meet the criteria applicable to final approval of an original application. See §§ 21.4230 and 21.4231 (38 U.S.C. 1791).

45. In § 21.4235, paragraph (a) (2) and (3) is amended to read as follows:

§ 21.4235 PredischARGE Education Program (PREP) and Special Assistance for Educationally Disadvantaged Veterans; chapter 34.

(a) Enrollment. Enrollment of a veteran may be approved in any elementary, secondary, preparatory, refresher, remedial, deficiency, or special educational assistance course not otherwise prohibited, regardless of his previous educational experience:

(2) After discharge or release from active duty without receipt therein of a secondary school diploma or equivalency certificate, if such course or courses are required to receive a secondary school diploma; or

(3) After discharge or release from active duty, if such course or courses are necessary to the pursuit of a program of education for which he would be eligible but for that lack.

46. In § 21.4236, the headnote and paragraphs (a), (b) (1), (c) and (d) are amended to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

(a) Enrollment. A veteran or eligible person pursuing a postsecondary educational program on a half-time or more basis at an educational institution who has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education may receive special supplemental monetary assistance to provide tutorial services.

(b) Certification. Approval will be granted upon certification by the educational institution:

(1) That individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to, the satisfactory pursuit of an approved program of education;

(c) Educational assistance allowance. In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or § 21.4137 the cost of such tutorial assistance in an amount not to exceed \$50 per month will be authorized.

(d) Entitlement charge. No charge will be made against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Spe-

cial supplemental assistance provided under this section will not exceed a maximum of \$450 (38 U.S.C. 1690, 1692, 1693).

47. Section 21.4237 and a cross reference are added to read as follows:

§ 21.4237 Special assistance for the educationally disadvantaged; chapter 35; wife or widow.

(a) Enrollment. Enrollment of an eligible wife or widow may be approved in an appropriate course or courses at the secondary school level in a State if the wife or widow:

(1) Has not received a secondary school diploma (or an equivalency certificate),

(2) Needs additional secondary school education, remedial, refresher or deficiency courses, to qualify for admission to an appropriate educational institution in a State in order to pursue a program of education, and

(3) Is to pursue the course or courses in a State.

(b) Measurement. Remedial, deficiency or refresher courses offered at the secondary school level will be measured as provided in §§ 21.4271(c) and 21.4272 (f).

(c) Educational assistance allowance. Educational assistance allowance will be authorized at the monthly rates specified in § 21.4137.

(d) Entitlement charge. No charge will be made against the period of the entitlement of the wife or widow because of enrollment in courses under the provisions of this section (38 U.S.C. 1733; Public Law 92-540, 86 Stat. 1074).

Cross Reference: High school evening courses. See § 21.4271.

48. In § 21.4250(c), subparagraphs (2) and (4) are amended to read as follows:

§ 21.4250 Approval of courses.

(c) Veterans Administration approval. The Director, Education and Rehabilitation Service, may approve:

(2) A course of education offered by any agency of the Federal Government authorized under other laws to offer such course; applications for courses at Department of Defense Overseas Dependents Schools and schools under contract with Department of Defense must include a copy of the report from Department of Defense to the Committees on Veterans' Affairs of the Senate and House of Representatives indicating the schools are to be used under the PredischARGE Education Program. Courses approved before October 24, 1972 will be considered approved until January 22, 1973 without this submission.

(4) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 38 U.S.C. ch. 34 or 35 offered by an institution of higher learning not located in a State (38 U.S.C. 1676, 1723); and

49. In § 21.4251(a), subparagraphs (3) and (4) are amended and subparagraph (5) is added so that the amended and added material reads as follows:

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(3) Any course which has been offered by a school for a period of more than 2 years, notwithstanding that the school has moved to another location within the same general locality, or where the school has made a complete move with substantially the same faculty, curricula, and students, without a change in ownership; or

(4) Any course which is offered by a nonprofit school of college level and which is recognized for credit toward a standard college degree; or

(5) Any course for the educationally disadvantaged or the predischarged education program offered by a proprietary nonprofit educational institution, at the principal or branch location, when the institution offering the course has been in operation for more than 2 years (38 U.S.C. 1789).

50. In § 21.4252, paragraphs (e), (f) (1), and (g) are amended to read as follows:

§ 21.4252 Courses precluded.

(e) *Correspondence courses.* Enrollment in such courses will not be approved for eligible children under Chapter 35. See § 21.4256 as to Chapter 34 and wives and widows under Chapter 35.

(f) *Courses on secondary level; Chapter 35.* (1) A curriculum offered by a public or private school at the secondary school level leading to the completion of the eligible child's regular secondary school education, that is, leading to a high school diploma or its equivalent, may not be pursued as a program of education or as part of a course of education of an eligible child under Chapter 35. An eligible wife or widow may pursue secondary school courses only under the special assistance for the educationally disadvantaged program. (See § 21.4237.)

(g) *On-farm courses; Chapter 35.* Enrollment in such courses will not be approved for eligible persons under Chapter 35 (38 U.S.C. 1723(c)).

51. In § 21.4253(a), subparagraph (2) is amended to read as follows:

§ 21.4253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements:

(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.

52. Section 21.4256 is revised to read as follows:

§ 21.4256 Correspondence courses.

(a) A school desiring to enroll veterans under Chapter 34 and eligible wives and widows under Chapter 35 for correspondence courses may have such courses approved when the courses and the school meet the requirements of § 21.4253 or § 21.4254, as applicable, and when its application demonstrates that the course is satisfactory in all elements. In addition the institution shall have the following enrollment and termination procedures.

(1) The enrollment agreement shall disclose fully the obligations of the institution and the veteran, wife, or widow and shall display in a prominent place on the agreement the conditions for affirmation, termination, refund, and payment of the educational allowance by the Veterans Administration.

(2) A copy of the agreement shall be given to the veteran, wife, or widow when it is signed.

(3) The agreement shall not be effective unless the veteran, wife, or widow, after the expiration of 10 days after the agreement is signed, shall have signed and submitted to the Veterans Administration a written statement, with a signed copy to the institution, specifically affirming the agreement.

(4) Upon notification of the institution by the veteran, wife, or widow of an intention not to affirm the agreement, any fees paid by the individual shall be returned promptly in full to him.

(5) Upon termination of the affirmed agreement for training in an accredited course by the veteran, wife, or widow, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or \$50, whichever is lesser, may be charged him. When the agreement is terminated after completion of less than 25 percent of the lessons of the course, the institution may retain the registration fee plus 25 percent of the tuition for the course. When the agreement is terminated after 25 percent but less than 50 percent of the lessons are completed, the institution may retain the registration fee plus 50 percent of the tuition for the course. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(6) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, wife, or widow than the pro rata basis as provided in paragraph (a) (5) of this section, such established policy will be applicable.

(b) Whenever the State approving agency approves a correspondence course for training of veterans under Chapter 34 and eligible wives and widows under Chapter 35, it shall immediately notify the Veterans Administration, identify-

ing the school, the course or courses approved, and the educational or vocational objective of each approved course.

53. Section 21.4260 is revised to read as follows:

§ 21.4260 Courses in foreign countries.

Enrollment in a course at a school not located in a State may be approved:

(a) In accordance with § 21.4250(c) when such course is pursued at an institution of higher learning, or

(b) When such course or courses contemplated under the provisions of § 21.4235(a) (1) are:

(1) Pursued at an institution operated by the Department of Defense, or

(2) Provided by an institution under a contract with the Department of Defense. Such course or courses must accord with regulations prescribed by the Administrator of Veterans Affairs. Assurance of compliance with the terms of such contract by such institution shall be the function of the Department of Defense.

The educational assistance allowance to a veteran or eligible person pursuing a course in a foreign country will be denied or discontinued when it is found that such enrollment is not for the best interests of the veteran, eligible person, or the Government.

54. In § 21.4261, the headnote and paragraphs (b) (1) and (c) (2) and (3) are amended to read as follows:

§ 21.4261 Apprentice courses.

(b) *Application.* Any training establishment desiring to furnish a course of apprentice training will submit a written application to the appropriate State approving agency setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(c) *Approval criteria.* The appropriate State approving agency may approve a course of apprentice training when the training establishment and its apprentice courses are found upon investigation to have met the following criteria:

(2) A signed copy of the training agreement for each veteran or eligible person, making reference to the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Veterans Administration and the State approving agency by the employer; and

(3) The course meets such other reasonable criteria as may be established by the State approving agency (38 U.S.C. 1787).

55. In § 21.4262, the headnote and paragraphs (b) (1), (5), (6), and (7) and (c) (2), (4), (5), (7), (8), and (10) are amended to read as follows:

§ 21.4262 Other training on-the-job courses.

(b) *Application.* Any training establishment desiring to furnish a course of other training on-the-job will submit to the appropriate State approving agency a written application setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(5) The entrance wage or salary paid by the training establishment to employees already trained in the kind of work for which the veteran or eligible person is to be trained;

(6) A certification that the wages to be paid the veteran or eligible person upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 percent of the wages paid for the job for which he is to be trained, and will be increased in regular periodic increments until, not later than the last full month of the scheduled training period they will be at least 85 percent of the wages paid for the job for which the veteran or eligible person is being trained;

(7) A certification that there is reasonable certainty that the job for which the veteran or eligible person is to be trained will be available to him at the end of the training period; and

(c) *Approval criteria.* The appropriate State approving agency may approve the application submitted under paragraph (b) of this section, when the training establishment and its courses are found upon investigation to have met the criteria outlined in this paragraph. Approval will not be granted for training in occupations which require a relatively short period of experience for a trainee to obtain and hold employment at the market wage in the occupation. This includes occupations such as automobile service station attendant or manager, soda fountain attendant, food service worker, salesman, window washer, building custodian or other unskilled or common labor positions as well as clerical positions for which on-the-job training is not the normal method of procuring qualified personnel.

(2) The training content of the course is adequate to qualify the veteran or eligible person for appointment to the job for which he is to be trained;

(4) The length of the training period is not longer than that customarily required by the training establishments in the community to provide the veteran or eligible person with the required skills, arrange for the acquiring of job knowledge, technical information, and other facts which the veteran or eligible person will need to learn in order to become competent on the job for

which he is being trained;

(5) Provision is made for related instruction for the individual veteran or eligible person who may need it;

(7) Adequate records are kept to show the progress made by each veteran or eligible person toward his job objective;

(8) The veteran or eligible person is not already qualified by training and experience for the job;

(10) A signed copy of the training agreement for each veteran or eligible person, including the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Veterans Administration and the State approving agency by the employer; and

56. In § 21.4264, paragraphs (a) and (c) are amended to read as follows:

§ 21.4264 Farm cooperative courses; 38 U.S.C. Chapter 34.

(a) *General.* A farm cooperative course is an institutional agricultural course which is pursued by an individual who is concurrently engaged in agricultural employment which is relevant to the agricultural course.

(1) The institutional portion may be on a term, quarter, or semester basis or

in the alternative it may consist of courses prescheduled to fall within not less than 44 weeks of the year at a minimum of 5-clock hours per week, or for full-time training the 440-clock hours a year may be prescheduled to provide not less than 80-clock hours in any 3-month period.

(2) In computing the clock-hour requirements, the time involved in field trips and individual and group instruction may be included when they are sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the veteran is enrolled (38 U.S.C. 1682; Public Law 92-540, 86 Stat. 1074).

(c) *Approval criteria.* The appropriate State approving agency may approve the application of such school when the school and its courses are found upon investigation to have met the following conditions:

(1) The criteria specified in § 21.4253 or § 21.4254, as appropriate; and

(2) The requirements of paragraph (b) of this section.

57. In § 21.4270, paragraph (h) and footnotes 1 and 2 are amended and footnote 6 is added so that the amended and added material reads as follows:

§ 21.4270 Measurement of courses.

Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

COURSES

Kind of school	Kind of course	Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time	Less than $\frac{1}{4}$, more than $\frac{1}{4}$ time	$\frac{1}{4}$ time or less
...	...	...	...	...	...	...
(h) Agricultural....	Farm cooperative ¹	10 clock hours net instruction ²	7 clock hours net instruction	5 clock hours net instruction	No provisions.	...
...	...	...	...	...	...	...

¹ In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

² Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing course at rate which would result in an accredited high school diploma at end of four ordinary school years, he is considered in full-time training. High school diploma courses or equivalent available only for chapter 34 and eligible wives and widows under chapter 35.

* For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.

58. In § 21.4271, paragraph (c) is amended to read as follows:

§ 21.4271 Trade or technical; high schools.

(c) *High schools.* Courses offered at the secondary school level which lead to a high school diploma or the equivalent will be measured on the basis of clock hours of instruction per week, or on the number of units required per year. Enrollment in courses at a secondary school level leading to a high school diploma or the equivalent will not be approved for eligible children under Chapter 35. Eligible wives and widows under Chapter 35 may pursue such courses under the Special Assistance for the Educationally Disadvantaged program.

59. In § 21.4272, paragraphs (f) (2) and (g) are amended to read as follows:

§ 21.4272 Collegiate undergraduate; credit-hour basis.

An undergraduate course in an institution of higher learning will be measured on a credit-hour basis provided all the conditions under paragraph (a), (b), or (c) of this section are met. Wherever "member of a nationally recognized accrediting association" is used in this section it will include a "Recognized Candidate" for accreditation or membership as this term is used by the regional accrediting associations.

(1) *Noncredit deficiency courses.* ...

(2) *Entitlement charge.* For awards to eligible children under chapter 35, the

entitlement charge will be made on the same basis as measurement for payment purposes. For awards under chapter 34 and for wives and widows under chapter 35, no entitlement charge will be made for any noncredit deficiency course on a secondary school level.

(g) *Noncredit courses; deficiency, remedial, and refresher.* Except for courses leading to a high school diploma or the equivalent, noncredit courses given by an institution of higher learning shall be measured on a quarter- or semester-hour basis if considered by the institution to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the school. Other noncredit courses shall be measured under § 21.4270 (a), (b), or (d) as appropriate.

[FR Doc.73-11380 Filed 6-6-73;8:45 am]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits: 38 U.S.C., Chapters 34, 35, and 36

PREDISCHARGE EDUCATION PROGRAM

Section 21.4235 is amended to include, in the meaning of a course under the predischARGE education program, individual unit subjects within a general education development (GED) examination program which are required for or preparatory to the pursuit of an appropriate course or training program in an approved educational institution or training establishment.

Compliance with the provisions of § 1.12 of this chapter, as to notice of proposed regulatory development and delayed effective date, is unnecessary in this instance and would serve no useful purpose. This amendment places in regulatory form a policy which is already in practice.

In § 21.4235(a), subparagraph (1) is amended to read as follows:

§ 21.4235 *PredischARGE Education Program (PREP) and Special Assistance for Educationally Disadvantaged Veterans; Chapter 34.*

(a) *Enrollment.*—Enrollment of a veteran may be approved in any elementary, secondary, preparatory, refresher, remedial, deficiency, or special educational assistance course not otherwise prohibited, regardless of his previous educational experience;

(1) While he is on active duty and meets the eligibility requirements of § 21.1040(e) (3), if such course or courses (but not including correspondence courses) are required to receive a secondary school diploma, or if such course or courses (including individual unit subjects within a general education development (GED) examination program) are required for or preparatory to the pursuit of an appropriate course or training program in an approved educational institution or training establishment; or

(72 Stat. 1114; 38 U.S.C. 210)

This VA regulation is effective October 24, 1972.

Approved, June 1, 1973.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
Associate Deputy Administrator.

[FR Doc.73-11379 Filed 6-6-73;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 84—CERTIFICATION OF GAS DETECTOR TUBES

Procedure for Evaluation and Certification Correction

In FR Doc. 73-9040 appearing at page 11458 in the issue for Tuesday, May 8, 1973, make the following changes:

1. In the table of contents in § 84.30 the word "quantity" should read "quality".

2. The ninth line of § 84.2(e) reading "ponents thereof will be undertaken by" should be deleted and "ponent which changes the nature of the" substituted therefor.

Title 45—Public Welfare

CHAPTER X—OFFICE OF ECONOMIC OPPORTUNITY

PART 1060—GENERAL CHARACTERISTICS OF COMMUNITY ACTION PROGRAMS

Subpart—OEO Income Poverty Guidelines

This subpart revises the OEO poverty guidelines as required by section 625 of the Economic Opportunity Act of 1964, as amended. These guidelines are used to determine program eligibility. Accordingly, chapter X, part 1060 of title 45 of the Code of Federal Regulations is revised to read as follows:

Sec.

1060.2-1 Applicability.

1060.2-2 Background.

1060.2-3 Policy.

AUTHORITY.—Sec. 602, 78 Stat. 528, 42 U.S.C. 2942.

§ 1060.2-1 Applicability.

This subpart applies to all programs financially assisted under title II or III-B of the Economic Opportunity Act if such assistance is administered by the Office of Economic Opportunity.

§ 1060.2-2 Background.

In August 1967, OEO issued uniform income guidelines for all programs it funds which use income to determine program eligibility. These guidelines were derived from poverty thresholds developed from a definition of poverty prepared for statistical purposes by the Social Security Administration in 1964. In September 1968; January 1970; December 1970; November 1971, and October 1972 OEO issued new guidelines which reflected changes in these poverty thresholds.

§ 1060.2-3 Policy.

(a) The 1972 Amendments to the Economic Opportunity Act of 1964 require the following:

Sec. 625 (a) Every agency administering programs authorized by this act in which the poverty line is a criterion of eligibility shall revise the poverty line at annual intervals, or at any shorter interval it deems feasible and desirable.

(b) The revision required by paragraph (a) of this section shall be accomplished by multiplying the official poverty line (as defined by the Office of Management and Budget) by the average percentage change in the consumer price index during the annual or other interval immediately preceding the time at which the revision is made.

(c) Revisions required by paragraph (a) of this section shall be made and issued not more than 30 days after the date on which the necessary consumer price index data becomes available.

Pursuant to the above requirements the attached income poverty guidelines were prepared. These are based upon table M of Current Population Reports, P-60, No. 86, Bureau of the Census, December 1972, and the average percentage change in the Consumer Price Index from 1971 to 1972 as set forth in table C-44 of the Economic Report of the President, January 31, 1973.

(b) The following definitions, derived from the above census document, have been adopted by OEO for use with the attached poverty guidelines:

(1) *Income.*—Refers to total cash receipts before taxes from all sources. These include money wages and salaries before any deductions, but not including food or rent in lieu of wages. They include receipts from self-employment or from own farm or business after deductions for business or farm expenses. They include regular payments for public assistance, social security, unemployment and workmen's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties, or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury. Also to be disregarded is noncash income, such as the bonus value of food stamps, surplus food, the value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or nonfarm housing.

(2) *A farm residence.*—Is defined as any dwelling on a place of 10 acres or more with \$50 or more annual sales of farm products raised there; or any place less than 10 acres having product sales of \$250 or more.