

1730, 1731. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)  
By the Federal Home Loan Bank Board.

J. J. Finn,  
Secretary.

[FR Doc. 79-33750 Filed 10-30-79; 8:45 am]  
BILLING CODE 6720-01-M

## 12 CFR Part 523

[No. 79-542]

### Federal Home Loan Bank Member; Reduction of Liquidity Requirement

October 25, 1979.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** This amendment reduces the overall liquidity requirement of each Federal Home Loan Bank member from 6 to 5½ percent of its liquidity base and reduces each member's short-term liquidity requirement from 2 to 1½ percent of such base. This action is taken because of reduced savings flows into member institutions; it is needed to help fund the large volume of forward mortgage commitments that institutions have outstanding, and to reduce the pressure for advances from Federal Home Loan Banks.

**EFFECTIVE DATE:** October 25, 1979.

**FOR FURTHER INFORMATION CONTACT:** Nancy L. Feldman, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, telephone number 202-377-6440.

The Board finds that (1) notice and public procedure are unnecessary under 5 U.S.C. 553(b) and 12 CFR 508.11, because this amendment relieves restriction, and (2) publication of this amendment for the 30-day notice specified in 5 U.S.C. 553(d) and 12 CFR 508.14 prior to effective date is unnecessary for the same reason.

Accordingly, the Board hereby revises § 523.11(a) of the Regulations for the Federal Home Loan Bank System (12 CFR 523.11(a)) to read as set forth below, effective October 25, 1979.

#### § 523.11 Liquidity requirements.

(a) *General.* Except as otherwise provided in paragraphs (b) and (d) of this section, for each calendar month, each member, other than a mutual savings bank with an election under paragraph (e) of this section in effect, shall maintain an average daily balance of liquid assets not less than 5½ percent of the average daily balance of its liquidity base during the preceding calendar month, and each member,

other than a mutual savings bank or an insurance company, shall maintain an average daily balance of short-term liquid assets not less than 1½ percent of the average daily balance of its liquidity base during the preceding calendar month.

(Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 252, as amended; sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1425a, 1437, Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.  
J. J. Finn,  
Secretary.

[FR Doc. 79-33742 Filed 10-30-79; 8:45 am]  
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## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket 9073]

#### Ford Motor Co., Et Al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** This order, among other things, requires Francis Ford, Inc., a Portland, Oreg. Ford dealer, to cease failing to dispose of repossessed vehicles in a manner designed to obtain the best possible price; provide information regarding the disposition of such vehicles to defaulting customers; properly calculate surpluses realized from the sale of the vehicles; and repay such surpluses in a timely fashion. The order further requires the firm to identify all surpluses realized back to February 10, 1976, and to notify affected consumers of their existence. Additionally, the firm is required to maintain specified records for at least three years.

**DATES:** Complaint issued Feb. 10, 1978. Final order issued Sep. 21, 1979.\*

**FOR FURTHER INFORMATION CONTACT:** Bruce D. Carter, Attorney, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442-4655.

**SUPPLEMENTARY INFORMATION:** In the Matter of Ford Motor Company, Ford Motor Credit Company, and Francis Ford, Inc., corporations. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Corrective

Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 disclosures; 13.533-37 Formal regulatory and/or statutory requirements; 13.533-45 Maintain records; 13.533-55 Refunds, rebates and/or credits. Subpart-Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1895 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Final Order, including further order requiring report of compliance therewith, is as follows:

[Docket No. 9073]

#### Final Order

This matter has been heard by the Commission upon the cross-appeals of complaint counsel and respondent's counsel from the initial decision and upon briefs and oral argument in support of and in opposition to each appeal. The Commission, for the reasons stated in the accompanying Opinion, has for the most part, denied the appeals of both sides. Therefore,

It is ordered that the initial decision of the administrative law judge, pages 1-45, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except for:

Finding No. 72, first sentence; Finding No. 73, first 18 words; Page 38, paragraph 4, second sentence; Page 38, paragraph 5; Page 38, Paragraph 6, last 25 words; Page 39; Page 40 through first full paragraph; Page 40, numbered paragraph "7".

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered:

#### Order

I. It is ordered that for purposes of this Order the following definitions shall apply:

A. "Respondent" means Francis Ford, Inc., a corporation, and its successors and assigns. It does not include Ford Motor Company or Ford Motor Credit Company.

B. "Vehicle" means an automobile or truck and any and all parts, accessories, and appurtenances repossessed therewith. A van is deemed a "truck."

\*Copies of the Initial Decision, Opinion of the Commission and Final Order filed with the original document.

C. "Adjusted balance" means the unpaid balance as of the date of repossession (1) less applicable finance charge and insurance premium rebates, (2) less all amounts received for collision insurance claim payments except those for which the corresponding vehicle damage is repaired, and (3) plus other charges authorized by contract or law and actually assessed prior to repossession.

D. "Proceeds" means whatever is received by respondent upon its disposition of a repossessed vehicle, excluding finance charges, sales taxes, separately priced warranties and service contracts insofar as the charges therefor are itemized in documents provided at that time to the party to whom disposition is made. Any underallowance realized on the disposition shall be included. The amount of any lawful overallowance given on such a disposition may be deducted if (1) the amount so deducted was determined at the time of the disposition and is no greater than the excess of the trade-in allowance over the wholesale value of the vehicle taken in trade on the repossessed vehicle as that value is shown in a current recognized guidebook used in the area, (2) overallowances are given and contemporaneously recorded in the normal course of respondent's sales or leases of nonrepossessed vehicles, and (3) correctly determined underallowances are included in the proceeds of other repossessed vehicle dispositions wherever applicable.

E. "Allowable expenses" means actual out-of-pocket expenses incurred by respondent as a direct result of a repossession. The expenses must be reasonable and result directly from the repossessing, holding, preparing for sale or reselling of the vehicle, and be not otherwise reimbursed to respondent nor prohibited by contract. They are limited to the following charges (insofar as permitted by state law) and no others:

1. Amounts paid to persons who are not employees of respondent nor of a financing institution which financed the prior sale, for repossessing, towing or transporting the vehicle;

2. Filing fees, court costs, cost of bonds, fees and expenses paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of respondent nor of the financing institution, for obtaining possession of or title to the vehicle;

3. Fees paid to others to register or obtain title to or legally required inspection of the vehicle;

4. Amounts paid to others for storage (excluding charges for storage at

facilities owned or operated by respondent);

5. Labor and associated parts and supplies furnished by respondent for the repair or reconditioning of the vehicle in preparation for resale, computed at the following cost rates:

a. The cost rate for labor of mechanical technicians employed in respondent's retail repair shop (for mechanical work) or for body-paint technicians employed in respondent's retail body shop (for body work) shall be based on actual time spent on the vehicle and may not exceed the greater of:

(i) the sum of respondent's average hourly base rate for that category of technicians (mechanical, body-paint, or heavy truck) plus 20 percent of that average hourly base rate to cover fringe benefits, provided that such data is reflected in a file identifiable with that vehicle, or

(ii) the sum of the average hourly base rate for that category of technicians plus the average annual hourly cost for voluntary and legislated fringe benefits for that category of technicians computed in accordance with the "long form" Warranty Labor Rate Request (Ford Form FCS 9716, April 1978) (Attachment A hereto), provided that such data is reflected in a file identifiable with that vehicle;

b. The cost rate for labor for other reconditioning, clean-up and preparation work performed by employees of respondent shall be based on actual time spent on the vehicle and may not exceed the base hourly wage rate for the employees involved plus 20 percent of their base hourly wage rate to cover fringe benefits, provided that such data is reflected in a file identifiable with that vehicle;

c. The cost rate for parts shall not exceed respondent's cost for the parts used as listed in the current manufacturer's catalogue.

Provided, however, that if the amount of respondent's payoff to the financing institution is reduced because of insured collision damage, or if respondent receives any payment for collision damage or warranty work, then the corresponding vehicle work performed shall not be an allowable expense, but if a payoff adjustment is for uninsured collision damage, the corresponding vehicle work performed shall be deemed an allowable expense.

6. amounts paid to others for labor and associated parts and supplies purchased for the repair or reconditioning of the vehicle in preparation for resale;

7. sales commissions paid for actual participation in the sale of the particular

vehicle, computed at a rate no higher than for a similar, non-repossessed vehicle, but excluding all portions of commissions attributable to the selling of service contracts, warranties, financing or insurance;

8. a proportionate share of expenditures for advertisements which specifically mention the particular vehicle;

9. fees and expenses paid to others for auctioning the vehicle;

10. expenses for telephone calls and postage incurred in arranging for the repossession, holding, transportation, reconditioning or resale of the vehicle; and

11. amounts respondent was contractually required to pay and did pay to reimburse the financing institution to which payoff was made, for expenses such as repossession of the vehicle or allowance for uninsured collision damage, if such expenses were not included in the payoff.

F. "Surplus" means the excess of (1) the proceeds plus any applicable rebates or credits not deducted by the financing institution, over (2) the adjusted balance, allowable expenses, and amounts paid to discharge any other security interest provided for by law. A negative (minus) amount produced by such calculation is referred to herein as a "deficiency."

G. "Diligent efforts" means that in any case where the full surplus or disclosure is not actually received by the defaulting customer within the specified time frame, respondent's efforts to effectuate such payment and/or disclosure shall meet at least the following criteria: The payment and/or disclosure are to be sent by regular mail within the specified time frame to the customer's last residence address known to respondent or available from the financing institution, with the face of the envelope (1) showing respondent's name and return address and (2) indicating that it is to be forwarded and that if there is no forwarding address it is to be returned to the sender. If the envelope is returned undelivered, the payment and/or disclosure are to be sent to the most recent of the following known addresses: the last employment address known to respondent or available from the financing institution; the address provided by the military locator service (if applicable); or the address of a co-signer, relative or other person through whom the customer may be reached. If an insurance rebate or other credit is received after a surplus payment has been sent, a further payment in the additional amount, is to be sent in the same manner within 45 days of respondent's disposition of the vehicle or

within 10 days of receiving the rebate, whichever is later. If such a rebate is received after a prior computation had indicated there was no surplus, a second computation is to be made and any surplus sent in the same manner and within the same time limit.

H. "Best possible price" means that respondent will exercise every reasonable effort to market the vehicle for the highest possible net return for the debtor's account (in terms of proceeds less allowable expenses). For each disposition of a repossessed vehicle by respondent other than by retail sale, respondent shall retain contemporaneous documentation showing with specificity that such manner of disposition could reasonably be expected to produce a greater net return for the debtor's account than would retail sale.

II. It is further ordered that respondent and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension and enforcement of motor vehicle retail credit obligations, and in connection with the disposition of repossessed motor vehicles, in or affecting commerce (as "commerce" is defined in the Federal Trade Commission Act, as amended), do forthwith cease and desist from:

A. Failing to determine the following information and to disclose or make diligent efforts to disclose such information to the defaulting customer in substantially the manner indicated on Attachment B hereto, "Resale of a Repossessed Vehicle," within forty-five (45) days of respondent's disposition of a repossessed vehicle:

1. The date, place and manner of disposition;
2. The adjusted balance, itemized to reflect the unpaid balance and all rebates and other adjustments thereto;
3. The proceeds and allowable expenses, itemized and excluding all expenses other than allowable expenses;
4. The amount of surplus or deficiency.

Provided that such disclosures need not be made where respondent can establish that no surplus resulted from the disposition, unless an attempt is made to collect a deficiency from the defaulting customer or from his or her successors or assigns.

B. Failing to pay or make diligent efforts to pay each surplus in full to the defaulting customer or to his or her successors or assigns, accompanied by disclosures as required by Paragraph II A above, within forty-five (45) days of respondent's disposition of the vehicle.

C. Failing to dispose of any repossessed vehicle in a manner designed to obtain the best possible price.

D. Failing to apply promptly for any rebate or credit owing to the defaulting customer's account.

E. Taking any action to obtain or to attempt to obtain or bring about a waiver of a customer's right to a refund of surplus, except in the precise manner and under the precise circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless respondent intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, respondent shall not represent that by proposing the waiver it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given.

F. Collecting or attempting to collect from a defaulting customer or from his or her successors or assigns, by any means, a deficiency in excess of either (1) the amount permissible under applicable state or federal law, or (2) the amount determined in accordance with the definitions set forth in Part I of this Order.

Provided that no customer's waiver of rights or failure to object to any secured party's proposal to retain the repossessed vehicle, unless procured in exact conformity with Paragraph II E, shall limit respondent's obligations under this Order to account for and pay any surplus.

III. It is further ordered that respondent:

A. Proceed immediately to identify, back to February 10, 1976, the existence and amount of each unpaid surplus arising from respondent's dispositions of repossessed vehicles in which respondent held or acquired a security interest or the rights or duties of a secured party at or after default. This identification shall be completed within ninety (90) days of the effective date of this Order.

B. For each defaulting customer entitled to a surplus identified under Paragraph III A above but previously reported to a credit reporting agency by respondent or a representative of respondent as owing a deficiency, advise the credit reporting agency of the correct facts within 120 days of the effective date of this Order.

C. Endeavor in good faith, through contacts with credit reporting agencies,

state licensing and employment offices, and other reasonably accessible research sources and records (including published directories), to locate each defaulting customer entitled to a surplus identified under Paragraph III A above, or the successors or assigns of such customers with respect to their surplus rights.

D. Disclose or make diligent efforts to disclose in writing to each defaulting customer, successor or assign located pursuant to Paragraph III C above, within 150 days of the effective date of this Order: (1) the same items of information specified in Paragraph II A of this Order, and (2) in clear lay language, in substantially the form indicated on Attachment C hereto, "Notification Letter," the rights and remedies of such customer, successor or assign under applicable state law and under this Order.

IV. It is further ordered that respondent maintain the following records relating to each repossessed vehicle returned to respondent:

A. Records of payment and of efforts to disclose and pay surpluses and locate defaulting customers entitled thereto under Parts II and III of this Order, including but not limited to canceled checks, returned envelopes and copies of disclosures and other communications (showing dates and manner of mailing).

B. Business records underlying each item specified in Paragraph II A of this Order, including but not limited to payroll records and warranty labor rate forms pertinent to determinations of "cost rates" of labor under Paragraph I E 5 of this Order. Each such record shall be retained by respondent for at least three years and shall be available for inspection and copying by authorized representatives of the Commission.

V. It is further ordered that respondent shall forthwith deliver a copy of this Order to each of its operating departments, divisions and related business enterprises, and applicable provisions thereof to all present and future personnel of respondent engaged in the sale or offering for sale of motor vehicles and/or in the consummation of any extension of consumer credit or in bookkeeping, accounting or recordkeeping for respondent; and that respondent secure from each such person a signed statement acknowledging receipt of the Order or provisions.

VI. It is further ordered that:

A. Respondent shall, within sixty (60) days after the effective date of this Order, file with the Commission a written report setting forth in detail the

manner and form in which it has complied with this Order.

B. Respondent shall, within one hundred eighty (180) days after the effective date of this Order, submit to the Commission a report demonstrating respondent's compliance with Part III of this Order, including the number of repossessions and surpluses identified, together with a detailed description of respondent's manner of identifying and attempting to disclose such surpluses and of locating and attempting to locate defaulting customers entitled thereto.

C. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation and dissolution of subsidiaries, or any other corporate change which may affect compliance obligations arising out of this Order.

By the Commission.

Carol M. Thomas,  
Secretary.

[FR Doc. 79-33606 Filed 10-30-79; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 281

[Docket No. RM79-40; Order No. 55]

#### Natural Gas Curtailment; Interim Regulation Governing the Determination of Alternative Fuels for Essential Agricultural Users

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Interim Regulations.

**SUMMARY:** The Commission is amending Part 281 of its regulations by adding a new Subpart C that prescribes which fuels the Commission has determined to be economically practicable and reasonably available as a substitute for the essential agricultural use of natural gas during the 1979-1980 winter heating season and how certain essential agricultural users of natural gas must remove from their priority 2 entitlements those volumes of gas for which there is an alternative fuel. The rule applies only to: (1) Essential agricultural use establishments that have requested from any direct supplier, over 300 Mcf of natural gas per day as a priority 2 entitlement; and (2) new boilers with a capacity of 300 Mcf per day, except diesel engines and turbines that can only use distillate fuels as a substitute for natural gas. The application of the rule is limited to the use of coal or

residual fuel oil as alternative fuels.

This rule is promulgated under section 401(b) of the Natural Gas Policy Act of 1978 which restricts the protection from curtailment afforded under the Act by excluding from that protection any gas applied to essential agricultural uses, where there are other economically practicable and reasonably available fuels for those uses.

Direct suppliers must request of each essential agricultural user a statement computing its ability to use alternative fuels as a substitute for natural gas. The request must be made by November 7, 1979, and essential agricultural users must respond by November 23, 1979.

Under the interim rule, interstate pipelines will receive sufficient information from customers in the next six weeks to be able to amend their indices of entitlement by downgrading certain volumes now classified as priority 2. New indices must be filed by December 24, 1979.

**EFFECTIVE DATE:** October 26, 1979.

**FOR FURTHER INFORMATION CONTACT:** MaryJane Reynolds, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Room 8000, Washington, D.C. 20426, (202) 357-8455.  
October 26, 1979.

#### I. Background and Summary

##### A. Statutory Background

Under Section 401(b) of the Natural Gas Policy Act (NGPA), the protection from curtailment required by section 401(a) does not apply to essential agricultural uses "if the Commission, in consultation with the Secretary of Agriculture, determines, by rule or by order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas \* \* \*."

On August 29, 1979, the Commission issued a second proposed rule in this docket which set forth a generic rule for the determination of alternative fuels for essential agricultural users as provided under Section 401(b) of the NGPA (44 FR 51993, September 6, 1979). The statute requires that the determination be made after consultation with the Secretary of Agriculture. The Commission has consulted with Agriculture and the written comments from Agriculture have been placed in the public files. However the Commission is aware that consultation does not necessarily result in full agreement. A public hearing was held on September 24, 1979, and 10 interested persons addressed the proposed rule. Written comments were filed by more than 70 interested persons including representatives of pipelines, distributors, agricultural users,

industrial users, State commissions, and Members of Congress. Based on the record developed in this proceeding, the Commission has decided to adopt the rule essentially as proposed, with some modifications to be described.

This rule establishes that the alternative fuel determinations will be made using a generic rule. It further holds that during the forthcoming winter heating season, residual fuel oil and coal can be regarded, for purposes of administration of Title IV of the NGPA, as economically practicable and reasonably available as an alternative fuel to natural gas for those essential agricultural users who have the installed capability to use such fuels. No such finding is made with respect to any other fuel.

Unlike the proposal, the alternative fuel determination promulgated by this final rule will affect only to those agricultural establishments with requirements in excess of 300 Mcf of natural gas per day from a direct supplier.<sup>1</sup> There are several other changes from the proposed rule which are discussed below.

The immediate effect of this rule is that certain users of natural gas who qualify for priority 2 requirements in accordance with Order No. 29<sup>2</sup> will have their requirements downgraded to a lower priority. The rule also applies to curtailment plans in effect after January 1, 1980, that deviate from Order No. 29 as a result of adjustment and settlements approved by the Commission that allows certain pipelines to implement plans that are different from the type of plan prescribed in Order No. 29.

The major issues raised in the proceedings on the proposed generic rule were the availability of residual fuel oil and distillate and the economic practicability of these liquid heating oil fuels as an alternative to natural gas.<sup>3</sup> Other issues that received considerable attention were the propriety of limiting the alternative fuel rule to those users who have installed capability, the creation of a small volume users exemption and the exclusion from the rule of those who use natural gas for non-boiler fuel uses. Many comments

<sup>1</sup> The rule also applies to certain new agricultural boilers with a capacity in excess of 300 Mcf.

<sup>2</sup> Final Regulation for The Implementation of Section 401(a) the NGPA, Docket No. RM79-15, issued May 2, 1979 (44 FR 26855, May 8, 1979).

<sup>3</sup> The first proposed rule issued in this docket on May 2, 1979, set forth a procedure for the determination of alternative fuel. (44 FR 26894, May 9, 1979.) That proposal would have required all essential agricultural users to file economic and supply data. Based on the information filed the Commission would have subsequently issued a proposed rule which determines the reasonable availability and economic practicability of alternative fuel on a facility-by-facility basis.

addressed the appropriate timing for implementation of the rule. Some persons urged immediate implementation of the rule; others urged it be postponed until after the winter heating season.

In response to comments, the final rule clarifies that the volumes downgraded from priority 2 are *only* those volumes for which residual fuel and coal can be substituted. Further the rule is modified to include a small volumes exemption. The rule will apply only to the essential agricultural users which use in excess of 300 Mcf of natural gas per day at any essential agricultural use establishment. The definition of new boiler is amended to include all turbines and diesel engines except those designed to use middle distillates as the only alternative to natural gas.

## II. Discussion of the Major Issues and Comments

### A. A Generic Rule

The rule adopted today is a generic rule, which makes two determinations. First, the rule prescribes a general procedure by which the Commission will henceforth make findings as to the availability of alternative fuels. Second, the rule finds that coal and residual fuel oils are economically practicable and reasonably available for the winter heating season of 1979-1980.

Some commentators were apparently misled by the proposed rule of August 29 which proposed a generic rule. They were of the view this rule constituted a rebuttable presumption, not a generic rule. Other essential agricultural users and the Secretary of Agriculture argued that the rule should be a rebuttable presumption.

The first proposed rule in this docket, issued on May 2, 1979, would have provided for a facility-by-facility determination of alternative fuel availability. However, many representatives of groups of essential agricultural users opposed the rule because they asserted that filing the information necessary for such a determination would be burdensome. These agricultural representatives, as well as other interested persons, urged the use of a generic rule. The Commission accepted this counsel and issued the second proposed rule on August 29, which set forth a generic rule. Now many of those who advocated a generic rule want the Commission to adopt a rebuttable presumption.

A rebuttal presumption is administratively infeasible, particularly if there is to be an alternative fuel rule in place for this winter heating season.

Moreover, any person who no longer qualifies for priority 2 classification because of alternative fuel may seek an adjustment in accordance with section 502(c) of the NGPA and the adjustment procedures in 18 CFR 1.41. Any person who experiences special hardship, inequity or unfair distribution of burdens because of the rule may seek an adjustment which modifies the rule as applied to such person or exempts the essential agricultural user from the rule. Moreover, any person who seeks adjustment relief may simultaneously seek interim relief which could provide such petitioner with the ultimate relief on an interim basis before a decision has been made on the merits of the petition for adjustment relief.

We recognize that if the Commission did adopt a rebuttable presumption in lieu of a generic rule, that the standards for exclusion from the rule could differ from the section 502(c) standards. It would also involve numerous factual determinations which could be administratively burdensome to resolve in an expeditious manner. Thus, use of a rebuttable presumption could cause substantial delay in implementation of an alternative fuel rule.

The Commission has received comments from various parties<sup>4</sup> requesting assurance of priority 2 entitlements for natural gas used to process "gasohol". The participants note that an assured entitlement is required before distillers will incur the expense of retrofitting their plants to produce the fuel grade alcohol.

It is our belief that it is inappropriate to address this problem in an interim rule. Further, the comments note that retrofitting requires at least six months to accomplish and this interim rule will terminate after this winter heating season.

The Commission is aware of the President's and Congressional interest to develop alternate fuels to motor gasoline. As such, the Commission believes it would be preferable to inquire into the desirability of establishing a long-term determination concerning the alternative fuel availability for gasohol in a separate proceeding.

### B. Availability of Fuels

The proposed rule envisioned a Commission determination for this winter heating season that coal and residual fuel oil were "reasonably available" as that term is used in the alternative fuel provision in section

401(b) of the NGPA. It stated further the Commission believes it lacks the relevant basis for a finding that distillates would be reasonably available this winter. There was no significant debate as to the finding of the availability of coal. The Commission finds, based on the data presented in response to the proposed rule of August 29, that coal is a reasonably available fuel.

In contrast, the positions on the availability of liquid fuels proved this to be a divisive issue. Those opposing a finding that any liquid fuels are available noted a general "nationwide shortage of crude oil."

The proposed rule indicated that the Commission did not believe that it had the requisite information to find that middle distillates were reasonably available for this coming winter heating season. The conclusion was supported by numerous statements by the Secretary of Energy and the Deputy Secretary who cited various Department of Energy (DOE) data concerning inventories of middle distillates. They expressed concern about the risks involved and established a target inventory of 240 million barrels at the start of the coming heating season. Over the course of the summer when middle distillate inventories (primary, secondary and tertiary) are historically stockpiled, the DOE data indicated dramatic shortages in primary supplies and a lag in the rates of stockpiling of secondary supplies. As a result, it may be that the buildup of tertiary supplies (summer fill of home and commercial heating oil tanks) was not completed. Recently, the DOE has issued statistics that indicate that primary stocks of middle distillates have reached the desired target for acceptable supplies. Current data is not available on secondary and tertiary supplies.

Thus, as this final rule is promulgated, there is reasonable cause for guarded optimism about the United States heating oil situation. As noted, the DOE guideline inventory target for primary supplies seems to have been achieved. The economic downturn has significantly lessened demand and should an economic recession ensue this winter's demand should be even further reduced. Conservation efforts and higher oil prices are having an effect. This winter may not be as cold as the last several.

On the other hand, the crude oil situation is extremely troublesome. A very key element in the prediction about the winter heating oil supply and demand balance is the assumption that refineries will be able to obtain sufficient crude oil imports. In this

<sup>4</sup> Among those expressing interest in furthering the distillation of "gasohol" were 18 members of the United States Senate.

respect, the confused and uncertain international oil market is a cause for great concern.

Put differently, the question of the "adequacy" or "reasonable availability" of heating oils for the forthcoming winter is a matter of predicting the level and interaction of a variety of complex and uncertain variables. Projecting how these variables will balance out is a risky task and on several previous occasions the Commission has declared its belief that caution and prudence in making decisions based on such projections is the appropriate posture.<sup>5</sup> Misjudgments that might have the unintended consequence of creating unanticipated additional demands for home heating oil this winter when the pertinent markets are in such an uncertain and changing condition should be avoided. In sum, the Commission continues to believe that in this period of significant change in fuel markets it should approach decisions that might create additional and unexpected demands for home heating oil with caution and avoid stimulating unintended exacerbation of the current scramble for heating oil supplies and the already impressive and disturbing run-up in heating oil prices.

In light of these policy considerations, especially the risk to home heating oil consumers this winter of misforecasts and despite guarded optimism about supplies this winter, we find that the data and information in the present record do not provide the requisite basis for the statutory finding of reasonable availability of distillate fuel oil for this winter.

The reasonable availability of residual fuel oil is a more difficult matter. As some commentators noted, and as just discussed, the crude oil situation remains tight and problematical. There is a national effort of highest priority to reduce imports. Also, as we noted in connection with Order Nos. 30 and 30-A<sup>6</sup>, all fuel oil

markets are closely linked. On the other hand, stocks of residual oil are reasonably comfortable and the relevant markets seem more stable.

Consequently, we believe that there has been the requisite basis established in this proceeding for a Commission determination that for this winter residual fuel oil is readily available pursuant to section 401 of the NGPA. To the extent that local shortages of residual fuel oil manifest themselves this winter, a situation that concerned a number of commentators, the Commission stands ready to act under section 502(c). They also pointed out that the President announced a ceiling on oil imports at the Economic Summit in Japan this summer. A large share of the residual fuel oil consumed in this country is imported. They concluded that the basis exists for a finding that all liquid fuels are not readily available.

However, there are contrary facts that tend to indicate a different supply picture. Notwithstanding the general shortage of domestic crude oil, because of imports, refineries have been operating at a relatively high level of capacity. During the four week period ending September 28, 1979, they have operated at an average capacity of approximately 84 percent. The Commission is cognizant of the import quota policy the President announced in July. It is not known whether the policy will limit imports of residual fuel oil. Some persons alleged there are spot or regional shortages of residual fuel oil but failed to support the claims with data.<sup>7</sup> Thus, based upon the record, the Commission finds that residual fuel oil is reasonably available.

The proposed rule did not address the availability of propane because of a lack of data on this matter. Accordingly, propane will not be found to be reasonably available for this winter heating season. The Department of Energy is presently conducting a rulemaking proceeding addressing decontrol of propane. (44 FR 50072, August 27, 1979). Information may be developed in that rulemaking which would allow the Commission to consider the availability and economic practicability of propane when it reviews all fuels after the winter heating season.

### C. Economic Practicability

For purposes of the rule, the Commission may properly limit the scope of its inquiry to the economic

practicability of those fuels found to be reasonably available—coal and residual fuel oil. As indicated in the preamble to the proposed rule, coal is generally less expensive than natural gas and no issue has been raised as to the economic practicability of using coal for those facilities which have installed capability to use coal.

The economic practicability of residual fuel oil is another matter. The relative cost of residual fuel oil as presented in the proposed rule was not seriously rebutted by any subsequent comment filed in this proceeding. The proposed rule found that residual fuel oil usually costs up to 50 percent more than the cost of natural gas.<sup>8</sup> The Commission believes that the use of residual fuel oil for the winter heating season is economically practicable. The Commission does not expect this action will cause "unnecessary increases in the cost of food." A finding that residual fuel oil is a reasonably available and economically practicable alternative for those firms that have installed capacity indicates that increases in food costs contemplated by the statute do not seem likely.

In reaching this conclusion, the impact of the alternative fuel rule (in terms of reduction of deliveries of natural gas during the first year the curtailment rule is in effect) was considered. The alternative fuel rule will cause the downgrading of some requirements of the essential agricultural user to the pre-existing curtailment priority instead of the new priority 2 created by the NGPA. It is anticipated that, over the course of this winter, curtailment will not be severe. Therefore, there is small likelihood that an essential agricultural user will necessarily have extended requirements for using alternative fuel as the agricultural user had over the course of the last two winter heating seasons, even if such essential agricultural user is downgraded to his historic priority. Moreover, no alternative fuel rule was in place over the summer and none will be in place until January 1, 1980. Thus, the difference in the cost of residual fuel oil, vis-a-vis the cost of natural gas, does not necessarily mean that the total annual fuel costs for an essential agricultural user who has requirements removed from priority 2 will result in

<sup>5</sup>Most recently, in Order No. 51, dealing with incremental pricing of natural gas, the Commission determined, subject to Congressional review and possible veto, that the current situation implied that it would be preferable for an interim period covering the current heating season to place the incremental ceiling price at the cost of No. 6 oil to minimize the risk of load shifting from natural gas to heating oil. Among the reasons for this judgment was concern about the impact on heating oil markets. The Commission stated: "Moreover, the shifted load would place a demand on fuel oil markets this winter that could have undesirable consequences." Order No. 51, Docket No. RM79-21 issued September 28, 1979, at 16 (44 FR 57778, October 5, 1979).

<sup>6</sup>Final rule, Transportation Certificates for Natural Gas for the Displacement of Fuel Oil, Docket No. RM79-34, issued May 17, 1979 (44 FR 30323, May 25, 1979); Order on Rehearing, Docket

No. RM79-34, issued September 12, 1979 (44 FR 54472, September 29, 1979).

<sup>7</sup>In the event shortages of residual fuel oil materialize, affected persons may seek adjustment relief to release them from the alternative fuel rule.

<sup>8</sup>Some persons argued that the Commission should issue a general standard by which it will measure economic practicability. The Commission finds that doing so would be premature at this time. Those persons who believe this rule will cause them hardship, inequity or an undue burden may seek an adjustment. In such a proceeding, the Commission would consider the cost the alternative fuel rule has on the food prices as a relevant factor.

annual increased fuel costs of the same magnitude.

We have given much attention to that part of the extensive record in this proceeding where persons have alleged that regarding residual fuel oil as an alternative fuel would produce economic difficulty in the agricultural sector. Very little economic data or persuasive factual analysis has been presented. Discussion of the issue was generally limited to a comparison in the costs of fuels. The essential agricultural users contesting the finding of economic practicability of residual oil failed to establish that the use of such oil would increase food costs significantly or unreasonably. For these reasons, the Commission believes that residual fuel oil is economically practicable for the course of this winter's heating season.

The Commission stresses that this rule finds that residual fuel oil and coal are economically practicable for this winter only for those essential agricultural users who presently have installed ability to use such fuels. There is no requirement for incurring conversion costs.

Certain essential agricultural users argue that, even though they have in fact the installed capability and have in fact used either residual fuel oil or coal they do not have adequate storage to use alternative fuel oil for all requirements. The effect of a finding that such essential agricultural users have alternative fuel merely downgrades their priority of service category. As noted above, it does not force them to turn to the alternative fuel for 100 percent of their energy requirement. It is anticipated that gas supplies this winter will be as good or better than in the last several winters. It follows, that essential agricultural users who had adequate storage to meet the exigencies of curtailment in recently past winters will, in large measure, have adequate storage to meet the exigencies of this winter caused by being downgraded from priority 2.

#### *D. Ability To Use Alternative Fuel*

The test for the ability to use an alternative fuel is twofold. The essential agricultural user must have installed capacity (as of the date of the proposed rule) to use the alternative fuel and it must have, in fact, used such fuel at some time since 1973. Several issues have been raised about this test. Some persons assert that environmental constraints will prevent them from using fuels that they have used in the past. Others have suggested that they experienced a reduction in quality of the product which is made by use of the alternative fuel. The Commission does

not believe that either of these problems countervail the efficacy of the rule.

Where laws or regulations no longer permit the use of the alternative fuels or where the use of alternative fuel would result in an inferior product, adjustment relief may be sought from the Commission in accordance with the adjustment procedures in 18 CFR 1.41.

Some persons suggest that the ability to use an alternative fuel should be based on actual use over a more extended period of continuous use than one day. The intent of the one day test is merely to establish the ability to use. A more extended test appears to be advocated in order to ensure against potential storage problems.

A number of parties alleged that the rule is unfair because it appears to penalize those essential agricultural users that have installed alternative fuel capability for the use of coal or residual fuel oil. These persons will be downgraded from priority 2 while those persons who failed to take measures to use coal or residual fuel oil in the face of severe natural gas shortages over the course of the last six years will not be required to downgrade. The Commission recognizes the inequity in downgrading only those facilities which have installed capability. Nonetheless, this is an interim rule and the Commission believes that it is impossible for essential agricultural users who have not installed alternative fuel capability to do so over the course of this winter. Therefore, the Commission does not believe it can downgrade essential agricultural users who do not have installed capability. It has not yet been determined if the Commission can find alternative fuel to be economically practicable at some subsequent time in those cases where the essential agricultural user has never installed alternative fuel capability. However, conversion costs would be a relevant factor in the Commission's determination of economic practicability. The Commission wishes to put essential agricultural users on notice that it has not determined whether it will be able to find an alternative fuel economically practicable for those users who have not presently installed alternative fuel capability.

#### *E. Small Volume Exemption*

The Commission believes it would be administratively burdensome and impracticable to gather the data concerning essential agricultural users under 300 Mcf per day and have the alternative fuel rule in place for this winter. Therefore, the Commission believes it is appropriate to limit the

alternative fuel test only to those essential agricultural use establishments of an essential agricultural user—on a facility by facility basis—which requested in excess of 300 Mcf of natural gas per day from a direct supplier. This is consistent with past Commission policy on large users.<sup>9</sup> The alternative fuel rule also provides that new boilers with capacity in excess of 300 Mcf per day other than diesel engines and gas turbines that use distillate oil, are deemed to have alternative fuel capability. We stress that both the questionable supply of distillates and the fact that the time lapse between design of a boiler and the placement onstream of the new boiler is such that it would be impracticable to apply the presumption of the new boiler test to all boilers for the course of this winter. However, the Commission reserves the right at some future time to reevaluate the question of allowing new boilers which are designed solely to use distillates in lieu of natural gas to obtain a priority 2 preference as essential agricultural users.

#### *F. Limitation of the Rule to Boiler Users*

Some persons have suggested that the alternative fuel rule be limited exclusively to boilers. The Commission sees no evidence in the record which supports the distinction between the boiler fuel use and any other use of natural gas by persons who are able to use coal or residual fuel oil. Nor does it perceive any public policy benefit from a rule which gives a preference to users who are able to use coal or residual fuel oil. Therefore, the rule shall apply to all users of residual fuel oil or coal and not just to boiler fuel users.

#### *G. Timing of the Rule*

The Commission is fully cognizant of the significant fluctuations in the liquid petroleum market. These fluctuations can affect either supply or price or both. Accordingly, the Commission is herein issuing an interim rule and will address the issues of availability and economics anew at the end of the winter heating season.

A number of persons have advocated that the rule should not be effective over the course of this winter's heating season because it will create problems for essential agricultural users who relied on obtaining natural gas under the priority 2 preference in Order No. 29. The Commission has stated frequently since January, 1979 that an alternative fuel rule would be forthcoming for

<sup>9</sup>The Commission stresses that after this winter heating season it may not feel constrained to classify large users as only those over 300 Mcf per day.

essential agricultural users. In May, it was announced that the Commission intended to have an alternative fuel rule in place for the winter heating season. Moreover, the Commission is cognizant that granting a priority 2 preference to essential agricultural users who are able to use residual fuel oil or coal would further jeopardize the availability of natural gas to process and feedstock users. Accordingly, the Commission finds good cause to issue the alternative fuel rule with an immediately effective date. The Commission notes, however, that it will take time to gather the data necessary to adjust the index of entitlements to exclude those essential agricultural users who do have the ability to use alternative fuel, as defined in this rule. Accordingly, this rule will not require the amendment of the indices of entitlements by interstate pipelines (which could result in excluding from priority 2 deliveries to essential agricultural users of volumes for which an alternative fuel is available) until January 1, 1979. This lag in the date upon which the alternative fuel determination will affect the availability of natural gas will give those facilities with installed alternative fuel capability, that have had notice of the proposal since at least August, 1979, three additional months to make arrangements for residual fuel oil or coal for this winter's heating season.

It is the Commission's preliminary view that an environmental impact statement is not necessary. However, the Commission has not completed its evaluation of the effects this rule could have upon the environment. If, upon the completion of its evaluation, the Commission believes an Environmental Impact Statement ("EIS") is necessary, it will undertake to prepare an EIS and will complete it before issuance of a permanent rule.

### III. Discussion of Substantive Changes in the Final Rule from the Proposed Rule

#### A. Data Gathering for Purposes of Implementing the Rule

The draft rule would have required that each essential agricultural user affected by this rule advise its direct supplier of its alternative fuel availability for either residual fuel oil or coal. After receipt of the information the direct supplier would transfer the information up the stream to the interstate pipeline suppliers. The interstate pipeline suppliers would adjust the index of requirements to exclude such essential agricultural users from their priority 2 treatment.

In light of the difficulty experienced in gathering data with respect to the

requirements of essential agricultural users under Order No. 29, which implemented the permanent curtailment plan, the Commission has determined it would be more appropriate to place the initial burden of gathering the information about alternative fuel volumes on the direct suppliers of such essential agricultural users. The essential agricultural users must, upon request of their direct suppliers, provide an amended request for priority 2 entitlements which excludes any volumes for which alternative fuel could be used. The user must also submit an oath statement that the amended request excludes all volumes for which it has an ability to use alternative fuels. If, in fact, an essential agricultural user refuses to provide the oath statement, the distribution company may presume that such essential agricultural user has the ability to use an alternative fuel. The essential agricultural user, using the attribution rule of Subpart B, in § 281.209, shall forward the information concerning the decrease in priority 2 requirements to its supplier.

#### B. Small Volume Exemptions

As discussed more fully above, the Commission does not believe it is administratively feasible to include all essential agricultural users in this first alternative fuel rule. Accordingly, the alternative fuel rule will apply only to those essential agricultural users that have requested, on behalf of an essential agricultural use establishment, natural gas in excess of 300 Mcf per day from a direct supplier.

#### C. Calculations of Volumes To Be Downgraded

A number of comments were raised which indicated that the volume of natural gas to be downgraded from priority 2 because of alternative fuel availability was unclear. The rule has been clarified but the intent remains unchanged. An essential agricultural user must downgrade its priority 2 requirements to exclude from priority 2 any natural gas for which its essential agricultural use establishments have the ability to use alternative fuel, as defined in this subpart. Assume an essential agricultural user that has requirements of 1,500 Mcf per day of natural gas at a particular essential agricultural use establishment. Of that amount, 1,000 Mcf will be used as boiler fuel and 500 Mcf of this natural gas for which priority 2 classification is requested is used directly as a process fuel for which there is no installed capability to use an alternative fuel. Assume further that the essential agricultural user has installed ability to use either coal or residual fuel

oil for 2,000 Mcf for boiler fuel requirements. In that situation, the essential agricultural user would downgrade 1,000 Mcf of natural gas for that establishment from priority 2 because of the alternative fuel rule. The essential agricultural user would retain 500 Mcf in priority 2 for process fuel for the establishment.

#### D. Definition of Boiler

The definition of boiler has been amended. A new boiler is not subject to the alternative fuel rule if it is a diesel engine or gas turbine designed to use middle distillates as the exclusive alternative to natural gas.

#### E. Filing Requirements

Section 281.305 of the proposed rule required essential agricultural users with requirements in excess of 300 Mcf per day to file certain information concerning their use of fuel other than natural gas. The Commission believes this information is essential for its future administration of section 301 of the NGPA and the essential agricultural curtailment rule. However, to avoid confusion, this filing requirement, which is in large part a data gathering exercise, will be promulgated as a separate subpart at a subsequent date.

### IV. Section-by-Section Summary of the Interim Rule

**Purpose (§ 281.301):** This section states that it is the purpose of the Subpart C (§§ 281.301-305) to determine the economic practicability and reasonable availability of alternative fuels for use by certain essential agricultural users of natural gas as a substitute for volumes of any natural gas for which the user is seeking a priority 2 entitlement in the curtailment plans of interstate pipelines.

**Applicability (§ 281.302):** This section applies to any essential agricultural use establishment, as defined in § 281.303, for which an essential agricultural user requested priority 2 entitlements for natural gas under § 281.207, in volumes over 300 Mcf per day from any single direct supplier, and to any new boiler of such an establishment that has a capacity of 300 Mcf of natural gas per day and is first put into service after August 29, 1979. Diesel engines and turbines that are designed to use distillate fuels as the only substitute for natural gas are not "new boilers" within the scope of the rule. The 300 Mcf limitation relates to an amount requested from a direct supplier on behalf of an essential agricultural use establishment, and indicates a total capacity, in the case of a new boiler.

*Definitions (§ 281.303).* This section defines the following terms as they are used in this subpart:

"Ability to use" a particular alternative fuel means that an essential agricultural use establishment had the installed physical capability on August 29, 1979, to use an alternative fuel and has used such fuel at some time since 1973 for an essential agricultural use.

"Alternative fuel" means coal or residual fuel oil.

"Boiler" means a fuel burning device used for generating steam or electricity or for producing hot water for space heating or manufacturing processes.

"Direct supplier" means the interstate pipeline or local distribution company that directly supplies natural gas to an essential agricultural use establishment, an interstate pipeline that directly supplies a local distribution company, and an interstate pipeline that directly supplies an interstate pipeline purchaser.

"Essential agricultural use establishment" has the same meaning as in the Department of Agriculture regulations, 7 CFR 2900.2, which reads, in pertinent part:

(b) "Establishment" means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (Note.—This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) "Essential Agricultural Use Establishment" means any Establishment, or portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

§ 2900.3 Essential agricultural uses. For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production: \* \* \*

An essential agricultural user, which ultimately requests priority classification for its deliveries of natural gas, may have more than one establishment in more than one location.

"Priority 2 entitlements" means the essential agricultural requirements that are classified by an interstate pipeline as priority 2 in its curtailment plan under Subpart B of the Commission's curtailment regulations.

This section also defines "capacity," "coal," "distillate fuel," "essential agricultural user," "local distribution company," and "residual fuel oil."

*General Rule (§ 281.304).* This section sets forth the method for calculating what volumes of natural gas of each essential agricultural user are subject to this alternative fuel rule. Paragraph (a)

states that the alternative fuel volumes subtracted from the total agricultural requirements of an essential agricultural user under § 281.208 are the sum of the alternative fuel volumes of each essential agricultural use establishment for which such user requested priority 2 entitlements in excess of 300 Mcf per day. The alternative fuel volume for each essential agricultural use establishment is that portion of such establishment's requirements for which it has requested priority 2 entitlement and for which it had, on August 29, 1979, the installed capability to burn coal or residual fuel oil.

Paragraph (b) provides that any boiler of an essential agricultural use establishment put into service after August 29, 1979, and having a capacity over 300 Mcf of natural gas per day, will not receive a priority 2 entitlement for any volumes of natural gas. This generic rule for new boilers does not apply to diesel engines or turbines designed to use only Nos. 1 or 2 heating oil, diesel fuel, or No. 4 fuel oil, in addition to natural gas.

*Filing of Amendments To Essential Agricultural Requirements and Priority 2 Entitlements (§ 281.305).* Paragraph (a) places the responsibility on direct suppliers of an essential agricultural use establishment for requesting of each such establishment that requests of that supplier over 300 Mcf per day in priority 2 entitlements, that it notify the essential agricultural user of its alternative fuel volumes and that the user in turn submit an amended request for priority 2 classification and an oath statement on alternative fuel capabilities, under paragraph (b). The direct supplier must make the request by November 7, 1979. While the essential agricultural user and the use establishment may be the same entity, the establishment may be one of several parts of the user at one of several locations. The user normally requests priority classification for natural gas for each individual establishment.

By December 7, 1979, the direct supplier must transmit to the next direct supplier, whether an interstate pipeline or interstate pipeline purchaser, the information submitted to it by the essential agricultural user or other direct customer that reduces its essential agricultural requirements for natural gas. Computation and transmittal of the amended essential agricultural requirements must be performed in accordance with the attribution rule in § 281.209.

Paragraph (b) prescribes the responsibilities of an essential agricultural use establishment, for which more than 300 Mcf per day of priority 2

entitlements has been requested from a direct supplier, to reduce its essential agricultural requirements according to its ability to use an alternative fuel as determined under § 281.304. The essential agricultural user must respond, by November 23, 1979, to the requests of any direct supplier under paragraph (a). The response must consist of an amended request for priority 2 classification of volumes of natural gas and an oath statement that the amended request contains no volumes of natural gas for which the establishment can use coal or residual oil.

Paragraph (c) states that failure of the essential agricultural user to respond to any direct supplier by November 23, 1979, will result in the irrebuttable presumption of alternative fuel capability for the establishment and will cause the direct supplier to subtract those volumes of natural gas classified as priority 2 from the essential agricultural requirements of the user, which requirements the direct supplier will transmit to its direct supplier.

Paragraph (d) requires interstate pipelines to amend the priority 2 classifications in the indices of entitlements according to the information about essential agricultural requirements as revised to accommodate the ability of end-users to use alternative fuels. The new indices must be filed by December 24, 1979 and have a proposed effective date of January 1, 1980.

*Conforming Amendments.* Sections 281.204(b)(3), 281.208(b)(1)(i)(B), and 281.211(b)(4) are revised to conform with the new Subpart C. These sections are in the regulations that set forth the basic procedures for establishing curtailment plans for natural gas classified as priority 1 and priority 2. They deal with the revision of indices of entitlement according to the alternative fuel determination, calculation of attributable priority 2 entitlements, and filing procedures for subsequent changes in priority 2 entitlements.

## V. Effective Date

These regulations are being issued effective immediately on an interim basis. The Commission finds that the significant fluctuations in the liquid petroleum market prevents a long-range determination of what alternative fuels are economically practical and reasonably available as a substitute for natural gas. The Commission will therefore address the issue again at the end of the 1979-1980 winter heating season. The Commission finds good cause to waive the 30-day delay in the effective date under section 553 of the Administrative Procedure Act. In order

that the interstate pipelines amend the indices of entitlements by the winter season, data on alternative fuels must be requested and transmitted to the pipelines in the next four to six weeks. In a curtailment situation, permitting priority 2 natural gas to be used this winter by essential agricultural users that are able to use coal or residual oil could jeopardize the availability of natural gas to process and feedstock users that do not have the ability to use alternative fuels. Moreover, the Commission has stated its intention to implement an alternative fuel rule on several occasions since January, 1979.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 281 of Chapter I, Title 18 of the Code of Federal Regulations is amended as set forth below, effective immediately.

By the Commission.  
Kenneth F. Plumb,  
Secretary.

1. Part 281 is amended in the Table of Contents by adding a new Subpart C to read as follows:

## PART 281—NATURAL GAS CURTAILMENT

### Subpart C—Alternative Fuel Determination

Sec.

- 281.301 Purpose.
- 281.302 Applicability.
- 281.303 Definitions.
- 281.304 General rule.
- 281.305 Filing of amendments to essential agricultural requirements priority 2 entitlements.

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267.

2. In § 281.204, paragraph (b)(3) is revised to read as follows:

#### § 281.204 Tariff filing requirements.

(b) *Index of entitlements.* \* \* \*

(3) *Alternative fuel determination.*  
The index of entitlements shall not include the volumes of natural gas for which volumes the essential agricultural user has the ability to use an alternative fuel, as determined under Subpart C of this part. Each interstate pipeline shall amend its index of entitlements to remove from the priority 2 classification and place in an appropriate priority of service category any volumes of natural gas included in any index of entitlements that is effective on October 31, 1979 (or on November 30, 1979, if the

pipeline elects to file tariff sheets under paragraph (a)(2) of this section).

\* \* \* \* \*

3. In § 281.208, paragraph (b)(1)(i)(B) is revised to read as follows:

#### § 281.208 Calculation of essential agricultural requirements and attributable priority 2 entitlements.

(b) *Calculations by the essential agricultural user.*—(1) *Total agricultural requirements*—(i) *General Rule.* \* \* \*  
(B) alternative fuel volumes (determined under § 281.304).

\* \* \* \* \*

4. In § 281.211, paragraph (b)(4) is revised to read as follows:

#### § 281.211 Filing and documentation.

(b) *Priority 2.* \* \* \*  
(4) *Subsequent request.* (i) For 1979, changes in priority 2 entitlements for essential agricultural use establishments that have the ability to use an alternative fuel shall be filed under Subpart C of this part.

(ii) For years subsequent to 1979, the data required by this paragraph for any change in priority 2 entitlements must be filed only to the extent that such change is sought. The filing dates are those prescribed in this paragraph, except that an interstate pipeline with a rolling base period may prescribe different dates as appropriate.

5. Part 281 is amended by adding a new Subpart C to read as follows:

### Subpart C—Alternative Fuel Determination

#### § 281.301 Purpose.

The purpose of this subpart is to determine the economic practicability and reasonable availability of alternative fuels, as prescribed in section 401(b) of the Natural Gas Policy Act of 1978 for use by essential agricultural use establishments that seek priority 2 entitlements for natural gas.

#### § 281.302 Applicability.

This subpart applies to—

- (a) Any essential agricultural use establishment for which an essential agricultural user:
  - (1) Has requested that natural gas be classified as priority 2 entitlements by an interstate pipeline under § 281.207; and
  - (2) Which has requested from any direct supplier priority 2 entitlements in excess of 300 Mcf per day; and
- (b) Any essential agricultural use establishment with a new boiler, other than a diesel engine or turbine designed

to use distillate fuels as the only alternative to natural gas, that:

- (1) Has a capacity in excess of 300 Mcf of natural gas per day; and
- (2) Is put into service for the first time after August 29, 1979.

#### § 281.303 Definitions.

For purposes of this subpart—

(a) "Ability to use" a particular alternative fuel means that an essential agricultural use establishment had, on August 29, 1979, the installed physical capability to use the alternative fuel and has used that alternative fuel, in any amount, at any time after 1973, for an essential agricultural use.

(b) "Alternative fuel" means coal or residual fuel oil.

(c) "Boiler" means any fuel burning device that is used for generating steam or electricity or producing hot water for space heating or manufacturing processes.

(d) "Capacity" means the volumes of natural gas used if the boiler is operated at nameplate rated capacity for a continuous 16-hour period.

(e) "Coal" means lignite or any rank of bituminous coal or anthracite coal.

(f) "Direct supplier" means, with respect to an essential agricultural use establishment, an interstate pipeline or local distribution company which directly supplies such essential agricultural use establishment; with respect to a local distribution company, an interstate pipeline which directly supplies such local distribution company; and, with respect to an interstate pipeline purchaser, an interstate pipeline which directly supplies the interstate pipeline purchaser.

(g) "Distillate fuel" means Nos. 1 and 2 heating oils, diesel fuel, and No. 4 fuel oil, as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM, D396 and D975.

(h) "Essential agricultural requirements" means volumes of natural gas certified by the Secretary of Agriculture and calculated in accordance with 7 CFR 2900.4.

(i) "Essential agricultural use" means any use of natural gas, as defined in § 281.203(a)(2) of this chapter and 7 CFR 2900.3.

(j) "Essential agricultural user" means an essential agricultural user as defined in § 281.203(b)(3).

(k) "Essential agricultural use establishment" is used as defined in 7 CFR 2900.2.

(l) "Local distribution company" means a local distribution company served directly by an interstate pipeline.

(m) "Priority 2 entitlements" means the essential agricultural requirements of an essential agricultural use establishment which requirements are classified by an interstate pipeline as priority 2 in its curtailment plan under Subpart B.

(n) "Residual fuel oil" means Nos. 5 and 6 oil, Bunker C, and Navy Special as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM, D396.

#### § 281.304 Computation of alternative fuel volume.

(a) *General rule.* For purposes of § 281.208(b)(1)(i)(B), and § 281.305:

(1) Alternative fuel volume of an essential agricultural user is equal to the sum of the alternative fuel volumes for each agricultural use establishment for which such user has requested from any direct supplier priority 2 entitlements in excess of 300 Mcf.

(2) Alternative fuel volume for an agricultural use establishment is that portion of such establishment's natural gas requirements for which such establishment has requested priority 2 curtailment and for which the establishment had on August 29, 1979, the ability to use alternative fuel.

(b) *New boilers.* For purposes of § 281.208(b)(1)(i)(B) and § 281.305: any new boiler of an essential agricultural use establishment shall be deemed to have alternative fuel volumes, if the boiler:

- (1) Has a capacity in excess of 300 Mcf of natural gas per day;
- (2) Is put into service for the first time after August 29, 1979; and
- (3) Is not a diesel engine or turbine designed to use distillate fuels as the only substitute for natural gas.

#### § 281.305 Filing of amendments to essential agricultural requirements and priority 2 entitlements.

(a) *Direct suppliers.* (1) Any direct supplier that provides natural gas to an essential agricultural use establishment for which an essential agricultural user has requested from that supplier priority 2 entitlements in excess of 300 Mcf per day for the establishment shall request, no later than November 7, 1979, that each such establishment notify its essential agricultural user of its alternative fuel volumes and that such essential agricultural user submit to the direct supplier a statement in accordance with paragraph (b) of this section.

(2) No later than December 7, 1979, the direct supplier shall transmit to its direct supplier the information provided under this section that amends the essential

agricultural requirements, in accordance with the attribution procedures in § 281.209.

(b) *Essential agricultural user.* Any essential agricultural user which has requested from any direct supplier priority 2 classification for volumes in excess of 300 Mcf per day for any essential agricultural use establishment shall:

(1) reduce its essential agricultural requirements calculated under § 281.207 to reflect the exclusion of volumes of natural gas for which its essential agricultural establishment has alternative fuel volumes under § 281.304; and

(2) respond no later than November 23, 1979 to the request of any direct supplier under paragraph (a)(1) of this section by submitting an amended request for priority 2 classification, where appropriate, and certifying on oath that the request for priority 2 classification, as amended under paragraph (b)(1) of this section, contains no alternative fuel volumes.

(c) *Presumption of alternative fuel volumes.* Any essential agricultural user that fails to comply with paragraph (b) of this section in timely fashion with respect to any essential agricultural establishment shall be deemed to have alternative fuel volumes for the essential agricultural uses of such establishment, in which case the direct supplier shall subtract all volumes of priority 2 natural gas used by such establishment from the essential agricultural requirements of its essential agricultural user.

(d) *Interstate pipelines.* An interstate pipeline shall revise its index of entitlements in accordance with the information provided under this section and shall file, no later than December 24, 1979, a new index of entitlements pursuant to § 281.204(a)(1), with a proposed effective date of January 1, 1980.

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## VETERANS ADMINISTRATION

### 38 CFR Part 21

#### Implementing Legislation; Administration of Education Loan Program

**AGENCY:** Veterans Administration.  
**ACTION:** Final regulations.

**SUMMARY:** The following regulatory provisions implement the provisions of the GI Bill Improvement Act of 1977 and adjust the administration of the education loan program. Those

regulations that implement the provisions of the GI Bill Improvement Act of 1977 provide for increases in monthly rates and other significant changes in the Veterans Administration educational assistance and vocational rehabilitation programs. Most of the changes are liberalizing. Others are of a minor or technical nature.

The adjustments in the education loan program allow veterans to appeal all decisions regarding entitlement to a loan to the Board of Veterans Appeals. Other adjustments are made to the criteria used to determine the amount of an education loan. These regulations will implement the provisions of the GI Bill Improvement Act of 1977 as well as make the administration of the education loan program more equitable.

**EFFECTIVE DATES:** May 31, 1976:  
Extended period of eligibility for veterans.

October 1, 1977: Changes in rates of payment.

November 23, 1977: Requirement that veterans and eligible persons be notified of withholding or discontinuance of payments; changes in the prohibition against assigning benefits; clarification that daily attendance need not be taken for courses leading to a standard college degree; and restrictions on offsetting a school's reporting fee in order to recover a liability of the school.

January 1, 1978: Education loan forgiveness through accelerated payment of benefits, a new method for delivering education loan checks; and the change in the fee payable for a school's delivering checks.

February 1, 1978: Changes in provisions for counseling; allowances payable to State approving agencies for administrative expenses; a new report of activities of State approving agencies; changes in the 85-15 percent ratio requirement; changes to the 2-year operation requirement; changes in measurement of certain courses; and changes in determination of satisfactory progress.

August 1, 1978: Other amendments to the education loan program.

December 1, 1978: Extended period of eligibility for spouses and surviving spouses.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202-389-2092).

**SUPPLEMENTARY INFORMATION:** On pages 7745 through 7763 of the Federal Register of February 7, 1979, there was published a notice of intent to amend

Part 21 to implement the GI Bill Improvement Act of 1977 and to adjust the administration of the education loan program.

Interested persons were given 60 days in which to submit comments, suggestions or objections regarding the proposed regulations. Five persons submitted letters containing numerous comments (and some requests for minor editorial changes which have been noted).

Two persons suggested that § 21.1043 should be revised to include a definition of willful misconduct. The commenters were concerned over whether veterans, who were addicted to alcohol or other drugs, could qualify for an extended entitlement period.

The Veterans Administration intends to use the same definition of willful misconduct in its education program as it uses in other programs. Since the question of alcohol and other drug abuse involves other programs, the Veterans Administration has decided to consider the matter further. Any changes in policy will be reflected in changes to Part 3, Title 38, Code of Federal Regulations where willful misconduct as it pertains to alcohol and other drug abuse, is discussed. Changes, if any, will appear there. Since the Veterans Administration plans to use the definition, however it may be worded, which appears in Part 3, it does not think it is necessary to include a second definition in § 21.1043.

One person suggested that § 21.1043 be amended to provide that the Veterans Administration would consider psychological evidence as well as medical evidence when determining whether a veteran is entitled to an extended eligibility period. The Veterans Administration has decided not to accept this suggestion, because it does not appear to agree with Congressional intent in providing for an extended eligibility period. The report of the Senate Veterans' Affairs Committee on the GI Bill Improvement Act of 1977 states, " \* \* \* it is not the Committee's intention \* \* \* that all veterans who seek readjustment counseling or receive such services automatically be granted a delimiting date extension. Rather \* \* \* it must be determined \* \* \* that a diagnosable disability or impairment existed during the veteran's period of educational assistance eligibility and was the cause of the veteran's inability to begin or complete his or her educational program." Since the Committee uses the term "diagnosable," it is appropriate that the evidence the Veterans Administration considers be limited to medical evidence.

One commenter believed that § 21.1043(a)(2) does not conform to 38 U.S.C. 601(1) or to the intent of Congress in providing for an extended period of eligibility. The Veterans Administration is satisfied that this section does conform. The Veterans Administration has not changed it.

One person suggested that the provisions of § 21.4251 would cause veterans to have to travel unnecessarily long distances to attend classes at a campus with approved courses. He stated that in order to avoid wasting energy, the provisions of § 21.4251 should not be enforced.

The Veterans Administration recognizes the need to conserve energy. However, the purpose of the 2-year operation requirement is to prevent the development of schools which are aimed at veterans eligible for GI Bill benefits and the abuses that can occur as a result of such a development. The Veterans Administration believes that in order that this purpose may be achieved, there should not be a blanket waiver of this requirement. The provisions for waiver that are included in this section are sufficient.

The same person suggested that the proposed change to § 21.4266 should be deleted. He stated that it would not be cost-effective. Until § 21.4266 was made part of the Code of Federal Regulations, the Veterans Administration did not know if a State approving agency's approval of a school's courses extended to all the school's campuses within the State. This section sets forth the conditions when approval for these courses should be combined with approval of courses at the school's parent facility and when they should not be combined. This eliminates ambiguity and prevents erroneous payments. Therefore, the Veterans Administration has decided to retain this regulation.

One person suggested that the word "enrollment" be substituted for the word "attendance" in the second sentence of § 21.4203(a). He believed that the proposed wording would prevent a school from giving an advance payment check to a veteran or eligible person before he or she actually begins attending class. This is a valid objection. The final regulation is changed accordingly.

One person suggested that the term, "approved length of the course," used in § 21.4277, be defined explicitly. The Veterans Administration has not accepted this suggestion because it believes that State approving agencies should be free to approve whatever length is appropriate for a course.

Another person, also commenting on § 21.4277, suggested substituting a

percentage of hours for which unsatisfactory grades have been received. The Veterans Administration has not adopted this suggestion, because it would not be fair to someone who began his or her program of education by taking only a small part of it. A veteran, for example, who began working toward a college degree by taking only one subject, should not be classified as making unsatisfactory progress if he or she has difficulty with it. It would be an insufficient test of the veteran's ability to progress satisfactorily.

This commenter also objected to the criteria used to determine if the provisions of § 21.4277 (a)(2) and (d) can be suspended. He stated that accreditation may be an unreliable criterion. The Veterans Administration is aware of the criticism which has been directed at the Federal government for what some perceive as an overreliance upon institutional accreditation. Nevertheless, the agency believes that accreditation is sufficiently reliable to be used in determining whether the provisions of the two paragraphs can be suspended.

Another commenter suggested eliminating the time limit for applying for an extended period of eligibility. Extension of the basic period of eligibility for veterans and eligible spouses and surviving spouses was provided by the Congress to alleviate the hardship caused under the previous rule, where no extensions were permitted. In some cases the veteran with eligibility for educational assistance was so disabled as to be unable to begin or complete training within the normal 10-year delimiting period. Upon recovery from the condition, the veteran would be unable to complete this vital readjustment service before the expiration of the delimiting period. The primary intent of the Congress in enacting the new limited extension authority was to provide sufficient flexibility to enable the individual to complete the whole process of educational readjustment, but still to do so expeditiously. Educational assistance is not a continuing long-term aid, but rather it is intended to help only in the period immediately following military service.

In most phases of the Veterans Administration programs, a veteran or other eligible person is given a maximum of 1 year in which to apply for benefits to which he or she would otherwise be entitled. Furthermore, traditionally when liberalizing legislation has been enacted the Veterans Administration has allowed 1

year from the date of enactment in which the individual, first eligible, may claim the new benefit. Section 21.1032 is consistent with this past practice. If no such provision were made, a veteran could defer seeking the extension for many years after recovery from the mental or physical condition and then qualify for training. That would be contrary to the longstanding intent of the program.

The same commenter wanted § 21.1043 to be rewritten. He was afraid that the word "clearly" ran counter to Veterans Administration policy, expressed in § 3.102 of this chapter, of resolving all doubt in favor of the veteran. The Veterans Administration does not believe that a conflict exists, and has not changed § 21.1043. Section 3.102 will be applied when determining whether a veteran qualifies for an extended period of eligibility.

The same person suggested that § 21.1043(d) was worded in such a way that veterans would be denied their full extended period of eligibility. He suggested that the regulation be changed. Section 21.1043(d) has wording similar to § 21.1042(d). The Veterans Administration always has interpreted § 21.1042(d) so as to give veterans their full initial period of eligibility. The agency will apply the same interpretation to § 21.1043(d) in the same manner to give veterans their full extended period of eligibility.

The same person suggested that § 21.4154(a) be reworded to make clear that State approving agencies must submit their reports monthly. The Veterans Administration believes that the phrase "each month thereafter" in the regulation is sufficient to indicate that the report should be monthly. Therefore, the agency has not adopted this suggestion.

The commenter also suggested relying upon a school's determination of the cost of attendance when determining if a person is entitled to an education loan. He thought that married persons would be unable to obtain a loan under the proposed regulations. After careful consideration the Veterans Administration has decided not to adopt this suggestion. These regulations are necessary to help reduce the loan default rate. Married persons are helped by the new regulations since only part of their educational assistance allowance is counted as a resource when the agency determines if a loan may be granted.

As a result of internal analysis the Veterans Administration has decided not to make final proposed § 21.4200(n), but instead to include that material in § 21.4500.

The proposed changes to the regulations necessary to implement the GI Bill Improvement Act of 1977 and to adjust the administration of the education loan program are deemed proper and are hereby approved.

Approved: October 24, 1979.  
By direction of the Administrator:  
Rufus H. Wilson,  
Deputy Administrator.

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

1. Section 21.133 is revised to read as follows:

##### § 21.133 Rates.

Subsistence allowance is payable at the following monthly rates effective October 1, 1977.

| Type of training                                                                  | Monthly rate of subsistence allowance <sup>1</sup> |             |              |                           |
|-----------------------------------------------------------------------------------|----------------------------------------------------|-------------|--------------|---------------------------|
|                                                                                   | No dependents                                      | 1 dependent | 2 dependents | Each additional dependent |
| Institutional:                                                                    |                                                    |             |              |                           |
| Full-time                                                                         | \$241                                              | \$298       | \$351        | \$26                      |
| 3/4 time                                                                          | 181                                                | 224         | 263          | 19                        |
| 1/2 time                                                                          | 120                                                | 149         | 176          | 13                        |
| Sheltered workshop, training in the home, independent instructor (full time only) | 241                                                | 298         | 351          | 26                        |
| Farm cooperative, apprentice or other on job (OJT) (full time only)               | 210                                                | 254         | 293          | 19                        |
| Combination (institutional and OJT) (full time only):                             |                                                    |             |              |                           |
| Institutional 1/2 time or more                                                    | 241                                                | 298         | 351          | 26                        |
| Institutional less than 1/2 time                                                  | 210                                                | 254         | 293          | 19                        |
| Cooperative (full time only):                                                     |                                                    |             |              |                           |
| Institutional full time                                                           | 241                                                | 298         | 351          | 26                        |
| Business/industry full time                                                       | 210                                                | 254         | 293          | 19                        |

<sup>1</sup> For on-job 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.

(38 U.S.C. 1504(b); Pub. L. 95-202, 91 Stat. 1433)

2. In § 21.145, paragraph (a) is revised to read as follows:

##### § 21.145 Veteran-student services.

(a) **Eligibility.** Veteran-students who are pursuing full-time programs of education or training under chapter 31 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or \$625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or

immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training, he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or \$2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95-202, 91 Stat. 1433)

(3) Section 21.201 is amended as follows:

(a) By deleting the reference "§ 21.4270 footnote 7" and inserting "§ 21.4270(b) footnote 1" in paragraph (j)(5).

(b) By revising paragraph (j)(1) and (2) as set forth below:

**§ 21.201 Types of courses.**

(j) *Independent study course leading to a degree.* A course pursued by independent study under the following conditions:

(1) The course is offered by a college or university.

(2) The course leads to or is fully creditable toward a standard college degree.

**Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34**

**§ 21.1021 [Amended]**

4. The cross reference following § 21.1021 is changed to read "Measurement of courses." See § 21.4270(a).

5. In § 21.1032, paragraph (d) is added to read as follows:

**§ 21.1032 Time limits.**

(d) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.1043 must be received by the Veterans Administration by the latest of the following dates:

(1) November 23, 1978,

(2) One year from the date on which the veteran's original period of eligibility ended,

(3) One year from the date on which the veteran's physical or mental disability ceased to prevent him or her from beginning or resuming the veteran's chosen program of education. (38 U.S.C. 1662)

6. In § 21.1041, paragraphs (a)(3), (d) (introductory portion preceding subparagraph (1)) and (d)(2) are revised to read as follows:

**§ 21.1041 Periods of entitlement.**

(a) *General.* \* \* \*

(3) The veteran may use his or her entitlement at any time during the 10-year period, including any applicable extension of it, determined under §§ 21.1042 and 21.1043, but in no event shall education or training be afforded a veteran under chapter 34 or 36 after December 31, 1989. It is not required that the entitlement time be used in consecutive months. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(d) *Extension.* The period of entitlement, including the 45-months period, may be extended, but not beyond the delimiting date specified in

§§ 21.1042 and 21.1043: (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(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 \$806 will provide for flight training and \$871 will provide for correspondence training, whichever is less. (38 U.S.C. 1661; 1677(b); 1786(a); Pub. L. 95-202, 91 Stat. 1433)

7. In § 21.1042, paragraphs (a) and (b) are revised to read as follows:

**§ 21.1042 Ending dates of eligibility.**

The ending date of eligibility will be the latest of the following dates:

(a) *General.* Except as provided by § 21.1043 no educational assistance will be afforded a veteran later than 10 years after his or her last discharge or release from active duty after January 31, 1955, or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

(b) *Correction of military records.* If the veteran becomes eligible for educational assistance as the result of a 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, educational assistance will not be afforded later than 10 years after the date his or her discharge or dismissal was changed, corrected or modified (except as provided by § 21.1043), or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

8. Section 21.1043 is added to read as follows:

**§ 21.1043 Extended period of eligibility.**

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.1042 provided:

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It

must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(3) The veteran is otherwise eligible for payment of educational assistance for the training pursuant to chapter 34, title 38, United States Code. (38 U.S.C. 1662, Pub. L. 95-202, 91 Stat. 1433)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen:

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.1042, and

(2) Must be on or before the ninetieth day following the date on which the veteran's application for an extension was approved by the Veterans Administration, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first ordinary term, quarter or semester following the ninetieth day after the veteran's application for an extension was approved by the Veterans Administration if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.1042, or

(iii) The date the veteran resumed training. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(2) If the veteran is training in a course not organized on a term, quarter

or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

- (i) The date the veteran's training became medically feasible or
- (ii) The veteran's delimiting date as determined by § 21.1042. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(d) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of an extended period of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the day preceding the end of the extended period of eligibility. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

9. In § 21.1045, paragraphs (a)(2) and (b)(2) are revised and paragraphs (h) and (i) are added so that the revised 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 \$288 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  $\frac{3}{4}$ ,  $\frac{1}{2}$  or  $\frac{1}{4}$  fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b); Pub. L. 95-202, 91 Stat. 1433)

(b) *Correspondence courses.* \* \* \*  
(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, spouse, or surviving spouse, who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each \$220 paid before September 1, 1974, to the veteran, spouse, or surviving spouse as an educational assistance allowance for such course. For payments made on or after September 1, 1974, the charge will be 1 month for each \$260 paid; for payments made on or after January 1, 1975, the charge will be 1 month for each

\$270 paid; for payments made on or after October 1, 1976, the charge will be 1 month for each \$292 paid; and for payments made on or after October 1, 1977, the charge will be 1 month for each \$311 paid. Where the computation results in a period of time other than a full month, or other than exactly  $\frac{3}{4}$ ,  $\frac{1}{2}$  or  $\frac{1}{4}$  fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1786(a)(2); Pub. L. 95-202, 91 Stat. 1433)

(h) *Accelerated payment; chapter 34 and chapter 35.* The entitlement of a veteran or eligible person who receives an accelerated payment will be charged at the rate of 1 month for each amount of accelerated payment (exclusive of the matching payment from the State and/or local governmental unit) equal to the full-time monthly rate payable to the veteran or eligible person under § 21.4136(a) at the time he or she applied for an accelerated payment. Where the computation results in a period of time other than a full month, or other than exactly  $\frac{3}{4}$ ,  $\frac{1}{2}$ , or  $\frac{1}{4}$  fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

(i) *Education loan after otherwise applicable delimiting date; chapter 34 or chapter 35 spouse or surviving spouse.* A charge will be made against the entitlement of a veteran, spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 month for each month of entitlement that would have been used had the veteran, spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted. Where the computation results in a period of time other than a full month, or other than exactly  $\frac{3}{4}$ ,  $\frac{1}{2}$  or  $\frac{1}{4}$  fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1662, 1712; Pub. L. 95-202, 91 Stat. 1433)

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

10. In § 21.3032, paragraph (c) is added to read as follows:

#### § 21.3032 Time limits.

(c) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility provided by § 21.3046(d) must be received by the Veterans Administration by the later of the following dates:

(1) One year from the date on which the spouse's or surviving spouse's original period of eligibility ended.

(2) One year from the date on which the spouse's or surviving spouse's physical or mental disability ceased to prevent him or her from beginning or resuming a chosen program of education. (38 U.S.C. 1712).

#### § 21.3045 [Amended]

11. Section 21.3045 is amended to delete the reference "§ 21.1045(a) through (c) and (e) through (g)" and insert "§ 21.1045(a) through (c) and (e) through (i)."

12. Section 21.3046 is amended as follows:

(a) By inserting "Pub. L. 95-202, 91 Stat. 1433" in paragraph (c)(3).

(b) By revising the introductory text and the introductory text of paragraph (c) preceding subparagraph (1) and adding paragraph (d) so that the revised and added material reads as follows:

#### § 21.3046 Periods of eligibility; spouses and surviving spouses.

The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (c) and (d) 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, 1982 unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section. The period of eligibility of a spouse 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 or his status changes to that of surviving spouse. (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

(c) *Extension to ending date.* Spouse is enrolled and eligibility ceases for a reason specified in paragraph (c)(1), (2), or (3) of this section: extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 12 weeks, whichever is earlier. 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 § 871 will provide, whichever is less. No extension may exceed maximum entitlement or extend beyond the delimiting date specified in paragraph (a) or (d) of this section, as appropriate. Extension is authorized

without regard to whether the midpoint of the quarter, semester or term has been reached. No extension of the period of eligibility will be made when training is pursued in a training establishment as defined in § 21.4200(c). (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

(d) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a). All other provisions of § 21.1043 concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance also apply to spouses and surviving spouses who qualify for extended periods of eligibility. (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

13. In § 21.3300, paragraph (c) is revised to read as follows:

**§ 21.3300 Special restorative training.**

(c) Special restorative training may be provided in excess of 45 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment in excess of \$98 per calendar month. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b); 1742; Pub. L. 95-202, 91 Stat. 1433)

14. In § 21.3333, paragraphs (a) and (b) are revised 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. | \$311        | If costs for tuition and fees average in excess of \$98 per month, rate may be increased by such amount in excess of \$98. |

(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 \$10.40 that the special training allowance exceeds the basic monthly rate of \$311. 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; Pub. L. 95-202, 91 Stat. 1433)

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

15. Section 21.4100 is revised to read as follows:

**§ 21.4100 Counseling.**

(a) The purpose of counseling is to assist:

(1) In selecting an educational or training objective,

(2) In developing a suitable program of education or training,

(3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective,

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program,

(5) In selecting an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances. (38 U.S.C. 1663, 1720; Pub. L. 95-202, 91 Stat. 1433)

(b) Counseling not required by other Veterans Administration regulations shall be provided as needed for the purposes identified in paragraph (a) of this section upon the request of the veteran or eligible person. (38 U.S.C. 1663; Pub. L. 95-202, 91 Stat. 1433)

**§ 21.4102 [Amended]**

16. Section 21.4102 is amended by deleting the words "wife, husband, widow or widower" and inserting "spouse or surviving spouse" in the headnote and the first sentence of paragraph (b).

**§ 21.4106 [Amended]**

17. Section 21.4106 is amended by deleting the words "Wife, Husband, Widow or Widower" and inserting "Spouse or Surviving Spouse" in the headnote of paragraph (a)(3).

18. In § 21.4130, the introductory text and paragraph (b)(2) are revised 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 a month in apprenticeship and on-job training programs). Final payment may be withheld until proof of continued enrollment is received and the account adjusted. No payment may be made for training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency; no payment may be made for lessons completed in a correspondence course in excess of the number approved by the State approving agency; and no payment may be made for training in any other type of course which occurs after the additional period, provided in § 21.4277, beyond the length of the course approved by the State approving agency. (38 U.S.C. 1674, 1681; Pub. L. 95-202, 91 Stat. 1433)

(b) The ending date will be the earliest of the following dates:

(2) The ending date of the veteran's eligibility as determined under §§ 21.1041, 21.1042 and 21.1043. (38 U.S.C. 1662(a); Pub. L. 95-202, 91 Stat. 1433)

19. Section 21.4133 is added to read as follows:

**§ 21.4133 Notification of withholding or discontinuance.**

Any eligible veteran or eligible person whose payments are withheld or discontinued pursuant to § 21.4134 or 21.4135 shall concurrently receive written notice of the withholding or discontinuance from the Veterans Administration. The notice shall state the reasons for the withholding or discontinuance of payments, and shall notify the veteran or eligible person that he or she has a right to a hearing and to present evidence why payments should not be discontinued or withheld. (38 U.S.C. 1790(b); Pub. L. 95-202, 91 Stat. 1433)

20. In § 21.4136, paragraphs (a) and (c) are revised to read as follows:

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

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1977:

| Type of courses                                                                  | Monthly rate                                                                                                                                                                                                                                         |             |              |                                          |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--------------|------------------------------------------|
|                                                                                  | No dependents                                                                                                                                                                                                                                        | 1 dependent | 2 dependents | Additional for each additional dependent |
| <b>Institutional:</b>                                                            |                                                                                                                                                                                                                                                      |             |              |                                          |
| Full time .....                                                                  | \$311                                                                                                                                                                                                                                                | \$370       | \$422        | \$26                                     |
| ¾ time .....                                                                     | 233                                                                                                                                                                                                                                                  | 277         | 317          | 19                                       |
| ½ time .....                                                                     | 156                                                                                                                                                                                                                                                  | 185         | 211          | 13                                       |
| Less than ½ but more than ¼ time <sup>1</sup> .....                              | 156                                                                                                                                                                                                                                                  |             |              |                                          |
| ¼ time or less <sup>2</sup> .....                                                | 78                                                                                                                                                                                                                                                   |             |              |                                          |
| Cooperative, other than farm cooperative (full time only) .....                  | 251                                                                                                                                                                                                                                                  | 294         | 334          | 19                                       |
| Apprentice or on-job (full time only but see footnote <sup>3</sup> below.) ..... |                                                                                                                                                                                                                                                      |             |              |                                          |
| Payment designated training assistance allowance:                                |                                                                                                                                                                                                                                                      |             |              |                                          |
| First 6 months .....                                                             | 226                                                                                                                                                                                                                                                  | 254         | 277          | 12                                       |
| Second 6 months .....                                                            | 169                                                                                                                                                                                                                                                  | 197         | 221          | 12                                       |
| Third 6 months .....                                                             | 113                                                                                                                                                                                                                                                  | 141         | 164          | 12                                       |
| Fourth 6 months and succeeding periods .....                                     | 56                                                                                                                                                                                                                                                   | 84          | 108          | 12                                       |
| Correspondence .....                                                             | 90 per centum of the established charge for number of lessons completed by veteran and serviced by school—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. See § 21.1045(a)(2). |             |              |                                          |
| <b>Farm cooperative:</b>                                                         |                                                                                                                                                                                                                                                      |             |              |                                          |
| Full time .....                                                                  | 251                                                                                                                                                                                                                                                  | 294         | 334          | 19                                       |
| ¾ time .....                                                                     | 188                                                                                                                                                                                                                                                  | 221         | 251          | 15                                       |
| ½ time .....                                                                     | 126                                                                                                                                                                                                                                                  | 147         | 167          | 10                                       |

<sup>1</sup> If a veteran under chapter 34 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$156 or \$78 as appropriate per month if the maximum allowance is not initially authorized.

<sup>2</sup> See paragraph (b) of this section.

<sup>3</sup> See footnote<sup>4</sup> of § 21.4270(b) 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.

<sup>4</sup> Established charge means that 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 January 1, 1973, will receive 100 percent of the established charges.

(38 U.S.C. 1677, 1682, 1786, 1787; Pub. L. 95-202, 91 Stat. 1433)

(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                            | Rates |
|----------------------------------------|-------|
| Full time.....                         | \$311 |
| ¾ time.....                            | 233   |
| ½ time.....                            | 156   |
| Less than ½, but more than ¼ time..... | 156   |
| ¼ time or less.....                    | 78    |

(38 U.S.C. 1682; Pub. L. 95-202, 91 Stat. 1433)

\* \* \* \* \*

21. Section 21.4137 is amended as follows:

(a) By deleting "§ 21.4270" and inserting "§ 21.4270(b)" in the parenthetical note following paragraph (f).

(b) By revising paragraph (a) to read 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 effective October 1, 1977 |
|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| <b>Institutional</b>                                                                                                         |                                        |
| Full time.....                                                                                                               | \$311                                  |
| ¾ time.....                                                                                                                  | 233                                    |
| ½ time.....                                                                                                                  | 156                                    |
| Less than ½ but more than ¼ time <sup>2</sup> .....                                                                          | 156                                    |
| ¼ time or less <sup>3</sup> .....                                                                                            | 78                                     |
| Cooperative, other than farm cooperative (full time only).....                                                               | 251                                    |
| Apprentice or on-job (full time only but see footnote <sup>1</sup> below.) Payment designated training assistance allowance: |                                        |
| First 6 months.....                                                                                                          | 226                                    |
| Second 6 months.....                                                                                                         | 169                                    |
| Third 6 months.....                                                                                                          | 113                                    |
| Fourth 6 months and succeeding periods.....                                                                                  | 56                                     |
| <b>Farm cooperative:</b>                                                                                                     |                                        |
| Full time.....                                                                                                               | 251                                    |
| ¾ time.....                                                                                                                  | 188                                    |
| ½ time.....                                                                                                                  | 126                                    |

Type of courses

Monthly rate effective October 1, 1977

Correspondence..... 90 per centum of the established charge for number of lessons completed by eligible spouse or surviving spouse and serviced by the school<sup>4</sup>—Allowance paid quarterly.

<sup>1</sup> See footnote 5 of § 21.4270(b) 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.

<sup>2</sup> 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 spouse or surviving spouse whichever is the lesser.

<sup>3</sup> If an eligible person under chapter 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$156 or \$78 as appropriate per month if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3); Pub. L. 95-202, 91 Stat. 1433)

(38 U.S.C. 1682, 1732, 1786, 1787; Pub. L. 95-202, 91 Stat. 1433)

\* \* \* \* \*

#### § 21.4138 [Amended]

22. Section 21.4138 is amended by deleting the cross reference following paragraph (f).

23. In § 21.4145, paragraph (a) is revised to read as follows:

#### § 21.4145 Veteran-student services.

(a) **Eligibility.** Veteran-students who are pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or \$625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may

not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or \$2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95-202, 91 Stat. 1433)

24. In § 21.4146, paragraph (f) is added to read as follows:

**§ 21.4146 Assignments of benefits prohibited.**

(f) *Savings clause.* Notwithstanding any other provision of this section the Director of the Veterans Administration field station of jurisdiction may authorize the educational institution to negotiate educational assistance checks payable to the veteran or eligible person under a power of attorney executed by the veteran or eligible person prior to December 1, 1976, authorizing the school to negotiate the check, provided that the following criteria are met:

- (1) The veteran or eligible person owes the full proceeds of the check to the educational institution for tuition and fees;
- (2) The educational institution is able to establish that it will face undue financial hardship if it is unable to negotiate the check; and
- (3) The check is for training:
  - (i) Received by the veteran or eligible person for a course offered by the educational institution under provisions of subchapter VI of chapter 34, title 38, United States Code, for Predischarge Education Program training, or at a location not in a State under provisions of section 1676, title 38, United States Code, and the course was begun by the veteran or the eligible person prior to December 1, 1976, and completed not later than June 30, 1977; or
  - (ii) By an accredited correspondence school received by the veteran or eligible person while residing in a State, and represents payment for lessons completed under section 1786, title 38, United States Code, that were serviced by the school prior to January 1, 1977. (Sec. 305(c)(1), Pub. L. 95-202, 91 Stat. 1433)

25. Section 21.4153 is amended as follows:

- (a) By changing the citation following paragraph (c)(4) to read "(38 U.S.C. 1774; Pub. L. 95-202, 91 Stat. 1433)".

(b) By revising paragraph (c)(3) 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            | Allowable for administrative expense                                                         |
|-------------------------------------------|----------------------------------------------------------------------------------------------|
| \$5,000 or less                           | \$630.                                                                                       |
| Over \$5,000 but not exceeding \$10,000.  | \$1,134.                                                                                     |
| Over \$10,000 but not exceeding \$35,000. | \$1,134 for the first \$10,000 plus \$1,050 for each additional \$5,000 or fraction thereof. |
| Over \$35,000 but not exceeding \$40,000. | \$6,862.                                                                                     |
| Over \$40,000 but not exceeding \$75,000. | \$6,862 for the first \$40,000 plus \$908 for each additional \$5,000 or fraction thereof.   |
| Over \$75,000 but not exceeding \$80,000. | \$13,608.                                                                                    |
| Over \$80,000                             | \$13,608 for the first \$80,000 plus \$793 for each additional \$5,000 or fraction thereof.  |

26. Section 21.4154 is added to read as follows:

**§ 21.4154 Report of activities.**

(a) *General.* Each State approving agency entering into a contract or agreement pursuant to § 21.4153 shall submit a report of activities to the Veterans Administration on September 30, 1978 for the preceding 12-month period and each month thereafter.

(b) *Content of the report.* The report shall be in the form prescribed by the Administrator and shall detail the activities of the State approving agency under the agreement or contract during the preceding month as well as from the beginning of the fiscal year through the end of that month. Each report shall describe the services performed and the determinations made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Veterans Administration. The content of the report shall include as a minimum:

- (1) A report of the number of active schools and establishments with approved courses in the jurisdiction of the State approving agency;
- (2) The actions taken by the State approving agency on applications for approval of course revisions;

(3) The actions taken by the State approving agency on applications for approval of new courses made by schools which previously have had courses approved;

(4) The actions taken by the State approving agency on applications for approval of new courses made by schools which have not had any courses approved previously;

(5) The number of inspections, approval and supervisory visits to schools made by the State approving agency;

(6) The actions taken by the State approving agency with respect to schools and establishments which the State approving agency found to have deficiencies;

(7) The actions taken by the State approving agency with respect to schools and establishments which the Veterans Administration found to have deficiencies;

(8) The actions taken by the State approving agency in promoting jobs for veterans programs; and

(9) The number of man-months used by the State approving agency pursuant to the contract. (38 U.S.C. 1774; Pub. L. 95-202, 91 Stat. 1433)

28. Section 21.4201 is revised to read as follows:

**§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.**

(a) *General.* Except as otherwise provided in this section no enrollment in any course may be approved for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, the Veterans Administration pursuant to title 38, United States Code, and/or grants of any other Federal agency. This restriction may be waived in whole or part.

(b) *Affected schools.* The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses.* The following courses or programs are exempt from the requirements of paragraph (a) of this section:

- (1) Any farm cooperative course;
- (2) Any course of Special Assistance for the Educationally Disadvantaged, offered pursuant to subchapter V, chapter 34, title 38, United States Code;

(3) Any approved course offered under contract with the Department of Defense which is on or immediately adjacent to a military base, which has been approved by the State approving agency of the State where the base is located or the State of the parent school if the course is offered overseas, and which either:

(i) Is available only to military personnel and their dependents, or  
(ii) Is available only to military personnel, their dependents, and civilian employees of the base located in a State, or

(iii) Is available only to persons authorized by the base commander to attend the course provided the base is located outside the United States;

(4) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities;

(5) Any course if the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution) except that the Director of the Veterans Administration field station of jurisdiction shall apply the provisions of paragraph (a) of this section if he or she has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course.

(d) *Application for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(5) of this section. To obtain an exemption as stated in paragraph (c)(5) of this section schools must submit reports as required in paragraph (f)(1) of this section.

(e) *Computing the 85-15 percent ratio—(1) Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions must

have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(a) General 2-year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(b) Students attending 4-year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85-15 percent computation must be made for each specific curriculum, i.e., BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85-15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and

content will be combined for computing the ratio.

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section the following students will be considered to be nonsupported provided they are not receiving educational assistance from the Veterans Administration:

(i) Students who are not veterans, and are not in receipt of Federal or institutional aid.

(ii) All graduate students in receipt of any Federal aid (other than Veterans Administration benefits) and any institutional aid.

(iii) Students in receipt of all types of Federal aid (other than Veterans Administration benefits). However, BEOG (Basic Educational Opportunity Grant) and SEOG (Supplementary Educational Opportunity Grant) recipients shall be counted as supported after notice to the school by the Veterans Administration.

(iv) Undergraduate and noncollege degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike, and the students do not have to be counted as supported pursuant to paragraph (e)(2)(iii) of this section.

(3) *Calculation.* (i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the full-time equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Veterans Administration student in a correspondence course has not completed a lesson nor made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85-15 percent ratio.

(ii) The 85-15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All courses offered at a flight school which are approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the

purpose of making this computation. Similarly, all courses offered at a flight school which are not approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the purpose of making this computation. Hours of training or tuition charges:

(a) In the private pilot's course shall be excluded;

(b) For students enrolled in courses approved under Part 141, Title 14, Code of Federal Regulations (the Federal Aviation Administration regulations) shall be actual hours of logged instructional flight time or charges; and

(c) For students enrolled in courses not approved under Part 141, Title 14, Code of Federal Regulations such as in courses for navigator or flight engineer, shall include ground training time in addition to actual logged instructional flight time or charges.

(4) *Relief from complete calculations.* If 35 percent or fewer of the students in a course, not otherwise exempt from the provisions of paragraph (a) of this section, offered by an institution of higher learning or noncollege degree school receive Veterans Administration educational benefits, the percentage of the school's total enrollment in all courses in all locations receiving BEOG and SEOG totals 85 percent or less the school need make no further calculations. This relief from complete calculations is for application only after the Veterans Administration has notified the school that BEOG and SEOG recipients are considered to be supported students as provided in paragraph (e)(2) of this section.

(f) *Reports.* (1) All calculations needed to support the exemption found in paragraph (c)(5) of this section to the requirements of paragraph (a) of this section must be submitted by a school to the Veterans Administration no later than 30 days after the beginning of the first term for which the school wishes the exemption to apply if the school is organized on a term, quarter or semester basis, or no later than 30 days after the beginning of the first calendar quarter for which the student wishes the exemption to apply if the school is not organized on a term, quarter or semester basis. A school having received an exemption found in paragraph (c)(5) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Veterans Administration assistance:

(i) Unless the Director of the VA field station of jurisdiction has reason to believe that the enrollment of eligible veterans and eligible persons in a specific course may exceed 85 percent of

the total enrollment in a specific course, or

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply.

(2) All calculations made pursuant to paragraph (e) (3) and (4) of this section must be submitted by the school to the Veterans Administration no later than 30 days after the beginning of each regular school term (excluding summer sessions) or before the beginning date of the next term, whichever occurs first, if the school is organized on a term, quarter or semester basis. If a school is not organized on a term, quarter or semester basis, reports must be received by the Veterans Administration no later than 30 days after the end of each calendar quarter.

(g) *Effect of the 85-15 percent ratio on processing new enrollments.* (1) The Veterans Administration will process new enrollments of eligible veterans in a course on the basis of the school's submission of the most recent computation showing that either the 85-15 percent ratio is satisfactory or that the course is exempt under paragraph (c)(5) of this section. However, no benefit will be paid when the most recent computation establishes that the course neither has a satisfactory 85-15 percent ratio nor is exempt under paragraph (c)(5) of this section, except for those enrollments which have a beginning date prior to or the same as the date the school completed this computation. If a school fails to submit a timely computation, no benefits will be paid for any enrollment with beginning dates beyond the expiration of the allowable computation period. Enrollments with later beginning dates may be processed only after the school submits a certification either that the proper ratio has been reestablished for the course, or that the course is exempt from the requirement pursuant to paragraph (c)(5) of this section. When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment submitted after reestablishment must be individually computed into the ratio to insure that the 85 percent limitation is not again immediately exceeded. Individual

computations will be required until the end of the term for which the ratio was reestablished or until the end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis.

(2) Once a student is properly enrolled in a course either before December 1, 1976 or after November 30, 1976, in a course which either meets the 85-15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85-15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving Veterans Administration education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education and Rehabilitation Service through the Director of the Veterans Administration field station of jurisdiction. A school desiring a waiver of the provisions of paragraph (a) of this section for any other course may apply to the Director of the Veterans Administration field station of jurisdiction.

(1) When applying a school must submit sufficient information to allow the Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge the merits of the request against the criteria shown in this subparagraph. This information and any other pertinent information available to the Veterans Administration shall be considered in relation to these criteria:

(i) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Office of Education, if applicable. Otherwise, the school should submit data sufficient to allow the

Director, Education and Rehabilitation Service, or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published, in Part 169, Subpart B, Title 45, Code of Federal Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(iii) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the Veterans Administration.

(iv) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, results of the 50 percent employment survey for vocational objective courses, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(2) If a school disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the director's recommendation be forwarded to the Director, Education and Rehabilitation Service for administrative review. (38 U.S.C. 1673(d); Pub. L. 95-202, 91 Stat. 1433)

28. In § 21.4203, paragraph (a) is revised to read as follows:

**§ 21.4203 Reports by schools; requirements.**

(a) *General.* (1) Educational institutions are required:

(i) To report promptly the entrance, reentrance, change in hours of credit or attendance, interruption and termination of attendance of each veteran or eligible person who is enrolled;

(ii) To verify enrollment for each veteran and eligible person receiving an advance payment; and

(iii) To verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or education loan.

(2) Nothing in this section or in any other section of Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(38 U.S.C. 1780(d), 1784, 1785, 1798; Pub. L. 95-202, 91 Stat. 1433)

29. In § 21.4206, paragraphs (a) and (c) are revised and paragraph (d) is added so that the revised and added material reads as follows:

**§ 21.4206 Reporting fee.**

(a) Except as provided in paragraph (b) of this section, the reporting fee will be computed for each calendar year by multiplying \$7 by the number of eligible veterans and eligible persons enrolled under chapter 34, chapter 35, or chapter 36 on October 31 of that year. (38 U.S.C. 1784(b); Pub. L. 95-202, 91 Stat. 1433)

(c) An additional \$4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of Subpart F. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional \$4 fee. In order to receive this fee, the institution shall submit to the Veterans Administration a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Veterans Administration. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Veterans Administration. (38 U.S.C. 1784, 1798; Pub. L. 95-202, 91 Stat. 1433)

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Veterans Administration against any liability of the educational institution for any overpayment which the Veterans Administration has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction. (38 U.S.C. 1784; Pub. L. 95-202, 91 Stat. 1433)

30. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

**§ 21.4236 Special supplemental assistance (tutorial).**

(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 \$69 per month will be authorized. (38 U.S.C. 1692(b); Pub. L. 95-202, 91 Stat. 1433)

(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. Special supplemental assistance provided under this section will not exceed a maximum of \$828. (38 U.S.C. 1690, 1692, 1693; Pub. L. 95-202, 91 Stat. 1433)

31. Section 21.4251 is amended as follows:

(a) By deleting "§ 21.4201(d)(4)" and inserting "§ 21.4201(c)(4)" in paragraph (a)(1).

(b) By revising paragraph (a)(6) and (f) and adding paragraph (h) and a cross reference so that the added and revised 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:

(6) Any course offered by an educational institution under a contract with the Department of Defense that (i) is given on, or immediately adjacent to, a military base, (ii) is available only to active duty military personnel and/or their dependents and (iii) has been approved by the State approving agency of the State in which the base is located or by the State approving agency in the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. The Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction pursuant to paragraph (h) of this section may waive the requirements referred to in this subparagraph in whole or in part, when such a waiver is in the interest of the veteran and the Federal Government.

(38 U.S.C. 1789(b); Pub. L. 95-202, 91 Stat. 1433)

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a) (1), (2), (3), or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as provided in the following subparagraphs:

(1) This requirement will apply to any course offered by a branch or extension of a public or other tax-supported institution where the branch or extension is located outside the area of the taxing jurisdiction providing support to the institution unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3), or (4) of this section.

(2) This requirement will apply to any course offered by a branch or extension of a proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond the normal commuting distance of such institution and to a proprietary profit educational institution, even if the branch or extension is located within commuting distance unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3) or (4) of this section.

(3) Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the

2-year limitation if all of the following conditions are met:

- (i) The school has been in operation for a period of 2 years or more;
- (ii) The school has reached the limit of its enrollment capacity in its present facilities;
- (iii) The courses to be offered at the additional facilities are the same as those given in the present facilities; and
- (iv) The additional facilities are within normal commuting distance of the present facilities. (38 U.S.C. 1789(b); Pub. L. 95-202, 91 Stat. 1433)

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a)(6), (f)(1) or (f)(2) of this section may apply to the appropriate Veterans Administration field station Director. The Veterans Administration field station Director may grant a waiver only when the conditions specified in this paragraph have been met. In all other instances he or she shall inform the school requesting a waiver that the request is denied. If a school, upon being informed, would like the request to be considered further, the request will be forwarded to the Director, Education and Rehabilitation Service with the field station Director's recommendation.

(1) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to military personnel and/or their dependents, and/or civilian employees of the base, and/or persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it.

(ii) The State approving agency of the State in which the course is offered certifies that the course meets all other approval requirements.

(2) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver

authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located outside the United States. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to persons whom the base commander has permitted to attend, and

(ii) The State approving agency having jurisdiction over the school offering the course certifies that the course meets all other approval requirements.

(3) The Director of the Veterans Administration field station of jurisdiction may exercise authority found in paragraph (f) of this section to allow a waiver of the requirements of either paragraph (f)(1) or (f)(2) of this section. He or she may grant such a waiver when he or she finds that:

(i) No alternative comparable courses are effectively open to veterans or eligible persons within normal commuting distance of the site where the course is offered for which a waiver is requested.

(ii) The compliance history of the parent school is satisfactory. This includes such factors as enrollment certification timeliness and accuracy, false or deceptive advertising complaints, and school liability indebtedness to the Veterans Administration.

(iii) The course for which a waiver is requested is also being offered at the school's main campus.

(iv) All credits earned in the course offered at the branch or extension are acceptable on transfer to the main campus without reservation.

(v) No contracts exist between the school and any other institution or entity which provide for recruitment of students for the course by the other institution or entity, or student payment of tuition and fees to the other institution or entity rather than to the school, or which effectively prevent the school's faculty on its main campus from overseeing the course being offered at the branch or extension.

(4) A school, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration

field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1789; Pub. L. 95-202, 91 Stat. 1433)

**Cross Reference:** Courses offered at branches or extensions. See § 21.4266. 32. Section 21.4266 is amended as follows:

(a) By adding a cross reference following paragraph (c) to read as follows:

**Cross Reference:** Period of operation of course. See § 21.4251.

(b) By revising paragraph (c)(2) (the introductory portion preceding subdivision (i)) to read as follows:

**§ 21.4266 Courses offered at subsidiary branches or extensions.**

(c) *Separate approval.* If the course offered at a subsidiary branch or extension cannot qualify under paragraph (b) of this section for a combined approval with the courses offered at the educational institution's parent facility, the State approving agency can only approve the courses separately. Such a course may not be approved if the branch or extension neither has administrative capability nor can qualify for an exception to having administrative capability.

(2) Notwithstanding any other provisions of this paragraph courses may be approved separately at a branch or extension without administrative capability if the parent facility within the same State:

33. Section 21.4270 is revised to read as follows:

**§ 21.4276 Measurement of courses.**

(a) Trade, technical, high school and high school preparatory courses shall be measured as stated in this table. 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                                                                                                                  | ¾ time                                                                                                                                | ½ time                                                                                                                                 | Less than ½ time more than ¼ time                                                                                                 | ¼ time or less                           |
| Trade or technical-nonaccredited (includes college courses not leading to a standing and degree) <sup>1</sup> . | Shop practice an integral part of course.                  | 30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study. | 22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study. | 15 through 21 clock hours attendance with not more than 1½ hours rest period allowance and not more than 2½ hours of supervised study. | 8 through 14 clock hours attendance with not more than ¾ hour rest period allowance and not more than ¼ hour of supervised study. | 1 through 7 clock hours attendance.      |
| .....                                                                                                           | Theory and class instruction predominates <sup>2</sup> .   | 25 clock hours net instruction and not more than 5 hours of supervised study.                                              | 18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.                                             | 12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.                                              | 7 through 11 clock hours net instruction and not more than 1½ hours of supervised study.                                          | 1 through 6 clock hours net instruction. |
| Trade or technical-accredited (includes college courses not leading to a standard degree) <sup>1</sup> .        | Shop practice and integral part of course <sup>3</sup> .   | 22 clock hours attendance with not more than 2½ hours rest period allowance.                                               | 16 through 21 clock hours attendance with not more than 2 hours rest period allowance.                                                | 11 through 15 clock hours attendance with not more than 1½ hours rest period allowance.                                                | 6 through 10 clock hours attendance with not more than 1 hour rest period allowance.                                              | 1 through 5 clock hours attendance.      |
| .....                                                                                                           | Theory and class instruction predominates <sup>2,4</sup> . | 18 clock hours net instruction.                                                                                            | 13 through 17 clock hours net instruction.                                                                                            | 9 through 12 clock hours net instruction.                                                                                              | 5 through 8 clock hours net instruction.                                                                                          | 1 through 4 clock hours net instruction. |
| High school-nonaccredited.                                                                                      | High school diploma or equivalent <sup>5,6</sup> .         | 25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalent.            | 18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study or 3 units per year or equivalent.           | 12 through 17 clock hours net instruction and not more than 2½ hours of supervised study or 2 units per year or equivalent.            | 7 through 11 clock hours net instruction and not more than 1½ hours of supervised study or 1 unit per year or equivalent.         | 1 through 6 clock hours net instruction. |
| High school accredited.                                                                                         | High school diploma or equivalent <sup>6,7</sup> .         | 18 clock hours net instruction or 4 units per year or equivalent.                                                          | 13 through 17 clock hours net instruction or 3 units per year or equivalent.                                                          | 9 through 12 clock hours net instruction or 2 units per year or equivalent.                                                            | 5 through 8 clock hours net instruction or 1 unit per year or equivalent.                                                         | 1 through 4 clock hours net instruction. |
| Elementary school-nonaccredited <sup>1</sup> .                                                                  | High school-preparatory <sup>8</sup> .                     | 25 clock hours net instruction and not more than 5 hours of supervised study.                                              | 18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.                                             | 12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.                                              | 7 through 11 clock hours net instruction and not more than 1½ hour of supervised study.                                           | 1 through 6 clock hours net instruction. |
| Elementary school-accredited <sup>1</sup> .                                                                     | High school-preparatory <sup>8</sup> .                     | 18 clock hours net instruction.                                                                                            | 13 through 17 clock hours net instruction.                                                                                            | 9 through 12 clock hours net instruction.                                                                                              | 5 through 8 clock hours net instruction.                                                                                          | 1 through 4 clock hours net instruction. |

<sup>1</sup>An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter or semester hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section, provided: (1) the academic portions of such courses must require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses must be measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, (3) the shop portions of such courses must be measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1½ hours or ¾ time courses of 16-21 clock hours; 1 hour for ½ time courses of 11-15 clock hours; or ½ hour for less than ½ time courses of 6-10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

<sup>2</sup>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.

<sup>3</sup>Supervised study must be excluded.

<sup>4</sup>Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of a 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

<sup>5</sup>Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent are available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

(38 U.S.C. 1786; Pub. L. 95-202, 91 Stat. 1433)

(b) Collegiate professional and on-the-job training courses shall be measured as stated in this table. 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                                                                                              | ¾ time                                                                                | ½ time                                                                              | Less than ½ time<br>more than ¼ time                                                | ¼ time or less                                                                      |
|-----------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Collegiate under graduate.              | Standard collegiate courses including cooperative and external degree programs <sup>1</sup> .  | 14 semester hours or equivalent <sup>2</sup> .                                                         | 10 through 13 semester hours or equivalent.                                           | 7 through 9 semester hours or equivalent.                                           | 4 through 6 semester hours or equivalent.                                           | 1 through 3 semester hours or equivalent.                                           |
| Collegiate graduate.                    | Standard collegiate graduate courses including law and external degree programs <sup>1</sup> . | 14 semester hours or equivalent or as certified by a responsible official of the school <sup>2</sup> . | 10 through 13 semester hours or as certified by a responsible official of the school. | 7 through 9 semester hours or as certified by a responsible official of the school. | 4 through 6 semester hours or as certified by a responsible official of the school. | 1 through 3 semester hours or as certified by a responsible official of the school. |
| Professional nonaccredited.             | Law only <sup>3</sup> .                                                                        | 12 class sessions per week.                                                                            | 9 through 11 class sessions per week.                                                 | 6 through 8 class sessions per week.                                                | 4 through 5 class sessions per week.                                                | 1 through 3 class sessions per week.                                                |
| Professional accredited and equivalent. | Internships and residencies: Medical, Dental, Osteopathic.                                     | As established by accrediting association.                                                             |                                                                                       | Full time only                                                                      |                                                                                     |                                                                                     |
|                                         | Nursing, X-ray, medical technology, medical records librarian, physical therapy <sup>4</sup> . | 18 clock hours or 14 semester hours, as appropriate.                                                   | 13 through 17 clock hours or 10 through 13 semester hours, as appropriate.            | 9 through 12 clock hours or 7 through 9 semester hours, as appropriate.             | 5 through 8 clock hours or 4 through 6 semester hours, as appropriate.              | 1 through 4 clock hours or less than 4 semester hours, as appropriate.              |
| Training establishment.                 | Apprentice or other on-the-job <sup>5</sup> .                                                  | Standard workweek.                                                                                     |                                                                                       | Full time only                                                                      |                                                                                     |                                                                                     |
| Agricultural                            | Farm cooperative <sup>6</sup> .                                                                | 10 clock hours net instruction <sup>7</sup> .                                                          | 7 clock hours net instruction.                                                        | 5 clock hours net instruction.                                                      | No provision                                                                        |                                                                                     |

<sup>1</sup>Independent study programs will be measured as provided in § 21.4280. Cooperative courses may be measured on full-time basis only.

<sup>2</sup>Where the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are (1) charged full-time tuition, or (2) considered full-time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement.

When 12 hours is properly certified as full-time, 9 through 11 hours will be measured as ¾ time, 6 through 8 hours will be measured as ½ time, 4 through 5 hours will be measured as less than ½ time and more than ¼ time, and 1 through 3 hours will be measured as ¼ time or less. All other undergraduate courses will be measured as indicated in the table for undergraduate or professional courses as appropriate, but where 13 credit hours or the equivalent is certified as full time, ¾ time will be 10 through 12 hours. When in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, ¾ time, ½ time, less than ½ time and more than ¼ time, or ¼ time, the certification will be accepted for measurement purposes.

Upon request of a beneficiary, an increase in rates warranted under this criteria may be authorized to him or her effective March 26, 1970, if he or she was enrolled on or after March 26, 1970. The request of the beneficiary will not be required for other payments under this criteria.

To meet criteria for full-time measurement under 38 U.S.C. chapters 34 and 35 in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(f) the noncredit deficiency courses will be converted on the basis of the applicable measurement criteria, that is, 18, 25 or 30 clock hours, 4 "Carnegie Units", or 12, 13 or 14 (as appropriate) semester hours equal full time. The credit-hours equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

<sup>3</sup>Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

<sup>4</sup>Supervised study must be excluded.

<sup>5</sup>Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

<sup>6</sup>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.

<sup>7</sup>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.

(38 U.S.C. 1682, 1732, 1777, 1787, 1788; Pub. L. 95-202, 91 Stat. 1433)

34. Section 21.4277 is revised to read as follows:

**§ 21.4277 Discontinuance; unsatisfactory progress and conduct.**

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if:

(1) The veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending, or

(2) The veteran or eligible person is not progressing at a rate that will permit him or her to graduate within the approved length of the course based on the training time as certified to the Veterans Administration by the educational institution plus an additional length of time as stated in this paragraph, notwithstanding the school's policy, unless mitigating circumstances are found.

(i) If a school is organized on a term basis with credit-hour measurement it will report unsatisfactory progress, if the student accumulates unsatisfactory punitive grades in the equivalent of more credit hours than the minimum full-time training load, for Veterans Administration purposes (normally 12 or 14 hours).

(ii) If a school is organized on a term basis without credit-hour measurement it will report unsatisfactory progress, if the student will be required to extend the equivalent of more than one term based on the minimum full-time requirement.

(iii) If a school is not organized on a term basis, for Veterans Administration purposes, it will report unsatisfactory progress when it determines that the student will require an extension beyond 10 percent of the approved length of the course to complete the program.

(b) *Mitigating circumstances.* Mitigating circumstances include, but are not limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the veteran or eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the veteran's or eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the veteran or eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V of chapter 34 or section 1733 of chapter 35, title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) The course is discontinued by the school.

(6) The veteran is required to perform unanticipated active duty military service, including active duty for training.

(c) *Suspension.* (1) After November 22, 1977 the Director of a Veterans Administration field station of jurisdiction may temporarily suspend the requirements of paragraphs (a)(2) and (d) of this section as they apply to any main campus branch or extension of an educational institution that is fully accredited by a recognized regional or national accrediting agency. Any educational institution which wants a suspension must make specific application to the Director through the State approving agency. The beginning date of the suspension shall be set by the Director on the basis of the evidence of record, but in no event shall it be earlier than November 23, 1977. A suspension may be terminated by the Director of the Veterans Administration field station upon written notice to the Chief Officer of the educational institution. A suspension must be terminated whenever a school no longer meets the criteria set forth in paragraph (c)(1) (i), (ii) and (iii) of this section. No suspension may be granted unless:

(i) The educational institution has submitted a copy of the catalog for the appropriate main campus, branch or extension to the Veterans Administration field station through the State approving agency.

(ii) The educational institution certifies that the policies pertaining to standards of progress or conduct

contained in the catalog or bulletin pursuant to § 21.4253(d)(1) are being enforced.

(iii) The catalog or bulletin states these policies fully and clearly. This requirement will be satisfied when the policy and regulations relative to standards of progress and conduct:

(a) Are stated without omission.

(b) Include a statement describing grades or credit assigned for completed courses.

(c) Specify the points during the course of study which will be designated for evaluation of student progress.

Schools operating on a term basis must make such an evaluation at the end of each term, quarter or semester.

(d) Specify as satisfactory a minimum grade average or credit level for each evaluation. These levels must be logically related to the minimum graduation requirements.

(e) Require that at each evaluation point the credit level or grade average maintained by the veteran or eligible person must be compared with the standard.

(f) State the action to be taken by the school when the standards are not met. This must include any provisions for interrupting the student's enrollment, provisions for probationary periods, if any, and conditions for the student's reentrance.

(g) State the progress records kept by the institution and furnished the student.

(h) State the conditions for dismissal for unsatisfactory conduct, and the conditions for reentrance in the school after such a dismissal. (38 U.S.C. 1674, 1724; Pub. L. 95-202, 91 Stat. 1433)

(2) An educational institution, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1674, 1724; Pub. L. 95-202, 91 Stat. 1433)

(d) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or

eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253. (38 U.S.C. 1674 and 1724)

35. In § 21.4279, paragraph (b)(1) is revised to read as follows:

**§ 21.4279 Combination correspondence-residence program.**

\* \* \* \* \*

(b) The rate of educational assistance allowance payable shall be computed as set forth in §§ 21.4270 and 21.4136(a).

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each \$311 of cost reimbursed. (38 U.S.C. 1786(a); Pub. L. 95-202, 91 Stat. 1433)

\* \* \* \* \*

**Subpart F—Educational Benefits**

36. In § 21.4500, paragraphs (d), (e)(4), (f) and (h) are revised and paragraphs (e)(6) and (i) are added so that the added and revised material reads as follows:

**§ 21.4500 Definitions.**

\* \* \* \* \*

(d) *Loan period.* (1) Loans made for enrollment periods which begin before August 1, 1978 are normally to be made for a quarter, semester, term, academic year or academic year plus a summer term. Loans made for enrollment periods which begin after July 31, 1978, normally are to be made for a quarter, semester, summer term or two consecutive quarters.

(2) A loan made to a veteran or eligible person attending a course not organized on a term, quarter or semester basis will be granted for a term of not more than 12 months provided the course requires at least 6 months at the full-time rate to complete, and the course begins before August 1, 1978. If such a course begins after July 31, 1978, a loan will be granted for a period of not more than 6 months at a time.

(i) The Director of the Veterans Administration field station of jurisdiction may waive the requirement

that such a course must take at least 6 months to complete. Such a waiver of the length of the course shall be granted by the Director only if a school requests one for a course and the Director finds that:

(a) During the previous 2 years at least 75 percent of the students enrolled in the course completed it.

(b) During the previous 2 years at least 75 percent of the persons completing the course found employment in the occupational category for which the course is designed to provide training.

(c) The default rate on all Veterans Administration education loans ever made to students at the educational institution does not exceed 5 percent or 5 cases, whichever is greater.

(d) The default rate on all loans ever made to students at the educational institution pursuant to loan programs administered by the Department of Health, Education, and Welfare does not exceed 5 percent or 5 cases, whichever is greater.

(e) The course is at least 3 months long.

(f) The course is approved for full-time attendance only.

(g) No more than 35 percent of the students attending the course are receiving educational assistance from the Veterans Administration.

(h) The Field Director for the region in which the Veterans Administration field station is located concurs in the waiver.

(ii) If a school disagrees with a decision of a Director of a Veterans Administration field station, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education and Rehabilitation Service. The Director of the Veterans Administration field station shall forward all requests to the Director, Education and Rehabilitation Service. He or she shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Veterans Administration field station, but he or she shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met.

(iii) A waiver will remain in effect until the date on which the course fails to meet one of the requirements of paragraph (d)(2)(i) of this section. A school which has received a waiver for a course must notify the Director of the Veterans Administration field station of jurisdiction within 30 days of the date on which one of those requirements is not met. (38 U.S.C. 1798(c); Pub. L. 95-202, 91 Stat. 1433)

(e) *Total amount of financial resources.* This term means the total of the following:

(4) For a loan period which begins before August 1, 1978, educational assistance received or receivable for the loan period by the veteran or eligible person under section 1631, 1661 or subchapter II of chapter 35, title 38, United States Code, exclusive of an education loan. For a loan period which begins after July 31, 1978, educational assistance received or receivable for the loan period by the veteran or other eligible person under section 1631, 1661, or subchapter II of chapter 35, title 38, United States Code, which applies solely to the veteran or eligible person. This amount shall be exclusive of an education loan. (38 U.S.C. 1798(b))

(6) Veterans Administration work-study allowance received or receivable by the veteran under section 1685, title 38, United States Code, during loan periods which begin after July 31, 1978. (38 U.S.C. 1798(b))

(f) *Actual cost of attendance.* (1) For loan periods which begin prior to August 1, 1978, this term means the actual charge per student for tuition, fees, room and board (or expenses related to commuting a reasonable distance), books, and an allowance for such other expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled.

(2) For loan periods which begin after July 31, 1978, this term means the actual per student charges for tuition, fees and books, an allowance for commuting (this allowance will be based on 12 cents per mile for distances which shall not exceed normal commuting distance), an allowance for other such expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled, and a room and board allowance. The room and board allowance shall be determined as follows:

(i) If the educational institution actually provides the veteran or eligible person with room and board, the allowance shall equal the actual charges to the veteran or eligible person for room and board.

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the veteran or eligible person, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board, or the amount for room and board which the

educational institution would have charged the veteran or eligible person, had the educational institution provided him or her with room and board, whichever is the lesser.

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board or the amount the veteran or eligible person would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board. (38 U.S.C. 1798(b))

(h) *Annual adjusted effective income.*

(1) For loan periods beginning before August 1, 1978, this income shall be considered to be the net taxable income less the Federal income tax paid or payable of the veteran or other eligible person. It is not limited to such income which may be available for use by the veteran or eligible person for education needs. The amount available for education needs is to be determined in accordance with § 21.4503.

(2) For loan periods beginning after July 31, 1978, this income shall include:

(i) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration. This includes income from sources such as Veterans Administration compensation and pension, disability retirement, unemployment compensation, welfare payments, Social Security benefits, etc.

(ii) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration, less:

(a) Authorized deductions for exemptions;

(b) Itemized or standard deduction, whichever is greater;

(c) Mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

(i) *School term.* This phrase means:

(1) In the case of an institution of higher learning operating on a quarter system, three consecutive quarters within an ordinary school year;

(2) In the case of an institution of higher learning operating on a semester system, two consecutive semesters within an ordinary school year; or

(3) In the case of an educational institution not an institution of higher learning or in the case of an institution

of higher learning not operating on a quarter or semester system, a period of 9 to 11 months provided:

- (i) The program of education is divided into segments, and
- (ii) At least one segment is completed prior to or during the 9 to 11-month period. (38 U.S.C. 1682A(e); Pub. L. 95-202; 91 Stat. 1433)

37. Section 21.4501 is revised to read as follows:

**§ 21.4501 Eligibility.**

(a) *General.* The criteria for determining an eligible veteran's or other eligible person's eligibility for an education loan depends upon whether or not the eligible veteran's or eligible person's delimiting period as determined by §§ 21.1042, 21.1043, 21.3041 or 21.3046 has expired. Any eligible veteran or eligible person shall be entitled to an education loan if he or she meets the criteria of this paragraph as well as the criteria of either paragraph (b) or (c) of this section as appropriate. The eligible veteran or eligible person must:

(1) Have financial resources that may be reasonably expected to be expended for education needs which are insufficient to meet the expected actual cost of attendance; and

(2) Execute a promissory note payable to the Veterans Administration, as provided by § 21.4504.

(b) *Additional criteria for eligible veterans and eligible persons eligible to receive educational assistance allowance.* An education loan shall be granted to an eligible veteran or eligible person whose delimiting period as determined by §§ 21.1042, 21.1043, 21.3041 or 21.3046 has not expired if the eligible veteran or eligible person meets the eligibility criteria found in paragraph (a) of this section and if the eligible veteran or eligible person:

(1) At the time the loan is authorized, is in attendance at an educational institution on at least a half-time basis and

(i) Is enrolled in a course leading to a standard college degree, or

(ii) Is enrolled in a course, the completion of which requires 6 months or longer, leading to an identified and predetermined professional or vocational objective; unless the Director of the Veterans Administration field station of jurisdiction waives these requirements, in whole or in part, upon determination that to do so is in the interest of the veteran or eligible person and the Federal Government; and

(2) Is in receipt of educational assistance allowance under section 1661 or subchapter II of chapter 35, title 38, United States Code.

(c) *Additional criteria for eligible veterans, spouses and surviving spouses not eligible to receive educational assistance allowance.* (1) An education loan may be granted to an eligible veteran, spouse or surviving spouse whose delimiting period as determined by §§ 21.1042, 21.1043 or 21.3046 (a), (b) or (d) has expired.

(2) A loan shall be granted if the eligible veteran, spouse or surviving spouse meets the eligibility criteria found in paragraph (a) of this section and if he or she:

(i) Has unused entitlement provided under section 1661 or 1711, title 38, United States Code, and

(ii) During the term, quarter or semester for which the loan is granted, is enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) and

(iii) Was enrolled in a program of education on a full-time basis:

(a) On the date his or her period of eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), or

(b) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), if the delimiting date fell during a school break or summer term.

(3) The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(i) November 23, 1979, or 2 years after the expiration of the period of eligibility as determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), whichever is later or

(ii) The date on which the entitlement of the eligible veteran, spouse or surviving spouse is exhausted, or

(iii) The date on which the eligible veteran, spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) expired. (38 U.S.C. 1662, 1737, 1798; Pub. L. 95-202, 91 Stat. 1433)

(d) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

(1) Is pursuing a program of correspondence, flight, apprenticeship, or other on-job or Predischage Education Program training, or

(2) Has defaulted on a previous education loan and there is a remaining unliquidated payment due the Veterans Administration. (38 U.S.C. 1798(c))

38. In § 21.4502, paragraph (b)(1) and (4) is revised, paragraph (b)(6) is

revoked, and paragraph (c) is added so that the added and revised material reads as follows:

**§ 21.4502 Applications.**

(b) *Information.* The application shall provide the Veterans Administration with the following information and such other information as may be reasonable upon specific request:

(1) For loan periods beginning before August 1, 1978, a statement of the amount of the net income of the veteran or other eligible person, less the Federal income tax paid or payable thereon, as reported or expected to be reported on the Federal income tax return of each such individual for the current tax year in which the application for the education loan is received by the Veterans Administration. For loan periods beginning after July 31, 1978, a statement of nontaxable income for the student for the current tax year in which the application for the education loan is received by the Veterans Administration; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Veterans Administration less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount not to exceed 12 cents per mile for commuting normal distances to classes if the student does not reside on campus. Applications for loans covering loan periods which begin after July 31, 1978 may also provide the Veterans Administration with a statement of the amount of charges for room and board which the school would have made to the veteran or eligible person had the school provided the veteran or eligible person room and board. If the school does not provide room and board, the application may provide the Veterans Administration with a statement of the charges for room and board which the veteran or eligible person would have received had he or she been provided room and board at the State college or State university which provides room and board. (38 U.S.C. 1798(b))

(6) [Revoked]

(c) *Assignment.* At the time of application the veteran, spouse or surviving spouse shall assign to the Veterans Administration (for deposit in the Veterans' Administration Education Loan Fund established under 38 U.S.C. 1799) the amount of any accelerated payment of educational assistance allowance to which he or she may become entitled, including any matching contributions of a State or local government unit made pursuant to 38 U.S.C. 1682A(b)(8), in connection with the school term for which the loan is granted. (38 U.S.C. 1798(f); Pub. L. 95-202, 91 Stat. 1433)

39. In § 21.4503, paragraph (b)(2), (3) and (4) is revised to read as follows:

**§ 21.4503 Determination of loan amount.**

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(2) The aggregate of the amounts any veteran or other eligible person may borrow for an education loan may not exceed the amount obtained by multiplying \$311 times the number of months of educational assistance allowance to which the veteran or other eligible person is entitled or would be entitled were it not for the expiration of his or her delimiting period under section 1661 or subchapter II of chapter 35, title 38, United States Code, on the date that training commences during the period for which the loan is sought, but in no event more than \$2,500 in any one academic year. (38 U.S.C. 1798(b); Pub. L. 95-202, 91 Stat. 1433)

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than the academic year plus the summer term, quarter or semester at least 8 weeks in length or for a period which begins after July 31, 1978 that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than 12 months or for a period which begins after July 31, 1978 that is longer than 6 months. (38 U.S.C. 1798)

(4) The following maximum amounts shall be paid on the loan at the beginning of the term:

(i) \$2,500 for an academic year which begins before August 1, 1978.

(ii) \$3,330 for an academic year and following summer term which begin before August 1, 1978.

(iii) \$1,660 for a quarter and following summer term which begin before August 1, 1978.

(iv) \$2,080 for a semester and following summer term which begin before August 1, 1978.

(v) \$1,250 for any semester.

(vi) \$830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(vii) \$1,660 for two consecutive quarters which begin after July 31, 1978.

(viii) \$270 per month of enrollment for a course not leading to a standard college degree if less than 6 months in length.

(ix) \$1,660 for a course not leading to a standard college degree 6 through 8 months in length provided the loan period begins before August 1, 1978.

(x) \$1,660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xi) \$270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xii) \$2,500 for a course not leading to a standard college degree 9 through 11 months in length provided that the loan period begins before August 1, 1978.

(xiii) \$3,330 for a course not leading to a standard college degree 12 months in length provided that the loan period begins before August 1, 1978. (38 U.S.C. 1798(b); Pub. L. 95-202, 91 Stat. 1433)

40. In § 21.4504, paragraph (a)(4) is revised to read as follows:

**§ 21.4504 Promissory note.**

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in the form of a promissory note which shall include:

(4) A provision for prepayment of all or part of the loan, without penalty, at the option of the borrower. (38 U.S.C. 1798)

41. A new § 21.4505 is added (the former § 21.4505 is revised and redesignated § 21.4507) to read as follows:

**§ 21.4505 Check delivery.**

(a) *General.* Education loans by the Veterans Administration shall be made

by a check payable to the veteran or eligible person and shall be mailed promptly to the educational institution in which the veteran or eligible person is enrolled for delivery by the educational institution.

(b) *Delivery and certification.* (1) The educational institution, electing to participate in this program, shall deliver an education loan check to the veteran or eligible person and shall certify the fact of delivery to the Veterans Administration immediately upon delivery. If the delivery is not made within 30 days after the institution receives the check, it shall return the check to the Veterans Administration.

(2) The Director of the Veterans Administration field station of jurisdiction may direct that education loan checks be sent directly to veterans and other eligible persons when:

(i) The educational institution demonstrates an inability to comply with these requirements; or

(ii) The educational institution fails to provide adequately for the safekeeping of the checks prior to the delivery to the student or return to the Veterans Administration; or

(iii) The educational institution elects not to participate in this program; or

(iv) There is compelling evidence that the institution is unable to discharge its responsibilities under this program. (38 U.S.C. 1798; Pub. L. 95-202, 91 Stat. 1433)

42. The former § 21.4506 is revoked and a new section is added to read as follows:

**§ 21.4506 Education loan forgiveness through accelerated payment of educational assistance allowance.**

(a) *General.* A veteran or eligible person may qualify for a reduction in the amount of an outstanding education loan obligation. The reduction will consist of an amount representing an offset against the veteran's or eligible person's entitlement and an equal matching amount paid by a State and/or local governmental unit. The offset against the veteran's or eligible person's entitlement is considered to be an accelerated payment of educational assistance allowance. If the veteran or eligible person received a loan for more than one school term, he or she may receive accelerated payment of educational assistance allowance for each.

(b) *Eligibility.* The veteran or eligible person shall be eligible for an accelerated payment of educational assistance allowance for any school term as defined in § 21.4500(i), when all of the following conditions are met:

(1) The veteran or eligible person:

(i) Was enrolled as a full-time student throughout the school term for which the particular education loan was granted, or

(ii) Was enrolled as a full-time student throughout one semester which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted, or

(iii) Was enrolled as a full-time student throughout two consecutive quarters which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted.

(2) The veteran or eligible person was entitled to an educational assistance allowance under either chapter 34 or chapter 35 during the school term for which the education loan was granted. This requirement will be met even though some or all payments may have been withheld.

(3) The student received an education loan from the Veterans Administration after January 1, 1978.

(4) The combined amount of tuition and fees of the educational institution in which the veteran or eligible person was enrolled:

(i) Exceeded \$700 for the school term for which the education loan was granted;

(ii) Exceeded \$450 for two consecutive quarters beginning after January 1, 1978 and ending August 1, 1978 for which the education loan was granted;

(iii) Exceeded \$350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which the education loan was granted.

(5) The educational institution in which the veteran or eligible person completed the program of education he or she was pursuing during the term for which he or she received the education loan certifies to the Veterans Administration that:

(i) The veteran or eligible person has satisfactorily completed that program of education and attained the predetermined and identified educational, professional, or vocational objective which the veteran or eligible person had been pursuing during the term he or she received the education loan, and

(ii) The educational institution has awarded the veteran or eligible person the appropriate educational degree, diploma or certificate signifying such attainment.

(6) The veteran or eligible person applies timely for accelerated payment as described in paragraph (c) of this section.

(7) The educational institution in which the veteran or eligible person was enrolled has certified that not more than

35 percent of the total number of students enrolled in the same school term as the one for which the veteran or eligible person received the education loan were receiving educational assistance from the Veterans Administration. This requirement must be met for each semester or quarter within the school term.

(8) A State or local governmental unit has made a matching payment to the Veterans Administration Education Loan Fund pursuant to a program meeting the criteria of paragraph (d) of this section.

(c) *Time limits.* An accelerated payment of educational assistance may be made only if a formal claim for it is received by the Veterans Administration within 180 days of the later of the following two dates:

(1) The date on which the degree, diploma, or certificate described in paragraph (b)(5) of this section was awarded, or

(2) The date on which the State or local governmental unit or jurisdiction established a program as required in paragraph (d) of this section. If more than one such matching payment program is established which may apply to the veteran or eligible person, accelerated payment will be based only on those programs for which a timely application was received.

(d) *State or local participation.* A State or local governmental unit electing to participate in the accelerated payment program must establish a program to do so. Such a program:

(1) Must be established prior to January 1, 1983.

(2) Must pertain only to veterans and eligible persons who received the education loan while enrolled in an educational institution located within the State or area of local governmental jurisdiction that is establishing the program.

(3) Must provide for payments on behalf of the veteran or eligible person to be made to the Veterans Administration for deposit in the Veterans Administration Education Loan Fund. Such payments may match the maximum accelerated payment as computed in paragraph (e) of this section or a lesser amount.

(4) May be limited to veterans and eligible persons who are bona fide residents of the State or local governmental unit establishing the program.

(e) *Computation of accelerated payment.* The amount of accelerated payment for a term shall equal whichever of the following amounts is the least:

(1) The amount equal to the educational assistance allowance actually awarded to the veteran or the eligible person for the school term for which the educational loan was granted;

(2) An amount equal to 33 1/3 percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds \$700 for the school term for which the educational loan was granted;

(3) An amount equal to 33 1/3 percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds \$450 for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted;

(4) An amount equal to 33 1/3 percent of the amount by which tuition and fees charged to the veteran or eligible person exceeds \$350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted.

(5) An amount equal to 33 1/3 percent of the amount by which the outstanding education loan obligation (principal only) for a school term exceeded \$700 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(6) An amount equal to 33 1/3 percent of the amount by which the outstanding education loan obligation (principal only) for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 exceeded \$450 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(7) An amount equal to 33 1/3 percent of the amount by which the outstanding education loan obligation (principal only) for one semester beginning after January 1, 1978 and ending before August 1, 1978 exceeded \$350 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(8) The amount which the State and/or local governmental unit concerned pays to the Veterans Administration to match the accelerated payment;

(9) An amount equal to the number of months (and fractional months) of remaining entitlement multiplied by the full-time rate (with dependents) in effect for the last month of the program within the delimiting period. (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

(f) *Entitlement charges.* Charges against the period of entitlement of a veteran or eligible person who receives an accelerated payment shall be made as stated in § 21.1045(h). (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

43. Section 21.4507 (formerly § 21.4505) is added to read as follows:

**§ 21.4507 Advertising.**

(a) *General.* No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Veterans Administration for eligible persons, except as provided in paragraph (b) of this section.

(b) *Form.* The statement which is permitted shall be as follows: "Certain eligible veterans and other eligible persons may qualify for a maximum educational loan of \$2,500 per academic year from the Veterans Administration depending upon need. Applications for such loans shall be made to the Veterans Administration on forms prescribed by it." (38 U.S.C. 1796, 1798(b); Pub. L. 95-202, 91 Stat. 1433)

[FR Doc. 79-33740 Filed 10-30-79; 8:45 am]

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**38 CFR Part 36**

**Increase in Maximum Permissible Interest Rate on New, Guaranteed, Insured, and Direct Loans**

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The VA (Veterans Administration) is increasing the maximum interest rate on guaranteed, insured and direct loans for homes and condominiums. The interest rate is also increased on loans for the purchase of a mobile home lot or for site preparation over \$2,500 on a lot previously acquired by a veteran. The maximum interest rate is increased because the former interest rate was not sufficiently competitive to induce private sector lenders to make VA guaranteed or insured loans without imposing substantial discounts. The increase in the interest rate will assure a continuing supply of funds for home mortgages; thereby allowing veterans to purchase a home with the assistance of a no downpayment VA loan.

**EFFECTIVE DATE:** October 26, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., NW, Washington, D.C. 20420 (202-389-3042).

**SUPPLEMENTARY INFORMATION:** The Administrator is required to establish a maximum interest rate for loans guaranteed, insured or made by the Veterans Administration as he finds the mortgage money market demands. Recent market indicators—including the

rate of discount charged by lenders on VA and Federal Housing Administration loans, the general increase in interest rates charged by lenders on conventional loans, and the results of the bi-weekly Federal National Mortgage Association auctions—have shown that the mortgage money market has become more restrictive. The maximum rate in effect for VA guaranteed loans has not been sufficiently competitive to induce private sector lenders to make VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program it has been determined that an increase in the maximum permissible rate is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

No change is being made in the maximum interest rate applicable to the mobile home loan program at this time except as to loans to purchase mobile home lots.

A loan to purchase a mobile home lot is similar to other real estate loans and for the purpose of assuring a continuing supply of funds and consistency with other real estate programs, the rate on these loans is also being increased.

The increase in the maximum interest rate is accomplished by amending §§ 36.4212(a) (2) and (3), 36.4311(a), and 36.4503(a), Title 38, Code of Federal Regulations. Compliance with the procedure for publication of proposed regulations prior to final adoption is waived because compliance would create an acute shortage of mortgage funds pending the final date which would necessarily be more than 30 days after publication in proposed form.

By direction of the Administrator:

Approved: October 23, 1979.

Rufus H. Wilson,

Deputy Administrator.

1. In § 36.4212, paragraph (a) (2) and (3) is revised to read as follows:

**§ 36.4212 Interest rates and late charges.**

(a) The interest rate charged the borrower on a loan guaranteed pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to October 26, 1979. (38 U.S.C. 1819(f))

(2) 11½ percent simple interest per annum for that portion of the loan which

finances the purchase of a lot and the cost of necessary site preparation, if any.

(3) 11½ percent simple interest per annum on that portion of a loan which will finance the cost of the site preparation necessary to make a lot owned by the veteran acceptable as the site for the mobile home purchased with the proceeds of the loan except that a rate of not to exceed 13 percent may be charged if the portion of the loan to pay for the cost of such necessary site preparation does not exceed \$2,500.

2. In § 36.4311, paragraph (a) is revised to read as follows:

**§ 36.4311 Interest rates.**

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 11½ percent per annum, effective October 26, 1979, the interest rate on any loan guaranteed or insured wholly or in part on or after such date may not exceed 11½ percent per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

3. In § 36.4503, paragraph (a) is revised to read as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after October 1, 1978, shall not exceed an amount which bears the same ratio to \$33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to \$25,000. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Loans made by the Veterans Administration shall bear interest at the rate of 11½ percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

(38 U.S.C. 1803(c)(1))

[FR Doc. 79-33687 Filed 10-30-79; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**41 CFR Parts 14.1 and 14.7**

**Indian Preference in Employment, Training and Subcontracting**

**AGENCY:** Department of the Interior, Office of the Secretary.

**ACTION:** Final rule.