

effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have made such a good cause finding, including the reasons stated, and established an effective date of [Date of Publication]. Therefore, the Agencies will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects

##### 33 CFR Part 323

Navigation, Water Pollution Control, Waterways.

##### 40 CFR Part 232

Environmental Protection, Wetlands, Water Pollution Control.

Dated: December 19, 2008.

**John Paul Woodley, Jr.,**

*Assistant Secretary of the Army (Civil Works),  
Department of the Army.*

Dated: December 19, 2008.

**Stephen L. Johnson,**

*Administrator, U.S. Environmental Protection  
Agency.*

■ In consideration of the foregoing, 33 CFR part 323 and 40 CFR part 232 are amended as set forth below:

#### PART 323—[AMENDED]

■ 1. The authority citation for part 323 continues to read as follows:

**Authority:** 33 U.S.C. 1344.

■ 2. Amend § 323.2 as follows:

■ a. Remove paragraph (d)(2).

■ b. In paragraph (d)(1) introductory text, remove the words "paragraph (d)(3)" and add, in their place, the words "paragraph (d)(2)".

■ c. Redesignate paragraphs (d)(3) through (d)(6) as paragraphs (d)(2) through (d)(5), respectively.

■ d. In the newly redesignated paragraph (d)(3), in the first sentence of paragraph (d)(3)(i) remove each time they appear the words "paragraphs (d)(5) and (d)(6)" and add, in their place, the words "paragraphs (d)(4) and (d)(5)".

#### PART 232—[AMENDED]

■ 1. The authority citation for part 232 continues to read as follows:

**Authority:** 33 U.S.C. 1344.

■ 2. Amend § 232.2 as follows:

■ a. In the definition of "Discharge of dredged material", remove paragraph (2).

■ b. In paragraph (1) of the definition of "Discharge of dredged material", remove the words "paragraph (3)" and add, in their place, the words "paragraph (2)".

■ c. Redesignate paragraphs (3) through (6) as paragraphs (2) through (5), respectively.

■ d. In the newly redesignated paragraph (3) of the definition of "Discharge of dredged material", in the first sentence of paragraph (3)(i) remove each time they appear the words "paragraphs (5) and (6)" and add, in their place, the words "paragraphs (4) and (5)".

[FR Doc. E8-30984 Filed 12-29-08; 8:45 am]

BILLING CODE 3710-KF-P

#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 21

RIN 2900-AM67

#### Increase in Rates Payable Under the Survivors' and Dependents' Educational Assistance Program and Other Miscellaneous Issues

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends Department of Veterans Affairs (VA) regulations to reflect increases effective for fiscal years 2005, 2006, 2007, 2008, and 2009, respectively, in the monthly rates payable under the Survivors' and Dependents' Educational Assistance (DEA) program in accordance with statutory requirements and previously established formulas; a change in the formula used to calculate entitlement charges for individuals pursuing apprenticeship or other on-job training in accordance with the Veterans Benefits Improvement Act of 2004; and nonsubstantive changes for the purpose of clarity and to reflect agency organization.

**DATES:** *Effective Date:* This final rule is effective December 30, 2008.

*Applicability Dates:* For information concerning the dates of applicability for certain provisions, see the Supplementary Information section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Brandye R. Terrell, Regulation Development Team Leader (225C), Education Service, Veterans Benefits Administration, Department of Veterans

Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-9822.

#### SUPPLEMENTARY INFORMATION:

##### I. Increase in Monthly Rates Payable Under the Survivors' and Dependents' Educational Assistance Program

Under the formula mandated by 38 U.S.C. 3564, the monthly rates of basic educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program must be increased by the percentage by which the total monthly Consumer Price Index-W for the 12-month period ending on June 30 preceding the fiscal year (FY) during which the increase is applicable exceeds the Consumer Price Index-W for the 12-month period ending on June 30 preceding the previous FY. Using this formula, VA calculated a 2 percent increase for FY 2005, a 3 percent increase for FY 2006, a 4 percent increase for FY 2007, a 2.5 percent increase for FY 2008, and a 3.9 percent increase for FY 2009.

Public Law 91-219 authorized monthly educational assistance payments for eligible persons pursuing training at less than half time. Since the effective date of that public law, February 1, 1970, students pursuing a program of education at less than one-half time but more than one-quarter time have had their payments limited to the prorated amount of tuition and fees not to exceed the half-time rate. Similarly, students pursuing a program of education at one-quarter time or less have had their payments limited to the prorated amount of tuition and fees not to exceed 25 percent of the full-time institutional rate. The monthly rates of basic educational assistance for students pursuing a program of education at less than half time are increased in accordance with the provisions of this paragraph, and this document makes changes in the regulations accordingly.

The entitlement charge for correspondence courses is based on the monthly rates of basic educational assistance. Hence, the amount used to determine entitlement charge for correspondence courses is increased by 2 percent for FY 2005, 3 percent for FY 2006, 4 percent for FY 2007, 2.5 percent for FY 2008, and 3.9 percent for FY 2009, consistent with the adjustments in the monthly rates of basic educational assistance discussed above.

The increases in the DEA rates are applied in accordance with the applicable statutory provisions discussed above. Thus, VA began paying the increases for FY 2005, 2006, 2007, and 2008 effective for training pursued on or after October 1, 2004, October 1, 2005, October 1, 2006, and

October 1, 2007, respectively. VA will pay the FY 2009 increase effective for training pursued on or after October 1, 2008.

## II. Modification of the Formula Used To Calculate Entitlement Charge for Eligible Persons Pursuing Apprenticeship or Other On-Job Training

The Veterans Benefits Improvement Act of 2004 (Pub. L. 108–454) modified the formula used to calculate entitlement charges for certain apprenticeship and other on-job trainees. Prior to October 1, 2005, eligible persons with 38 U.S.C. chapter 35 entitlement were charged a month of entitlement for each month they received educational assistance. The entitlement charge was based on the length of training rather than the amount received for training. Public Law 108–454 mandates that 38 U.S.C. chapter 35 entitlement charged for training pursued on or after October 1, 2005, be reduced proportionately by the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution. This document amends VA regulations concerning 38 U.S.C. chapter 35 entitlement accordingly, and makes nonsubstantive changes in those entitlement provisions intended to clarify that entitlement charges are charges for record purposes and not monetary charges.

## III. Other Nonsubstantive Changes

This document also makes other nonsubstantive changes in the DEA regulations for the purpose of clarity. These include clarifying changes to specify the ending dates for certain 2004 provisions in §§ 21.3045, 21.3046, 21.3131, 21.3300, and 21.3333.

In addition, we are making a nonsubstantive change to reflect current agency organization. Due to a publishing error, instructions that VA published in the **Federal Register** in a final rule entitled “Veterans Benefits Administration Nomenclature Changes” (66 FR 44052–44053, Aug. 22, 2001) were not fully implemented in the Code of Federal Regulations. This document repeats an instruction that had been in that final rule.

## IV. Applicability Dates To Conform to Statutory Requirements

The changes in the DEA rates for fiscal years 2005, 2006, 2007, and 2008, are applied retroactively for training pursued on or after October 1, 2004,

October 1, 2005, October 1, 2006, and October 1, 2007, respectively, to conform to statutory requirements. The changes in the DEA rates for fiscal year 2009 are being applied effective October 1, 2008, for training pursued on or after that date, to conform to statutory requirements. The change in the formula used to calculate entitlement charges is applied retroactively to training pursued on or after October 1, 2005, to conform to statutory requirements.

## Administrative Procedure Act

The changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas, or are interpretive rules or nonsubstantive changes. These changes are exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553(b) and (d).

## Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined that it is not a significant regulatory action under the Executive Order.

## Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

## Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

## Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

## Catalog of Federal Domestic Assistance

The program that this rule affects has the following Catalog of Federal Domestic Assistance number and title: 64.117, Survivors and Dependents Educational Assistance.

## List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational Rehabilitation.

Approved: December 22, 2008.

**Gordon H. Mansfield,**  
Deputy Secretary of Veterans Affairs.

■ For the reasons stated above, the Department of Veterans Affairs amends

38 CFR chapter I and 38 CFR part 21 (subpart C) as follows:

### Chapter I—Department of Veterans Affairs

- 1. In chapter I, revise all references to “VR&C” to read “VR&E”.

### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

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

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

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

- 3. Amend § 21.3045 by:
- a. In the first sentence of the introductory text, adding “record-purpose” before “charges” and “38 U.S.C. chapter 35” before “entitlement”.
  - b. In paragraph (c) introductory text, removing “entitlement—” and adding, in its place, “entitlement of—”.
  - c. Revising paragraphs (g) and (h).
- The revisions read as follows:

#### § 21.3045 Entitlement charges.

(g) *Entitlement charge for apprenticeship or other on-job training.* For each month that an eligible person is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, including months in which the eligible person fails to complete 120 hours of training, VA will make a record-purpose charge against 38 U.S.C. chapter 35 entitlement, if any, as follows:

(1) For training pursued before October 1, 2005, VA will reduce chapter 35 entitlement by one month for each month of benefits paid.

(2) For training pursued on or after October 1, 2005, VA will reduce chapter 35 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution.

(Authority: 38 U.S.C. 3534, 3687; sec. 102, Pub L. 108–454, 118 Stat. 3600)

(h) *Entitlement charge for correspondence courses.* The charge against entitlement of a spouse or surviving spouse for pursuit of a course exclusively by correspondence will be 1 month for each of the following amounts paid as an educational assistance allowance:

- (1) \$788.00, paid after June 30, 2004, and before October 1, 2004;
- (2) \$803.00, paid after September 30, 2004, and before October 1, 2005;
- (3) \$827.00, paid after September 30, 2005, and before October 1, 2006;
- (4) \$860.00, paid after September 30, 2006, and before October 1, 2007;
- (5) \$881.00, paid after September 30, 2007, and before October 1, 2008; and
- (6) \$915.00, paid after September 30, 2008.

(Authority: 38 U.S.C. 3534(b), 3564, 3686(a))

\* \* \* \* \*

- 4. Amend § 21.3046 by revising paragraph (d)(4)(ii) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(ii) The total additional amount of instruction that—

(A) \$2,206 provides during the period July 1, 2004, through September 30, 2004;

(B) \$2,248 provides during the period October 1, 2004, through September 30, 2005;

(C) \$2,316 provides during the period October 1, 2005, through September 30, 2006;

(D) \$2,408 provides during the period October 1, 2006, through September 30, 2007;

(E) \$2,467 provides during the period October 1, 2007, through September 30, 2008; or

(F) \$2,562 provides after September 30, 2008.

(Authority: 38 U.S.C. 3511(b))

\* \* \* \* \*

- 5. Amend § 21.3131 by:

- a. Revising paragraph (a).
- b. Removing paragraphs (b) and (c).
- c. Redesignating paragraphs (d), (e), and (f), as new paragraphs (b), (c), and (d), respectively.

The revision reads as follows:

#### § 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance under 38 U.S.C. chapter 35 is payable at the following monthly rates—

(1) For training pursued after June 30, 2004, and before October 1, 2004:

Type of course	Monthly rate
Institutional:	
Full time .....	\$788.00
¾ time .....	592.00
½ time .....	394.00
Less than ½ but more than ¼ time <sup>1</sup> .....	394.00
¼ time or less <sup>1</sup> .....	197.00
Cooperative training (other than farm cooperative) (full time only) .....	788.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	574.00
Second six months .....	429.00
Third six months .....	285.00
Fourth six months and thereafter .....	144.00
Farm cooperative:	
Full time .....	636.00
¾ time .....	477.00
½ time .....	319.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$394.00 or \$197.00, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(2) For training pursued after September 30, 2004, and before October 1, 2005:

Type of course	Monthly rate
Institutional:	
Full time .....	\$803.00
<sup>3</sup> / <sub>4</sub> time .....	603.00
<sup>1</sup> / <sub>2</sub> time .....	401.00
Less than <sup>1</sup> / <sub>2</sub> but more than <sup>1</sup> / <sub>4</sub> time <sup>1</sup> .....	401.00
<sup>1</sup> / <sub>4</sub> time or less <sup>1</sup> .....	200.75
Cooperative training (other than farm cooperative) (full time only) .....	803.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	585.00
Second six months .....	438.00
Third six months .....	291.00
Fourth six months and thereafter .....	147.00
Farm cooperative:	
Full time .....	648.00
<sup>3</sup> / <sub>4</sub> time .....	486.00
<sup>1</sup> / <sub>2</sub> time .....	325.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$401.00 or \$200.75, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(3) For training pursued after September 30, 2005, and before October 1, 2006:

Type of course	Monthly rate
Institutional:	
Full time .....	\$827.00
<sup>3</sup> / <sub>4</sub> time .....	621.00
<sup>1</sup> / <sub>2</sub> time .....	413.00
Less than <sup>1</sup> / <sub>2</sub> but more than <sup>1</sup> / <sub>4</sub> time <sup>1</sup> .....	413.00
<sup>1</sup> / <sub>4</sub> time or less <sup>1</sup> .....	206.75
Cooperative training (other than farm cooperative) (full time only) .....	827.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	650.00
Second six months .....	507.00
Third six months .....	366.00
Fourth six months and thereafter .....	151.00
Farm cooperative:	
Full time .....	667.00
<sup>3</sup> / <sub>4</sub> time .....	500.00
<sup>1</sup> / <sub>2</sub> time .....	334.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$413.00 or \$206.75, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(4) For training pursued after September 30, 2006, and before October 1, 2007:

Type of course	Monthly rate
Institutional:	
Full time .....	\$860.00
¾ time .....	645.00
½ time .....	429.00
Less than ½ but more than ¼ time <sup>1</sup> .....	429.00
¼ time or less <sup>1</sup> .....	215.00
Cooperative training (other than farm cooperative) (full time only) .....	860.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	676.00
Second six months .....	527.00
Third six months .....	380.00
Fourth six months and thereafter .....	157.00
Farm cooperative:	
Full time .....	693.00
¾ time .....	520.00
½ time .....	347.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$429.00 or \$215.00, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(5) For training pursued after September 30, 2007, and before January 1, 2008:

Type of course	Monthly rate
Institutional:	
Full time .....	\$881.00
¾ time .....	661.00
½ time .....	439.00
Less than ½ but more than ¼ time <sup>1</sup> .....	439.00
¼ time or less <sup>1</sup> .....	220.25
Cooperative training (other than farm cooperative) (full time only) .....	881.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	692.00
Second six months .....	540.00
Third six months .....	389.00
Fourth six months and thereafter .....	160.00
Farm cooperative:	
Full time .....	710.00
¾ time .....	533.00
½ time .....	355.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$439.00 or \$220.25, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(6) For training pursued after December 31, 2007, and before October 1, 2008:

Type of course	Monthly rate
Institutional:	
Full time .....	\$881.00
¾ time .....	661.00
½ time .....	439.00
Less than ½ but more than ¼ time <sup>1</sup> .....	439.00
¼ time or less <sup>1</sup> .....	220.25
Cooperative training (other than farm cooperative) (full time only) .....	881.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	641.00
Second six months .....	480.00
Third six months .....	317.00
Fourth six months and thereafter .....	160.00
Farm cooperative:	
Full time .....	710.00
¾ time .....	533.00
½ time .....	355.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$439.00 or \$220.25, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(7) For training pursued after September 30, 2008:

Type of course	Monthly rate
Institutional:	
Full time .....	\$915.00
¾ time .....	686.00
½ time .....	456.00
Less than ½ but more than ¼ time <sup>1</sup> .....	456.00
¼ time or less <sup>1</sup> .....	227.75
Cooperative training (other than farm cooperative) (full time only) .....	915.00
Apprenticeship or on-job (full time only): <sup>2</sup>	
First six months .....	666.00
Second six months .....	499.00
Third six months .....	329.00
Fourth six months and thereafter .....	166.00
Farm cooperative:	
Full time .....	737.00
¾ time .....	553.00
½ time .....	368.00
Correspondence .....	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. <sup>3</sup>

<sup>1</sup> If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis 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 \$456.00 or \$227.75, as appropriate, per month, if the maximum allowance is not initially authorized.

<sup>2</sup> See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

<sup>3</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 to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

\* \* \* \* \*

■ 6. Amend § 21.3300 by revising paragraph (d) to read as follows:

**§ 21.3300 Special restorative training.**

\* \* \* \* \*

(d) *Duration of special restorative training.* VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated

program requiring a rate of payment for tuition and fees in excess of—

(1) \$247.00 a month for the period beginning July 1, 2004, and ending September 30, 2004;

(2) \$251.00 a month for the period beginning October 1, 2004, and ending September 30, 2005;

(3) \$258.00 a month for the period beginning October 1, 2005, and ending September 30, 2006;

(4) \$268.00 a month for the period beginning October 1, 2006, and ending September 30, 2007;

(5) \$274.00 a month for the period beginning October 1, 2007, and ending September 30, 2008; and

(6) \$284.00 a month for months after September 30, 2008.

(Authority: 38 U.S.C. 3541(b), 3542)

\* \* \* \* \*

■ 7. Amend § 21.3333 by:

■ a. Revising paragraphs (a)(1), (a)(2), and (a)(3), and adding paragraph (a)(4).

■ b. Revising paragraph (b)(1).

The revisions and addition read as follows:

**§ 21.3333 Rates.**

(a) \* \* \*

(1) For special restorative training pursued after June 30, 2004, and before October 1, 2004:

Course	Monthly rate	Accelerated charges
Special restorative training .....	\$788.00	If costs for tuition and fees average in excess of \$247.00 per month, rate may be increased by such amount in excess of \$247.00.

(Authority: 38 U.S.C. 3542)

(2) For special restorative training pursued after September 30, 2004, and before October 1, 2005:

Course	Monthly rate	Accelerated charges
Special restorative training .....	\$803.00	If costs for tuition and fees average in excess of \$251.00 per month, rate may be increased by such amount in excess of \$251.00.

(Authority: 38 U.S.C. 3542)

(3) For special restorative training pursued after September 30, 2005, and before October 1, 2006:

Course	Monthly rate	Accelerated charges
Special restorative training .....	\$827.00	If costs for tuition and fees average in excess of \$258.00 per month, rate may be increased by such amount in excess of \$258.00.

(Authority: 38 U.S.C. 3542)

(4) For special restorative training pursued after September 30, 2006, and before October 1, 2007:

Course	Monthly rate	Accelerated charges
Special restorative training .....	\$860.00	If costs for tuition and fees average in excess of \$268.00 per month, rate may be increased by such amount in excess of \$268.00.

(Authority: 38 U.S.C. 3542)

(5) For special restorative training pursued after September 30, 2007, and before October 1, 2008:

Course	Monthly rate	Accelerated charges
Special restorative training .....	\$881.00	If costs for tuition and fees average in excess of \$274.00 per month, rate may be increased by such amount in excess of \$274.00.

(Authority: 38 U.S.C. 3542)

(6) For special restorative training pursued after September 30, 2008:

Course	Monthly rate	Accelerated charges
Special restorative training .....	\$915.00	If costs for tuition and fees average in excess of \$284.00 per month, rate may be increased by such amount in excess of \$284.00.

(Authority: 38 U.S.C. 3542)

(b) *Accelerated charges.* (1) VA may pay the additional monthly rate if the eligible person, or his or her parent or guardian (see § 21.3021(d)) if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, concurs in having his or her period of entitlement reduced by 1 day for each—

(i) \$26.27 that the special training allowance exceeds the basic monthly rate of \$803.00 for the period July 1, 2004, through September 30, 2004;

(ii) \$26.77 that the special training allowance exceeds the basic monthly rate of \$803.00 for the period October 1, 2004, through September 30, 2005;

(iii) \$27.57 that the special training allowance exceeds the basic monthly rate of \$827.00 for the period October 1, 2005, through September 30, 2006;

(iv) \$28.67 that the special training allowance exceeds the basic monthly rate of \$860.00 for the period October 1, 2006, through September 30, 2007;

(v) \$29.37 that the special restorative training allowance exceeds the basic monthly rate of \$881.00 for the period October 1, 2007, through September 30, 2008; and

(vi) \$30.50 that the special restorative training allowance exceeds the basic monthly rate of \$915.00 for months after September 30, 2008.

\* \* \* \* \*

[FR Doc. E8-31033 Filed 12-29-08; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-1044, EPA-R05-OAR-2007-1133; FRL-8757-8]

### Approval and Promulgation of Air Quality Implementation Plans; Illinois and Indiana; Finding of Attainment for 1-Hour Ozone for the Chicago-Gary-Lake County, IL-IN Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a January 30, 2007, request from the Illinois Environmental Protection Agency (IEPA) that EPA find that the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) nonattainment area, has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also approving an October 25, 2007, request from the Indiana Department of

Environmental Management (IDEM) that EPA find that the Indiana portion of the Chicago-Gary-Lake County, IL-IN nonattainment area, has attained the revoked 1-hour ozone NAAQS. EPA proposed to approve both requests on July 7, 2008. We received three comments on our proposed rulemaking, which are addressed below.

**DATES:** This final rule is effective on January 29, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Nos. EPA-R05-OAR-2007-1004 and EPA-R05-OAR-2007-1133. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, [alvarez.gilberto@epa.gov](mailto:alvarez.gilberto@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

#### I. What Did EPA Propose?

#### II. What Comments Did We Receive on the Proposed Action?

#### III. What Action Is EPA Taking?

#### IV. Statutory and Executive Order Reviews

##### I. What Did EPA Propose?

On January 30, 2007, IEPA requested that EPA find that the Illinois portion of the Chicago-Gary-Lake County, IL-IN nonattainment area, had attained the revoked 1-hour ozone NAAQS. On October 25, 2007, IDEM requested that EPA find that the Indiana portion of

Chicago-Gary-Lake County, IL-IN nonattainment area, had attained the revoked 1-hour ozone NAAQS. On July 7, 2008, EPA proposed to approve the requests (73 FR 38353).

#### II. What Comments Did We Receive on the Proposed Action?

EPA received three comment letters in response to the proposed rulemaking.

*Comment:* The Indiana Steel Environmental Group submitted comments in support of our proposed action. It also stated its understanding that this action means that Lake and Porter Counties will not be subject to the requirement to implement contingency measures for failure to attain the ambient standard.

*Response:* EPA agrees with the commenter. A finding of attainment eliminates the requirement for a maintenance plan and contingency measures under Sections 107(d)(3) and 175A(d) of the Clean Air Act. Such measures would be required, however, in order for the area to be redesignated to attainment.

*Comment:* While IDEM was generally supportive of the proposal, it expressed disappointment that EPA did not address certain New Source Review issues in our action.

*Response:* EPA intends to address these issues in a separate Agency rulemaking which is currently under development.

*Comment:* Dominion Resources Services, Inc. requested that EPA reiterate that these attainment areas are not subject to fees under Section 185 of the Act, and would not be subject to such fees even if the areas were to lapse into nonattainment.

*Response:* EPA confirms that this action relieves Illinois and Indiana from having to develop a Section 185 rule for the subject areas, although the States are free to do so if they choose.

#### III. What Action Is EPA Taking?

EPA is approving a January 30, 2007, request from IEPA that EPA find that the Illinois portion of the Chicago-Gary-Lake County, IL-IN nonattainment area, attained the revoked 1-hour ozone NAAQS. EPA is also approving an October 25, 2007, request from IDEM that EPA find that Indiana portion of the Chicago-Gary-Lake County, IL-IN nonattainment area, attained the revoked 1-hour ozone NAAQS.

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable