

statements and the significance of the appearance of warning statements on certain juice products but not on others.

The agency intends to involve State and local officials in its education initiative because it is often the State or local official who is in direct contact with the farmer or juice processor. Thus, State and local officials can play a significant role in educating and assisting juice manufacturers and consumers in understanding the public health concerns associated with consumption of untreated juice products and in developing measures to reduce the risk.

To meet its educational objectives, FDA intends to: (1) Enlist the aid of State and local officials, industry representatives, trade associations, and consumer groups in coordinating consumer and industry educational outreach programs; (2) use FDA field public affairs specialists to educate consumers and health professionals through lectures, meetings, and local media spots; (3) use FDA's home page on the World Wide Web to alert consumers to the potential hazard; (4) hold public meetings to discuss the issues raised in the impending proposals as well as the educational programs discussed in this document; (5) distribute "Dear Consumer" letters to targeted consumer groups; (6) use the FDA CFSAN information line to relay information to consumers and health professionals about the public health concern associated with untreated juice; (7) distribute camera-ready English and Spanish articles and English radio scripts and video news releases to the news media nationwide in September 1997 to coincide with the National Food Safety Education Program and "Back to School" program; and (8) distribute letters and articles to State and local officials.

V. Conclusion

As outlined in this document, FDA has developed a proposed comprehensive strategy to address the public health concerns associated with consumption of fresh juice and juice products not specifically treated to prevent or eliminate the presence of pathogens. The agency invites comment on the appropriateness of its strategy on the guidance contained in this document and on whether additional or alternative regulatory or nonregulatory measures are necessary to adequately protect consumers. Comments suggesting additional or alternative measures should explain why such measures are needed and suggestions on how to implement the measure.

In addition, the agency solicits comments on the specific wording of the warning statement to ensure that the final warning statement adequately conveys to consumers the risk of illness associated with consumption of the juice product. Furthermore, the agency solicits comments on whether to include all or some fruit and vegetable juice products that have not been pasteurized or otherwise specifically processed to prevent or eliminate the presence of harmful bacteria in any future proposal on HACCP or label warning statements.

Because the details of this strategy will be discussed more fully in any future proposals, commenters may choose to wait until that time to respond. However, the agency will consider comments received within 15 days of publication of this notice prior to publication of any proposed rule. Because of time constraints, the agency may not be able to consider comments received after this date, but these comments will be considered as part of the public rulemaking record associated with any proposal.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Besser, R. E., S. M. Lett, J. T. Weber, M. P. Doyle, T. J. Barrett, J. G. Wells, and P. M. Griffin, "An Outbreak of Diarrhea and Hemolytic Uremic Syndrome from *Escherichia coli* 0157:H7 in Fresh-pressed Apple Cider," *Journal of the American Medical Association*, 269(17):2217-2220, 1993.
2. Centers for Disease Control and Prevention, "Outbreak of *Escherichia coli* 0157:H7 Infections Associated with Drinking Unpasteurized Commercial Apple Juice—British Columbia, California, Colorado, and Washington, October 1996," *Morbidity and Mortality Weekly Report*, 45(44):975, 1996.
3. Centers for Disease Control and Prevention, "Outbreaks of *Escherichia coli* 0157:H7 Infection and Cryptosporidiosis Associated with Drinking Unpasteurized Apple Cider—Connecticut and New York, October 1996," *Morbidity and Mortality Weekly Report*, 46(1):4-8, 1997.
4. National Advisory Committee on Microbiological Criteria for Foods—Fresh Produce Subcommittee Proceedings, December 16, 1996.
5. Centers for Disease Control, "*Salmonella typhimurium* Outbreak Traced to a Commercial Apple Cider—New Jersey," *Morbidity and Mortality Weekly Report*, 24:87-88, 1975.
6. Millard, P. S., K. F. Gensheimer, D. G. Addiss, D. M. Sosin, G. A. Beckett, A. Houck-Jankoski, and A. Hudson, "An Outbreak of Cryptosporidiosis from Fresh-pressed Apple

Cider," *Journal of the American Medical Association*, 272(20):1592-1596, 1994.

7. Centers for Disease Control and Prevention, "Cholera Associated with Imported Frozen Coconut Milk—Maryland, 1991," *Morbidity and Mortality Weekly Report*, 40(49):844-845, 1991.

8. Centers for Disease Control and Prevention Memorandum from Kim A. Cook, M.D. to Steve Thacker, M.D., October 1, 1995.

9. FDA Recall Data Memorandum, Dirk J. Mouw to Raymond P. Mars, June 2, 1992.

10. FDA Recall Data Memorandum, M. Anthony Abel to Ronald E. Joyce, March 21, 1994.

11. Memorandum of Telephone Conversation between Debra Street, Ph.D., FDA, and P. Walker, Washington State Department of Health, January 15, 1997.

12. Memorandum of Telephone Conversation between Debra Street, Ph.D., FDA, and Dr. K. Hendricks, Texas State Department of Health, January 16, 1997.

13. FDA Memorandum to File, B. Timbo, Ph.D., July 14, 1997.

14. FDA Memorandum, Alan S. Levy, Ph.D. to Kenneth Falci, Ph.D., June 26, 1997.

VII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this document at any time. As noted above, the agency will consider comments received by September 12, 1997, prior to publication of any proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-22977 Filed 8-25-97; 4:44 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF85

Veterans Education: Suspension and Discontinuance of Payments

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to make changes to the education regulations. With respect to determinations concerning suspension or discontinuance of payments of educational assistance when educational institutions (including training establishments) fail to meet requirements, it is proposed to require that recommendations first be obtained from Committees on Educational Allowances, to establish procedural and composition requirements for the Committees, and to establish hearing rules for the Committees. In addition, it is proposed that appeals of a decision concerning such suspension or discontinuance of payments of educational assistance be determined by the Director of the Education Service upon request by the affected educational institution based on the evidence of record. The proposed changes would apply to the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selected Reserve, Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program, and the Educational Assistance Pilot Program. The proposed changes appear to be appropriate to ensure proper decisionmaking. In addition, nonsubstantive changes would be made for the purpose of clarification.

DATES: Comments must be received on or before October 27, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AF85." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, (202) 273-7187.

SUPPLEMENTARY INFORMATION: This document proposes to make changes to the education regulations in 38 CFR part 21. More specifically, it is proposed to make changes to the regulations concerning suspension or discontinuance of payments of educational assistance when educational institutions (including

training establishments) fail to meet requirements. The proposed changes would apply to the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selected Reserve, Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP), and the Educational Assistance Pilot Program. The authority for this proposal is contained in 10 U.S.C. 2147 note and 16136(b); and 38 U.S.C. 501, 3034(a), 3241(a), and 3690.

Under these programs, veterans, reservists, servicemembers, and eligible persons (as statutorily identified for each program) receive educational assistance from the Department of Veterans Affairs (VA) while attending programs of education. To be eligible for assistance, individuals must pursue courses approved by a State approving agency. Educational institutions are required to inform VA of certain occurrences relating to these programs (e.g., when VA-supported students discontinue or reduce training, change programs, or fail to progress satisfactorily), and to meet a number of other legal requirements. When an educational institution has failed to meet such requirements and the State approving agency has not withdrawn course approval, the Director of the VA facility of jurisdiction may suspend or discontinue payment of educational assistance.

It is not proposed to change the requirement in the regulations that failure by an educational institution to meet requirements pertaining to the percentage of students receiving VA educational benefits could result in discontinuance of educational assistance to new students based on undisputed information submitted by the educational institution. (See 38 CFR 21.4201.) However, when an educational institution otherwise fails to meet requirements, it is proposed that, prior to making determinations concerning suspension or discontinuance of educational assistance, the Director of the VA facility of jurisdiction will refer the matter to the VA facility's Committee on Educational Allowances and receive recommendations therefrom. This document also proposes to require that such a referral be in writing, contain the reasons for the referral, and be posted in the VA facility of jurisdiction. We believe that this would help ensure appropriate decisionmaking.

Currently, a Committee on Educational Allowances must be composed of three individuals. It is proposed to require that at least one of

the individuals be a VA employee familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. VA believes that this is warranted to ensure that the committee has sufficient expertise for appropriate recommendations.

This document also proposes to establish a comprehensive set of hearing rules for use by the respective Committees on Educational Allowances. This would help ensure uniformity and fairness with respect to recommendations made by the committees.

The current regulations provide for an automatic de novo review in VA Central Office by the Central Office Education Training and Review Panel of any decision of the Director of the VA facility of jurisdiction if the committee's recommendation to the Director is not unanimous or if the Director disagrees with the recommendation of the committee. It is proposed that the review be based on the evidence of record rather than constituting a de novo review. It is also proposed that the review be conducted by the Director of the Education Service rather than by the Central Office Education Training and Review Panel. Further, instead of providing for an automatic review, it is proposed that such a review be provided only upon request by the affected educational institution. This appears to provide adequate fairness for these circumstances and will help to ensure efficiency and uniformity in decisionmaking.

Also, nonsubstantive changes would be made for the purpose of clarification.

The Department of Defense (DOD) and VA are jointly issuing this proposal insofar as it relates to VEAP. This program is funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this proposal insofar as it relates to the Montgomery GI Bill—Selected Reserve program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this proposal is issued solely by VA.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs, within their respective jurisdictions, hereby certify that the adoption of the proposed provisions will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Although it is possible that a small-entity school could be affected by this rulemaking, the number of individuals affected at the

school would in all likelihood be an insignificant portion of the student body. Also, experience has shown that only one or two schools per year would be affected by the provisions of this rulemaking concerning suspensions and discontinuance of payments. Therefore, pursuant to 5 U.S.C. 605(b), the proposed provisions are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this proposal are 64.117, 64.120, and 64.124. There is no Catalog of Federal Domestic Assistance number for the Montgomery GI Bill—Selected Reserve program.

List of Subjects in 38 CFR Part 21

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

Approved: August 21, 1997.

Hershel W. Gober,
Acting Secretary of Veterans Affairs.

Approved: May 8, 1997.

Normand G. Lezy,
Lieutenant General, USAF Deputy Assistant Secretary (Military Personnel Policy).

Approved: April 24, 1997.

W.C. Donnell,
RADM, USCG Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21, subparts D, G, K, and L, is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2147 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

§ 21.4133 [Removed]

2. Section 21.4133 is removed.

§ 21.4134 [Removed]

3. Section 21.4134 is removed.

4. In § 21.4135, paragraph (f) is revised; introductory text is added to paragraph (j); paragraph (j)(1) is revised; the heading for paragraph (k) is revised; introductory text is added to paragraph (k); and paragraph (k)(1) is revised, to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(f) *Discontinued by VA (§§ 21.4215, 21.4216).* If VA discontinues payments of educational assistance as provided by §§ 21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance were preceded by such a suspension.

(2) End of the month in which the decision to discontinue is effective pursuant to § 21.4215(d), if the Director of a VA facility did not suspend payments prior to the discontinuance.

(Authority: 38 U.S.C. 3690)

* * * * *

(j) *Disapproval by State approving agency (§ 21.4259(a)).* If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

* * * * *

(k) *Disapproval by Department of Veterans Affairs (§§ 21.4215, 21.4259(c)).* If VA disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

* * * * *

§ 21.4146 [Amended]

5. Section 21.4146(e) is amended by removing “§§ 21.4207 and 21.4202(b)(4)” and adding, in its place, “§§ 21.4210(g) and 21.4212”.

§ 21.4152 [Amended]

6. Section 21.4152(b)(2) is amended by removing “§ 21.4202” and adding, in its place, “§ 21.4210(d)”.

§ 21.4202 [Amended]

7. In § 21.4202, paragraphs (a) and (b) are removed and reserved.

§ 21.4207 [Removed]

8. Section 21.4207 is removed.

§ 21.4208 [Removed]

9. Section 21.4208 is removed.

10. Section 21.4210 is added to read as follows:

§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview.* (1) VA may pay educational assistance to an individual eligible for such assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 35, or 36, only if the individual is pursuing a course approved in accordance with the provisions of 38 U.S.C. chapter 36. In general, courses are approved for this purpose by a State approving agency designated to do so (or by VA in some instances). Notwithstanding such approval, however, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of courses or training approved under 38 U.S.C. chapter 36.

(2) For the purposes of this section and the purposes of §§ 21.4211 through 21.4216, except as otherwise expressly stated to the contrary—

(i) The term course includes an apprenticeship or other on-job training program;

(ii) The term educational institution includes a training establishment; and

(iii) Reference to action suspending, discontinuing, or otherwise denying enrollment or reenrollment means such action with respect to providing educational assistance under the chapters listed in paragraph (a)(1) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452, 3671, 3690)

(b) *Denial of payment in individual cases.* VA may deny payment of educational assistance to a specific individual for pursuit of a course or courses if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(1) The course fails to meet any of the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or

(2) The educational institution offering the individual's course has violated any of those requirements of law.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b)(1), 3690(b)(2))

(c) *Notice in individual cases.* Except as provided in paragraph (e) of this section, when VA denies payment of

educational assistance to an individual under paragraph (b) of this section, VA will provide concurrent written notice to the individual. The notice shall state—

- (1) The adverse action;
- (2) The reasons for the action; and
- (3) The individual's right to an opportunity to be heard thereon in accordance with part 19 of this title.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Actions affecting groups.* (1) The Director of the VA facility of jurisdiction may suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course, and may disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course. The decision to take such action, except as provided in paragraph (d)(2) of this section, must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course receiving educational assistance to which they are not entitled because:

(i) One or more of the course approval requirements of 38 U.S.C. chapter 36 are not met, including the course approval requirements specified in §§ 21.4253, 21.4254, 21.4261, 21.4262, 21.4263, and 21.4264; or

(ii) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of 10 U.S.C. chapter 1606, or of 38 U.S.C. chapters 30, 32, 34, 35, and 36. These violations may include, but are not limited to, the following:

(A) Willful and knowing submission of false reports or certifications concerning students or courses of education;

(B) Failure to report to VA a veteran's, servicemember's, reservist's, or eligible person's reduction, discontinuance, or termination of education or training; or

(C) Submission of improper or incorrect reports in such number, manner, or period of time as to indicate negligence on its part, including failure to maintain an adequate reporting or recordkeeping system.

(2) The Director also may make a decision to take the action described in paragraph (d)(1) of this section when the Director has evidence that one or more prohibited assignments of benefits have occurred at an educational institution as a result of that educational institution's policy. This decision may be made regardless of whether there is a substantial pattern of erroneous payments at the educational institution. See § 21.4146.

(3) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:

(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course; or

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other charges that substantially denies to veterans, servicemembers, reservists, or eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§ 21.4138(d), 21.7140(a), and 21.7640(d); or

(iii) Has used erroneous, deceptive, or misleading practices as set forth in § 21.4252(h).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3680A(d), 3684, 3685, 3690, 3696, 5301)

(e) *Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution.* (1) The Director of the VA facility of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:

(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and

(ii) The educational institution—
(A) Refuses to take corrective action; or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:

(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action;

(ii) Give the reasons why the Director intends to suspend payments and/or

suspend approval of new enrollments and reenrollments; and

(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b))

(f) *Actions in cases indicating submission of false, misleading, or fraudulent claims or statements.* The Director of the VA facility of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Director will follow the procedures in part 42 of this title.

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3690(d))

(g) *Referral to the Committee on Educational Allowances.* If the Director of the VA facility of jurisdiction suspends payment of educational assistance to, or suspends approval of the enrollment or reenrollment of, individuals in any course or courses as provided in paragraph (d) of this section, the Director will refer the matter to the Committee on Educational Allowances as provided in § 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Withdrawal of referral to Committee on Educational Allowances.*

(1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA facility of jurisdiction determines that the conditions which

justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course or courses, the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

11. Section 21.4211 is added to read as follows:

§ 21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.

(a) *Authority.* VA is authorized by 38 U.S.C. 3690 to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that the program of education or course in which such individuals are enrolled fails to meet any of the requirements of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, or when VA finds an educational institution or training establishment has violated any such statute or regulation, or fails to meet any such statutory or regulatory requirement. Sections 21.4210 and 21.4216 implement that authority. This section provides for establishment of a Committee on Educational Allowances within each VA facility of jurisdiction whose findings of fact and recommendations will be provided to the Director of that VA facility, to whom such authority to discontinue educational benefits or disapprove enrollments or reenrollments has been delegated.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Purpose.* (1) The Committee on Educational Allowances is established to assist the Director of the VA facility of jurisdiction in reaching a conclusion as to whether, in a specific case, educational assistance to all individuals enrolled in any course or courses offered by the educational institution should be discontinued and, if

appropriate, whether approval of all further enrollments or reenrollments in those courses should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs administered by VA because a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part is not being met or a provision of such statute or regulation has been violated.

(2) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments. Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to the Committee any evidence, argument, or other material considered pertinent.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Jurisdiction.* The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§ 21.4210(g) and 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Committee members.* The Committee on Educational Allowances will consist of three employees of the VA facility of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA facility of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Duties and responsibilities of the Committee.* (1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA facility of jurisdiction in connection with specific cases

referred for consideration as provided in §§ 21.4210(g) and 21.4212.

(2) The performance of this function will include:

(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;

(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and

(iii) Furnishing the Director of the VA facility of jurisdiction a written statement setting forth specifically the question or questions considered, a summation of the essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity, both the majority and the minority views and recommendations will be furnished.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

12. Section 21.4212 is added to read as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

(a) *Form and content of referral to Committee.* When the Director of the VA facility of jurisdiction refers a case to the Committee on Educational Allowances, as provided in § 21.4210(g), the referral will be in writing and will—

(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;

(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;

(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;

(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and

(5) Ask the Committee on Educational Allowances to perform the functions described in §§ 21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued and approval of new enrollments or reenrollments denied.

(b) *Notice of the referral.* (1) At the time of referral the Director will—

(i) Send notice of the referral, including a copy of the referral

document, by certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institution has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;

(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and

(iii) Place a copy of the notice and referral document on display at the VA facility of jurisdiction for review by any interested party or parties.

(2) The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

13. Section 21.4213 is added to read as follows:

§ 21.4213 Notice of hearing by Committee on Educational Allowances.

(a) *Content of hearing notice.* In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in § 21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of—

(1) The time and place of the hearing;

(2) The matters to be considered;

(3) The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and

(4) The complete hearing rules and procedures.

(b) *Expenses connected with hearing.* The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.

(c) *Publication of hearing notice.* Notice of the hearing will be published in the **Federal Register**, which will constitute notice to any interested

individuals, and will indicate that, while such individuals may attend and observe the hearing, they may not participate unless called as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034(a), 3241(a), 3690)

14. Section 21.4214 is added to read as follows:

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) *Rule 1.* The Chairperson of the Committee on Educational Allowances will be in charge of the proceedings, will administer oaths or affirmations to witnesses, and will be responsible for the official conduct of the hearing. A majority of the members of the Committee will constitute a quorum. No party to the proceedings may conduct a voir dire of the Committee members.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Rule 2.* At the opening of the hearing, the Chairperson of the Committee on Educational Allowances will inform the educational institution of the purpose of the hearing, the nature of the evidence of record relating to the asserted failures or violations, and the applicable provisions of law and VA regulations. The Chairperson will advise the VA Regional Counsel, or designee, representing VA, that the Committee on Educational Allowances will entertain any relevant evidence or witnesses which VA Counsel presents to the Committee and which would substantiate a decision by the Committee to recommend that the Director of the VA facility of jurisdiction take an adverse action on the issues submitted for its review. The educational institution will be advised of its right to present any evidence, relevant to the issues submitted for the Committee's review, by oral or documentary evidence; to submit rebuttal evidence; to present and cross-examine witnesses; and to make such statements as may be appropriate on its behalf for a true and full disclosure of the facts. VA Counsel will be allowed to cross-examine any witnesses offered by the educational institution and to reply to any written briefs or arguments submitted to the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Rule 3.* Any testimony or evidence, either oral or written, which the Committee on Educational Allowances deems to be of probative value in deciding the question at issue will be admitted in evidence. While irrelevant, immaterial, or unduly repetitious

evidence, testimony, or arguments should be excluded, reasonable latitude will be permitted with respect to the relevancy, materiality, and competency of evidence. In most instances the evidence will consist of official records of the educational institution and VA, and these documents may be attested to and introduced by affidavit; but the introduction of oral testimony by the educational institution or by VA will be allowed, as appropriate, in any instance where the educational institution or VA Counsel desires. VA, however, will neither subpoena any witness on behalf of the educational institution for such purposes nor bear any expenses in connection with the appearance of such witness. In instances where the evidence reasonably available consists of signed written statements, secondary or hearsay evidence, etc., such evidence may be introduced into the record and will be given the weight and consideration which the circumstances warrant.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Rule 4.* A verbatim stenographic or recorded transcript of the hearing will be made. This transcript will become a permanent part of the record, and a copy will be furnished to the educational institution and the VA Counsel at the conclusion of the proceeding, unless furnishing of the copy of the transcript is waived by the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Rule 5.* The Chairperson of the Committee on Educational Allowances will identify all exhibits in the order of introduction or receipt (numerically for VA exhibits and alphabetically for exhibits introduced by the educational institution). All such original exhibits or documents shall be attached to the original of the transcript. VA shall make photocopies or certified copies and attach them to the copy of the transcript furnished to the educational institution and the VA Counsel. The original transcript will accompany the Committee's recommendation to the Director of the VA facility of jurisdiction along with all exhibits, briefs, or written statements received by the Committee during the course of the proceedings. Such documents should be clearly marked to indicate which were received into evidence and relied upon by the Committee in making its recommendations.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(f) *Rule 6.* The Committee on Educational Allowances, at its discretion, may reasonably limit the number of persons appearing at the hearing, including any affected individuals presented as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(g) *Rule 7.* Any person who is presented to testify will be required to be duly placed under oath or affirmation by the Chairperson of the Committee on Educational Allowances. If an official of the educational institution desires to present a statement personally, the individual will be required to be placed under oath or affirmation. The Chairperson will advise each witness that the Committee understands that he or she is voluntarily appearing before the Committee; that any testimony or statement given will be considered as being completely voluntary; and that no one has authority to require the individual to make any statement or answer any question against his or her will before the Committee, except that a person called as a witness on behalf of either VA or the educational institution must be willing to submit to cross-examination with respect to testimony given. Each witness will also be advised that his or her testimony or statement, if false, even though voluntary, may subject him or her to prosecution under Federal statutes.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Rule 8.* Any member of the Committee on Educational Allowances may question any witness presented to testify at the hearing or either a representative of the educational institution or the VA Counsel concerning matters that are relevant to the question at issue. Generally, questioning by a Committee member will be limited to the extent of clarifying information on the facts and issues involved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(i) *Rule 9.* If the educational institution fails to timely notify the Committee of its intent to participate in a hearing or if a representative of the educational institution is scheduled to appear for a hearing but, without good cause, fails to appear either in person or by writing, the Committee will proceed with the hearing and will review the case on the basis of the evidence of record which shall be presented by the VA Counsel.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(j) *Rule 10.* Any objection by an authorized representative of the educational institution or the VA Counsel on a ruling by the Chairperson of the Committee on Educational Allowances regarding the admissibility of testimony or other evidence submitted will be made a matter of record, together with the substance in brief of the testimony intended or other evidence concerned. If the other evidence concerned is in the form of an affidavit or other document, it may be accepted for filing as a future reference if it is later ruled admissible as part of the record of the hearing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(k) *Rule 11.* Objections relating to the jurisdiction or membership of the Committee on Educational Allowances or the constitutionality of statutes or the constitutionality of, or statutory authority for, VA regulations, are not before the Committee for decision. The time of the Committee will not be used to hear arguments in this regard. However, any such matters outside the province of the Committee may be the subject of a brief or a letter for consideration by the VA Office of General Counsel upon completion of the hearing. The ruling of such authority upon such issues will be obtained and included in the record before the Committee's recommendations are submitted to the Director of the VA facility of jurisdiction. If the VA General Counsel's ruling on such legal issues necessitates reopening the proceeding, that shall be done before the Committee makes its recommendations to the Director of the VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(l) *Rule 12.* The hearing will be open to the public.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(m) *Rule 13.* The hearing will be conducted in an orderly manner with dignity and decorum. The conduct of members of the Committee on Educational Allowances, the VA Counsel, and any representatives of the educational institution shall be characterized by appropriate impartiality, fairness, and cooperation. The Chairperson of the Committee shall take such action as may be necessary, including suspension of the hearing or the removal of the offending person from the hearing room for misbehavior, disorderly conduct, or the persistent disregard of the Chairperson's ruling. Where this occurs, the Chairperson will

point out that the Committee is entitled to every possible consideration in order that the case may be presented clearly and fully, which may be accomplished only through observance of orderly procedures.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(n) *Rule 14.* The Chairperson of the Committee on Educational Allowances will conduct the hearing proceedings in such a manner that will protect from disclosure information which tends to disclose or compromise investigative sources or methods or which would violate the privacy of any individual. The salient facts, which form the basis of charges, may be disclosed and discussed without revealing the source.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(o) *Rule 15.* At the close of the hearing, the Chairperson of the Committee on Educational Allowances shall inform the appropriate representative of the educational institution that the arguments and the evidence presented will be given careful consideration; and that notice of the decision of the Director of the VA facility of jurisdiction, together with the Committee's recommendations, will be furnished to the educational institution and the VA Counsel at the earliest possible time. The Chairperson will also indicate that notice of the Director's decision will be published in the **Federal Register** for the information of all other interested persons.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(p) *Rule 16.* In making its findings of facts and recommendations, the Committee on Educational Allowances will consider only questions which are referred to it by the Director of the VA facility of jurisdiction as being at issue and which are within the jurisdiction of the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

15. Section 21.4215 is added to read as follows:

§ 21.4215 Decision of Director of VA facility of jurisdiction.

(a) *Decision.* The Director of the VA facility of jurisdiction will render a written decision on the issue of discontinuance of payments of benefits and/or denial of further enrollments or reenrollments in the course or courses at the educational institution which was the subject of the Committee on Educational Allowances proceedings.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Basis of decision.* (1) The decision of the Director of the VA facility of jurisdiction will be based upon all admissible evidence of record, including—

- (i) The recommendations of the Committee on Educational Allowances;
- (ii) The hearing transcript and the documents admitted in evidence; and
- (iii) The ruling on legal issues referred to appropriate authority.

(2) The decision will clearly describe the evidence and state the facts on which the decision is based and, in the event that the decision differs from the recommendations of the Committee on Educational Allowances, will give the reasons and facts relied upon by the Director in deciding not to follow the Committee majority's recommendations. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Correction of deficiencies.* If the Director of the VA facility of jurisdiction believes that the record provided for review is incomplete or for any reason should be reopened, before rendering a decision he or she will order VA staff to gather any additional necessary evidence and will notify the educational institution that it may comment upon the new evidence added. The Director will then notify the educational institution as to whether the matter will be resubmitted to the Committee on Educational Allowances for further proceedings, on the basis of the new circumstances. If the matter is referred back to the Committee, the Director will defer a decision until he or she has received the Committee's new recommendations based upon all of the evidence of record.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Effective date.* If the decision of the Director of the VA facility of jurisdiction is adverse to the educational institution, the decision shall indicate specifically the effective date of each adverse action covered by the decision.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Notification of decision.* (1) The Director of the VA facility of jurisdiction shall send a copy of the decision to the educational institution by certified mail, return receipt requested. A copy of the decision also will be provided by regular mail to the institution's legal representative of record, if any. If the decision is adverse to the educational institution, the Director will enclose a notice of the educational institution's right to have the Director, Education Service review the decision.

(2) The Director of the VA facility of jurisdiction will also send a copy of the decision to:

- (i) The State approving agency; and
- (ii) VA Counsel.

(3) The Director of the VA facility of jurisdiction shall post a copy of the decision at the VA facility of jurisdiction. A copy of the decision shall be published in the **Federal Register**.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

16. Section 21.4216 is added to read as follows:

§ 21.4216 Review of decision of Director of VA facility of jurisdiction.

(a) *Decision is subject to review by Director, Education Service.* A review by the Director, Education Service of a decision of a Director of a VA facility of jurisdiction to terminate payments or disapprove new enrollments or reenrollments, when requested by the educational institution, will be based on the evidence of record when the Director of the VA facility of jurisdiction made that decision. It will not be de novo in nature and no hearing on review will be held.

(b) *Authority of Director, Education Service.* The Director, Education Service has the authority to affirm, reverse, or remand the original decision. In the case of such a review, the reviewing official's decision, other than a remand, shall become the final Department decision on the issue presented.

(c) *Notice of decision of Director, Education Service is required.* Notice of the reviewing official's decision will be provided to the interested parties and published in the **Federal Register**, in the same manner as is provided in § 21.4215(e) for decisions of the Director of the VA facility of jurisdiction, for the information of all concerned.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

17. The authority citation for part 21, subpart G, is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, unless otherwise noted.

§ 21.5130 [Amended]

18. In § 21.5130, paragraphs (b) and (c) are removed, and paragraphs (d), (e), (f), and (g) are redesignated as paragraphs (b), (c), (d), and (e), respectively.

19. In § 21.5200, the introductory text is amended by removing "in the same manner as they are applied in the

administration of chapters 34 and 36"; paragraph (h) is removed; paragraph (j) is redesignated as paragraph (h); and paragraph (i) is revised and paragraphs (j), (k), (l), (m), (n), and (o) are added, to read as follows:

§ 21.5200 Schools.

* * * * *

(i) Section 21.4210—Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(j) Section 21.4211—Composition, jurisdiction and duties of Committee on Educational Allowances.

(k) Section 21.4212—Referral to Committee on Educational Allowances.

(l) Section 21.4213—Notice of hearing by Committee on Educational Allowances.

(m) Section 21.4214—Hearing rules and procedures for Committee on Educational Allowances.

(n) Section 21.4215—Decision of Director of VA facility of jurisdiction.

(o) Section 21.4216—Review of decision of Director of VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

20. The authority citation for part 21, subpart K, is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

21. Section 21.7133 is revised to read as follows:

§ 21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

§ 21.7135 [Amended]

22. In § 21.7135, paragraph (i) introductory text and paragraph (i)(2) are amended by removing "§ 21.4207" and adding, in its place, "§ 21.4211 (d) and (g)"; and paragraphs (i)(1), (j)(1), and (k)(1) are amended by removing "§ 21.4134" wherever it appears, and adding, in its place, "§ 21.4210".

23. In § 21.7158, the section heading, paragraph (b)(2), and the authority citation for paragraph (b) are revised, to read as follows:

§ 21.7158 False, late, or missing reports.

* * * * *

(b) * * *

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

Subpart L—Educational Assistance for Members of the Selected Reserve

24. The authority citation for part 21, subpart L, is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

§ 21.7624 [Amended]

25. Section 21.7624(b) is amended by removing "21.4202(b)" and adding, in its place, "21.4210(b)".

26. Section 21.7633 is revised to read as follows:

§ 21.7633 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3690)

§ 21.7635 [Amended]

27. In § 21.7635, the introductory text of paragraph (e) is amended by removing "§ 21.4207 of this part", and adding, in its place, "§ 21.4211 (d) and (g)"; paragraph (e)(2) is amended by removing "§ 21.4207 of this part", and adding, in its place, "§ 21.4211 (d) and (g)"; and paragraphs (e)(1), (f)(1), and (g)(1) are amended by removing "§ 21.4134 of this part" wherever it appears, and adding, in its place, "§ 21.4210".

28. In § 21.7658, paragraph (b)(1) introductory text is amended by removing "negligent" and adding, in its place, "negligent."; paragraph (b)(1)(i) is amended by removing "institution of higher learning to report," and adding, in its place, "educational institution to report" and by removing "reservist," and adding, in its place, "reservist."; paragraph (b)(1)(ii) is amended by removing "§ 21.7644(b) of this part" and adding, in its place, "§ 21.7644(c)"; and the section heading, the heading of paragraph (b), and paragraph (b)(2) are revised to read as follows:

§ 21.7658 False, late, or missing reports.

* * * * *

(b) *Educational institution or training establishment.* * * *

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to reservists already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3690)

[FR Doc. 97-22876 Filed 8-27-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5883-9]

40 CFR Part 55

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Ventura County Air Pollution Control District (Ventura County APCD) is the designated COA. The intended effect of approving the OCS requirements for the above District, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before September 29, 1997.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A-93-16 Section XV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rules and copies of the document EPA is proposing to incorporate by reference are contained in Docket No. A-93-16 Section XV. This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A-93-16 Section XV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-93-16 Section XV, Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by a local air pollution control agency.

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.