

PART 3—ADJUDICATION**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

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

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

§ 3.317 [Amended]

■ 2. In § 3.317, paragraph (a)(1)(i) is amended by removing “December 31, 2006” and adding, in its place, “December 31, 2011”.

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DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 21**

RIN 2900–AM12

Transfer of Montgomery GI Bill-Active Duty Entitlement to Dependents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule amends Department of Veterans Affairs (VA) regulations to implement VA’s authority under the National Defense Authorization Act for Fiscal Year 2002 and the Bob Stump National Defense Authorization Act for Fiscal Year 2003 to provide educational assistance to dependents eligible for transferred Montgomery GI Bill-Active Duty (MGIB) entitlement. The legislation authorized the Department of Defense (DoD) to offer individuals in the Armed Forces, who have critical military skills, the option to transfer up to 18 months of their MGIB entitlement to their dependents as a reenlistment incentive. In addition, the rule implements a provision in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, which increased the maximum amount of benefits payable under DoD’s college fund program.

DATES: *Effective Date:* This final rule is effective December 18, 2006.

Applicability Dates. VA will apply the amendments in this final rule in accordance with the effective dates specified by Congress for the statutory changes. Therefore, the transfer of entitlement provisions of this rule will apply to individuals, who are eligible, on or after December 28, 2001, the date of enactment of the National Defense Authorization Act for Fiscal Year 2002. The provisions of this rule addressing the maximum monthly amount payable

under DoD’s college fund program will apply to individuals, who are eligible, on or after October 1, 1998, the date of enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. VA will apply the increased maximum college fund amount to individuals first entering the Armed Forces after September 30, 1998.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This document amends VA’s regulations set forth in 38 CFR part 21 concerning the MGIB program to implement provisions permitting the transfer of MGIB entitlement to dependents and to reflect the maximum amount of additional educational assistance payable under DoD’s college fund program.

I. Transfer of MGIB Entitlement

Section 654 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), added section 3020 to title 38, United States Code, authorizing DoD to permit certain individuals to transfer some of their MGIB entitlement to their dependents. The Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) amended 38 U.S.C. 3020 to clarify the rate of payment of educational assistance allowance to dependents in receipt of transferred entitlement. VA is amending its regulations to implement the provisions in 38 U.S.C. 3020 as described in this final-rule notice. Section 3020 authorizes the Secretary of each service department, or the Secretary of Defense with respect to the Coast Guard or the Secretary of Homeland Security when the Coast Guard is not operating as a service in the Navy, at such Secretary’s sole discretion, to permit a servicemember, who is entitled to MGIB, to transfer up to 18 months of his or her MGIB entitlement to his or her eligible dependents. The statute further provides the—

- Eligibility criteria for both the individual transferring the entitlement and the dependent;
- Limits on months of entitlement that may be transferred;
- Administrative provisions (including designations, revocations, and modifications of transferred entitlement); and
- Special provisions in the event of an overpayment of educational assistance allowance.

These statutory changes are being incorporated in VA’s existing

regulations governing the MGIB program by adding new 38 CFR 21.7080.

Since 38 U.S.C. 3020(h) provides that a dependent transferee has the same MGIB entitlement as the transferor, new 38 CFR 21.7080(a) lists the regulations in 38 CFR part 21 that apply to individuals in receipt of transferred entitlement.

As it is at the discretion of the Secretary concerned to approve transfer entitlement, and not every servicemember will be permitted to do so, VA must have some evidence of the approval prior to payment of benefits. Thus, § 21.7080(b) provides that VA will accept a copy of the reenlistment contract attachment (DD Form 2366–2) that DoD issues to individuals granted the transferability option or any other comparable document issued and signed by an appropriate service department official.

Section 3020 of title 38, United States Code, permits the transfer of entitlement to an approved servicemember’s child or children. A stepchild meets the definition of child for VA purposes if the stepchild is a member of the veteran’s household (38 U.S.C. 101(4); 38 CFR 3.57). Section 21.7080(c)(4) provides that a stepchild, who is a member of the servicemember’s household or who has maintained normal family ties while temporarily absent from the household, is an eligible transferee.

Section 3032(a)(1) of title 38, United States Code, places limitations on educational assistance for individuals who are on active duty. However, section 3020(h)(3)(A) specifically provides that these limitations do not apply to eligible dependents. Nonetheless, VA is not allowing an individual, who is eligible for the Selected Reserve “kicker,” to transfer the “kicker” to his or her dependent because there are no provisions in title 10, United States Code, that authorize such a transfer. The Selected Reserve kicker is an amount of money that DoD authorizes for certain Selected Reserve members under the authority of 10 U.S.C. 16131(i)(2) and is a benefit provided in addition to the amount otherwise payable under 38 U.S.C. 3015. Based on the lack of statutory authority in title 10, we will not include the transferor’s “Selected Reserve kicker” when determining the amount payable to a dependent under 38 CFR 21.7080(k). However, if the dependent is eligible for a Selected Reserve kicker based on his or her own Selected Reserve service, we will increase the MGIB educational assistance transferred to the dependent by the amount of the

kicker in accordance with 10 U.S.C. 16131(i)(2).

In 38 CFR 21.7080(l), we state that a dependent is not entitled to educational assistance for training pursued in an on-the-job training or apprenticeship program during periods the transferor is on active duty. This restriction implements 38 U.S.C. 3002(3), which provides that an authorized program of education for MGIB purposes includes on-the-job training or apprenticeship programs only for those individuals who are *not* on active duty.

Section 21.7080(n) addresses the maximum months of entitlement and concurrent receipt of educational assistance for a dependent, who is eligible for MGIB through his or her own military service and through transferred entitlement. Section 3033 of title 38, United States Code, does not bar an individual's receipt of MGIB benefits based on his or her own military service concurrently with educational assistance payable via transferred entitlement. We note that 38 U.S.C. 3695 limits the period of assistance (months of entitlement) when an individual is entitled to educational assistance under two or more programs. However, this limitation does not apply when the individual is entitled to MGIB educational assistance through transferred entitlement and MGIB educational assistance based on the individual's own military service because the benefits are provided under one program (38 U.S.C. chapter 30).

Section 3020(h)(4) of title 38, United States Code, provides that the death of the transferor will not affect the transferee's entitlement. Section 21.7050(h)(2) and (i)(2) provide that the ending date of eligibility for dependents of a transferor, who dies on active duty without specifying an eligibility termination date, is 10 years from the date of the transferor's death. This is consistent with the generally applicable eligibility period of 10 years following the date of discharge or release from active duty. Regardless, a dependent child's eligibility will end at age 26 in accordance with 38 U.S.C. 3020(h)(5), even if the 10-year period has not expired.

II. Increased Maximum Amount of DoD College Fund "Kicker"

Effective October 1, 1998, the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) amended 38 U.S.C. 3015 to increase the maximum amount payable under DoD's college fund program for certain individuals, who first become members of the Armed Forces after September 30, 1998. The

Secretary concerned determines the amount of the college fund payment to these individuals. VA is updating its regulations, 38 CFR 21.7136, to include this increase.

In updating § 21.7136, VA is also correcting an earlier technical oversight that failed to set forth the maximum amount payable under the DoD college fund program. This oversight has not harmed those eligible for the increased college fund because VA, regardless of the regulatory error, has been paying educational assistance that includes the maximum college fund when appropriate and as authorized by DoD. For clarity, VA is further amending 38 CFR 21.7137(b) to provide that if there is no cost for a course, educational assistance is not payable. Section 3032(a) of title 38, United States Code, provides that the amount of educational assistance payable to an active duty servicemember or an individual training at less than ½-time is the lesser of the rate otherwise payable or the cost of the tuition and fees. Consequently, if there is no cost, nothing is payable.

We are also amending 38 CFR 21.7137 to remove paragraph (d). Public Law 105-261 amended 38 U.S.C. 3015(d) to authorize the service departments to increase the basic MGIB educational assistance allowance to \$950 per month for certain individuals, who first became members of the Armed Forces on or after October 1, 1998. Currently only those individuals, who meet the requirements of 38 U.S.C. 3011(a)(1)(B) or (C), or 3012(a)(1)(B) or (C), are eligible for the enhanced educational assistance rates set forth in current § 21.7137. Such rates may be awarded at the discretion of the Secretary of the service department concerned. However, these individuals, who meet the requirements of 38 U.S.C. 3011(a)(1)(B) or (C), or 3012(a)(1)(B) or (C), first became members of the Armed Forces *before* July 1, 1985, and thus do not qualify for the additional amount provided in 38 U.S.C. 3015(d), as amended by Public Law 105-261. Prior to the enactment of Public Law 105-261, the law did not proscribe these additional payments to certain individuals, who had prior service or who entered the Armed Forces before October 1, 1998. Nonetheless, the service departments did not offer the additional payments to individuals who entered the Armed Forces before July 1, 1985. VA is removing paragraph (d) of § 21.7137 because the statutory amendment only applies to service on or after October 1, 1998, and because the service departments never provided the additional payment to any individual who entered service before that date.

III. Clerical Changes, Revisions for Clarity or Simplification of Application

We are amending 38 CFR 21.7131(h) and 38 CFR 21.7135(p)(1) to remove cross references to former 38 CFR 21.7139(e), (f), and (g).

We are amending 38 CFR 21.7135(a)(2) by adding the words "his or her" before "program of education."

We are amending 38 CFR 21.7138(c)(1) to provide the correct cross-reference to § 21.7136.

We are amending 38 CFR 21.7139(b) and (c) by combining them into new § 21.7137(b) for purposes of simplification. In addition, we are amending several cross references in § 21.7139 because of revisions in §§ 21.7136 and 21.7137.

Administrative Procedure Act

Changes to 38 CFR part 21 are being published without regard to the notice-and-comment and delayed-effective-date provisions of 5 U.S.C. 553 because they conform VA's existing rules to statutory amendments. Accordingly, these changes involve procedural and interpretive rules 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 "significant regulatory action," requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy

implications of this final rule have been examined and it has been determined that it is a significant regulatory action under the Executive Order because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Paperwork Reduction Act

The filing requirements in new 38 CFR 21.7080(b), (e), (g), and (h) are not considered collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–321) because they apply to less than 10 persons within any 12-month period.

The filings information referenced in § 21.7080(b) is a one-time submission to establish that the transferor was approved by a service department to participate in the transferability program. The collection in § 21.7080(e) is generally a one-time collection.

The filings information referenced in paragraphs (g) and (h) of § 21.7080 apply to modifications and revocations of the transferor's designation of transfer. Although early in the program, VA has not received any modification or revocation requests.

Due to the small universe of servicemembers approved to transfer entitlement and the low volume of dependents who have requested educational assistance via transferred entitlement since the program began, and the varying ages of the transferor's children, VA does not anticipate collecting information from 10 or more persons in any year under any of the above mentioned paragraphs of § 21.7080.

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 developing any rule that may result in an 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 given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

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.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance number and title for the program affected by this final rule is 64.124, All-Volunteer Force 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: September 8, 2006.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21, subpart K, as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

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

■ 1. The authority citation for part 21, subpart K continues to read as follows:

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

■ 2. Amend § 21.7020 to revise paragraph (b)(9)(i) and to add paragraphs (b)(58) and (b)(59) immediately following the authority citation at the end of paragraph (b)(57), to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(9) * * *

(i) A spouse as defined in § 3.50(a) of this chapter,

* * * * *

(58) *Transferor.* The term *transferor* means an individual, who is—

(i) Entitled to educational assistance under the Montgomery GI Bill—Active

Duty program based on his or her own active duty service; and

(ii) Approved by the service department to transfer a portion of his or her entitlement to his or her dependent or dependents.

(Authority: 38 U.S.C. 3020)

(59) *Transferee.* The term *transferee* means an individual to whom entitlement has been transferred.

(Authority: 38 U.S.C. 3020)

■ 3. Amend § 21.7050 to add paragraphs (h) and (i) immediately after the authority citation at the end of paragraph (g), to read as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(h) *Time limitation for a spouse eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(i) *Time limitation for a child eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080 is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the

period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(Authority: 38 U.S.C. 3020)

■ 4. An undesignated center heading and § 21.7080 are added to read as follows:

Transfer of Entitlement to Basic Educational Assistance to Dependents

§ 21.7080 Transfer of entitlement.

An individual entitled to educational assistance under the Montgomery GI Bill—Active Duty (38 U.S.C. chapter 30) program based on his or her own active duty service, and who is approved by a service department to transfer a portion of his or her entitlement, may transfer up to a total of 18 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available.

(a) *Application of sections in subpart K to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.7020—Definitions.

(Authority: 38 U.S.C. 3020)

(2) *Claims and Applications.* Section 21.7030—Applications, claims, and time limits.

(Authority: 38 U.S.C. 3020)

(3) *Eligibility.* (i) Section 21.7050—Ending dates of eligibility, only paragraphs (h) and (i); and

(ii) Section 21.7051—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke transfer at

any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3020)

(4) *Entitlement.* (i) Section 21.7070—Entitlement;

(ii) Section 21.7075—Entitlement to tuition assistance top-up; and

(iii) Section 21.7076—Entitlement charges.

(Authority: 38 U.S.C. 3020)

(5) *Counseling.* (i) Section 21.7100—Counseling; and

(ii) Section 21.7103—Travel expenses.

(Authority: 38 U.S.C. 3020)

(6) *Programs of Education.* (i) Section 21.7110—Selection of program of education;

(ii) Section 21.7112—Programs of education combining two or more types of courses; and

(iii) Section 21.7114—Change of program.

(Authority: 38 U.S.C. 3020)

(7) *Courses.* (i) Section 21.7120—Courses included in programs of education;

(ii) Section 21.7122—Courses precluded; and

(iii) Section 21.7124—Overcharges.

(Authority: 38 U.S.C. 3020)

(8) *Payments—Educational Assistance.* (i) Section 21.7130—Educational Assistance;

(ii) Section 21.7131—Commencing dates, except for paragraphs (d), (g), (l), (m), (n), (o), and (p) of § 21.7131;

(iii) Section 21.7133—Suspension or discontinuance of payments;

(iv) Section 21.7135—Discontinuance dates, except for paragraphs (q), (s) and (u) of § 21.7135;

(v) Section 21.7139—Conditions which result in reduced rates or no payment, except for paragraph (c) of § 21.7139. VA will apply the rules in paragraph (d) of § 21.7139 to dependents, who are on active duty;

(vi) Section 21.7140—Certifications and release of payments;

(vii) Section 21.7141—Tutorial assistance;

(viii) Section 21.7142—Accelerated payments;

(ix) Section 21.7143—Nonduplication of educational assistance; and

(x) Section 21.7144—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent.

(Authority: 38 U.S.C. 3020)

(9) *Pursuit of courses.* (i) Section 21.7150—Pursuit;

(ii) Section 21.7151—Advance payment and accelerated payment certifications;

(iii) Section 21.7152—Certification of enrollment;

(iv) Section 21.7153—Progress and conduct;

(v) Section 21.7154—Pursuit and absences;

(vi) Section 21.7156—Other required reports;

(vii) Section 21.7158—False, late, or missing reports; and

(viii) Section 21.7159—Reporting fee.

(Authority: 38 U.S.C. 3020)

(10) *Course Assessment.* (i) Section 21.7170—Course measurement; and

(ii) Section 21.7172—Measurement of concurrent enrollments.

(Authority: 38 U.S.C. 3020)

(11) *State approving agencies.* Section 21.7200—State approving agencies.

(Authority: 38 U.S.C. 3020)

(12) *Approval of courses.* (i) Section 21.7220—Course approval; and

(ii) Section 21.7222—Courses and enrollments which may not be approved.

(Authority: 38 U.S.C. 3020)

(13) *Administrative.* (i) Section 21.7301—Delegations of authority; (ii) Section 21.7302—Finality of decisions;

(iii) Section 21.7303—Revision of decisions;

(iv) Section 21.7305—Conflicting interests;

(v) Section 21.7307—Examination of records;

(vi) Section 21.7310—Civil rights; and (vii) Section 21.7320—Procedural protection; reduction following loss of dependent.

(Authority: 38 U.S.C. 3020)

(b) *Proof of transfer of entitlement option.* An individual transferring entitlement, or the dependent to whom entitlement is transferred, must submit to VA—

(1) A copy of DD Form 2366–2, entitled “Montgomery GI Bill Act of 1984 (MGIB) Transferability Program”; or

(2) Any other document issued and signed by the transferor's service department that shows the transferor is authorized to transfer entitlement.

(Authority: 38 U.S.C. 3020)

(c) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to—

(i) The individual's spouse;

(ii) One or more of the individual's children; or

(iii) A combination of the individuals referred to in paragraphs (c)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter.

(3) A child must meet the definition of child in § 3.57 of this chapter. The transferor must make the required designation shown in § 21.7080(e)(1) before the child attains age 23.

(4) A stepchild, who meets VA's definition of child in § 3.57 of this chapter and is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3020)

(d) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her service department to transfer entitlement may do so at any time after such approval up until the transferor's ending date of eligibility as determined under § 21.7050.

(Authority: 38 U.S.C. 3020)

(e) *Designating dependents, designating the amount to transfer, and period of transfer.* (1) An individual transferring entitlement under this section must—

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on a copy of DD Form 2366-2, Montgomery GI Bill Act of 1984 Transferability Program, or on any document signed by the transferor that shows the information required in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(Authority: 38 U.S.C. 3020)

(f) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of—

(i) Eighteen months of his or her entitlement; or

(ii) The amount of entitlement he or she has available.

(2) Subject to the limitations in paragraph (f)(1) of this section, the transferor may transfer up to the maximum amount of transferable entitlement—

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3020)

(g) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the service department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3020)

(h) *Modifying a transfer of entitlement.* (1) A transferor may modify the designations he or she made under paragraph (e) of this section at any time. Any modification made will apply only to any unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the service department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3020)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by the dependents.

(Authority: 38 U.S.C. 3020)

(j) *Secondary school diploma (or equivalency certificate).* Children, who have attained age 18, and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3020)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.7136 or § 21.7137 (and the rules in § 21.7138 when applicable) to determine

the educational assistance rate that would apply to the transferor. VA will pay the dependent the monthly rate of educational assistance that would be payable to the transferor except that VA will—

(1) Exclude the transferor's kicker for service in the Selected Reserve (§§ 21.7136(g) and 21.7137(e)) if the transferor is eligible for such kicker;

(2) Include the dependent's Selected Reserve kicker, if the dependent is eligible for a kicker from the Selected Reserve based on the dependent's own Selected Reserve service; and

(3) Disregard the fact that either the transferor or the dependent is on (or both are on) active duty and pay the veteran rate rather than the rate applicable to individuals on active duty.

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3020(h))

(l) *Restriction on payment of educational assistance to a dependent pursuing an on-the-job training or apprenticeship program while transferor is on active duty.* A dependent is not entitled to educational assistance for training pursued in an on-the-job training or apprenticeship program during periods the transferor is on active duty.

(Authority: 38 U.S.C. 3002(3), 3020(h))

(m) *Transferor fails to complete required service contract that afforded participation in the transferability program.* (1) The dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of active duty service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless the transferor did not complete the active duty service due to—

(i) His or her death;

(ii) A service-connected disability;

(iii) A medical condition which preexisted such service on active duty and which the Secretary of VA determines is not service-connected;

(iv) A hardship; or

(v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct, but that did interfere with the individual's performance of duty, as determined by the Secretary of each service department.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraphs (m)(1)(i) through (v) of this section.

(Authority: 38 U.S.C. 3020, 38 U.S.C. 3011(a)(1)(A)(ii))

(n) Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 30 based on his or her own active duty service. Dependents eligible for payment of educational assistance through transferred entitlement and who are eligible for payment under 38 U.S.C. chapter 30 based on their own active service—

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course.

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 30 as long as the only educational assistance paid is under 38 U.S.C. chapter 30. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 30), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3020, 3033, 3034(a), 3695)

■ 5. Amend § 21.7131 to revise paragraph (h) introductory text and to add new paragraphs (r) and (s) immediately after the authority citation at the end of paragraph (q), to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(h) *Individuals in a penal institution.* If a veteran or a servicemember is paid a reduced rate of educational assistance under § 21.7139 (c) and (d) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

* * * * *

(r) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.7080, the commencing date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3020)

(s) *Child eligible for transferred entitlement.* If a child is eligible for

transferred entitlement under § 21.7080, the commencing date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in § 3.50(a) of this chapter;

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3020)

■ 6. Amend § 21.7135 to revise paragraphs (a)(2), (p)(1), and (r) and to add new paragraphs (dd) through (ii) immediately after the authority citation at the end of paragraph (cc), to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(a) * * *

(2) In all other cases if the veteran or servicemember dies while pursuing his or her program of education, the discontinuance date of educational assistance shall be the last date of attendance.

* * * * *

(p) * * * (1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7139 (c) and (d).

* * * * *

(r) *Record-purpose charge against entitlement under 38 U.S.C. chapter 34 equals entitlement that remained on December 31, 1989.* An individual, who is receiving basic educational assistance at the rates stated in § 21.7137(a), will have his or her award reduced to the rates found in § 21.7136(a) effective the date the total of the individual's record-purpose charges against his or her entitlement under 38 U.S.C. chapter 34 equals the entitlement to that benefit which the individual had on December 31, 1989.

(Authority: 38 U.S.C. 30159(c); Pub. L. 98-525)

* * * * *

(dd) *Dependent exhausts transferred entitlement.* The discontinuance date of an award of educational assistance to a dependent, who exhausts the entitlement transferred to him or her is

the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3020)

(ee) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of entitlement, the dependent's date of discontinuance is the effective date of the revocation of transfer as determined under § 21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(ff) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement to educational assistance; and

(2) The service department discharges the transferor for a reason other than one of the reasons stated in § 21.7080(m)(1).

(Authority: 38 U.S.C. 3020)

(gg) *Spouse eligible for transferred entitlement and transferor divorce.* If a spouse eligible for transferred entitlement and the transferor divorce, the spouse's discontinuance date is the date of the divorce.

(Authority: 38 U.S.C. 101(31), 103, 3020)

(hh) *Child eligible for transferred entitlement marries.* If a child eligible for transferred entitlement marries, the date of discontinuance is the date the child marries.

(Authority: 38 U.S.C. 101(4), 3020)

(ii) *Stepchild eligible for transferred entitlement no longer member of transferor's household.* If a stepchild eligible for transferred entitlement ceases to be a member of the transferor's household, the date of discontinuance is the date the stepchild was no longer a member of the transferor's household. See § 21.7080(c)(4).

(Authority: 38 U.S.C. 101(4), 3020)

■ 7. Section 21.7136 is amended by:

■ a. Revising paragraphs (d)(1) and (d)(2) introductory texts;

■ b. Redesignating paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) as paragraphs (d)(4), (d)(5), (d)(7), and (d)(8), respectively.

■ c. Adding new paragraphs (d)(3) and (d)(6).

■ d. Revising newly designated paragraph (d)(5) introductory text.

■ e. Revising paragraphs (e)(1) and (e)(2), and removing paragraph (e)(3).

■ f. Revising paragraphs (g)(1) introductory text, (g)(1)(i) and (g)(2)(ii).

■ g. Revising paragraphs (h)(1) introductory text, (h)(2)(i) through (iii), and (h)(3).

The revisions and additions read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(d) * * *

(1) For individuals, who first become members of the Armed Forces before November 29, 1989, (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training) it may not exceed:

* * * * *

(2) For individuals, who become members of the Armed Forces during the period beginning November 29, 1989 and ending September 30, 1998 (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training), it may not exceed:

* * * * *

(3) For individuals, who first become members of the Armed Forces after September 30, 1998, (other than those pursuing apprenticeship or other on-job training), it may not exceed:

- (i) \$950.00 per month for full-time training,
- (ii) \$712.50 per month for three-quarter-time training,
- (iii) \$475.00 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or
- (iv) \$237.50 per month for one-quarter-time training or less.

(Authority: 38 U.S.C. 3015, 3032)

* * * * *

(5) For individuals, who first become members of the Armed Forces during the period beginning November 29, 1989 and ending September 30, 1998, and, who are pursuing an apprenticeship or other on-job training, it may not exceed:

* * * * *

(6) For individuals, who first become members of the Armed Forces after September 30, 1998, and who are pursuing apprenticeship or other on-job training, it may not exceed:

- (v) \$712.50 per month during the first 6 months of training,
- (vi) \$522.50 per month during the second 6 months of training, or
- (vii) \$332.50 per month during the remaining months of training.

(Authority: 38 U.S.C. 3015, 3032)

* * * * *

(e) * * *

(1) The monthly rate stated in either paragraph (b) or (c) of this section (as

determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (d) or (f) of this section, or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

(Authority: 38 U.S.C. 3015, 3032)

* * * * *

(g) *Increase ("kicker") in basic educational assistance rates payable for service in the Selected Reserve.* (1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase ("kicker") is payable to an individual, who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for education under §§ 21.7042(a), 21.7045, or 21.7080; and

* * * * *

(2) * * * (ii) May set the amount of the increase ("kicker") payable, for an individual pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

* * * * *

(h) * * *

(1) VA will increase the monthly rate provided in paragraphs (b)(1) through (b)(4) and (c)(1) through (c)(4) of this section by:

* * * * *

(2) * * *

(i) During the first 6 months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraphs (b)(5) through (b)(8) and (c)(5) through (c)(8) of this section by \$3.75 for every \$20 the individual contributed;

(ii) During the second 6 months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraphs (b)(5) through (b)(8) and (c)(5) through (c)(8) of this section by \$2.75 for every \$20 the individual contributed; and

(iii) During the remaining months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraphs (b)(5) through (b)(8) and (c)(5) through (c)(8) of this section by \$1.75 for every \$20 the individual contributed.

(3) VA will increase the monthly rate provided in paragraphs (b)(9) or (c)(9) of

this section by \$5 for every \$20 the veteran has contributed.

(Authority: 38 U.S.C. 3015(g))

- 8. Section 21.7137 is amended by:
 - a. Revising paragraph (b) introductory text and paragraph (b)(2).
 - b. Removing paragraph (d).
 - c. Redesignating paragraph (e), (f), and (g) as (d), (e), and (f), respectively.
 - d. Revising newly designated paragraphs (d)(1) introductory text and (d)(1)(i).

The revisions read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

* * * * *

(b) * * * Except as provided in paragraph (d) of this section, the monthly rate of basic educational assistance for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

* * * * *

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

* * * * *

(d) *Increase ("kicker") in basic educational assistance rates for service in the Selected Reserve.* (1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraphs (a), (b), or (c) of this section, as appropriate. The increase ("kicker") is payable to an individual who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for educational assistance under § 21.7044(a) or § 21.7080;

* * * * *

■ 9. Amend § 21.7138 to revise paragraph (c)(1) to read as follows:

§ 21.7138 Rates of supplemental educational assistance.

* * * * *

(c) * * *

(1) The monthly rate of the veteran's or servicemember's basic educational assistance determined as provided in §§ 21.7136(e) and 21.7137(b), (c) and (d) of this part.

* * * * *

- 10. Section 21.7139 is amended by:
 - a. Removing paragraph (b).
 - b. Redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (b), (c), (d), (e), and (f) respectively.
 - c. In newly designated paragraph (b), revising the paragraph heading and introductory text.

■ d. Revising newly designated paragraphs (c)(2)(iii), (d)(3)(iii), (f)(1)(i), and (f)(1)(ii).

The revisions read as follows:

§ 21.7139 Conditions that result in reduced rates or no payment.

* * * * *

(b) *No educational assistance for some incarcerated veterans or servicemembers.* VA will pay no educational assistance to a veteran or servicemember, who—

* * * * *

(c) * * *

(2) * * *

(iii) The monthly rate found in § 21.7136(e) or § 21.7137(c), as appropriate.

* * * * *

(d) * * *

(3) * * *

(iii) The monthly rate determined by § 21.7136(e) or § 21.7137(b), as appropriate, plus the monthly rate stated in § 21.7138(c) if the veteran is entitled to supplemental educational assistance.

* * * * *

(f) * * *

(1) * * *

(i) The rates specified in §§ 21.7136(b)(5) through (b)(8), (c)(5) through (c)(8), (d)(4) through (d)(6), (f)(4) and (h)(2) and 21.7137(a)(5) through (a)(8); and

(ii) Any increase (“kicker”) set by the Secretary of the service department concerned as described in §§ 21.7136(g) and 21.7137(d).

* * * * *

[FR Doc. E6-21525 Filed 12-15-06; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

Shippers—General Requirements for Shipments and Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of October 1, 2005, on page 584, § 173.302a is corrected by reinstating the second sentence of paragraph (d) to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

* * * * *

(d) * * * The maximum filling density of the diborane may not exceed 7 percent. * * *

* * * * *

[FR Doc. 06-55531 Filed 12-15-06; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039-6332-38; I.D. 110806D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; extension of temporary area and gear restrictions.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces the extension of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan’s (ALWTRP) implementing regulations. These restrictions will continue to apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,809 nm² (6,204 km²), east of Portland, Maine, for an additional 15 days. The purpose of this action is to provide immediate protection to an aggregation of Northern right whales (right whales).

DATES: This notice extends the restricted period from 0001 hours December 18, 2006, through 2400 hours January 1, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at <http://www.nero.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP’s DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40°00’ N. lat. to protect right whales. Under the DAM program, NMFS may: (1) Require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to