

# **PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 3. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In § 135.128, amend paragraph (a)(2)(ii)(D) to read as follows:

## **§ 135.128 Use of safety belts and child restraint systems**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(D) Except as provided in § 135.128(a)(2)(ii)(C)(3) and § 135.128(a)(2)(ii)(C)(4), booster-type child restraint systems (as defined in Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

\* \* \* \* \*

Issued in Washington, DC on September 29, 2006.

**Brenda D. Courtney,**

*Acting Director, Office of Rulemaking.*

[FR Doc. E6–16622 Filed 10–6–06; 8:45 am]

**BILLING CODE 4910–13–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

#### **21 CFR Part 520**

#### **Oral Dosage Form New Animal Drugs; Omeprazole**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for administration of omeprazole paste to horses for 8 or 28 days for the prevention of gastric ulcers.

**DATES:** This rule is effective October 10, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: [melanie.berson@fda.hhs.gov](mailto:melanie.berson@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 141–227 for ULCERGARD (omeprazole) Paste. The supplemental application provides for administration of omeprazole paste to horses for 8 or 28 days for the prevention of gastric ulcers. The supplemental NADA is approved as of September 15, 2006, and 21 CFR 520.1615 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning September 15, 2006.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a rule of “particular applicability.” Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

#### **List of Subjects in 21 CFR Part 520**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

#### **PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS**

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### **§ 520.1615 Omeprazole.**

■ 2. In paragraph (d)(1)(ii) of § 520.1615, at the end of the first sentence remove “for up to 28 days” and add in its place “for 8 or 28 days”.

Dated: September 27, 2006.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*  
[FR Doc. E6–16604 Filed 10–6–06; 8:45 am]

**BILLING CODE 4160–01–S**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

[DOD–2006–OS–0134; RIN 0790–AG91]

#### **32 CFR Part 284**

#### **Waiver Procedures for Debts Resulting from Erroneous Payments of Pay and Allowances**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule implements policy and prescribes procedures for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General’s authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General’s former duties within the Department of Defense with little impact on the public.

**DATES:** *Effective Date:* October 10, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael Hipple, 703–696–8510.

#### **SUPPLEMENTARY INFORMATION:**

On Thursday, November 14, 2002 (67 FR 68964), the Department of Defense published 32 CFR part 284 along with parts 281, 282, and 283 as proposed rules with request for public comments.

No public comments were received on part 284. Numerous comments, however, were received from the DoD components on the appropriate format, syntax, and in some instances, the substance of the final regulation. None of the possibly substantive changes negatively impact individual applicants. The changes deal mostly with internal government organization or process. However, the redesign of the regulation, and its coordination throughout DoD, was time consuming.

In consideration of the various internal comments that were offered, the final rule modifies the proposed rule as follows:

(1) The functional process for obtaining a waiver is now contained in the appendices of the regulation rather than being intermingled with such internal matters as purpose, policy and responsibilities. Accordingly, subparts 284.6 through 284.12 were eliminated, and the content of these former subparts is now contained in Appendix A to part 284 (Overview of Waiver Application Process). The word “and functions” was deleted from the heading of 284.5. The other appendices were re-labeled to reflect that there is a new Appendix A (e.g., former Appendix A is now Appendix B, etc.).

(2) Technical changes include the deletion of the word “Instruction” where it appears and the substitution of the word “part.” While Part 284 is the same regulation as DoD Instruction 1340.23, the word “Instruction” is not used in the **Federal Register** format. The underlining of statutory citations is deleted, and underlines are now used to differentiate separate processes and concepts. Numbers less than 10 are spelled out rather than written as a number; e.g., “Three” has been substituted for “3.”

(3) The overall format was changed to provide for a more distinct, and less verbose, paragraph style. The bulk of the modifications involve simpler sentence structures and word reduction. For example, in Appendix B (Standards for Waiver Determinations), paragraph A.1, the words “In other words,” were deleted from the beginning of the third sentence which now reads: “If a benefit is bestowed by mistake, no matter how careless the act of the Government may have been, the recipient must make restitution.” The phrase “In other words,” added nothing to the meaning of the standard. Another example is the deletion of “strict conformity,” and the substitution of “compliance,” from the definition of “Erroneous Payment” in Subpart 284.3 (*Erroneous Payment*. A payment that is not in compliance with applicable laws or regulations.) Other

examples include the deletion of words like “therefore” and the splitting of larger sentences into multiple, smaller ones. Examples are found throughout the entire document and are too numerous to detail each instance.

(4) Changes that could be considered as substantive are as follows:

(a) Subpart 284.2(b) was revised to include references to agreements between DoD and the departments and agencies that involve the “non-DoD Components” that are impacted by the regulation. The substance of former Subpart 284.2(b) is now found at Subpart 284.2(c), and is contained in a more succinct form.

(b) The definition of “Uniformed Services” was eliminated from Subpart 284.3 because it is defined by statute.

(c) The words “of Uniformed Service personnel” were added for clarification purposes to make it clear that the regulation only pertained to the debts of uniformed service members and not to those of civilian employees working under the Heads of the Non-DoD Components. See Subpart 284.5(d) and Appendix D paragraph C.1.i. The General Accounting Office Act of 1996 and the subsequent delegation of the Director, Office of Management and Budget to the Secretary of Defense affected only uniformed service personnel of the non-DoD Components. Part 284 was never intended to affect the civilian employees of the heads of the Non-DoD Components. The only civilian employees affected by this regulation are those within the Department of Defense.

(d) The reference to the Director, Department of Defense Dependent Schools (DoDDS) was struck and replaced with the Director, Department of Defense Education Activity (DoDEA) to assure that all elements within DoDEA were included.

(e) An additional responsibility for DoD Components is added. DoD Components must also ensure that, if applicable, the submission and filing of waiver applications/appeals also satisfy the requirements of 5 U.S.C. 552a. See Appendix A, paragraph B and E.

(f) The requirement that an applicant include his social security number to DOHA was eliminated, and is now only required if the component concerned requires such information as part of its procedures. See Appendix C, paragraph C.3 and Appendix F, paragraph C.3.

(g) For clarification purposes, the date of discovery of an overpayment is further defined by adding the following sentence to Appendix C, paragraph F: “The date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has

been made.” This language is consistent with the explanation provided in the decisions of the Defense Office of Hearings and Appeals and the Comptroller General.

#### **Executive Order 12866, “Regulatory Planning and Review”**

It has been determined that 32 CFR Part 284 is not economically significant regulatory actions and will not significantly affect a substantial number of small entities.

#### **Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)**

It has been certified that 32 CFR part 284 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified that 32 CFR Part 284 is not subject to the “Regulatory Flexibility Act” (5 U.S.C. 601) because, if promulgated, they would not have a significant economic impact on a substantial number of small entities. These rules affect members of the Uniformed Services, Federal employees and transportation carriers. 32 CFR Part 284 establishes policies and provide procedures for considering applications for waiver of debts resulting from erroneous pay and allowances to or on behalf of members and civilian DoD employees.

#### **Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been certified that these parts do not impose any reporting or record-keeping requirements under the Paperwork Reduction Act of 1995.

#### **Executive Order 13132, “Federalism”**

It has been certified that these parts do not have federalism implications, as set forth in Executive Order 13132. These parts do not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among various levels of government.

#### **List of Subjects in 32 CFR Part 284**

Administrative practice and procedure, Armed Forces, Waivers.

■ Accordingly, 32 CFR part 284 is added to read as follows:

## **PART 284—WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES**

### **Sec.**

284.1 Purpose.

284.2 Applicability and scope.

284.3 Definitions.

284.4 Policy.

284.5 Responsibilities.

Appendix A to part 284—Overview of Waiver Application Process.

Appendix B to part 284—Standards for Waiver Determinations.

Appendix C to part 284—Submitting a Waiver Application.

Appendix D to part 284—Processing a Waiver Application When the Debt is \$1,500 or Less.

Appendix E to part 284—Processing a Waiver Application When the Debt is More than \$1,500.

Appendix F to part 284—Appeals.

**Authority:** 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

### **§ 284.1 Purpose.**

This part implements policy under 32 CFR part 283 and prescribes procedures for considering waiver applications under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

### **§ 284.2 Applicability and Scope.**

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the “DoD Components”).

(b) The Coast Guard, when it is not operating as a Service in the Navy under agreement with the Department of Homeland Security, the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA) under agreements with the Departments of Health and Human Services and Commerce, respectively (hereafter referred to collectively as the “non-DoD Components”).

(c) Certain functions for considering waiver applications that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense.

### **§ 284.3 Definitions.**

**Committee.** The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

**Component Concerned.** The agency/ activity (as well as the official designated by the Head of the agency/ activity) required to perform the function or take the action indicated or that notifies the individual of the debt that is the subject of a waiver application.

**Debt.** An amount an individual owes the Government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

**Employee.** A person who is or was an officer or employee as defined in 5 U.S.C. 2104 and 2105.

**Erroneous Payment.** A payment that is not in compliance with applicable laws or regulations.

**Final Action.** A finding by the appropriate official under this part concerning a waiver application from which there is no right to appeal or request reconsideration, or for which the time limit prescribed in this part for submitting an appeal or request for reconsideration has expired without such a submission.

**Member.** A member or former member of the Uniformed Services.

**Waiver Application.** A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

### **§ 284.4 Policy.**

It is DoD policy under 32 CFR part 283 that waiver applications for debts resulting from erroneous payments of pay and allowances (hereafter referred to as “waiver applications”) be processed according to all pertinent statutes, regulations, and other relevant authorities.

### **§ 284.5 Responsibilities.**

(a) The *General Counsel of the Department of Defense* (GC, DoD) or designee shall consult on, or render opinions concerning, questions of law or equity that arise in the course of the performance of the Director, Defense Office of Hearings and Appeals’ (DOHA) responsibilities under paragraph (b) of this section when requested by the Director.

(b) The *Director, Defense Office of Hearings and Appeals* or designee, under the GC, DoD (as the Director, Defense Legal Services Agency), shall:

(1) Deny or grant all or part of a waiver application, if the aggregate amount of the debt is more than \$1,500.

(2) Consider an appeal of an initial determination and affirm, modify, reverse, or remand the initial determination, according to this part and relevant GC, DoD opinions.

(3) Process waiver applications and appeals according to this part.

(c) The Heads of the DoD Components or designee shall process waiver applications according to this part.

(d) The *Heads of the Non-DoD Components* or designee concerning debts of Uniformed Services personnel resulting from the Component’s activity; the *Director, Department of Defense Education Activity* (DoDEA) or designee, concerning debts of civilian employees resulting from that Component’s activity; the *Director, National Security Agency* (NSA) or designee, concerning debts resulting from that Component’s activity; and the *Director, Defense Finance and Accounting Service* (DFAS) or designee, under the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), concerning debts resulting from all other DoD Components’ activities shall:

(1) Deny or grant all or part of a waiver application, if the aggregate amount of the debt is \$1,500 or less.

(2) If the aggregate amount of the debt is more than \$1,500:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that part or all of the application be granted, according to this part.

(3) Process waiver applications, when the aggregate amount of the debt is more than \$1,500, and appeals according to this part.

(4) Resolve a debt according to the final action that results from the waiver application process provided for in this part.

## **Appendix A to Part 284—Overview of Waiver Application Process**

### **A. Standards for Waiver Determinations**

The standards that must be applied in determining whether all or part of a waiver application should be granted or denied are at Appendix B to this part.

### **B. Submitting a Waiver Application**

The DoD Components shall ensure, if applicable, the submission and filing of waiver applications/appeals satisfy the requirements of 5 U.S.C. 552a. The procedures an applicant must follow to submit a waiver application are at Appendix C to this part.

### **C. Processing A Waiver Application When The Debt Is \$1,500 Or Less**

The procedures a DoD Component must follow in processing a waiver application

when the debt is \$1,500 or less are at Appendix D to this part.<sup>1</sup>

#### **D. Processing a Waiver Application When the Debt Is More Than \$1,500**

The procedures a DoD Component must follow in processing a waiver application when the debt is more than \$1,500 are at Appendix E to this part.

#### **E. Appeals**

The DoD Components shall ensure, if applicable, the submission and filing of waiver applications/appeals satisfy the requirements of 5 U.S.C. 552 and 552a. The procedures for appealing initial determinations are at Appendix F to this part.

#### **F. Refund of Repaid Debts That Are Subsequently Waived**

When a final action waives all or part of a debt that has been repaid, the waiver application shall be interpreted as an application for a refund and the Component concerned shall, to the extent of the waiver, refund the amount repaid.

#### **G. Publication**

The Director, DOHA or designee shall make redacted copies of responses to requests for reconsideration available for public inspection and copying at the DOHA's public reading room and on the worldwide web according to 5 U.S.C. 552 and 552a.

### **Appendix B to Part 284—Standards for Waiver Determinations**

#### **A. Standards**

1. Generally, persons who receive a payment erroneously from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the Government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. However, 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584 provide authority to waive, under certain conditions debts individuals owe the Government that are the result of erroneous payments of pay and allowances (including travel and transportation allowances). A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

2. Debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. There must be no indication the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

3. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting a waiver.

4. A waiver usually is not appropriate when a recipient knows, or reasonably

should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

5. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

6. A waiver may be inappropriate in cases where a recipient questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the recipient knew or reasonably should have known that the advice was erroneous.

7. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

8. Waiver determinations under these standards depend on the facts in each case.

### **Appendix C to Part 284—Submitting a Waiver Application**

#### **A. Who May Apply for Waiver**

Any person ("applicant") from whom collection is sought for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) may submit a waiver application under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584. Additionally, an authorized official of the Component concerned, or the Director, DOHA or designee may initiate a waiver application during the processing of a claim under 32 CFR part 281.

#### **B. Where To Submit A Waiver Application**

An applicant must submit a waiver application to the Component concerned according to the guidance provided by that Component. A waiver application submitted somewhere other than to the Component concerned does not stop the calculation of the time limit as discussed in paragraph F to this Appendix. It is the applicant's responsibility to submit the waiver application properly.

#### **C. Format of a Waiver Application**

An applicant must submit a waiver application in the format prescribed by the Component concerned. It must be written and signed by the applicant (in the case of an application on behalf of a minor or incompetent person, there are additional requirements explained at paragraph E to this Appendix) or by the applicant's authorized agent or attorney (there are additional requirements explained at paragraph D to this Appendix). In addition, the waiver application should include:

1. The applicant's mailing address.
2. The applicant's telephone number.
3. The applicant's social security number when required by the Component concerned.
4. The amount for which waiver is requested.

5. An explanation why a waiver should be granted under the standards explained at Appendix B to this part.

6. Copies of documents referred to in the application.

7. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

#### **D. Waiver Application Submitted by Agent or Attorney**

In addition to the requirements in paragraph C to this Appendix, a waiver application submitted by the applicant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the applicant.

#### **E. Waiver Application Submitted on Behalf of a Minor or Incompetent Person**

In addition to the requirements in paragraph C to this Appendix:

1. If a guardian or committee has not been appointed, a waiver application submitted on behalf of a minor or incompetent person must:

- i. State the applicant's relationship to the minor or incompetent person.
- ii. Provide the name and address of the person having care and custody of the minor or incompetent person.

iii. Include an affirmation that any moneys received shall be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

2. If a guardian or committee has been appointed, a waiver application on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

#### **F. When To Submit a Waiver Application**

An applicant must submit a waiver application so that it is received by the Component concerned within three years after the erroneous payment is discovered. The date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has been made. The time limit is set by 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584, whichever applies. It may not be extended or waived. Although the issue of timeliness is usually raised on initial submission (as explained in paragraph B to Appendix D in this part), the issue may be raised at any point during the waiver application consideration process.

### **Appendix D to Part 284—Processing a Waiver Application When the Debt Is \$1,500 or Less**

#### **A. Initial Component Processing**

Upon receipt of a waiver application, the Component concerned must:

1. Date stamp the application on the date received.

2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in paragraph B to this Appendix.

<sup>1</sup> Contact the appropriate non-DoD Component for the procedures it follows in processing a waiver application.

3. Investigate the circumstances relating to the erroneous payment.

4. Refer the application to the appropriate determining official (see paragraph C to this Appendix) for consideration and an initial determination.

#### **B. Untimely Waiver Applications**

When the Component concerned determines that a waiver application was not received within three years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

1. The notice must:

i. Cite the applicable statute and explain the reasons for the finding of untimely receipt.

ii. State that the application was not received within the statutory time limit and may not be considered unless that finding is reversed on appeal.

iii. Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph B.2.).

iv. State that the statutory time limit may not be extended or waived.

2. An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice and may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

i. Explain the points of, and reasons for, disagreement with the notice.

ii. Have any documents referred to in the rebuttal attached.

iii. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

3. If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and the application may not be considered.

4. If the applicant submits a timely rebuttal, the Component must consider the rebuttal.

i. If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on its merits.

ii. If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph C.1. to this Appendix) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in paragraph D to this Appendix. In addition, if the determining official finds that the application was timely, the official may:

i. Return the application to the Component concerned for processing on its merits according to this part, or

ii. Consider the application and make an initial determination on its merits according to paragraph C.2. to this Appendix.

#### **C. Initial Determinations**

The standards in Appendix B to this part must be applied when considering the merits of a waiver application. After making an initial determination, the determining official must follow the procedures at paragraph D to this Appendix.

1. The officials listed and referred to in this part as determining officials shall consider waiver applications and take the appropriate action described in paragraph C.2. to this Appendix. These officials are identified as follows:

i. The Head of a non-DoD Component or designee for debts of Uniformed Services personnel resulting from that Component's activity.

ii. The Director, DoDEA or designee for debts of civilian employees resulting from that Component's activity.

iii. The Director, NSA or designee for debts resulting from that Component's activity.

iv. The Director, DFAS or designee for debts resulting from the DoD Component activity not included in paragraphs C.1.ii. and C.1.iii. to this Appendix.

2. The officials listed in paragraph C.1. to this Appendix may make an initial determination for the following:

i. Whether or not a waiver application was received within three years after the discovery of the erroneous payment.

ii. Deny a waiver application in its entirety.

iii. Grant all or part of a waiver application.

#### **D. Processing After An Initial Determination**

After making an initial determination, the determining official must:

1. Notify the applicant. The notification must explain:

i. The determination and the reasons for it.

ii. The appropriate Component action to resolve the debt as a consequence of the determination if it is or becomes a final action (the finality of an initial determination is explained at paragraph E to this Appendix).

iii. The appeal process (as explained in Appendix F to this part) if the determination does not grant the entire application or does not contain a finding of timely receipt.

2. Notify the Component concerned if the determining official is not an official of the Component concerned when and if the determination is a final action. The notice must explain:

i. The determination and its reasons.

ii. The appropriate Component action to resolve the debt as a consequence of the determination.

#### **E. When an Initial Determination Is Final**

A final action is an initial determination that grants the entire waiver application or finds that the application was timely received. Also, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any

extension of up to 30 additional days granted by the determining official for good cause shown).

### **Appendix E to Part 284—Processing a Waiver Application When the Debt Is More Than \$1,500**

#### **A. Initial Component Processing**

Upon receipt of a waiver application, the Component concerned must:

1. Date stamp the application on the date received.

2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in paragraph B in this part.

3. Investigate the circumstances relating to the erroneous payment.

4. Refer the waiver application to the appropriate determining official (see paragraph C to this Appendix) who after applying the standards in Appendix B in this part may either:

i. Deny the application in its entirety, if appropriate, and follow the procedures in Appendix D to this part, or

ii. Refer the application with a recommendation that part or all of the application be granted to the DOHA for consideration and an initial determination under paragraph C to this Appendix. The determining official must send the entire record and prepare and submit a recommendation and administrative report (as explained in paragraphs D and E to this Appendix) with the application.

#### **B. Untimely Waiver Applications**

When the Component concerned determines that a waiver application was not received within three years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

1. The notice must:

i. Cite the applicable statute and explain the reasons for the finding of untimely receipt.

ii. State that the application was not received within the statutory time limit and may not be considered unless that finding is reversed on appeal.

iii. Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph B.2. to this Appendix.).

iv. State that the statutory time limit may not be extended or waived.

2. An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice and may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

i. Explain the points of, and reasons for, disagreement with the notice.

ii. Have any documents referred to in the rebuttal attached.

iii. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

3. If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and the application may not be considered.

4. If the applicant submits a timely rebuttal, the Component must consider the rebuttal:

i. If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on its merits.

ii. If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph C.1. of Appendix D to this part) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in Appendix D to this part. In addition, if the determining official finds that the application was timely, the official may:

i. Return the application to the Component concerned for processing on the merits according to this part, or

ii. Make a recommendation to the DOHA to grant all or part of the application as described in paragraph D to this Appendix.

### C. Initial Determinations

The standards in Appendix B to this part must be applied when considering the merits of a waiver application. After making an initial determination, the DOHA must follow the procedures at paragraph F to this Appendix and may take the following actions regarding waiver applications referred under paragraph A.4.ii. or B.5.ii. to this Appendix:

1. Make an initial determination denying a waiver application in its entirety; or
2. Make an initial determination granting all or part of a waiver application.

### D. Recommendation to the DOHA To Grant All or Part of an Application

Referrals to the DOHA must include the entire record along with the recommendation and administrative report described in paragraph E to this Appendix. The record and the report must be sent to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

### E. Recommendation and Administrative Report

The recommendation and administrative report required by paragraph D to this Appendix must describe the recommended action (and its reasons) and the following:

1. The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located.
2. The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount.

3. The date the erroneous payment was discovered.

4. The date the recipient was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice.

5. A summary of the facts and circumstances describing how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; the steps taken by the recipient to bring the matter to the attention of the appropriate official; and the Component's response, if any.

6. A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding.

7. Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders.

8. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

### F. Processing After an Initial Determination

After making an initial determination, the DOHA must:

1. Notify the applicant if all or part of the waiver application is denied. The notification must explain:
  - i. The determination and the reasons for it.
  - ii. The appropriate Component action to resolve the debt as a consequence of the determination if it is or becomes a final action (the finality of an initial determination is explained at paragraph G to this Appendix).
  - iii. The appeal process (as explained in Appendix F to this part) if the determination does not grant the entire application or does not contain a finding of timely receipt.
2. Notify the Component concerned when and if the determination is a final action. The notice must explain:
  - i. The determination and its the reasons.
  - ii. The appropriate Component action to resolve the debt as a consequence of the determination.

### G. When an Initial Determination Is Final

A final action is an initial determination that grants the entire waiver application or finds that the application was timely received. Also, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

## Appendix F to Part 284—Appeals

### A. Who May Appeal

An applicant may appeal if an initial determination denies all or part of a waiver application or finds that the application was not received by the Component concerned within the time limit required by statute.

### B. When and Where To Submit an Appeal

1. When the determining official is not in the DOHA, the determining official must

receive an applicant's appeal within 30 days of the date of the initial determination. The determining official may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal shall be processed under the procedures in paragraphs C through K to this Appendix.

2. When the determining official is in the DOHA, the DOHA must receive an applicant's appeal within 30 days of the date of the initial determination. The DOHA may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal shall be considered to be a request for reconsideration and shall be processed under the procedures in paragraphs L through Q of this Appendix.

### C. Content of an Appeal

No specific format for an appeal is required however it must be written and signed by the applicant, the applicant's authorized agent, or the applicant's attorney. In addition, it should:

1. Provide the applicant's mailing address.
2. Provide the applicant's telephone number.
3. Provide the applicant's social security number when required by the Component concerned.
4. Identify specific:
  - i. Errors or omissions of material and relevant facts.
  - ii. Legal or equitable (under the standards in Appendix B to this part) considerations that were overlooked or misapplied.
  - iii. Conclusions that were arbitrary, capricious, or an abuse of discretion.
5. Present evidence of the correct or additional facts alleged.
6. Explain the reasons why the findings or conclusions should be reversed or modified.
7. Have attached copies of documents referred to in the appeal.
8. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the appeal.

### D. Determining Official's Review

The determining official must review an applicant's appeal, and affirm, modify, or reverse the initial determination.

1. When the determining official grants the entire waiver appeal or grants the application to the extent requested in the appeal after review of an appeal in a case involving a debt in the aggregate amount of \$1,500 or less, the determining official must notify the applicant in writing and the Component concerned if the determining official is not an official of the Component concerned. The notice must explain the appropriate action to resolve the debt. This is a final action.

2. When the determining official finds that the application was received within the time limit required by statute after review of an appeal concerning the untimely receipt of the waiver application, the determining official must notify the applicant in writing and take the appropriate action under paragraph B.5. of Appendix D to this part or paragraph B.5. of Appendix E to this part, as appropriate.

3. In all other cases, the determining official must forward the appeal to the DOHA according to paragraph E. of this Appendix. The determining official must prepare a recommendation and administrative report (as explained in paragraph F to this Appendix) and send a copy of the administrative report to the applicant with a notice that the applicant may submit a rebuttal to the determining official (as explained in paragraph G to this Appendix).

4. The determining official must date stamp the applicant's rebuttal on the date it is received.

#### **E. Submission of Appeal to the DOHA**

The determining official must send the entire record along with the recommendation and administrative report required by paragraph F to this Appendix no earlier than 31 days after the date of the administrative report or the day after the applicant's rebuttal period, as extended, expires, to the following address: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203-1995.

#### **F. Recommendation and Administrative Report**

The recommendation and administrative report required by paragraph D.3. to this Appendix must describe the recommended action (and its reasons) and include:

1. The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located.
2. The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount.
3. The date the erroneous payment was discovered.
4. The date the recipient was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice.
5. A summary of the facts and circumstances describing how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; the steps taken by the recipient to bring the matter to the attention of the appropriate official; and the Component's response;
6. A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding.
7. Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders.
8. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

#### **G. Applicant's Rebuttal**

An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be received by the determining official within 30 days of the date of the recommendation and administrative report. The determining

official may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

1. An explanation of the points and reasons for disagreeing with the report.
2. The file reference number.
3. Any documents referred to in the rebuttal.
4. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

#### **H. DOHA Appeal Decision**

Except as provided in paragraph P to this Appendix, the DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the applicant. The written decision must:

1. Affirm, modify, reverse, or remand the initial determination and decide the application on its merits or return the application to the Component concerned for investigation and processing for an initial determination on the merits according to Appendix D to this part.
2. State the amount of the waiver application that is granted and the amount denied and/or that the application was or was not received within the statutory time limit, as appropriate.
3. Explain the reasons for the decision.

#### **I. Processing After the Appeal Decision**

After issuing an appeal decision, the DOHA must:

1. Send the applicant the decision and notify the applicant of:
  - i. The appropriate Component action to resolve the debt as a consequence of the decision if it is or becomes a final action (as explained in paragraph J to this Appendix).
  - ii. The procedures under this Appendix to request reconsideration (as explained in paragraphs K through M to this Appendix), if the decision does not grant the waiver application to the extent requested, or does not contain a finding of timely receipt, when applicable.
2. Notify the Component concerned of the decision and the appropriate Component action to resolve the debt as a consequence of the decision.

#### **J. Finality of a DOHA Appeal Decision**

An appeal decision that grants the waiver application to the extent requested on appeal, or that finds that the application was timely received, when applicable, is a final action when issued. An appeal decision is a final action if the DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by the DOHA for good cause shown). **Note:** In the case of a DOHA appeal decision issued before the effective date of this part that denied all or part of the waiver application, a request for reconsideration by the GC, DoD may be submitted within 60 days of the effective date of this part. The GC DoD shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the GC, DoD received more than 60 days after the effective date of this part shall not be

accepted. Requests must be submitted to the address in paragraph E.5. to this Appendix. The provisions of paragraph M to this Appendix apply.

#### **K. Who May Request Reconsideration**

An applicant may request reconsideration of a DOHA appeal decision.

#### **L. When and Where To Submit a Request for Reconsideration**

The DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.<sup>2</sup> The DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in paragraph E to this Appendix.

#### **M. Content of a Request for Reconsideration**

The requirements of paragraph C to this Appendix for the content of an appeal apply to a request for reconsideration.

#### **N. DOHA's Review of a Request for Reconsideration**

No earlier than 31 days after the date of the appeal decision or the day after the last period for submitting a request, as extended, expires, the DOHA must:

1. Consider a request for reconsideration.
2. Affirm, modify, or reverse the appeal decision.
3. Prepare a response that explains the reasons for the finding.
4. Send the response to the applicant and the Component concerned and notify them of the appropriate action on the debt.

#### **O. Finality of a DOHA Reconsideration Decision**

The response is a final action. It is precedent in the consideration of all waiver applications covered by this part unless otherwise stated in the document.

#### **P. Consideration of Appeals and Requests for Reconsideration**

When considering an appeal or request for reconsideration, the DOHA may:

1. Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.
2. Remand a matter to the Component with instructions to provide additional information.

Dated: October 3, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, DoD.*

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<sup>2</sup> Request for reconsideration by the GC, DoD must be received by the DOHA within 60 days of the effective date of this Instruction as explained in paragraph J of this appendix for appeal decisions issued before the effective date of this Instruction.