

the Component for the submission of waiver applications relating to debts resulting from the component's activity, which shall be referred to the appropriate official for consideration as set forth in paragraphs (b), (c), (d), or (e) of this section.

(2) Ensure compliance with this part and policies and procedures promulgated under paragraph (e)(3) of this section.

Dated: November 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 284

RIN 0790-AG91

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

**AGENCY:** Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes policy and prescribes procedures for considering waiver applications. 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:** Consideration will be given to all comments received on or before January 13, 2003.

**ADDRESSES:** Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Hipple, 703-696-8510.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (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 on entitlement, 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 this Executive Order.

#### Public Law 96-354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

#### Public Law 96-511, "Paperwork Reduction Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

#### Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

#### Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that

this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

Administrative practice and procedure, Armed Forces, Wages.

Accordingly, 32 CFR part 284 is proposed to be added to subchapter M to read as follows:

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

Sec.

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- Appendix E to Part 284—Appeals.

**Authority:** 5 U.S.C. 552a; 2104, 2105, 5584; 10 U.S.C. 2774; 32 U.S.C. 716

#### § 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 the 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, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as “the non-DoD Components”).

(c) This part applies to waiver applications relating to 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 DoD employees under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

#### § 284.3 Definitions.

(a) *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.

(b) *Component concerned*. The Component that notifies the individual of the debt that is the subject of a waiver application.

(c) *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 Service or civilian DoD employees.

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

(e) *Erroneous payment*. A payment that is not in strict conformity with applicable laws or regulations.

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

(g) *Member*. A member or former member of a Uniformed Service.

(h) *Uniformed Services*. The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

(i) *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, or 5 U.S.C. 5584.

#### § 284.4 Policy.

It is Department of Defense policy that waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

#### § 284.5 Responsibilities and functions.

(a) *The Head of a Non-DoD Component*, or designee, concerning debts resulting from the Component’s activity:

(1) May 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, may:

(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, in accordance with this part.

(3) Shall process waiver applications, when the aggregate amount of the debt is more than \$1,500, and appeals in accordance with this part.

(4) Shall resolve a debt in accordance with the final action that results from the waiver application process provided for in this part.

(b) *The Director, Department of Defense Dependents Schools*, or designee, concerning debts of civilian employees resulting from that Component’s activity; the *Director, National Security Agency*, or designee, concerning debts resulting from that Component’s activity; and the *Under Secretary of Defense (Comptroller)*, through the Defense Finance and Accounting Service, or other designee, concerning debts resulting from all other DoD Components’ activities:

(1) May 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, may:

(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, in accordance with this part.

(3) Shall process waiver applications and appeals in accordance with this part.

(4) Shall resolve debts in accordance with the final action that results from the waiver application process provided for in this part.

(c) *The Director, Defense Office of Hearings and Appeals (DOHA)*, or designee, under the General Counsel of the Department of Defense (as the Director, Defense Legal Services Agency):

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

(2) Shall consider an appeal of an initial determination and affirm, modify, reverse, or remand the initial determination, in accordance with this part and relevant DoD Office of General Counsel opinions.

(3) Shall process waiver applications and appeals in accordance with this part.

(d) *The General Counsel of the Department of Defense*, or designee, upon the request of the Director, DOHA, shall consult on, or render opinions concerning, questions of law or equity that arise in the course of the performance of the Director’s responsibilities under paragraph (c) of this section.

(e) *The Head of a DoD Component*, or designee, shall process waiver applications in accordance with this part.

#### § 284.6 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 A to this part.

#### § 284.7 Submitting a waiver application.

The procedures an applicant must follow to submit a waiver application are at Appendix B to this part.

#### § 284.8 Processing a waiver application when the debt is \$1500 or less.

The procedures a Component must follow in processing a waiver application when the debt is \$1500 or less are at Appendix C to this part.

#### § 284.9 Processing a waiver application when the debt is more than \$1500.

The procedures a Component must follow in processing a waiver application when the debt is \$1500 or more are at Appendix D to this part.

#### § 284.10 Appeals.

The procedures for appealing initial determinations are at Appendix E to this part.

#### § 284.11 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 construed as an application for a refund and the Component concerned shall, to the extent of the waiver, refund the amount repaid.

#### § 284.12 Publication.

In accordance with 5 U.S.C. 552a, the Director, DOHA, or designee, shall make

redacted copies of responses to requests for reconsideration available for public inspection and copying at DOHA's public reading room and on the worldwide web.

#### Appendix A to Part 284—Standards for Waiver Determinations

(a) 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. In other words, 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 had merely 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). Waiver is not a matter of right, but is available to provide relief as a matter of equity, if the circumstances warrant.

(b) 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 that the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

(c) Administrative error or mistake on the part of the Government in making an erroneous payment is a factor for consideration in determining whether waiver is appropriate. However, the fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not, in and of itself, sufficient basis for granting a waiver.

(d) 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.

(e) 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.

(f) 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.

(g) The fact that collection of an erroneous payment from a recipient might result in financial hardship is not a factor for consideration in determining whether waiver is appropriate.

(h) Waiver determinations under these standards necessarily depend upon the facts in each case.

#### Appendix B 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. 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 (that is, to the Component that notified the applicant of the indebtedness) in accordance with the guidance provided by that Component. A waiver application that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in paragraph (f) of this Appendix. It is the applicant's responsibility to submit the waiver application properly.

(c) *Format of a Waiver Application.* A waiver application 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) of this Appendix) or by the applicant's authorized agent or attorney (there are additional requirements explained at paragraph (d) of this Appendix) and should:

- (1) Provide the applicant's mailing address;
- (2) Provide the applicant's telephone number;
- (3) Provide the applicant's social security number;
- (4) State the amount for which waiver is requested;
- (5) Explain why under the facts and circumstances waiver should be granted under the standards explained at Appendix A to this part;
- (6) Have attached copies of documents referred to in the application; and
- (7) Include or have attached 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) of 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) of this Appendix, 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. If a guardian or committee has not been

appointed, a waiver application submitted on behalf of a minor or incompetent person must:

- (1) State the applicant's relationship to the minor or incompetent person,
- (2) Provide the name and address of the person having care and custody of the minor or incompetent person, and
- (3) Include an affirmation that any moneys received will 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.

(f) *When to Submit a Waiver Application.* An applicant must submit a waiver application so that it is received by the Component concerned within 3 years after the erroneous payment is discovered. The time limit is set by 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584, whichever applies. The time limit may not be extended or waived. Although the issue of timeliness normally will be raised upon initial submission (as explained at Appendix C to this part, paragraph (b)), the issue may be raised at any point during the waiver application consideration process.

#### Appendix C to Part 294—Processing a Waiver Application When the Debt is \$1500 or Less

(a) *Initial Component Processing.* Upon receipt of a waiver application, the Component concerned<sup>1</sup> must:

- (1) Date stamp the application on the date received.
- (2) Determine whether the application was received within 3 years after the discovery of the erroneous payment, and if the application was not timely, follow the procedures in paragraph (b) of this Appendix.
- (3) Investigate the circumstances relating to the erroneous payment.
- (4) Refer the application to the appropriate determining official (see paragraph (c) of this Appendix) for consideration and an initial determination.

(b) *Untimely Waiver Applications.* When the Component concerned finds that a waiver application was not received within 3 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, therefore, may not be considered, unless that finding is reversed;

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

(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

<sup>1</sup> Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the Head of the Component concerned or by Component regulations to perform the function or take the action indicated.

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. The Component 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 attached any documents referred to in the rebuttal; and
- (iii) Include or have attached statements (that are attested to be true and correct to the best of the individuals'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, therefore, the application may not be considered. If the applicant submits a timely rebuttal, the Component must consider the rebuttal and:

(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 the merits; or

(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 this Appendix) for an initial determination on the issue of untimely receipt. The Component need not investigate the merits of the application before forwarding the record.

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

(i) Return the application to the Component concerned for processing on the merits in accordance with this appendix, or

(ii) Consider the application and make an initial determination on the merits, in accordance with paragraph (c)(2) of this Appendix.

(c) *Initial Determinations.* The standards in Appendix A 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) of this Appendix.

(1) The officials listed in this paragraph, and referred to in this Appendix as determining officials, shall consider waiver applications and take the appropriate action described in paragraph (c)(2) of this Appendix with respect to the following debts:

(i) The head of a non-DoD Component, or designee, for debts resulting from that Component's activity.

(ii) The Director, Department of Defense Dependents Schools, or designee, for debts of civilian employees resulting from that Component's activity.

(iii) The Director, National Security Agency, or designee, for debts resulting from that Component's activity.

(iv) The Under Secretary of Defense (Comptroller), through the Defense Finance and Accounting Service, or other designee, for debts resulting from DoD Component activity not included in paragraphs (c)(1)(ii) and (c)(1)(iii) of this Appendix.

(2) The officials listed in paragraph (c)(1) of this Appendix may take the following actions with respect to waiver applications:

(i) Make an initial determination concerning whether or not a waiver application was received within 3 years after the discovery of the erroneous payment.

(ii) Make an initial determination denying a waiver application in its entirety.

(iii) Make an initial determination granting 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) of this Appendix); and

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

(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 include an explanation of:

(i) The determination and the reasons for it, and

(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) of this Appendix).

(e) *Finality of an Initial Determination.* An initial determination that grants the entire waiver application, or that finds that the application was timely received, as the case may be, is a final action when it is issued. Otherwise, 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 D to Part 284—Processing a Waiver Application When the Debt is More Than \$1500**

(a) *Initial Component Processing.* Upon receipt of a waiver application, the Component concerned<sup>1</sup> must:

<sup>1</sup> Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the head of the Component concerned or by Component

(1) Date stamp the application on the date received.

(2) Determine whether the application was received within 3 years after the discovery of the erroneous payment, and if the application was not timely, follow the procedures in paragraph (b) of this Appendix.

(3) Investigate the circumstances relating to the erroneous payment.

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

(i) Deny the waiver application in its entirety, if appropriate, and follow the procedures in Appendix C to this part, paragraph (d), or

(ii) Refer the application, with a recommendation that part or all of the application be granted, to DOHA<sup>2</sup> for consideration and an initial determination under paragraph (c) of this Appendix. The determining official must send the entire record and must prepare and submit a recommendation and administrative report (as explained in paragraphs (d) and (e) of this Appendix) with the application.

(b) *Untimely Waiver Applications.* When the Component concerned finds that a waiver application was not received with 3 years after the erroneous payment was discovered, the Component must send the application 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, therefore, may not be considered, unless that finding is reversed;

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

(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. The Component 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 attached any documents referred to in the rebuttal; and

(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

regulations to perform the function or take the action indicated.

<sup>2</sup> Depending on the context, "DOHA," as used in this Appendix, means the Director, Defense Office of Hearings and Appeals, or the individual(s) designated by the Director to perform the function or take the action indicated.

Component must return the application to the applicant with a notice that the finding is final and, therefore, the application may not be considered. If the applicant submits a timely rebuttal, the Component must consider the rebuttal and:

(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 the merits; or

(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 official (see Appendix C to this part, paragraph (c)(1)) for an initial determination on the issue of untimely receipt. The Component need not investigate the merits of the application before forwarding the record.

(4) After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in Appendix C to this part, paragraph (d). In addition, if the determining official finds that the application was timely, the official may either:

(i) Return the application to the Component concerned from processing on the merits in accordance with this part, or

(ii) Make a recommendation to DOHA to grant all or part of the application as described in paragraphs (d) and (e) of this Appendix.

(c) *Initial Determinations.* The standards in Appendix A to this part must be applied when considering the merits of a waiver application. After making an initial determination, DOHA must follow the procedures at paragraph (f) of this Appendix. DOHA may take the following actions with respect to waiver applications referred under paragraph (a)(4)(ii) or (b)(4)(ii) of this Appendix:

(1) Make an initial determination denying a waiver application in its entirety.

(2) Make an initial determination granting all or part of a waiver application.

(d) *Recommendation to DOHA to Grant All or Part of an Application.* Referrals to DOHA must include the entire record along with the recommendation and administration report described in paragraph (e) of 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) of this Appendix must describe the recommended action (and the reasons for it), 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; and the steps the recipient took, if any, 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; and

(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, DOHA must:

(1) Notify the applicant. The notice must include an explanation of:

(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) of this Appendix); and

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

(2) Notify the Component concerned when and if the determination is a final action. The notice must include an explanation of:

(i) The determination and the reasons for it, and

(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) of this Appendix).

(g) *Finality of an Initial Determination.* An initial determination that grants the entire waiver application, or that finds that the application was timely received, as the case may be, is a final action when it is issued. Otherwise, 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—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 DOHA<sup>1</sup>, they 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 will be processed under the procedures in paragraph (c) through paragraph (k) of this Appendix.

(2) When the determining official is in DOHA, DOHA must receive an applicant's appeal within 30 days of the date of the initial determination. 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 will be considered to be a request for reconsideration and will be processed under the procedures in paragraph (1) through paragraph (q) of this Appendix.

(c) *Content of an Appeal.* The appeal must be written and signed by the applicant, the applicant's authorized agent, or the applicant's attorney, and should:

(1) Provide the applicant's mailing address;

(2) Provide the applicant's telephone number;

(3) Provide the applicant's social security number;

(4) Identify specific:

(i) Errors or omissions of material and relevant fact,

(ii) Legal or equitable (under the standards in Appendix A to this part) considerations that were overlooked or misapplied, and

(iii) Findings that were arbitrary, capricious, or an abuse of discretion.

(5) Present evidence of the correct or additional facts alleged;

(6) Explain the reasons the findings should be reversed or modified;

(7) Have attached copies of documents referred to in the appeal; and

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

(1) If upon review of an appeal in a case involving a debt in the aggregate amount of \$1500 or less, the determining official grants the entire waiver appeal or grants the application to the extent requested in the appeal, the determining official must notify the applicant 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) If the appeal concerns the untimely receipt of the waiver application and, upon the review of the appeal, the determining official finds that the application was received within the time limit required by statute, the official must notify the applicant in writing and take the appropriate action

<sup>1</sup> Depending on the context, "DOHA," as used in this appendix, means the Director, Defense Office of Hearings and Appeals, or the individual(s) designated by the Director to perform the function or take the action indicated.

under paragraph (b)(4) of Appendix C to this part or paragraph (b)(4) of Appendix D to this part, as appropriate.

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

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report or the day after the applicant's rebuttal period, as extended, expires, the determining official must send the entire record along with the recommendation and administrative report described in paragraph (f) of this Appendix to: 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) of this Appendix must describe the recommended action (and the reasons for it) and, unless included in a report in the record that was prepared in the initial determination process as follows:

(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; and the steps the recipient took, if any, 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; and

(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, to the recommendation and administrative report. The rebuttal must be submitted to 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; and

(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) *Action by the Determining Official on Appeal.* The determining official must:

(1) Date stamp the applicant's rebuttal on the date it is received.

(2) Send the entire record to DOHA, but no earlier than 31 days after the date of the report, or the day after the applicant's rebuttal period, as extended, expires (as explained in paragraph (g) of this Appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (q) of this Appendix, 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 the merits or return the application to the Component concerned for investigation and processing for an initial determination on the merits in accordance with Appendix C to this part;

(2) State the amount of the waiver application that is granted and the amount that is denied and/or state that the application was or was not received within the statutory time limit, as appropriate; and

(3) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, 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 (k) of this Appendix); and

(ii) The procedures under this Appendix to request reconsideration (as explained in paragraphs (l) through (n) of this Appendix), if the decision does not grant the waiver application to the extent requested, or does not contain a finding of timely receipt, as the case may be.

(2) Notify Component concerned of the decision, and the appropriate Component action to resolve the debt as a consequence of the decision.

(k) *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, as the case may be, is a final action when issued. Otherwise, an appeal decision is a final action if 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 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 General Counsel of the Department of Defense, or designee, may be submitted within 60 days of [the effective date of this part]. The General Counsel of the Department of Defense, or designee, shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the General Counsel of the Department of Defense, or designee, received more than 60 days after [the effective date of this part] will not be accepted. Requests must be submitted to the address in paragraph (e) of this Appendix. The provisions of paragraph (n) of this Appendix apply.

(l) *Who May Request Reconsideration.* An applicant may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.<sup>2</sup> DOHA may extend this period for up to an additional 30 days for good cause down. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address in paragraph (e) of this Appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this Appendix concerning the content of an appeal, apply to a request for reconsideration.

(o) *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, 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 both of the appropriate action on the debt.

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

(q) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, DOHA may:

(1) Consider additional evidence not included in the record as presented. The applicant must be provided a copy of the additional evidence and must be given a reasonable time to comment.

(2) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

(3) Remand a matter to the Component with instructions to provide additional information.

<sup>2</sup> With respect to appeal decisions issued before [the effective date of this part], the request for reconsideration by DOHA must be received within 30 days of [the effective date of this part].

Dated: November 4, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 02-28735 Filed 11-13-02; 8:45 am]

**BILLING CODE 5001-08-M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA134-138-4193b; FRL-7391-7]

#### Approval and Promulgation of Air Quality Implementation Plans; PA; Revisions to Allegheny County Articles XX and XXI

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County. EPA is proposing approval of: A recodification of Allegheny County's air pollution control regulations, from articles XX to XXI; revisions of Allegheny County's article XXI regulations pertaining to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources; approval of new and revised definitions associated with the article XXI provisions; and removal from the SIP of outdated and outmoded article XX provisions which are no longer codified in article XXI. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note

that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Comments must be received in writing by December 16, 2002.

**ADDRESSES:** Written comments should be addressed to, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:**

Harold A. Frankford, (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action for Pennsylvania, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 27, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 02-28697 Filed 11-13-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[EPA Docket ID No. OW-2002-0022; FRL-7408-3]

#### Water Quality Standards for Kentucky

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

**ACTION:** Proposed rule and request for  
comments.

**SUMMARY:** EPA is proposing water quality standards that establish an antidegradation policy and implementation methods for high quality waters in the Commonwealth of Kentucky. On August 7, 1997, EPA disapproved the Commonwealth's antidegradation provisions for "high quality waters" because the criteria for designating such waters were not sufficiently inclusive. The Commonwealth subsequently revised portions of the antidegradation provisions. However, the replacement standards did not address all of the disapproved items. The Clean Water Act requires the Administrator to propose and promulgate revised water quality standards if she determines that a standard adopted by a State is inconsistent with the Act.

**DATES:** EPA will consider written comments on the proposal received by March 14, 2003.

EPA will hold a public hearing on this proposed rule on January 23, 2003, from 2 pm to 5 pm and from 7 pm to 10 pm. If you need special accommodations at this meeting, including wheelchair access or sign language interpreter, you should contact Fritz Wagener at 404/562-9267 at least 15 business days prior to the meeting so that we can make appropriate arrangements.

**ADDRESSES:** Send your comments by mail to: Docket Manager, Attention Docket ID No. OW-2002-0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104. You may also submit comments electronically, or through hand delivery or courier. Follow the detailed instructions provided in I.C. The hearing will be conducted at the Capital Plaza Convention Complex, 405 Mero Street, Frankfort, Kentucky.

Comments may be submitted electronically, by mail, or through hand delivery or courier. Follow the detailed instructions provided in **SUPPLEMENTARY INFORMATION** Part I. General Information. **FOR FURTHER INFORMATION CONTACT:** Fritz Wagener, Water Quality Standards