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**Ali Bahrami,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 524

#### Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, Clotrimazole Ointment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The supplemental ANADA provides for a new container size, a 15-gram bottle, from which gentamicin sulfate, betamethasone valerate, clotrimazole ointment may be dispensed for the treatment of acute and chronic canine otitis externa.

**DATES:** This rule is effective April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melluso, Center for Veterinary Medicine (HFV-104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0169, e-mail: [christopher.melluso@fda.hhs.gov](mailto:christopher.melluso@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767-1861, filed a supplement to ANADA 200-229 that provides for use of TRI-OTIC (gentamicin sulfate, USP; betamethasone valerate, USP; and clotrimazole, USP) Ointment for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin. The supplement provides for a new container size, a 15-gram bottle. The supplemental ANADA is approved as of February 27, 2006, and the regulations are amended in § 524.1044g (21 CFR 524.1044g) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA has noticed that a 215-gram bottle size was approved for this product under ANADA 200-229 but not codified. At this time, that bottle size is being added to § 524.1044g. This action is being taken to improve the accuracy of the regulations.

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.

The agency has determined under 21 CFR 25.33(a)(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 524

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 524 is amended as follows:

#### PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

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

■ 2. In § 524.1044g, revise paragraphs (b)(2) and (c)(1)(i) to read as follows:

#### § 524.1044g Gentamicin sulfate, betamethasone valerate, clotrimazole ointment.

\* \* \* \* \*

(b) \* \* \*

(2) No. 054925 for use of 7.5- or 15-g tubes; 10-, 15-, 25-, or 215-g bottles.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) From 7.5- or 15-g tubes; 10-, 12.5-, 15-, 25-, or 30-g bottles: 4 drops for dogs weighing less than 30 pounds (lb) or 8 drops for dogs weighing 30 lb or more.

\* \* \* \* \*

Dated: March 24, 2006.

**Bernadette A. Dunham,**

*Deputy Director, Office of New Animal Drug  
Evaluation, Center for Veterinary Medicine.*

[FR Doc. 06-3149 Filed 3-31-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF STATE

### 22 CFR Part 34

[Public Notice: 5310]

#### Debt Collection

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is revising its debt collection regulations to conform to changes in Federal Government-wide debt collection laws and regulations, including the Debt Collection Improvement Act of 1996 and the revised Federal Claims Collections Standards jointly issued by the Department of the Treasury and Department of Justice in 2000.

**DATES:** This rule is effective May 3, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [AmoryER@state.gov](mailto:AmoryER@state.gov)
- Mail paper submissions to the Deputy Assistant Secretary for Global Financial Services, Charleston Financial Service Center, P.O. Box 150008, Charleston, S.C. 29415-5008.

Persons with access to the internet may also view this notice by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Amory, Office of the Legal Adviser, Charleston Financial Service Center, telephone 843-308-5605.

**SUPPLEMENTARY INFORMATION:** This rule revises the Department of State's (State) debt collection regulations found at 22 CFR part 34 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX (parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government.

This regulation provides procedures for the collection of debts owed to State entities. State adopts the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390), and supplements the FCCS by prescribing procedures

consistent with the FCCS, as necessary and appropriate for State operations. Nothing in this regulation precludes the use of otherwise authorized collection remedies not contained in this regulation.

### Regulatory Analysis

#### *Administrative Procedures Act*

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice (5 U.S.C. 553(b)(3)(A)).

#### *Regulatory Flexibility Act*

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandated Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### *Executive Order 12866*

The Department does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed

the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

#### *Executive Order 12988*

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Order 13132*

This regulation will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department determines that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

#### *Executive Order 12372*

This regulation does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

### List of Subjects in 22 CFR Part 34

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

■ In consideration of the foregoing, the State Department amends Title 22 of the Code of Federal Regulations, by revising Part 34 to read:

## PART 34—DEBT COLLECTION

### Subpart A—General Provision

Sec.

- 34.1 Purpose
- 34.2 Scope
- 34.3 Exceptions
- 34.4 Definitions
- 34.5 Other procedures or actions
- 34.6 Interest, penalties, and administrative cost
- 34.7 Collection in installments

### Subpart B—Collection Actions

- 34.8 Notice and demand for payment
- 34.9 Request for internal administrative review
- 34.10 Collection Methods

### Subpart C—Salary Offset

- 34.11 Scope

- 34.12 Coordinating offset with another Federal agency
- 34.13 Notice requirements before offset
- 34.14 Request for an outside hearing for certain debts
- 34.15 Outside hearing
- 34.16 Procedures for salary offset
- 34.17 Non-waiver of rights by payment

### Subpart D—Collection Adjustments

- 34.18 Waiver of indebtedness
- 34.19 Compromise
- 34.20 Suspension
- 34.21 Termination
- 34.22 Discharge
- 34.23 Bankruptcy
- 34.24 Refunds

**Authority:** 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 C.F.R. part 285; 31 CFR parts 900–904; 5 CFR 550 subpart K.

## Subpart A—General Provisions

### § 34.1 Purpose.

These regulations prescribe the procedures to be used by the United States Department of State (STATE) in the collection of debts owed to STATE and to the United States.

### § 34.2 Scope.

(a) Except as set forth in this part or otherwise provided by law, STATE will conduct administrative actions to collect debts (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claims Collection Standards (FCCS) of the Department of the Treasury and Department of Justice, 31 CFR parts 900–904.

(b) This part is not applicable to STATE claims against another Federal agency, any foreign country or any political subdivision thereof, or any public international organization.

### § 34.3 Exceptions.

(a) Debts arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published at 41 CFR part 102–118.

(b) Debts arising out of acquisition contracts subject to the Federal Acquisition Regulation (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 48 CFR part 32).

(c) Debts based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(d) Tax debts are excluded from the coverage of this regulation.

#### **§ 34.4 Definitions.**

For purposes of the section:

(a) Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the person to the United States.

(b) Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt owed to the United States.

(c) Compromise means that the creditor agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(d) Creditor agency means the Federal agency to which a debt is owed.

(e) Debt or claim means an amount of money which has been determined to be owed to the United States from any person. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

(f) Debtor means a person who owes the Federal government money.

(g) Delinquent debt means a debt that has not been paid by the date specified in STATE's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or that has not been paid in accordance with a payment agreement with STATE.

(h) Discharge means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(i) Disposable pay means the amount that remains from an employee's current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; normal premiums for life and health insurance benefits and such other deductions that are required by law to be withheld, excluding garnishments.

(j) FCCS means the Federal Claims Collection Standards published jointly by the Departments of the Treasury and Justice and codified at 31 CFR parts 900–904.

(k) Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency, Foreign Government, or public international organization.

(l) Salary offset means the withholding of amounts from the current pay account of a Federal employee to satisfy a debt owed by that employee to the United States.

(m) Suspension means the temporary cessation of active debt collection pending the occurrence of an anticipated event.

(n) Termination means the cessation of all active debt collection action for the foreseeable future.

(o) Waiver means a decision to forgo collection of a debt owed to the United States, as provided for by a specific statute and according to the standards set out under that statute.

#### **§ 34.5 Other procedures or actions.**

(a) Nothing contained in this regulation is intended to require STATE to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this regulation is intended to deter STATE from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of STATE to comply with any provision in this regulation shall not serve as defense to the debt.

#### **§ 34.6 Interest, penalties, and administrative costs.**

Except as otherwise provided by statute, contract or excluded in accordance with the FCCS, STATE will assess:

(a) Interest on delinquent debts in accordance with 31 CFR 901.9.

(b) Penalties at the rate of 6 percent a year or such other rate as authorized by law on any portion of a debt that is delinquent for more than 90 days.

(c) Administrative costs to cover the costs of processing and calculating delinquent debts.

(d) Late payment charges under paragraphs (a) and (b) of this section shall be computed from the date of delinquency.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(f) STATE shall consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 31 CFR 901.9(g).

#### **§ 34.7 Collection in installments.**

Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset, including salary offset, or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. If STATE agrees to accept payment in installments, it may require a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability of the debtor to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim within 3 years.

#### **Subpart B—Collection Actions**

##### **§ 34.8 Notice and Demand for Payment.**

(a) STATE shall promptly hand deliver or send by first-class mail to the debtor at the debtor's most current address in the records of STATE at least one written notice. Written demand under this subpart may be preceded by other appropriate actions under this part and or the FCCS, including but not limited to actions taken under the procedures applicable to administrative offset, including salary offset.

(b) The written notice shall inform the debtor of:

- (1) The basis of the debt;
- (2) The amount of the debt;
- (3) The date by which payment should be made to avoid the imposition of interest, penalties and administrative costs, and the enforced collection actions described in paragraph (b)(7) of this section;

(4) The applicable standards for imposing of interest, penalties and administrative costs to delinquent debts;

(5) STATE's readiness to discuss alternative payment arrangements and how the debtor may offer to enter into a written agreement to repay the debt under terms acceptable to STATE;

(6) The name, address and telephone number of a contact person or office within STATE;

(7) STATE's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the debt:

(i) Offset from Federal payments otherwise due to the debtor, including income tax refunds, salary, certain benefit payments, retirement, vendor payments, travel reimbursement and advances, and other Federal payments due from STATE, other Federal agencies, or through centralized disbursing from the Department of the Treasury;

(ii) Referral to private collection agency

(iii) Report to credit bureaus

(iv) Administrative Wage Garnishment

(v) Litigation by the Department of Justice

(vi) Referral to the Financial Management Service of the Department of the Treasury for collection

(vii) Liquidation of collateral

(viii) Other actions as permitted by the FCCS and applicable law;

(8) The debtor's right to inspect and copy records related to the debt;

(9) The debtor's right to an internal review of STATE's determination that the debtor owes a debt or the amount of the debt;

(10) The debtor's right, if any, to request waiver of collection of certain debts, as applicable (see § 34.18);

(11) Requirement that the debtor advise STATE of any bankruptcy proceeding of the debtor; and

(12) Provision for refund of amounts collected if later decision finds that the amount of the debt is not owed or is waived.

(c) Exceptions to notice requirements. STATE may omit from a notice to a debtor one or more of the provisions contained in paragraphs (b)(7) through (b)(12) of this section if STATE determines that any provision is not legally required given the collection remedies to be applied to a particular debt, or which have already been provided by prior notice, applicable agreement, or contract.

#### **§ 34.9 Requests for Internal Administrative Review.**

(a) For all collection methods for debts owed to STATE, the debtor may request a review within State of the existence or the amount of the debt. For offset of current Federal salary under 5 U.S.C. 5514 for certain debts, debtors may also request an outside hearing. See subpart C of this part.

This subpart rather than subpart C applies to collections by salary offset for debts arising under 5 U.S.C. 5705 (travel advances), 5 U.S.C. 4108 (training expenses), and other statutes specifically providing for collection by salary offset.

(b) A debtor requesting an internal review shall do so in writing to the

contact office by the payment due date stated within the initial notice sent under 34.8(b) or other applicable provision. The debtor's written request shall state the basis for the dispute and include any relevant documentation in support.

(1) STATE will provide for an internal review of the debt by an appropriate official. The review may include examination of documents, internal discussions with relevant officials and discussion by letter or orally with the debtor, at STATE's discretion. An oral hearing may be provided when the matter cannot be decided on the documentary record because it involves issues of credibility or veracity. Unless otherwise required by law, such oral hearing shall not be a formal evidentiary hearing. If an oral hearing is appropriate, the time and location of the hearing shall be established by STATE. An oral hearing may be conducted, at the debtor's option, either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of STATE. During the period of review, STATE may suspend collection activity, including the accrual of interest and penalties, on any disputed portion of the debt if STATE determines that suspension is in the Department's best interest or would serve equity and good conscience.

(2) If after review STATE either sustains or amends its determination, it shall notify the debtor of its intent to collect the sustained or amended debt. If previously suspended, collection actions will be re-instituted unless payment of the sustained or amended amount is received or the debtor has made a proposal for a payment plan to which STATE agrees, by the date specified in the notification of STATE's decision.

#### **§ 34.10 Collection Methods.**

Upon completion of notice and provision of all due process rights as listed in 34.8(b) of this section and upon final determination of the existence and amount of a debt, unless other acceptable payment arrangements have been made or procedures under a specific statute apply, STATE shall collect the debt by one or more of the following methods:

(a) Administrative offset.

(1) Payments otherwise due the debtor from the United States shall be offset from the debt in accordance with 31 CFR 901.3. These may be funds under the control of the Department of State or

other Federal agencies. Collection may be made through centralized offset by the Financial Management Service ("FMS") of the Department of the Treasury.

(2) Such payments include but are not limited to vendor payments, salary, retirement, lump sum payments due upon Federal employment separation, travel reimbursements, tax refunds, loans or other assistance. For offset of Federal salary payments under 5 U.S.C. 5514 for certain types of debt see subpart C of this part.

(3) Administrative offset under this subsection does not apply to debts specified in the FCCS, 31 CFR 901.3(a)(2).

(4) Before administrative offset is instituted by another Federal agency or the FMS, STATE shall certify in writing to that entity that the debt is past due and legally enforceable and that STATE has complied with all applicable due process and other requirements as described in this part and other Federal law and regulations.

(5) Administrative offset of anticipated or future benefit payments under the Civil Service Retirement and Disability Fund will be requested by STATE pursuant to 5 CFR 831.1801–1808.

(6) Expedited offset. STATE may effect an offset against a debtor prior to sending a notice to the debtor as described in § 34.8, when:

(i) The offset is in the nature of a recoupment,

(ii) Offset is executed pursuant to procedures set out in the Contracts Disputes Act,

(iii) Previous notice and opportunity for review have been given, or

(iv) There is insufficient time before payment would be made to the debtor/payee to allow prior notice and an opportunity for review. In such case, STATE shall give the debtor notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(7) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(b) *Referral to Private Collection Agency.* STATE may contract for collection services to recover delinquent

debts, or transfer a delinquent debt to FMS for private collection action, pursuant to 31 U.S.C. 3718, 22 U.S.C. 2716 and the FCCS, 31 CFR 901.5, as applicable. STATE will not use a collection agency to collect a debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

(c) Disclosure to consumer reporting agencies. STATE may disclose delinquent debts to consumer reporting agencies and other automated databases in accordance with 31 U.S.C. 3711(e) and the FCCS, 31 CFR 901.4, and in compliance with the Bankruptcy Code and the Privacy Act 5 U.S.C. 552a.

(d) Liquidation of Collateral, if applicable, in accordance with the FCCS, 31 CFR 901.7.

(e) Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges in accordance with the FCCS, 31 CFR 901.6.

(f) *Litigation.* Debts may be referred to the Department of Justice for litigation for collection in accordance with the standards set forth in the FCCS, 31 CFR part 904.

(g) *Transfer to FMS.* Debts delinquent more than 180 days shall be transferred to the Financial Management Service of the Department of the Treasury for collection by all available means. Debts delinquent less than 180 days may also be so transferred.

(h) *Administrative Wage Garnishment.* STATE may collect debts from a non-Federal employee's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. All parts of 31 CFR 285.11 are incorporated by reference into these regulations, including the hearing procedures described in 31 CFR 285.11(f).

(i) *Salary Offset.* See subpart C of this part.

### Subpart C—Salary Offset

#### § 34.11 Scope.

(a) This subpart sets forth STATE's procedures for the collection of a Federal employee's current pay by salary offset to satisfy certain debts owed to the United States.

(b) This subpart applies to:

(1) Current employees of STATE and other agencies who owe debts to STATE;

(2) Current employees of STATE who owe debts to other agencies.

(c) This subpart does not apply to (1) Offset of a separating employee's final payments or Foreign Service annuity payments which are covered under administrative offset (See § 34.10(a)),

(2) Debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States.

(3) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less.

(4) Any routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment.

(5) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) These regulations do not preclude an employee from requesting waiver of the debt, if waiver is available under subpart D of this part or by other regulation or statute.

(e) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under subpart D of this part or other regulations or statutes.

#### § 34.12 Coordinating offset with another Federal agency.

(a) When STATE is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until STATE provides the agency with a written certification that the debtor owes STATE a debt (including the amount and basis of the debt and the due date of payment) and that STATE has complied with these regulations.

(b) When another agency is owed the debt, STATE may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

#### § 34.13 Notice requirements before offset.

Except as provided in § 34.16, salary offset deductions will not be made unless STATE first provides the employee with a written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When STATE is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by first class mail to the last known address that is available to the Department and will state:

(a) That STATE has reviewed the records relating to the debt and has determined that the debt is owed, its origin and nature, and the amount due;

(b) The intention of STATE to collect the debt by means of deduction from the employee's current pay until the debt and any and all accumulated interest, penalties and administrative costs are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) The requirement to assess and collect interest, penalties, and administrative costs in accordance with § 34.6, unless waived in accordance with § 34.6(f);

(e) The employee's right to inspect and copy any STATE records relating to the debt, or, if the employee or their representative cannot personally inspect the records, to request and receive a copy of such records;

(f) The opportunity to voluntarily repay the debt or to enter into a written agreement (under terms agreeable to STATE) to establish a schedule for repayment of the debt in lieu of offset;

(g) Right to an internal review or outside hearing.

(1) An internal review under § 34.9 may be requested in cases of collections by salary offset for debts arising under 5 U.S.C. 5705 (travel advances), 5 U.S.C. 4108 (training expenses), and other statutes specifically providing for collection by salary offset.

(2) For all other debts, an internal review or an outside hearing conducted by an official not under the supervision or control of STATE may be requested with respect to the existence of the debt, the amount of the debt, or the repayment schedule (i.e. the percentage of disposable pay to be deducted each pay period);

(h) That the timely filing of a request for an outside hearing or internal review within 30 calendar days after the date of the notice of intent to offset will stay the commencement of collection proceedings;

(i) The method and time period for requesting an internal review or outside hearing;

(j) That a final decision on the internal review or outside hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the request, unless the employee requests and the outside hearing official grants a delay in the proceedings;

(k) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729–3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

(l) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(m) That the amounts paid on the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary; and

(n) The name and address of the STATE official to whom communications should be directed.

#### **§ 34.14 Request for an outside hearing for certain debts.**

(a) Except as provided in paragraph (d) of this section, an employee must file a request that is received by STATE not later than 30 calendar days from the date of STATE's notice described in § 34.13 if an employee wants an outside hearing pursuant to § 34.13(g)(2) concerning:

(1) The existence or amount of the debt; or

(2) STATE's proposed offset schedule.

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for an outside hearing later than the required 30 calendar days as described

in paragraph (a) of this section, STATE may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(e) An employee waives the right to an outside hearing and will have his or her pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph (a) of this section.

#### **§ 34.15 Outside Hearings.**

(a) If an employee timely files a request for an outside hearing under § 34.13(g)(2), pursuant to 5 U.S.C. 5514(a)(2), STATE shall select the time, date, and location of the hearing.

(b) Outside hearings shall be conducted by a hearing official not under the supervision or control of STATE.

(c) *Procedure.* (1) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(6) *Failure to appear.* In the absence of good cause shown (e.g. excused

illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown.

(d) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 only. It does not supersede the finding by STATE that a debt is owed and does not affect the Government's ability to recoup the indebtedness through alternative collection methods under § 34.10.

#### **§ 34.16 Procedures for salary offset.**

Unless otherwise provided by statute or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.* (1) Lump sum payment. Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

#### **§ 34.17 Non-waiver of rights by payments.**

So long as there are no statutory or contractual provisions to the contrary, no employee payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

**Subpart D—Collection Adjustments****§ 34.18 Waivers of indebtedness.**

(a) Waivers of indebtedness may be granted only as provided for certain types of debt by specific statutes and according to the standards set out under those statutes.

(b) *Authorities.* (1) Debts arising out of erroneous payments of pay and allowances. 5 U.S.C. 5584 provides authority for waiving in whole or in part debts arising out of erroneous payments of pay and allowances, and travel, transportation and relocation expenses and allowances, if collection would be against equity and good conscience and not in the best interests of the United States.

(i) Waiver may not be granted if there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver.

(ii) Fault is considered to exist if in light of the circumstances the employee knew or should have known through the exercise of due diligence that an error existed but failed to take corrective action. What an employee should have known is evaluated under a reasonable person standard. Employees are, however, expected to have a general understanding of the Federal pay system applicable to them.

(iii) An employee with notice that a payment may be erroneous is expected to make provisions for eventual repayment. Financial hardship is not a basis for granting a waiver for an employee who was on notice of an erroneous payment.

(iv) If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is not automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(A) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(B) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed

positions for the worse, regardless of the employee's financial circumstances.

(C) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(D) Whether failure to make restitution would result in unfair gain to the employee;

(E) Whether recovery of the claim would be unconscionable under the circumstances.

(2) Debts arising out of advances in pay. 5 U.S.C. 5524a provides authority for waiving in whole or in part a debt arising out of an advance in pay if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of an advance payment would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(3) Debts arising out of advances in situations of authorized or ordered departures. 5 U.S.C. 5522 provides authority for waiving in whole or in part a debt arising out of an advance payment of pay, allowances, and differentials provided under this section if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of an advance payment would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(4) Debts arising out of advances of allowances and differentials for employees stationed abroad. 5 U.S.C. 5922 provides authority for waiving in whole or in part a debt arising out of an advance of allowances and differentials provided under this subchapter if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of an advance

payment would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(5) Debts arising out of employee training expenses. 5 U.S.C. 4108 provides authority for waiving in whole or in part a debt arising out of employee training expenses if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of a debt arising out of employee training expenses would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(6) Under-withholding of life insurance premiums. 5 U.S.C. 8707(d) provides authority for waiving the collection of unpaid deductions resulting from under-withholding of Federal Employees' Group Life Insurance Program premiums if the individual is without fault and recovery would be against equity and good conscience.

(i) Fault is considered to exist if in light of the circumstances the employee knew or should have known through the exercise of due diligence that an error existed but failed to take corrective action.

(ii) Factors to be considered when determining whether recovery of unpaid deduction resulting from under-withholding would be against equity and good conscience include, but are not limited to:

(A) Whether collection of the claim would cause serious financial hardship to the individual from whom collection is sought.

(B) The time elapsed between the failure to properly withhold and discovery of the failure and notification of the individual;

(C) Whether failure to make restitution would result in unfair gain to the individual;



(D) Whether recovery of the claim would be unconscionable under the circumstances.

(7) Overpayments of Foreign Service Annuities. For waiver of debts arising from overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System or the Foreign Service Pension System see 22 CFR part 17.

(8) As otherwise provided by law.

(c) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration.

(d) The burden is on the employee to demonstrate that the applicable waiver standard has been met.

(e) *Requests.* A debtor requesting a waiver shall do so in writing to the contact office by the payment due date stated within the initial notice sent under § 34.8(b) or other applicable provision. The debtor's written response shall state the basis for the dispute and include any relevant documentation in support.

(f) While a waiver request is pending, STATE may suspend collection, including the accrual of interest and penalties, on the debt if STATE determines that suspension is in the Department's best interest or would serve equity and good conscience.

#### **§ 34.19 Compromise.**

STATE may attempt to effect compromise in accordance with the standards set forth in the FCCS, 31 CFR part 902.

#### **§ 34.20 Suspension.**

The suspension of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1–903.2

#### **§ 34.21 Termination.**

The termination of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1 and 903.3–903.4.

#### **§ 34.22 Discharge.**

Once a debt has been closed out for accounting purposes and collection has been terminated, the debt is discharged. STATE must report discharged debt as income to the debtor to the Internal Revenue Service per 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

#### **§ 34.23 Bankruptcy.**

A debtor should notify STATE at the contact office provided in the original notice of the debt, if the debtor has filed for bankruptcy. STATE will require documentation from the applicable

court indicating the date of filing and type of bankruptcy. Pursuant to the laws of bankruptcy, STATE will suspend debt collection upon such filing unless the automatic stay is no longer in effect or has been lifted. In general, collection of a debt discharged in bankruptcy shall be terminated unless otherwise provided for by bankruptcy law.

#### **§ 34.24 Refunds.**

(a) STATE will refund promptly to the appropriate individual amounts offset under this regulation when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) STATE is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.

Dated: February 1, 2006.

**Henrietta H. Fore,**

*Under Secretary for Management,  
Department of State.*

[FR Doc. 06–3135 Filed 3–31–06; 8:45 am]

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

[CGD05–06–018]

**RIN 1625–AA08**

#### **Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.525 for the Virginia State Hydroplane Championships to be held April 22 and 23, 2006, on the waters of the Western Branch of the Elizabeth River at Portsmouth, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

**DATES:** *Effective Dates:* 33 CFR 100.525 will be enforced from 8 a.m. to 6 p.m. on April 22 and 23, 2006.

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

Petty Officer William Banker, Marine Events Coordinator, Commander, Coast Guard Sector Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, VA 23703, and (757) 668–5584.

**SUPPLEMENTARY INFORMATION:** The Virginia Boat Racing Association will sponsor the Virginia State Hydroplane Championships on the waters of the Western Branch of the Elizabeth River at Portsmouth, Virginia. The event will consist of high performance hydroplane vessels racing around a one-mile course at high speeds. A fleet of spectator vessels is expected to gather near the event site to view the race. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.525 will be enforced for the duration of the event. Under provisions of 33 CFR 100.525, from 8 a.m. to 6 p.m. on April 22 and 23, 2006 vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

The regulation in 33 CFR 100.525, paragraph (c) “Effective Dates” has been modified with respect to weekend days. Specifically, that Sunday will be substituted for Friday on the fourth weekend in April.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: March 23, 2006.

**Larry L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

[FR Doc. 06–3175 Filed 3–31–06; 8:45 am]

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

[CGD05–06–022]

**RIN 1625–AA08**

#### **Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD**

**AGENCY:** Coast Guard, DHS.