

(1) Its average annual loss rate during the preceding five years is less than fifteen percent, and

(2) No other factors exist that may impair the Intermediary's ability to repay all obligations which it owes to the SBA under the Microloan program.

Dated: March 24, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00-8117 Filed 3-31-00; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[DEA-200C]

#### Schedules of Controlled Substances: Scheduling of Gamma Hydroxybutyric Acid Into Schedule I; Correction

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to the final regulations (DEA-200F) which were published on Monday, March 13, 2000 (65 FR 13235). These regulations relate to the placement of gamma hydroxybutyric acid (GHB) and its salts, isomers and salts of isomers into Schedule I of the Controlled Substances Act pursuant to Public Law 106-172.

**EFFECTIVE DATE:** April 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** The final regulations that are the subject of these corrections amend title 21, Code of Federal Regulations (CFR), chapter II. As published, the final regulations contained errors that could cause confusion. Specifically, the final regulations published on March 13, 2000 (65 FR 13235) did not take into account the amendment of 21 CFR 1308.13 that was included in a Final Rule published by DEA on July 13, 1999 (64 FR 37673), which became effective on August 12, 1999.

Accordingly, the publication on March 13, 2000, of the final regulations to amend part 1308 which were the subject of **Federal Register** document 00-5925 (65 FR 13235), is corrected as follows:

#### PART 1308—[CORRECTED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. On page 13238, in the third column, correct amendatory instruction #3 to read as follows:

\* \* \* \* \*

3. Section 1308.13 is amended by redesignating the existing paragraphs (c)(5) through (c)(12) as (c)(6) through (c)(13) and by adding a new paragraph (c)(5) to read as follows:

\* \* \* \* \*

Dated: March 27, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 00-8047 Filed 3-31-00; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 581

[AR 15-185]

#### Army Board for Correction of Military Records

**AGENCY:** Assistant Secretary of the Army for Manpower and Reserve Affairs, DOD.

**ACTION:** Final rule.

**SUMMARY:** This final rule is a revision of the regulation on the Army Board for Correction of Military Records. This revision updates information on the policy and procedures for the operation of the Army Board for Correction of Military Records; implements that portion of 10 U.S.C. 1034, and that portion of Department of Defense Directive (DODD) 7050.6, Military Whistleblower Protection, that pertain to actions by the Army Board for Correction of Military Records; implements Department of Defense Instruction (DODI) 1336.6, Correction of Military Records; prescribes DD Form 149, Application for Correction of Military Record, under the provisions of 10 U.S.C. 1552 and eliminates those portions pertaining to the process of applying to the Army Board for Correction of Military Records, transferring them to a Department of the Army Pamphlet.

**EFFECTIVE DATE:** March 29, 2000.

**ADDRESSES:** Department of the Army, The Army Review Boards Agency, ATTN: SFMR-RBR, 1941 Jefferson

Davis Highway, Arlington, VA 22202-4508.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary L. Howell, Military Personnel Management Specialist, 703-607-1612, FAX 703-602-0935, email address: howelml@hqda.army.mil.

#### SUPPLEMENTARY INFORMATION:

##### a. Background

Basic revised information on Army Board for Correction of Military Records was previously published in the **Federal Register**, Volume 63, No. 188, pages 51875-51878, September 29, 1998 for public comment.

##### b. Comments and Responses

*Comment:* Only one respondent provided comment. The respondent objected to the authority of the ABCMR staff to review and reject requests for reconsideration without Board consideration.

*Response:* The respondent had a different interpretation of the ABCMR staff's authority and a different definition of a "request for reconsideration" which was noted. The staff in its administrative review can only reject a request for reconsideration if it fails to meet the published criteria for a proper request for reconsideration. There were no changes in policy made as a result of the respondent's comments.

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, this final rule will not have an annual effect on the economy of \$100 million or have a significant impact on a substantial number of small entities. The final rule only concerns the correction of information in Federal records that pertain to individuals.

##### *Paperwork Reduction Act*

In compliance with The Paperwork Reduction Act, information collection is required on Department of Defense Form 149 titled "Application for Correction of Military Record". The form is necessary to identify specific types of information in support of the Army Board requirements. The form was approved previously by the Office of Management Budget (OMB) and assigned OMB Control No. 0704-0003.

##### *Executive Order 12612, Federalism*

This final rule has no significant federalism implications to warrant preparation of a Federalism Assessment under the principles and criteria in E.O. 12612.

*Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights*

This final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12630 or the Private Property Rights Act do not apply.

*Executive Order 12866, Regulatory Planning and Review*

This final rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

*Executive Order 12875, Enhancing the Intergovernmental Partnership*

This final rule does not impose non statutory unfunded mandates on small governments and is not subject to the requirements of the executive order.

*Executive Order 12988, Civil Justice Reform*

This final rule is in compliance with the provisions and requirements of E.O. 12988.

*Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

This final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 13045 do not apply.

*Unfunded Mandates Act*

This final rule does not impose an enforceable duty upon the private sector nor does it impose unfunded mandates on small governments and is not subject to the requirements of the Unfunded Mandates Reform Act.

*National Environmental Policy Act*

This final rule will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required.

*Submission to Congress and the Comptroller General of the General Accounting Office*

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army will submit a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

**List of Subjects in 32 CFR Part 581**

Administrative practice and procedure, Archives and Records, Military Personnel.

Accordingly, part 581 is amended as follows:

**PART 581—[AMENDED]**

1. The authority citation for part 581 is revised to read as follows:

**Authority:** 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

2. Section 581.3 is revised to read as follows:

**§ 581.3 Army Board for Correction of Military Records.**

(a) *General*—(1) *Purpose.* This section prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR).

(2) *Statutory authority.* Title 10 U.S.C. Section 1552, Correction of Military Records: Claims Incident Thereto, is the statutory authority for this regulation.

(b) *Responsibilities.* (1) *The Secretary of the Army.* The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications, as appropriate.

(2) *The ABCMR Director.* The ABCMR Director will manage the ABCMR's day-to-day operations.

(3) *The chair of an ABCMR panel.* The chair of a given ABCMR panel will preside over the panel, conduct a hearing, maintain order, ensure the applicant receives a full and fair opportunity to be heard, and certify the written record of proceedings in pro forma and formal hearings as being true and correct.

(4) *The ABCMR members.* The ABCMR members will—

(i) Review all applications that are properly before them to determine the existence of error or injustice.

(ii) If persuaded that material error or injustice exists, and that sufficient evidence exists on the record, direct or recommend changes in military records to correct the error or injustice.

(iii) Recommend a hearing when appropriate in the interest of justice.

(iv) Deny applications when the alleged error or injustice is not adequately supported by the evidence, and when a hearing is not deemed proper.

(v) Deny applications when the application is not filed within prescribed time limits and when it is not in the interest of justice to excuse the failure to file in a timely manner.

(5) *The director of an Army records holding agency.* The director of an Army records holding agency will—

(i) Take appropriate action on routine issues that may be administratively corrected under authority inherent in the custodian of the records and that do not require ABCMR action.

(ii) Furnish all requested Army military records to the ABCMR.

(iii) Request additional information from the applicant, if needed, to assist the ABCMR in conducting a full and fair review of the matter.

(iv) Take corrective action directed by the ABCMR or the Secretary of the Army.

(v) Inform the Defense Finance and Accounting Service (DFAS), when appropriate; the applicant; applicant's counsel, if any; and interested Members of Congress, if any, after a correction is complete.

(vi) Return original records of the soldier or former soldier obtained from the Department of Veterans Affairs (VA).

(6) *The commanders of Army Staff agencies and commands.* The commanders of Army Staff agencies and commands will—

(i) Furnish advisory opinions on matters within their areas of expertise upon request of the ABCMR, in a timely manner.

(ii) Obtain additional information or documentation as needed before providing the opinions to the ABCMR.

(iii) Provide records, investigations, information, and documentation upon request of the ABCMR.

(iv) Provide additional assistance upon request of the ABCMR.

(v) Take corrective action directed by the ABCMR or the Secretary of the Army.

(7) *The Director, Defense Finance and Accounting Service (DFAS).* At the request of the ABCMR staff, the Director, DFAS, will—

(i) Furnish advisory opinions on matters within the DFAS area of expertise upon request.

(ii) Obtain additional information or documentation as needed before providing the opinions.

(iii) Provide financial records upon request.

(iv) On behalf of the Army, settle claims that are based on ABCMR final actions.

(v) Report quarterly to the ABCMR Director on the monies expended as a result of ABCMR action and the names of the payees.

(c) *ABCMR establishment and functions.* (1) *ABCMR establishment.* The ABCMR operates pursuant to law (10 U.S.C. 1552) within the Office of the Secretary of the Army. The ABCMR

consists of civilians regularly employed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty. Three members constitute a quorum.

(2) *ABCMR functions.* (i) The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice.

(ii) When an applicant has suffered reprisal under the Military Whistleblower Protection Act 10 U.S.C. 1034 and Department of Defense Directive (DODD) 7050.6, the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(iii) The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing in 10 U.S.C. 1034 and DODD 7050.6) or request additional evidence or opinions.

(d) *Application procedures*—(1) *Who may apply.* (i) The ABCMR's jurisdiction under 10 U.S.C. 1552 extends to any military record of the DA. It is the nature of the record and the status of the applicant that define the ABCMR's jurisdiction.

(ii) Usually applicants are soldiers or former soldiers of the Active Army, the U.S. Army Reserve (USAR), and in certain cases, the Army National Guard of the United States (ARNGUS) and other military and civilian individuals affected by an Army military record. Requests are personal to the applicant and relate to military records. Requests are submitted on DD Form 149 (Application for Correction of Military Record under the Provisions of 10 U.S.C. 1552). Soldiers need not submit applications through their chain of command.

(iii) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, missing, or deceased. Depending on the circumstances, a child, spouse, parent or other close relative, heir, or legal representative (such as a guardian or executor) of the soldier or former soldier may be able to demonstrate a proper interest. Applicants must send proof of proper interest with the application when requesting correction of another person's military records.

(2) *Time limits.* Applicants must file an application within 3 years after an

alleged error or injustice is discovered or reasonably should have been discovered. The ABCMR may deny an untimely application. The ABCMR may excuse untimely filing in the interest of justice.

(3) *Administrative remedies.* The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

(4) *Stay of other proceedings.* Applying to the ABCMR does not stay other proceedings.

(5) *Counsel.* (i) Applicants may be represented by counsel, at their own expense.

(ii) See DODD 7050.6 for provisions for counsel in cases processed under 10 U.S.C. 1034.

(e) *Actions by the ABCMR Director and staff.* (1) *Criteria.* The ABCMR staff will review each application to determine if it meets the criteria for consideration by the ABCMR. The application may be returned without action if—

(i) The applicant fails to complete and sign the application.

(ii) The applicant has not exhausted all other administrative remedies.

(iii) The ABCMR does not have jurisdiction to grant the requested relief.

(iv) No new evidence was submitted with a request for reconsideration.

(2) *Burden of proof.* The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

(3) *ABCMR consideration.* (i) A panel consisting of at least three ABCMR members will consider each application that is properly brought before it. One panel member will serve as the chair.

(ii) The panel members may consider a case on the merits in executive session or may authorize a hearing.

(iii) Each application will be reviewed to determine—

(A) Whether the preponderance of the evidence shows that an error or injustice exists and—

(1) If so, what relief is appropriate.

(2) If not, deny relief.

(B) Whether to authorize a hearing.

(C) If the application is filed outside the statute of limitations and whether to deny based on untimeliness or to waive the statute in the interest of justice.

(f) *Hearings.* ABCMR hearings. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

(g) *Disposition of applications.* (1) *ABCMR decisions.* The panel members' majority vote constitutes the action of

the ABCMR. The ABCMR's findings, recommendations, and in the case of a denial, the rationale will be in writing.

(2) *ABCMR final action.* (i) Except as otherwise provided, the ABCMR acts for the Secretary of the Army, and an ABCMR decision is final when it—

(A) Denies any application (except for actions based on reprisals investigated under 10 U.S.C. 1034).

(B) Grants any application in whole or in part without a hearing when—

(1) The relief is as recommended by the proper staff agency in an advisory opinion; and

(2) Is unanimously agreed to by the ABCMR panel; and

(3) Does not involve an appointment or promotion requiring confirmation by the Senate.

(ii) The ABCMR will forward the decisional document to the Secretary of the Army for final decision in any case in which—

(A) A hearing was held.

(B) The facts involve reprisals under the Military Whistleblower Protection Act, confirmed by the DOD Inspector General (DODIG) under 10 U.S.C. 1034 and DODD 7050.6.

(C) The ABCMR recommends relief but is not authorized to act for the Secretary of the Army on the application.

(3) *Decision of the Secretary of the Army.* (i) The Secretary of the Army may direct such action as he or she deems proper on each case. Cases returned to the Board for further consideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the ABCMR's recommendation, adopts a minority position, or fashions an action that he or she deems proper and supported by the record, that decision will be in writing and will include a brief statement of the grounds for denial or revision.

(ii) The Secretary of the Army will issue decisions on cases covered by the Military Whistleblower Protection Act (10 U.S.C. 1034 and DODD 7050.6). In cases where the DODIG concluded that there was reprisal, these decisions will be made within 180 days after receipt of the application and the investigative report by the DODIG, the Department of the Army Inspector General (DAIG), or other Inspector General offices. Unless the full relief requested is granted, these applicants will be informed of their right to request review of the decision by the Secretary of Defense.

(4) *Reconsideration of ABCMR decision.* An applicant may request the ABCMR to reconsider a Board decision under the following circumstances:

(j) If the ABCMR receives the request within 1 year of the ABCMR's action and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives the request more than 1 year after the ABCMR's action or after the ABCMR has already considered one request for reconsideration, the ABCMR staff will review the request to determine if substantial relevant evidence is submitted showing fraud, mistake of law, mathematical miscalculation, manifest error, or the existence of substantial relevant new evidence discovered contemporaneously or within a short time after the ABCMR's original consideration. If the ABCMR staff finds such evidence, it will be submitted to the ABCMR for its determination of whether a material error or injustice exists and the proper remedy. If the ABCMR staff does not find such evidence, the application will be returned to the applicant without action.

(h) *Claims/Expenses.*—(1) *Authority.*

(i) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(ii) The Army may not pay any claim previously compensated by Congress through enactment of a private law.

(iii) The Army may not pay for any benefit to which the applicant might later become entitled under the laws and regulations managed by the VA.

(2) *Settlement of claims.* (i) The ABCMR will furnish DFAS copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(ii) The DFAS will settle claims on the basis of the corrected military record. The DFAS will compute the amount due, if any. The DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. Earnings received from civilian employment during any period for which active duty

pay and allowances are payable will be deducted. The applicant's acceptance of a settlement fully satisfies the claim concerned.

(3) *Payment of expenses.* The Army may not pay attorney's fees or other expenses incurred by or on behalf of an applicant in connection with an application for correction of military records under 10 U.S.C. 1552.

(i) *Miscellaneous Provisions.*—(1) *Special Standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* (Civil Action No. 77-0904), a former Army soldier is entitled to an honorable discharge if a less than honorable discharge was issued to the soldier on or before November 27, 1979 in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the term "CATEGORY G" in block 11b of DD Form 149. Such applications should be expeditiously reviewed by a designated official, who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official will not constitute an action or decision by the ABCMR.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act (5 U.S.C. 552), records created on or after November 1, 1996 will be available by electronic means.

(ii) Under the Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is received from the applicant or unless

the Board is otherwise authorized by law.

**Karl F. Schneider,**

*Deputy, Assistant Secretary (Army Review Boards).*

[FR Doc. 00-8089 Filed 3-31-00; 8:45 am]

BILLING CODE 3710-08-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD01-00-014]

#### Drawbridge Operation Regulations: Norwalk River, CT

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Washington Street S136 Bridge, mile 0.0, across the Norwalk River at Norwalk, Connecticut. This deviation from the regulations allows the bridge owner to keep the S136 Bridge in the closed position Tuesday through Thursday each week from March 28 through April 20, 2000. These closures are necessary to facilitate structural repairs at the bridge.

**DATES:** This deviation is effective March 28, 2000, through April 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Washington Street S136 Bridge, mile 0.0, across the Norwalk River at Norwalk, Connecticut, has a vertical clearance of 9 feet at mean high water, and 16 feet at mean low water in the closed position. The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the operating regulations to facilitate structural repairs at the bridge. The existing operating regulations listed at 33 CFR 117.217 require the bridge to open on signal, except that, from 7 a.m. to 8:45 a.m., 11:45 a.m. to 1:15 p.m., and 4 p.m. to 6 p.m., Monday through Friday, except holidays, the draw need not be opened for the passage of vessels that draw less than 14 feet of water.

This deviation to the operating regulations allows the owner of the bridge to keep the bridge in the closed position as follows:

March 28, 2000, through March 30, 2000;