

1988, except for that tax paid in installments under the provisions of § 170.66 or § 170.73. If any installment payment is not timely made, interest and penalties shall accrue from that time on the entire unpaid balance. (See 26 U.S.C. 6601)

(68A Stat. 817, as amended (26 U.S.C. 6601); sec. 7, Pub. L. 93-625, 88 Stat. 2114, as amended (26 U.S.C. 6621); sec. 344, Pub. L. 97-248, 96 Stat. 635 (26 U.S.C. 6622))

§ 170.79 Authority of ATF officers.

(a) *Entry of premises; penalties for interference.* Any officer of the Bureau may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose. See 26 U.S.C. 7212 relating to penalties for attempts to interfere with the administration of Internal Revenue laws.

(b) *Examination.* With respect to ATF examination of books and witnesses done in connection with ascertaining, determining, or collecting floor stocks tax, see 27 CFR 70.22.

(68A Stat. 855, 872, 901, as amended, 903, as amended (26 U.S.C. 7212, 7342, 7602, 7606); sec. 204, Pub. L. 85-859, 72 Stat. 1429, as amended (26 U.S.C. 7608))

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. The authority citation for Part 252 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

§ 252.195b [Amended]

Par. 2. Section 252.195b is amended to remove in the second sentence of paragraph (b) the words "\$10.50 per proof gallon" and insert in their place the words "the rate of tax imposed by 26 U.S.C. 5001 or 7652 on each proof gallon or part thereof of distilled spirits produced in or imported into the United States".

Signed: May 17, 1985.

W.T. Drake,
Acting Director.

Approved: August 12, 1985.

Edward T. Stevenson,
Acting Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85-20120 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-31-M

PANAMA CANAL COMMISSION

35 CFR Part 256

Collection by Salary Offset From Federal Employees Indebted to the United States

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Administrator of the Panama Canal Commission issues final regulations establishing rules for the offset of a debt against the Federal pay of a current or former Federal employee who is indebted to the United States. These regulations implement debt collection procedures provided for under the Debt Collection Act of 1982.

EFFECTIVE DATE: These regulations shall take effect August 23, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, D.C. 20036 (Tel. No. (202) 634-6441) or Mr. Jess K. Trotten, Acting General Counsel, Panama Canal Commission 34011 (Tel. No. in Balboa Heights, Republic of Panama, 011-507-52-7511).

SUPPLEMENTARY INFORMATION: On May 9, 1985, the Administrator published in the *Federal Register*, 50 FR 19539, a notice of proposed rulemaking setting forth proposed rules for offsetting the Federal pay of current and former Federal employees who are indebted to the United States. The preamble to the notice of proposed rulemaking set forth, in detail, the basis and purpose of the proposed rule. The Administrator is adopting the proposed rule as a final rule with only minor technical changes and accordingly, is incorporating by reference into this preamble the preamble to the proposed rule (50 FR 19539-19541, May 9, 1985).

Comments and Responses

Interested persons were invited to submit comments and recommendations regarding the proposed regulations within a 30-day period following publication. No comments or recommendations were received.

Paperwork Reduction Act of 1980

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

Executive Order 12291

The Panama Canal Commission has determined that this rule does not

constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, upon implementation, will not have an effect on the economy of \$100 million or more per year. Secondly, the rule would not result in a major increase in costs of process of consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulation Flexibility Act Certification

The Administrator certifies pursuant to 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. These regulations will not affect small entities, but only individuals employed by the United States.

List of Subjects in 35 CFR Part 256

Claims, Debt collection, Government employees.

Dated: June 28, 1985.

Fernando Manfredo, Jr.,
Acting Administrator.

Accordingly, the Title 35 of the Code of Federal Regulations is amended by adding a new part, Part 256, to read as follows:

PART 256—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES

Sec.

- 256.1 Collection of debts by offset; scope of regulations.
- 256.2 Definitions.
- 256.3 Pay subject to offset.
- 256.4 Advance notice of debt; request for records; submission of information.
- 256.5 Formal notice to employee.
- 256.6 Request for a hearing; prehearing submissions.
- 256.7 Hearings; time, date, and location.
- 256.8 Consequence of employee's failure to meet deadline dates.
- 256.9 Hearing procedures.
- 256.10 Representation.
- 256.11 Applicable legal principles.
- 256.12 Standards for determining extreme financial hardship.
- 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

Authority: 5 U.S.C. 5514, as amended by section 5 of Public Law 97-365, 96 Stat. 1751-1752.

§ 256.1 Collection of debts by offset; scope of regulations.

(a) If it is determined that an employee of the United States is indebted to the Panama Canal Commission, the employee's pay may be offset to satisfy that indebtedness under the procedures set forth in this part.

(b) Debts owed by Commission employees to other agencies of the United States may be recovered by offset against the employee's pay in accordance with § 256.13. Similar provision in the regulations of other agencies permit the Commission to recover by offset debts owed to the Commission by the employee of another agency, if the Commission first complies with the provisions of §§ 256.1 through 256.12 of this part.

(c) An offset against pay shall be carried out in accordance with the standards established under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

(d) The regulations in this part do not apply to, and do not impair the United States' authority with regard to, the collection of a debt, by offset or by other means, if the debt is owed to the United States by a Federal employee and the debt arose under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), or in any other circumstances in which collection of a debt by salary offset is explicitly provided by Federal statute, such as the collection authority granted the Commission pursuant to 22 U.S.C. 3845.

(e) These regulations do not preclude an employee from questioning the amount or validity of a debt by submitting a claim to the General Accounting Office, but the Commission need not suspend the collection of the debt because of the filing of such a claim.

(f) These regulations do not preclude the compromise, suspension or termination of collection actions where appropriate under the standards set forth at 4 CFR 101.1 *et seq.*

(g) An employee's involuntary payment of all or any portion of an alleged debt being collected pursuant to this part shall not be construed as a waiver of any rights which the employee may have under this subpart or any other provision of law, except as otherwise provided by law.

(h) Amounts paid or deducted pursuant to this subpart shall be promptly refunded to an employee if the debt is waived or otherwise found not owing to the United States or if the Commission is directed by a competent judicial or administrative authority to

refund amounts deducted from an employee's current pay.

(i) The procedures in this part and the collection of debts by the Panama Canal Commission shall be carried out by the Chief Financial Officer.

(j) The Commission will not initiate salary offset to collect a debt under this subpart more than ten 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 or officials of the Government who are charged with discovering and collecting the debt in question.

§ 256.2 Definitions.

As used in this part:

"Agency" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Creditor agency" means the Federal agency to which the debt is owed.

"Day," unless specified otherwise, means a calendar day, and time limits are to be computed by counting calendar days, rather than only those days on which Commission offices are open for business.

"Debt" means an amount owed to the United States from any source, except as provided in this part. Such debts include, but are not limited to, those arising from loans insured or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest forfeitures, etc. Interest, penalties, and administrative costs may be assessed on debts collected pursuant to this part. These charges shall be assessed or waived in accordance with the provisions of 4 CFR 102.13.

"Delinquent debt" means (a) a debt which has not been paid, or for which arrangements for payment have not been agreed to by the creditor agency and the employee, by the date specified in the creditor agency's initial written notification or (b) a debt for which the employee fails to comply with the terms of payment arrangements agreed to with the creditor agency.

"Disposable pay" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Employee" means a current—

(a) Civilian employee, as defined in 5 U.S.C. 2105;

(b) Member of the Armed Forces or Reserves of the United States;

(c) Employee of the United States Postal Service; or

(d) Employee of the Postal Rate Commission.

"Pay" means basic pay, premium pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual or disbursing his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction at one or more officially established pay intervals from the current pay of an employee without his consent.

"Waiver" means the cancellation, remission, forgiveness or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 256.3 Pay subject to offset.

(a) An offset from an employee's pay from the Commission may not exceed 15 percent of the employee's disposable pay, unless the employee agree in writing to a larger offset.

(b) If collection in one lump-sum payment would exceed 15 percent of the employee's disposable pay, an offset shall be made biweekly or at officially established pay intervals from the employee's current pay account. Whenever possible, the installment payments shall be sufficient in size to liquidate the debt during a period not greater than the anticipated period of active duty or employment of the debtor employee.

(c) If an employee retires, resigns, or is discharged, or if his employment period or period of active duty otherwise ends before collection of the debt is completed, an offset may be made from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the individual from the employing agency, to the extent necessary to liquidate the debt. If the final payment due the employee is insufficient to satisfy the debt, the creditor agency shall take steps necessary to provide for payment of the debt by administrative offset from payments of any kind due the former employee from the United States pursuant to 31 U.S.C. 3716. (See 4 CFR 102.4)

§ 256.4 Advance notice of debt, request for records submission of information.

(a) Before initiating an offset proceeding, the Chief Financial Officer of the Panama Canal Commission will establish an individual administrative case file for each employee to be

covered by the offset proceeding and notify the employee—

(1) That he has determined that the employee is indebted to the United States in a specific amount as the result of a debt due and owing to the Panama Canal Commission;

(2) That he intends to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay unless the employee can demonstrate that he is not indebted to the United States or that the proposed offset schedule would produce an extreme financial hardship, as defined in § 256.12 of this part;

(3) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including a description of the conditions under which a waiver must be granted, notice that the employee has an opportunity to request such a waiver, and instructions on how to apply for a waiver; and

(4) The options available to him and time limits within which submission of additional information or documents must be made.

(b)(1) An employee who has been notified of the Chief Financial Officer's determination of the existence and amount of the debt and the proposed offset schedule, may submit to him a request—

(i) Not later than 10 days from the date the employee receives the notice, for a copy of the records in the possession of the agency relating to the debt;

(ii) Within the time specified in paragraph (c) of this section, that he reconsider his determination of the existence or amount of the debt;

(iii) Within the time set forth in paragraph (c) of this section, that he reconsider the proposed offset schedule, on the basis that it would produce an extreme financial hardship for the employee; and

(iv) Within the time set forth in paragraph (c) of this section, that he consider a request for waiver of the debt, if a waiver provision is applicable to the debt.

(2) If the employee requests a reconsideration of the determination of the existence or amount of the debt, the employee shall submit a statement, with supporting documents, indicating why the employee believes he is not so indebted.

(3) If the employee requests a reconsideration of the proposed offset schedule, the employee shall file an alternative proposed offset schedule and a statement, with supporting documents, showing why the schedule proposed by the agency would produce an extreme financial hardship for the employee. The

supporting documents must show, for the employee and his spouse and legal dependents, for the one-year period preceding the receipt of the notice and for the repayment period proposed by the employee in his or her offset schedule, the—

- (i) Income from all sources,
- (ii) Assets,
- (iii) Liabilities,
- (iv) Number of legal dependents,
- (v) Expenses for food, housing, clothing, and transportation,
- (vi) Medical expenses, and
- (vii) Exceptional expenses, if any.

(c) An employee who requests a reconsideration of the existence or amount of the debt, or the proposed offset schedule, shall submit his statement, with supporting documents, to the Chief Financial Officer no later than—

(1) Forty-five days from the date the employee receives the notice of the debt, if he does not make a timely request for records under paragraph (b)(1)(i); or

(2) Forty-five days from the date the employee receives the records, if a timely request for records was made.

(d) If the employee submits a timely request for reconsideration under paragraph (b), together with the required documents, the Chief Financial Officer will reconsider whether the employee is indebted to the United States, the amount that the employee owes, or whether the proposed offset schedule is appropriate.

(e) If the employee files a timely request for waiver of the debt, the Chief Financial Officer will consider that request. If the employee files a request for waiver that is not timely, the request will be considered if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(f) The Chief Financial Officer's decision on the employee's request for reconsideration will be based on agency records and the material submitted by the employee. He shall promptly notify the employee of his decision concerning the existence and amount of the debt and the appropriateness of the employee's proposed alternative offset schedule.

(g) If the Chief Financial Officer determines that the employee is indebted to the United States, he will include in the notice to the employee the following matters:

(1) A statement of the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for

any reduction of the amount of the indebtedness; and

(2) The notice described in § 256.5.

(h) If the Chief Financial Officer determines that his original offset schedule, or a modified schedule (other than the one proposed by the employee) will not impose an extreme financial hardship on the employee, he will include in the notice to the employee—

(1) A statement of the reasons for his conclusion that his original or modified offset schedule will not impose an extreme financial hardship, and

(2) The notice described in § 256.6.

§ 256.5 Formal notice to employee.

(a) At least 30 days before requesting an agency to offset the pay of an employee or commencing the offset of the pay of an employee of the Commission, the Chief Financial Officer will send the employee a notice stating—

(1) The nature and amount of the debt he has determined that the employee owes the United States;

(2) His intention to collect the debt by offset;

(3) The amount that the agency determines will be offset from the employee's disposable pay, including the proposed schedule for the deductions;

(4) Unless such payments are excused in accordance with 4 CFR 102.13, an explanation of the creditor agency's requirements concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(7) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including notice of the period within which such a waiver must be requested and an explanation of the conditions under which waiver may be granted;

(8) That amounts paid or deducted for the alleged debt which are later waived or found not owed to the United States

will be promptly refunded to the employee;

(9) The employee's right to a hearing on the Chief Financial Officer's determination concerning the existence and amount of the debt and the proposed offset schedule. This notice shall include a description of the applicable hearing procedures and requirements;

(10) That the timely filing of a petition for hearing on the existence or amount of a debt or the offset schedule will stay the commencement of collection proceedings; but that a request for a waiver or a hearing on the employee's credibility of veracity in connection with a request for a permissive waiver will not stay the collection proceedings;

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

(12) The method and time period for requesting a hearing; and

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

- (i) Disciplinary or adverse action;
- (ii) Penalties under the False Claims Act, sections 3729-3731 of title 31, United States Code, or any other applicable statutory authority; or
- (iii) Criminal penalties under sections 288, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(b) The formal notice prescribed by paragraph (a) is not applicable to any pay adjustment 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 four pay periods or less.

§ 256.6 Request for a hearing; prehearing submissions.

(a) An employee's request for a hearing or waiver under section 256.5 must be filed not later than 15 days from the date of receipt of the formal notice.

(b) Not later than three days prior to a scheduled hearing date, the employee may notify the Chief Financial Officer of his election to have the matter determined by the hearing official solely on the basis of written submissions. If no such election is filed by the employee, the hearing shall be conducted as an oral proceeding.

(c) If an employee files a timely petition for a hearing, the Chief Financial Officer will—

(1) Notify the employee of the time, date, and location of the hearing, if a determination solely on the basis of written submissions has not been requested; and

(2) Provide copies of the records in the possession of the agency relating to the employee's debt to the hearing official and, if he has not previously received the records, to the employee.

(d) If the employee files a request for a hearing that is not timely, he will be granted a hearing if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(e) If the employee contests the Commission determination of the existence or amount of the debt, he shall, not later than 10 days prior to the scheduled hearing date, file the following documents:

(1) A statement of the reasons why the employee believes that the Commission determination of the existence or amount of the debt was clearly erroneous. The statement shall include a recitation of the facts on which the employee relies to support his belief and any legal arguments supporting his position;

(2) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(3) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(f) If the employee contests the Commission's proposed offset schedule, he shall, not later than 10 days prior to the scheduled hearing date, file the following:

(1) A proposed alternative offset schedule;

(2) A statement of the reasons why the proposed offset against disposable pay will produce an extreme financial hardship;

(3) The information required in § 256.4(b)(3) of this part;

(4) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(5) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(g) The Chief Financial Officer shall file, not later than 10 days prior to the scheduled hearing date, a list of witnesses that the Commission intends to call at the hearing.

(h) Material submitted by an employee in connection with a request for reconsideration or for a waiver under section 256.4 need not be resubmitted in connection with the proceeding under this section.

(i) Material required to be filed under paragraphs (e), (f), and (g) of this section shall be filed with the hearing official and copies shall be provided to the opposing party.

§ 256.7 Hearings, time, date, and location.

(a) If an employee files a timely request for a hearing under § 256.6, the Commission will select the time, date, and location for the hearing. A hearing will be granted on a request for a waiver only if such waiver is provided for by law and if the request, in the judgment of the Chief Financial Officer, raises issues of veracity or credibility of the employee. To the extent feasible, the Commission will select a date and location that is convenient for the employee.

(b) For an employee who resides on the Isthmus of Panama, the hearing will be held in Panama. Hearings may be scheduled in New Orleans or Washington, D.C. for persons not residing in Panama.

§ 256.8 Consequence of employee's failure to meet deadline dates.

(a) An employee shall be considered to have waived his right to a hearing, and will have his disposable pay offset in accordance with the offset schedule proposed by the Commission, if the employee fails to appear at the time fixed for a hearing, or fails to file the required submissions under § 256.6 within five days after the filing date established under that section.

(b) The hearing official may excuse the employee's failure to meet any of the foregoing requirements if the employee shows that he exercised due diligence and that there is good cause for his failure to meet the requirements.

§ 256.9 Hearing procedures.

(a) The hearing will be conducted by a hearing official who is not an employee of the Commission or otherwise under its supervision or control, except that hearings on waivers may be conducted by an employee of the Commission.

(b) The hearing official shall prepare a summary record of the hearing, which will be maintained by the Commission as a part of the record of the offset procedures; however, no transcript of the hearing shall be made.

(c) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the

admissibility or use of evidence, except that the hearing official shall limit the evidence to testimony and documents which are relevant to the issues being considered.

(d) At the hearing, the employee and the Commission may introduce evidence and may call witnesses, consistent with the provisions of paragraph (c) of this section. Witnesses shall testify under oath and are subject to cross-examination.

(e) If the matter being contested is the existence or amount of a debt, the hearing official shall issue a decision upholding the Commission determination, unless the hearing official finds that the Commission determination was clearly erroneous.

(f) If the hearing official finds that the Commission's determination of the amount of the debt was clearly erroneous, he shall determine the amount owed by the employee, if any.

(g) If the matter being contested is the Commission's proposed offset schedule, the hearing official shall uphold that schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under that schedule would result in an extreme financial hardship for the employee.

(h) If the matter being contested is the credibility or veracity of the employee in connection with his request for a waiver, the hearing official shall make a determination as to the employee's credibility or veracity.

(i) If the hearing official finds that the payments called for under the Chief Financial Officer's proposed offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time which will not result in an extreme financial hardship for the employee.

(j) The hearing official shall issue a written opinion setting forth his decision and a statement of the reasons supporting it as soon as practicable, but not more than 60 days after the filing of the petition requesting the hearing, unless the hearing official has granted a delay in the proceedings at the request of the employee. The opinion shall contain his determinations as to the existence and amount of the debt, the origin of the debt, and, if a request for a waiver has been made, the employee's veracity or credibility.

(k) If the employee files a petition for a hearing in connection with a request for a waiver under a statute requiring a waiver and meets the time limits for filing material prior to the hearing, no

deductions to effect the offset will be made until the employee has been provided a hearing and a final written decision has been issued.

§ 256.10 Representation.

An employee may represent himself or may be represented by another person, including an attorney, during any proceedings under this part.

§ 256.11 Applicable legal principles.

(a) The hearing official may not find that the Commission's determination of the existence or amount of the employee's debt was erroneous—

(1) On the basis of State or local statutes of limitations;

(2) On the basis that the employee is owed monies by the United States (other than regular salary) and that payment of that debt by the United States would eliminate or reduce the debt, unless the employee has, not later than 45 days after receipt of advance notice of the debt under section 256.4, submitted written confirmation by the agency which is indebted to the employee that such money is owed and has assigned the payment of that money to the Commission; or

(3) On the basis of any factual or legal argument that was decided on the merits adversely to the employee in a court of competent jurisdiction.

(b) In determining whether the Chief Financial Officer's decision concerning the existence or amount of the employee's debt is clearly erroneous, the hearing official shall be bound by the relevant Federal statutes and regulations governing the program which gave rise to the debt, and general principles of the law of the United States, if relevant.

§ 256.12 Standards for determining extreme financial hardship.

(a) An offset will be considered to produce an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his spouse and dependents. Essential subsistence expenses consist of the costs incurred for medical care, food, housing, clothing, and transportation only.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the following matters shall be considered—

(1) The income from all sources of the employee and his spouse and dependents;

(2) The extent to which the assets of the employee and his spouse and dependents are available to pay the debt or the essential subsistence expenses;

(3) Whether the essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his spouse and dependents can borrow money to pay the debt or the essential subsistence expenses; and

(5) The extent to which the employee and his spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

§ 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a commission employee.

(a) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency shall forward to the Commission a certified statement of the existence of the debt. This document shall include a statement that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date on which the claim against the debtor accrued, if different from the payment due date, and a statement that agency regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(b) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the actions taken under section 5514(b) and give the dates the actions were taken.

(c) If, after the debt claim has been submitted by the creditor agency, the employee transfers to a position in another agency, the Commission will certify the total amount of the collection made on the debt. One copy of the certification will be furnished to the employee, and one copy will be furnished to the creditor agency, together with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder, together with the certification of the amount which has been collected. Upon receiving the official personnel folder, it will be the responsibility of the new paying agency to resume the collection from the individual's current pay and notify the employee and the creditor agency of the resumption. In cases in which an employee transfers to the Commission while a debt is being collected from him

by another Federal agency by offset, the Commission will resume the collection and notify the employee that it is doing so.

(d) For collections of debts by offset under this section, the Commission will not repeat the procedures prescribed by 5 U.S.C. 5514 and agency regulations under section 5514.

(e) If the Commission receives an incomplete or improperly certified debt claim, it will return the claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 must be complied with and a complete debt claim must be submitted before any action will be taken to collect the debt by offset from the employee's current pay.

(f) If the Commission receives a complete debt claim, deductions shall be scheduled to begin on the next officially established pay interval, if possible. A copy of the debt claim form shall be given to the debtor, together with notice of the date deductions will commence.

(g) The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt.

[FR Doc. 85-20153 Filed 8-22-85; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises fees charged to commercial vehicles operated on U.S. Highway 209 within Delaware Water Gap National Recreation Area, Pennsylvania. Public Law 98-63 provided for the establishment of a fee schedule for commercial vehicles exempted from the prohibition found in National Park Service general regulations. The Service published a Proposed Rule in the Federal Register on January 8, 1985 (50 FR 973), to increase the interim one-way fee schedule that ranges from \$.50 to \$5.00 to a schedule ranging from \$1.00 to \$10.00. The Service, after considering public comment, is now implementing a revised commercial fee schedule ranging from \$1.00 for two-axle cars, vans or pickups to \$7.00 for vehicles with five or more axles. This increase will provide an estimated \$195,550 in additional

revenue to be used to offset partially the costs of management, operation, construction and maintenance of U.S. Highway 209 within the boundary of the recreation area.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Albert A. Hawkins, Superintendent, Delaware Water Gap National Recreation Area, Telephone (717) 588-6637.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1983, Pub. L. 98-63 was enacted restricting commercial vehicle use on U.S. Highway 209 and mitigating the conditions of 36 CFR 5.6, which otherwise would be applicable. Pub. L. 98-63 authorized certain commercial vehicles to use the highway and directed that fees be established, not to exceed \$10.00 per trip, for certain commercial vehicle operations on U.S. Highway 209. On October 14, 1983, the National Park Service published in the Federal Register, special regulations codified at 36 CFR 7.71 (d) and (e) to implement Pub. L. 98-63.

The commercial vehicles authorized to operate within the boundaries by the 1983 special regulations, are those vehicles: (i) Operated by businesses based within the recreation area; (ii) operated by businesses that, as of July 30, 1983, operated a commercial vehicular facility in Monroe, Pike or Northampton Counties, Pennsylvania, and the vehicular operation originates or terminates at such facility; or (iii) operated in order to provide services to businesses and persons located in or contiguous to the boundaries of the recreation area.

In accordance with Pub. L. 98-63, the National Park Service also published, as part of § 7.71 (e) (i), a fee schedule based on the number of axles of lightweight, and heavy commercial vehicles. By law, the fees collected are for the management, operation, construction, and maintenance of U.S. Highway 209 within the boundary of the recreation area.

The interim fees were based on the probable impact of vehicles on road structure. Rates were calculated for four-wheel vehicles and four-wheel vehicles with trailers at \$.25 per axle and for vehicles with more than four wheels at \$1.00 per axle. The interim fees were determined as follows:

- \$3.00..... Two axle car, van or pickup.
- \$4.00..... Two axle—four wheel vehicle with trailer.
- \$5.00..... Two axle—six wheel vehicle.

- \$3.00..... Three axle vehicle.
- \$4.00..... Four axle vehicle.
- \$5.00..... Five or more axle vehicle.

The closure and exceptions provisions of Pub. L. 98-63, absent any additional Congressional action, were to terminate on December 31, 1983. Congress directed in Pub. L. 98-63, that in the interim, a commission be established to make recommendations to Congress by October 30, 1983, regarding a permanent transportation improvement program in the affected area. The 209 Commission was directed, among other things, to evaluate the statutory closure and exceptions. Their report was transmitted to Congress on October 30, 1983.

The statutory closure of U.S. Highway 209 was amended and extended until December 31, 1985 by passage of Pub. L. 98-151 on November 14, 1983. In addition to the exemptions established by Pub. L. 98-63, Pub. L. 98-151 also provided exemptions for up to 150 northbound and 150 southbound commercial vehicles per day serving businesses or persons in Orange County, New York.

The Service published a Proposed Rule with Request for Comments in the Federal Register of Tuesday, January 8, 1985 (50 FR 973), to increase the interim one-way fee schedule (ranging from \$.50 for two axle cars/vans or pickups to \$5.00 for a five or more axle vehicle) to a fee schedule ranging from \$1.00 for nonexempt commercial cars/vans or pickups to \$10.00 for a five or more axle vehicle. This proposed rule was based upon the recommendations of the Congressionally mandated 209 Commission Report and revised estimates of costs for management, operation, construction and maintenance of U.S. Highway 209 within Delaware Water Gap National Recreation Area. This proposed rule was open to public comment until February 7, 1985. The Service has now analyzed the written comments received regarding the proposed rule, and has determined that a revised fee schedule ranging from \$1.00 for two axle cars/vans or pickups to \$7.00 for a five or more axle vehicle is a compromise which will accommodate the needs of the public, the local businesses, and the Service.

Summary of Comments

During the public comment period, January 8, 1985 to February 7, 1985, the National Park Service received 193 timely written comments regarding the regulation. Comments were received from 188 individuals, 1 member of the

legal profession representing a trucking company, 1 trucking company, 4 local businesses, 2 local governments and 2 state representatives.

Analysis of Comments

The National Park Service received 51 letters opposing the proposed increase in commercial vehicle fees. Of these, at least 28 letters were written by employees of the largest trucking company which would be affected by this increase. This company currently employs over 800 local people. Forty comments expressed concern that higher fees would have a negative economic impact on business in the four county area. This impact would result if trucking companies were to relocate. Commentors believed the higher shipping costs could not be competitively passed on to the consumer. According to some commentors unemployment in the three counties would increase as trucking companies relocate. The National Park Service estimates that the proposed fee increase would have had an immediate economic impact on the four county commercial vehicle industry of \$486,000 maximum. The increase would have cost the largest commercial vehicle operation approximately \$190,000 more than they are currently paying for the use of the highway (based upon figures supplied by the company). This cost constitutes an increase in shipping costs of approximately \$0.25 per ton of goods for 5 axle vehicles (\$5.00 fee increase for 5 axle vehicles divided by 20 tons per load). The revised fee schedule (\$2.00 fee increase for 5 axle vehicles) will reduce the immediate economic impact on the four county commercial vehicle industry to \$195,550 maximum. This increase is expected to cost the largest commercial vehicle operation approximately \$76,000 more than they are currently paying. The comparable increase in shipping costs will be approximately \$0.10 per ton of goods for 5 axle vehicles. As visitation to the Recreation Area increases, business income from tourists in the Pocono region is expected to increase as it did in Pike County in 1983 (U.S. 209 Commission Report). This increase is expected to partially offset the negative economic impact that might occur in the region.

Twenty-five comments contend that U.S. Highway 209 is currently the highest cost per mile toll road in the United States while four other comments stated that doubling the fees would make the toll exorbitant. Currently the \$5.00 fee for five axle trucks for 21 miles of highway constitutes a cost of \$0.24 per mile.

Increasing the fee to \$7.00 would make the charge \$0.33 per mile. A fee schedule ranging from \$9.00 for a 2 axle, 4-wheel vehicle up to \$25.00 for a five axle vehicle is currently in effect on the 20 mile Chesapeake Bay Bridge-Tunnel in Virginia, a charge of \$1.25 per mile.

The cost of a 5 axle vehicle to travel on the shortest alternate route currently available at the \$1.115 per mile operating cost estimated in September 1982 (Final Environmental Impact Statement, National Park Service) is \$16.73. U.S. Highway 209 is not intended to be a turnpike-toll road comparable to the Pennsylvania or Ohio Turnpike. It is a park road upon which only specific commercial vehicles are authorized to travel until such time as a reasonable alternative route is established (Pub. L. 98-63). Congress mandated, in Pub. L. 98-63, that a fee not to exceed \$10.00 per trip be charged for this use.

Seventeen comments stated that it was not the intent of Congress in Pub. L. 98-63 that the fees should cover all of the costs of maintenance and operation of U.S. Highway 209. In Pub. L. 98-63 Congress explicitly stated that the fees collected were to be available for management, operation, construction and maintenance of U.S. Highway 209. Congress did not state whether fees were intended to cover all costs incurred in operating the highway. January 1985 cost projections for annual management, operation, construction and maintenance are \$2,117,760. Of this cost, \$1,145,450 is currently funded from National Park Service funds. Another \$972,310 will be required to meet this projected need. Of these additional funds required, only \$681,700 will be derived from U.S. Highway 209 fees. The Service will seek alternative funding to obtain the remaining \$290,600 necessary to manage the highway.

Twelve commentors felt that the commercial vehicle fees discriminate against the trucking industry, and fifteen commentors recommended that tolls should be extended to all users. Two additional commentors stated that maintenance and operational costs would occur irrespective of the type of user. The National Park Service has no legislative authority to charge non-commercial vehicles for use of U.S. Highway 209. Pub. L. 98-63 mandates that a fee, not to exceed \$10.00, be charged for all commercial vehicles from the ban, except for those commercial vehicles servicing the Recreation Area or servicing businesses or persons located contiguous to the boundaries of the Recreation Area. The commercial vehicle fees apply not only to five axle trucks, but also to all passenger cars,

vans, pickups and other vehicles which are used for commercial purposes.

Ten commentors emphasized that no feasible alternative routes currently exist. The Final Environmental Impact Statement on U.S. Highway 209, September 1982, and the U.S. 209 Commission Report identified the interstate highways (I-80, I-81, I-380, I-84) as alternate routes to U.S. Highway 209. The U.S. 209 Commission is currently studying alternatives for development and construction of another alternate route in the area.

One hundred and forty-seven letters were received which supported the proposal to increase commercial vehicles fees. One hundred and forty-six commentors stated that the increased fees were necessary to help produce a useful Recreation Area. One commentor stated that the privilege and beauty of the Recreation Area are for all, not for a special purpose commercial concern unrelated to the Recreation Area.

Section-by-Section Analysis

Public Law 98-63 was enacted July 30, 1983, closing U.S. Highway 209 in accordance with § 5.6 of Title 36 of the Code of Federal Regulations, prohibiting commercial vehicles from Delaware Water Gap National Recreation Area, authorizing the exemption of some commercial vehicles, and directing that fees not to exceed \$10.00, be established for certain commercial vehicle operations on Highway 209. The fees collected are for the management, operation, construction and maintenance of Highway 209 within the boundary of the Recreation Area.

The interim fees which were effective on October 14, 1983 were based on the probable impact of vehicles on road structure. Rates were calculated for four-wheel vehicles and four-wheel vehicles with trailers at \$.25 per axle and for vehicles with more than four wheels at \$1.00 per axle.

A further analysis of information concerning the permitted commercial use of U.S. Highway 209 has indicated that the interim fees as published on October 14, 1983, were too low. Consequently, the decision was made to increase these fees based on the following:

The recommendation of the Congressionally mandated 209 Commission (U.S. 209 Congressional Commission Report, October, 1983), to continue collecting a toll not to exceed \$10.00 per trip; and

Revised estimates of costs for the management, operation, construction and maintenance of U.S. Highway 209.

The Service published a Proposed Rule with Request for Comments in the Federal Register of Tuesday, January 8, 1985 (50 FR 973). This proposed rule would have doubled the interim fees. The Service has subsequently analyzed the public comments received regarding the proposed rule, and has developed a revised fee schedule. The potential economic impacts of the proposed rule were weighed against the needs for funds to manage, operate, and maintain U.S. Highway 209 as a safe road for public use and the comments supporting the proposed fee increase. The Service believes that the revised fee schedule (ranging from \$1.00 for two axle cars/vans or pickups to \$7.00 for five or more axle vehicles) is a compromise which will accommodate the needs of the public, the local businesses, and the Service.

The following table compares the interim fees, the fees proposed in the proposed rulemaking, and the revised fees which represent the Service's final fee schedule determination.

	Interim fees	Proposed fees	Revised (final) fees
Two axle cars/vans/pickups.....	\$5.00	\$1	\$1
Two axle 4 wheel vehicle with trailer.....	1.00	2	2
Two axle 6 wheel vehicle.....	2.00	4	3
Three axle vehicle.....	3.00	6	4
Four axle vehicle.....	4.00	8	6
Five or more axle vehicle.....	5.00	10	7

This regulation will be effective 30 days after publication in the Federal Register.

Drafting Information

The principal author of this rulemaking is Paul R. Anderson, Delaware Water Gap National Recreation Area, National Park Service, Bushkill, Pennsylvania 18324.

Paperwork Reduction Act

The rulemaking contains no provision that would entail the collection of information or require compliance with 44 U.S.C. § 3501 *et seq.*

Compliance With Other Laws

An Environmental Assessment and Finding of No Significant Impact has been prepared on the imposition of the fee schedule. The revision of the fee schedule is within the range of alternatives initially discussed, and does not constitute a significant deviation from the original proposed action. The final EIS on the management of U.S. Highway 209 (September 1982) addresses the impacts of commercial vehicular traffic on U.S. Highway 209

and the diversion of that traffic. Copies of these documents are available at the address noted at the beginning of this notice. The Department has determined that it is not necessary to prepare any additional documents concerning this regulation in order to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will affect about 200 small businesses. The maximum economic impact is projected to be \$195,550 in additional user fees.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising section 7.71(e)(1) to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area

(e) *Commercial vehicle fees.*—(1) *Fee Schedule:* Fees are charged for those commercial vehicular uses described in paragraphs (d)(1)(i), (ii) and (iii) of this section based on the number of axles and wheels on a vehicle, regardless of load or weight, as follows:

(i) Two-axle car, van or pickup.....	\$1
(ii) Two-axle 4-wheel vehicle with trailer.....	2
(iii) Two-axle 6-wheel vehicle.....	3
(iv) Three-axle vehicle.....	4
(v) Four-axle vehicle.....	6
(vi) Five or more-axle vehicle.....	7

The fees charged are for one trip, one way.

Dated: August 2, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20231 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 17

Amount of Aid Payable; Rates

AGENCY: Veterans Administration.

ACTION: Notice of Per Diem Rates.

SUMMARY: The Veterans Administration hereby gives notice that the amount of aid payable to a recognized State home under 38 CFR 17.166c shall be at the following per diem rates:

Type of care	Rate
Domiciliary care.....	\$7.30
Nursing home care.....	17.05
Hospital care.....	15.25

EFFECTIVE DATE: These rates are payable pursuant to 38 U.S.C. 641(a) effective on date of enactment of Pub. L. 98-160, sec. 105(a), November 21, 1983.

FOR FURTHER INFORMATION CONTACT: F. Brent Baker (202) 389-3854.

Dated: August 14, 1985.

By direction of the Administrator.

John A. Gronvall,

Deputy Chief Medical Director.

[FR Doc. 85-20091 Filed 8-22-85; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 18

Nondiscrimination on the Basis of Age

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) issues these final regulations to carry out its responsibilities under the "Age Discrimination Act of 1975" and the governmentwide regulations published in the Federal Register on June 12, 1979, codified at 45 CFR Part 90. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

These regulations are designed to guide the actions of recipients of financial assistance from the VA. The regulations incorporate the basic standards for determining what is age discrimination that were set forth in the governmentwide regulations. They discuss the circumstances under which a statutory exception may be invoked; the responsibilities of the VA and recipients