

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated herein shall ensure that feedback is provided to the Administrator through the NASA Information Security Program Committee. The Chairperson of the Committee shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Dale D. Myers,

Deputy Administrator.

November 3, 1988.

[FR Doc. 88-25898 Filed 11-8-88; 8:45 am]

BILLING CODE 7510-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 420

Amendment of Comprehensive Plan, Water Code of the Delaware River Basin and Basin Regulations—Water Supply Charges

AGENCY: Delaware River Basin Commission.

ACTION: Final rules.

SUMMARY: At its October 26, 1988 business meeting the Delaware River Basin Commission took two rule-making actions. The first amended its Comprehensive Plan and Water Code by adopting a drought management plan for the Christina River Basin, Chester County, Pennsylvania and New Castle County, Delaware. The second amended its Comprehensive Plan and Basin Regulations—Water Supply Charges by adopting water charges for water use at hydroelectric power plants.

As noted in the September 15 and October 18, 1988 Federal Register, the Commission held a public hearing on the proposed Christina River Basin Drought Management Plan on October 26, 1988. Resolution No. 88-26 amended the Comprehensive Plan and Article 2 of the Water Code of the Delaware River

Basin, which are referenced in 18 CFR Part 410, by the addition of a new Section 2.5.7 Drought Management Plan for the Christina River Basin, Chester County, Pennsylvania and New Castle County, Delaware, a summary of which follows.

The adopted drought management plan addresses the unique hydrologic circumstances of the Christina River Basin by establishing drought criteria based on both surface and ground water conditions within the Christina River Basin and setting forth actions to be undertaken on a coordinated basis as conditions dictate, notwithstanding the absence of the commission drought declaration. The plan is incorporated in the drought management plans of the Commonwealth of Pennsylvania and the State of Delaware and, by this action, in the commission's Comprehensive Plan. The amendment defines the area governed by the plan; plan administration; drought indicators, criteria and actions; enforcement and plan amendment procedures.

Anyone interested in obtaining a copy of the full text of the amendment may request a copy by writing or calling the Commission. See **FOR FURTHER INFORMATION CONTACT.**

As noticed in the June 16 and July 27, 1988 Federal Registers, the Commission held a public hearing on a proposed amendment to its Comprehensive Plan and Basin Regulation—Water Supply Charges to include water charges for water use at hydroelectric power projects on August 3, 1988. At that time, the hearing record was extended through September 20, 1988 for the submission of written comments. Resolution No. 88-29 added a new Section 420.51, hydroelectric power plant water use charges, to the Commission's Basin Regulations—Water Supply Charges. The amendment establishes annual base charges to owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission. In addition to the base charge, annual variable charges based on power generated at each facility would be assessed to owners of hydroelectric power plants that benefit from increased hydraulic head to the hydroelectric project as a result of investments by the Commission. Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project would also be charged; however, no charges for increased flows would be required when charges for increased hydraulic

head are in effect. Finally, charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way would be determined on a case-by-case basis. As adopted, the owner of any hydroelectric generating facility would receive a credit against the water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission. The amendment also includes provisions addressing payment of bills and exemptions from charges.

EFFECTIVE DATE: Both amendments became effective on October 26, 1988.

ADDRESS: Copies of the Commission's Water Code and Basin Regulations—Water Supply Charges are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission; Telephone (609) 883-9500.

List of Subjects in 18 CFR Part 420

Water supply policy.

PART 420—[AMENDED]

1. The authority citation for 18 CFR Part 420 continues to read as follows:

Authority: Pub. L. 87-328 (75 Stat. 688).

2. Section 420.51 is added and an undesignated center heading is added preceding it to read as follows:

Hydroelectric Power Water Use Charges

§ 420.51 Hydroelectric power plant water use charges.

(a) **Annual base charges.** Owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission shall pay an annual base charge to the Commission. The amount of the base annual charge shall be one dollar per kilowatt of installed capacity.

(b) **Annual variable charges.** In addition to the base charge established in (a) of this section, annual charges based on power generated at each facility will be assessed as follows:

(1) Owners of hydroelectric power plants that benefit from increased hydraulic head available to the hydroelectric project as a result of investments by the Commission shall be charged one mill per kilowatt-hour of energy produced.

(2) Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project shall be charged one-half mill per kilowatt-hour of energy produced. No charges for increased flows will be required when charges for increased hydraulic head are in effect.

(3) Charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way will be determined on a case-by-case basis as approved by the Commission.

(c) *Credits.* The owner of any hydroelectric generating facility shall receive a credit against the current year water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission for each calendar year.

(d) *Exemptions.* No payment will be required when hydroelectric power facility water use charges would amount to less than \$25 per year. Retroactive charges will not be assessed for facilities which have already obtained Commission approval pursuant to Section 3.8 of the Delaware River Basin Compact. All hydroelectric generating projects that do not benefit from storage owned or partially owned by the Commission are exempt from these Commission water charges.

(e) *Payment of bills.* The amount due each year shall bear interest at the rate of 1% per month for each day it is unpaid beginning 30 days after the due date. Payments are due within 30 days of the end of each calendar year. Annual base charges will be prorated for periods less than a year.

2. This amendment shall be effective October 26, 1988.

Delaware River Basin Compact, 75 Stat. 688.
Susan M. Weisman,
Secretary.
November 2, 1988.

[FR Doc. 88-25881 Filed 11-8-88; 8:45 am]
BILLING CODE 6360-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 361

Recovery of Debts Owed to the United States Government by Employees

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to provide for the administration of its authority under 5 U.S.C. 5514 to recover debts owed to the United States by installment collections from the current pay account of Federal employees.

EFFECTIVE DATE: November 9, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidelines for the administration of the Board's authority under 5 U.S.C. 5514 for recovering debts owed to the United States by installment collections from the current pay accounts of its employees.

The Debt Collection Act of 1982, Pub. L. 97-365, amended section 5514 to permit interagency recovery of general debts due the United States. However, before agencies may use this new recovery procedure, certain due process rights must be extended to the debtor. The specific procedures in this regulation conform with the statutory provisions added to 5 U.S.C. 5514 by the Debt Collection Act, 5 CFR 550.1101 *et seq.*, and court decisions emphasizing the debtor's right to due process protection prior to the initiation of an action to recover for a debt (*Califano v. Yamasaki*, 442 U.S. 682 (1979)).

On March 9, 1984, the U.S. General Accounting Office and the Department of Justice adopted final regulations amending the Federal Claims Collection Standards (FCCS). See 4 CFR Chapter II. Although the installment collection from the current pay account of an employee described in these regulations is authorized by 5 U.S.C. 5514, such a collection is still an administrative offset as defined in 31 U.S.C. 3701(a)(1). Consequently, any collection matters involving salary offset not addressed in these regulations are governed by the FCCS.

In essence this rule provides that the Board shall not deduct moneys from the current pay of one of its employees in order to satisfy a debt owed by that employee to the United States until it has afforded the employee a pre-offset hearing before an impartial adjudicator. However, there are three types of collections against pay which are not subject to the full procedural rights provided by these regulations.

The first is a collection which has resulted from an overpayment caused

by an employee's election of coverage or a change in coverage under a Federal benefit program. An employee who makes such an election is aware, or reasonably should be aware, that the election would cause a change in the amount withheld from his or her salary. Accordingly, it is appropriate to exclude from the scope of the salary offset due process procedures routine "catch-up" retroactive collections which are necessary solely because of brief, necessary, and inevitable processing delays.

A similar situation exists with regard to ministerial adjustments of pay rates of allowances, *e.g.*, credit union allotment, union dues deduction, etc., which cannot be placed into effect immediately because of normal processing delays. The debt in this case does not arise from any error committed by either the employee or the agency. The validity of the obligation is beyond reasonable dispute and the amount due is readily ascertainable.

For these two types of collections the rule provides for a limited procedure whereby the employee is notified in advance of the amount of the retroactive collection and may dispute the retroactive collection by notifying a specified official. Furthermore, it should be noted that in collections by salary offset made for reasons other than normal processing delays or, even if made by reason of normal processing delays but where the period for which retroactive deduction must be made will exceed four pay period, the full due process procedures set out in the final regulations shall apply.

Finally, where there is no question regarding credibility and veracity, no pre-offset hearing will be granted. In these cases the Board will make its pre-offset determination under this part based upon a review of the written record. Such a provision in the regulation is consistent with the FCCS (4 CFR 102.3(c)).

In addition, this rule also covers the situation in which the Board is not the creditor agency but merely the paying agency of the debtor. In such situations, the rule provides that this agency will commence deductions from the current pay account of an employee upon receipt of a properly certified debt claim as provided by 5 CFR 550.1108.

On January 5, 1988, the Board published this rule as a proposed rule and invited comments for 120 days ending May 4, 1988, (53 FR 143-147). No comments were received within the allotted time frame. The Board did receive on May 5, 1988, a comment from the American Federation of Government

Employees (AFGE), Local 375. AFGE suggested that the Board provide some limited due process when it is the paying agency (see § 361.17), and receives a claim from another agency. Specifically, AFGE recommends that when the Board receives such a claim and the affected employee disputes the debt, the Board should provide the documentation from the requesting agency which proves that the debt exists and give the employee 60 days to attempt resolution of the debt before offset would occur.

Under 5 CFR 550.1108(b)(3), if a paying agency receives a debt claim which meets the requirements of that section, it is not authorized to review the merits of the creditor agency's determination with respect to the validity of the debt. Under 5 CFR 550.1108(b), upon receipt of a properly certified debt claim the paying agency should schedule deductions to begin prospectively at the next officially established pay interval.

Section 361.17 of this part provides that if the Board receives a claim which meets the requirements of 5 CFR 550.1108, deductions will commence at the next established pay interval. In addition, the Board will notify the employee of receipt of the claim, the amount of the debt, and the date salary deductions will commence and the amount of the deductions. Furthermore, it is the agency's policy to permit the affected employee to view and make copies of any documentation provided by the creditor agency.

It is the Board's view that § 361.17 fully complies with the requirements of 5 CFR 550.1108 and therefore AFGE's suggestion was not adopted.

This regulation has been approved by the Office of Personnel Management.

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. In addition, any information required to be furnished under this rule is information to be provided by a government employee or agency and, therefore, is not covered by the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 361

Administrative practice and procedure, Government employees, Wages, Debt Collection.

1. For the reasons set forth in the preamble, Title 20, Chapter II, of the Code of the Federal Regulations is amended by adding a new Part 361 as follows:

PART 361—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY GOVERNMENT EMPLOYEES

Sec.

- 361.1 Purpose.
- 361.2 Scope.
- 361.3 Definitions.
- 361.4 Determination of indebtedness.
- 361.5 Notice requirements before offset.
- 361.6 Requests for waiver or hearing.
- 361.7 Written decision following a hearing.
- 361.8 Limitations on notice and hearing requirements.
- 361.9 Exception to requirement that a hearing be offered.
- 361.10 Written agreement to repay debt as alternative to salary offset.
- 361.11 Procedures for salary offset: When deductions may begin.
- 361.12 Procedures for salary offset: Types of collection.
- 361.13 Procedures for salary offset: Methods of collection.
- 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.
- 361.15 Non-waiver of rights.
- 361.16 Refunds.
- 361.17 Coordination with other government agencies.

Authority: 5 U.S.C. 5514(b)(1).

§ 361.1 Purpose

These regulations, which implement 5 U.S.C. 5514, provide the standards and procedures which the Board will utilize to collect debts owed to the United States from the current pay accounts of its employees, including the current pay accounts of employees who owe debts to agencies other than the Board.

§ 361.2 Scope.

(a) *Coverage.* This part applies to agencies and employees as defined by § 361.3 of this part.

(b) *Applicability.* This part and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations shall be consistent with the provisions of the Federal Claims Collection Standards (FCCS).

(1) *Excluded debts or claims.* The procedures contained in this part do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1, *et seq.*), the Social Security Act (42 U.S.C. 301, *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and

employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the U.S. General Accounting Office.* This part does not preclude an employee from requesting waiver of recovery of an overpayment under 5 U.S.C. 5584 or any other similar provision of law, or from questioning the amount of validity of a debt by submitting a subsequent claim to the U.S. General Accounting Office.

(3) *Compromise, suspension, or termination under the Federal Claims Collection Standards* (4 CFR 101.1, *et seq.*). Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under the standards implementing 31 U.S.C. 3711, *et seq.* (4 CFR 101.1, *et seq.*).

§ 361.3 Definitions.

For purposes of this part, terms are defined as follows:

"Agency" means—

(a) An executive agency as defined by section 105 of Title 5, United States Code; including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department as defined in Section 102 of Title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in Section 810 of Title 28, United States Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal government.

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

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Delinquent debt" means a debt which has not been paid by the date specified in the creditor agency's initial written notification, unless satisfactory arrangements for payment have been made by that date, or where, at any time thereafter, the employee fails to satisfy his or her obligations under a payment agreement with the creditor agency.

"Disposable pay" means that part of 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 the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.104 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of a Federal agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the U.S. General Accounting Office at 4 CFR 101.1, *et seq.*

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

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

"Waiver" means the cancellation, remission, forgiveness, or non-recovery 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, 32 U.S.C. 716, or any other similar law.

§ 361.4 Determination of indebtedness.

In determining that an employee is indebted, the Board will review the debt to make sure it is valid and past due.

§ 361.5 Notice requirements before offset.

The Board shall provide an employee written Notice of Intent to Offset Salary (Notice of Intent). The employee will be provided the notice at least thirty calendar days before the intended deduction is to begin. In addition, the notice must provide the following:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, and the origin, nature, and amount of that debt;

(b) The Board's intention to collect the debt by means of deduction from the employee's current disposable pay account;

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

(d) An explanation of the Board's requirements concerning interest, penalties, and administrative costs, and notification that such assessment must be made unless such payments are excused in accordance with the FCCS;

(e) Advice as to the employee's or his or her representative's right to inspect and copy or to be provided copies of government records relating to the debt;

(f) If not previously provided, notification of the opportunity (under terms agreeable to the Board) 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 Board, and documented in the Board's files (4 CFR 102.2(e));

(g) Advice that the Board will accept a repayment agreement which is reasonable in view of the financial condition of the employee at that time;

(h) If there is a statutory provision for waiver, cancellation, remission or forgiveness of the debt to be collected, advice that waiver may be requested within the period and by the procedure specified and explaining the conditions under which waiver, cancellation, remission or forgiveness is granted;

(i) Advice as to the employee's right to a hearing conducted by an official arranged by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) on the Board's determination of the debt, the amount of the debt, and the percentage of disposable pay to be deducted each pay period if a petition is filed as prescribed by the Board;

(j) Advice that the timely filing of a petition for hearing or a request for waiver (if the waiver statute or regulations are not "permissive" in nature) will stay the commencement of collection proceedings;

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

(l) Advice as to the method and time period for requesting a hearing as provided for in section 361.5 and for requesting waiver, if it is available;

(m) Advice that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, sections 3729-3731 of Title 31, United States Code, or any other applicable statutory authority; or

(3) Criminal penalties under §§ 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority;

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

(o) Advice that unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee. Such refunds will not bear interest unless required or permitted by law.

§ 361.6 Requests for waiver or hearing.

(a) A request for waiver or for a hearing must be made in writing and received by the Chief Financial Officer no later than thirty calendar days after the notice is sent to the employee. This time limit may, at the discretion of the Chief Financial Officer, be extended if the employee can show that the delay was caused by circumstances which were beyond the employee's control or because of the employee's failure to receive notice of the time limit. Any right to waiver or to a hearing is forfeited unless the time limits set forth in this paragraph are complied with.

(b) The employee's request for a hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(c) A request for a hearing under this paragraph is not a request for waiver. A request for waiver must state the basis for the request for waiver and whether a hearing is requested. If no request for a hearing is contained in the waiver request, no hearing will be provided.

(d) A hearing, if requested, will be an informal proceeding conducted by an administrative law judge or hearing official not under the control of the Board. The employee, or his/her representative, and the Board will be given full opportunity to present evidence, witnesses and argument.

§ 361.7 Written decision following a hearing.

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with

respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

§ 361.8 Limitations on notice and hearing requirements.

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) *Limited procedures.* If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this part shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowances received by the employee, the employee may dispute the amount of the retroactive collection by notifying a specified office or official.

(c) *Limitation on exceptions.* The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under §§ 361.4 and 361.5 of this part shall be extended to the employee.

§ 361.9 Exception to requirement that a hearing be offered.

When an employee is overpaid due to

the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

§ 361.10 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within thirty calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 361.11 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Board before the expiration of the period provided for in section 361.5, then deductions will begin after the hearing officer has provided the employee with a hearing and the hearing officer's final written decision is in favor of the Board.

(c) If an employee retires, resigns or his or her period of employment ends before collection of a debt is completed, offset shall be made from subsequent payments of any nature (e.g., final salary payment, lump sum leave, etc.) due the employee from the Board to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from

any final payment due the employee from the Board, the Board shall liquidate the debt by administrative offset, pursuant to 31 U.S.C. 3716, from later payments of any kind which are due the employee from the United States.

§ 361.12 Procedures for salary offset: Types of collection.

A debt will be collected in a lump sum or in installments. Collection will be effected in one lump sum collection unless the employee is financially unable to pay in one lump sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 361.13 Procedures for salary offset: Methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Board agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Board.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Board will make deductions only from 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.

§ 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest will be charged in accordance with 4 CFR 102.13.

§ 361.15 Non-waiver of rights.

So long as there are no statutory or

contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 361.16 Refunds.

The Board will refund promptly to the appropriate individual amounts offset under these regulations when:

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

(b) The Board is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 361.17 Coordination with other government agencies.

(a) *Board is paying agency.* (1) If the Board receives a claim which meets the requirements of 5 CFR 550.1108 from another agency, deductions shall begin prospectively at the next officially established pay interval. The employee will receive written notice that the Board has received a certified debt claim from a creditor agency. The notice will contain the amount of the debt and the date deductions from salary will commence and the amount of such deductions.

(2) If the Board receives a claim which does not meet the requirements of 5 CFR 550.1108, then the Board will return the claim to the creditor agency and inform the creditor agency that before any action is taken to collect the debt from the employee's current pay account, the procedures under 5 U.S.C. 5514 and 5 CFR Part 550 must be followed and a claim which meets the requirements of 5 CFR 550.1108 must be received.

(b) *Board is creditor agency.* When the Board is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Board provides the agency with a written certification that the procedures under this part have been followed and the Board has provided the other agency with a claim which meets the requirement of 5 CFR 550.1108.

Dated: November 2, 1988.

By Authority of the Board,
Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-25886 Filed 11-8-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. R-88-1391; FR-2477]

Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United States Housing Act of 1937. This rule amends 24 CFR Part 885 to incorporate loan interest rate provisions contained in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

DATES: Under Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Purpose

HUD's regulations at 24 CFR Part 885 govern projects that receive direct loans under Section 202 of the Housing Act of 1959 and housing assistance payments under Section 8 of the United States Housing Act of 1937. On February 5, 1988, President Reagan approved the Housing and Community Development Act of 1987 (Pub. L. 100-242) ("the Act"). This Act made several revisions to the section 202 loan program. This final rule implements statutory revisions to the method of calculating the interest rate to be used on section 202 loans.

The Department published an interim

rule on June 1, 1988 (53 FR 19899) seeking public comments on interim provisions governing the interest rate calculation. No public comments were received. Accordingly, this final rule makes no changes to the provisions contained in the interim rule.

II. Findings and Certifications

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters categorically excluded from the environmental requirements of 24 CFR Part 50.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides HUD with additional flexibility in adjusting section 202 interest rates in periods of low market interest rates, and may result in lower section 202 interest rates for some Borrowers. The effect of these changes on small entities, however, should be minor.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will not have a significant impact on the family. The final rule establishes the methodology that will be used to calculate the interest rate on section 202/8 loans to non-profit Borrowers and will have little, if any, impact on family formation, maintenance or general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have federalism implications. The final rule establishes the methodology that will be used to calculate the interest rate on section