Headquarters Policy Flash

FLASH 99-18

DATE: October 22, 1999
TO: Distribution
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Amendment to 10 CFR Part 600 - Financial Assistance Rules**

SUMMARY: This Flash transmits a Final Rule (effective November 19, 1999) to amend the Department of Energy's Financial Assistance Regulations and provides a summary of the changes.

FLASH #99-18

A. Amendment

On October 20, 1999, DOE amended 10 CFR Part 600 - Financial Assistance Rules. A copy of the Federal Register Notice, 64 FR 56418, is attached.

B. Summary of Changes

Section 600.3 - Definitions. The definition of "merit review" was revised to clarify what constitutes an "independent examination" of a financial assistance application.

Section 600.6 - Eligibility. The approval authority on a determination that a noncompetitive award is in the public interest has been changed from the Deputy Assistant Secretary for Procurement and Assistance Management to the Secretary of Energy. Guidance on obtaining Secretarial approval on such determinations will be issued in the near future. Until then, the approval process will remain the same (i.e., Justifications originate with the Program Assistant Secretary and are forwarded through the Office of Management Systems, MA-52, for the concurrence of the Procurement Executive prior to forwarding to the Secretary).

Section 600.13 - Objective merit review. Provisions relating to internal merit review procedures have been eliminated. Guidance on the conduct of merit reviews will be provided in a DOE Merit Review Handbook to be issued in the near future.

Section 600.14 - Conflict of Interest. This section has been removed. Conflict of Interest requirements for all DOE employees, including those who participate in the review of applications for DOE financial assistance or in the administration of financial assistance awards, are covered in 5 CFR Part 2635 and Part 2640. Conflict of Interest requirements for non-federal merit reviewers will be covered in the DOE handbook on merit reviews.

This amendment also updates titles and addresses and corrects a typographical error. Questions regarding this Flash may be directed to Trudy Wood at (202) 586-5625.

Gwendolyn S. Cowan, Director

Attachment

contamination so as to prevent contamination or adulteration of product. Reuse that which has come into contact with raw product may not be used on ready-to-eat product.

(4) Reconditioned water that has never contained human waste and that has been treated by an onsite advanced wastewater treatment facility may be used on raw product, except in product formulation, and throughout the facility in edible and inedible production areas, provided that measures are taken to ensure that this water meets the criteria prescribed in paragraph (g)(1) of this section. Product, facilities, equipment, and utensils coming in contact with this water must undergo a separate final rinse with non-reconditioned water that meets the criteria prescribed in paragraph (g)(1) of this section.

(5) Any water that has never contained human waste and that is free of pathogenic organisms may be used in edible and inedible product areas, provided it does not contact edible product. For example, such reuse water may be used to move heavy solids, to flush the bottom of open evisceration troughs, or to wash antemortem areas, livestock pens, trucks, poultry cages, picker aprons, picking room floors, and similar areas within the establishment.

(6) Water that does not meet the use conditions of paragraphs (g)(1) through (g)(5) of this section may not be used in areas where edible product is handled or prepared or in any manner that would allow it to adulterate edible product or create insanitary conditions.

(h) *Dressing rooms, lavatories, and toilets.* (1) Dressing rooms, toilet rooms, and urinals must be sufficient in number, ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. They must be separate from the rooms and compartments in which products are processed, stored, or handled.

(2) Lavatories with running hot and cold water, soap, and towels, must be placed in or near toilet and urinal rooms and at such other places in the establishment as necessary to ensure cleanliness of all persons handling any product.

(3) Refuse receptacles must be constructed and maintained in a manner that protects against the creation of insanitary conditions and the adulteration of product.

§ 416.3 Equipment and utensils.

(a) Equipment and utensils used for processing or otherwise handling edible product or ingredients must be of such material and construction to facilitate thorough cleaning and to ensure that their use will not cause the adulteration of product during processing, handling, or storage. Equipment and utensils must be maintained in sanitary condition so as not to adulterate product.

(b) Equipment and utensils must not be constructed, located, or operated in a manner that prevents FSIS inspection program employees from inspecting the equipment or utensils to determine whether they are in sanitary condition.

(c) Receptacles used for storing inedible material must be of such material and construction that their use will not result in the adulteration of any edible product or in the creation of insanitary conditions. Such receptacles must not be used for storing any edible product and must bear conspicuous and distinctive marking to identify permitted uses.

§ 416.4 Sanitary operations.

(a) All food-contact surfaces, including food-contact surfaces of utensils and equipment, must be cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product.

(b) Non-food-contact surfaces of facilities, equipment, and utensils used in the operation of the establishment must be cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product.

(c) Cleaning compounds, sanitizing agents, processing aids, and other chemicals used by an establishment must be safe and effective under the conditions of use. Such chemicals must be used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment must be available to FSIS inspection program employees for review.

(d) Product must be protected from adulteration during processing, handling, storage, loading, and unloading at and during transportation from official establishments.

§ 416.5 Employee hygiene.

(a) *Cleanliness.* All persons working in contact with product, food-contact surfaces, and product-packaging materials must adhere to hygienic practices while on duty to prevent adulteration of product and the creation of insanitary conditions.

(b) *Clothing.* Aprons, frocks, and other outer clothing worn by persons who handle product must be of material that is disposable or readily cleaned. Clean garments must be worn at the start of each working day and garments must be changed during the day as often as necessary to prevent adulteration of product and the creation of insanitary conditions.

(c) *Disease control.* Any person who has or appears to have an infectious disease, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, must be excluded from any operations which could result in product adulteration and the creation of insanitary conditions until the condition is corrected.

§ 416.6 Tagging insanitary equipment, utensils, rooms or compartments.

When an FSIS program employee finds that any equipment, utensil, room, or compartment at an official establishment is insanitary or that its use could cause the adulteration of product, he will attach to it a "U.S. Rejected" tag. Equipment, utensils, rooms, or compartments so tagged cannot be used until made acceptable. Only an FSIS program employee may remove a "U.S. Rejected" tag.

Done in Washington, DC on October 6, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–26983 Filed 10–19–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB53

Assistance Regulations; Technical and Administrative Amendments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Assistance Regulations to make technical and administrative changes. These changes include: revising a definition for clarity, updating titles and addresses, changing an approval authority, eliminating provisions that contain internal procedures for DOE officials, removing obsolete coverage, eliminating redundant coverage, and correcting a typographical error. These changes are technical and administrative in nature and have no significant impact on non-agency persons, such as recipients or applicants. The uniform administrative requirements for grants and cooperative agreements with institutions of higher

education, hospitals, other non-profit organizations, commercial organizations, and state and local governments are not changed by this rule.

EFFECTIVE DATE: This final rule will be effective November 19, 1999.

FOR FURTHER INFORMATION CONTACT: Trudy Wood, Office of Procurement and Assistance Policy (MA-51), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone 202-586-5625.

SUPPLEMENTARY INFORMATION:

I. Explanation of Changes
II. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12612
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999

I. Explanation of Changes

1. In section § 600.3 *Definitions*, we have revised the definition of "Merit review" to clarify what constitutes an "independent examination" of a financial assistance application.

2. In § 600.4 *Deviations*, we have updated the title of the authorizing official.

3. In § 600.6 *Eligibility*, we have changed the approval authority on a determination that a noncompetitive award is in the public interest to the Secretary, because such determinations are more appropriately made by the Secretary of Energy.

4. In § 600.10 *Form and content of applications*, we have updated the address for obtaining a guide for the preparation and submission of unsolicited applications and removed redundant language.

5. In § 600.13 *Objective merit review*, we have changed the title to "Merit review" and eliminated provisions relating to internal procedures that are more appropriately addressed in a DOE handbook on merit reviews.

6. Section 600.14 *Conflict of interest* is removed because the current provision is obsolete. Conflict of interest requirements for all DOE employees, including those who participate in the review of applications for DOE financial assistance or in the administration of financial assistance awards, are covered in 5 CFR part 2635 and part 2640. Conflict of interest requirements for non-federal merit reviewers are more appropriately covered in a DOE handbook on merit reviews.

7. In § 600.24 *Noncompliance*, we have corrected a typographical error in a cross-reference.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform (February 7, 1996)" 61 FR 4729, imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule is not subject to review under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no legal requirement to propose financial assistance rules for public comment.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the proposed amendments to the DOE financial assistance regulation do not change the environmental effect of the rule being amended (categorical exclusion A.5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to state, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking would not affect state, local or tribal governments or private sector entities.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking is not subject to a requirement to propose for public comment, and section 654 therefore does not apply.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, DC, on October 12, 1999.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301–6308, unless otherwise noted.

2. Section 600.3 is amended by removing the term *objective merit review* and adding in its place in alphabetical order the term *merit review* to read as follows:

§ 600.3 Definitions.

Merit review means a thorough, consistent, and objective examination of applications based on pre-established criteria by persons who are independent of those submitting the applications and who are knowledgeable in the field of endeavor for which support is requested.

* * * * *

§ 600.4 [Amended]

3. Section 600.4 is amended in paragraphs (c)(2)(ii) and (c)(3) by revising the phrase "Deputy Assistant Secretary for Procurement and Assistance Management" to read "Director, Procurement and Assistance Management".

4. Section 600.6 is amended by revising paragraph (c)(8) to read as follows:

§ 600.6 Eligibility.

* * * * *

(c) * * *

(8) The responsible program Assistant Secretary (or official of equivalent authority), with the approval of the Secretary of Energy, determines that a noncompetitive award is in the public interest. This authority may not be delegated.

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5. Section 600.10 is amended by revising paragraph (b) to read as follows:

§ 600.10 Form and content of applications.

* * * * *

(b) *Forms.* Applications shall be on the form and in the number of copies specified in a program rule, the solicitation, or these regulations. (See also §§ 600.112 and 600.210.) For unsolicited applications, a guide for preparation and submission is available from U.S. Department of Energy, Federal Energy Technology Center, Attn: Unsolicited Proposal Manager, Post Office Box 10940, Pittsburgh, PA, 15236–0940.

* * * * *

6. Section 600.13 is revised to read as follows:

§ 600.13 Merit review.

* * * * *

(a) It is the policy of DOE that discretionary financial assistance be awarded through a merit-based selection process. A merit review means a thorough, consistent, and objective examination of applications based on pre-established criteria by persons who are independent of those submitting the applications and who are knowledgeable in the field of endeavor for which support is requested.

(b) Each program office must establish a merit review system covering the financial assistance programs it administers. Merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the project/program official with responsibility for deciding whether an award will be made.

§ 600.14 [Removed and Reserved]

7. Section 600.14 is removed.

§ 600.24 [Amended]

8. Section 600.24 is amended in paragraph (b), introductory text, by revising "§ 600.121(n)" to read "§ 600.122(n)".

[FR Doc. 99–27424 Filed 10–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–338–AD; Amendment 39–11380; AD 99–22–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 757–200PF series airplanes, that requires revising the Airplane Weight & Balance (W&B) Manual to prohibit operation of any airplane without side vertical restraints installed on the main cargo deck when carrying a particular pallet. This amendment also provides for optional terminating action for the Airplane W&B Manual revision. This amendment is prompted by reports indicating that some airplanes have been operated without side vertical restraints installed on the main cargo deck when carrying certain pallets. The actions specified by this AD are intended to prevent inadvertent movement of a cargo pallet during flight, which could result in an adverse center of gravity condition and consequent reduced controllability of the airplane.

EFFECTIVE DATE: November 24, 1999.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 757–200PF series airplanes was published in the **Federal Register** on February 10, 1999 (64 FR 6577). That action proposed to require revising the Airplane Weight & Balance (W&B) Manual to prohibit operation of any airplane without side vertical restraints installed on the main cargo deck when