

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Learjet: Docket 95–NM–240–AD.

Applicability: Model 60 airplanes, as listed in Learjet Service Bulletin SB 60–71–2, dated May 12, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the sealant material in the aft core cowl nozzle of the engine nacelles from interfering with the lever of the emergency

fuel shutoff actuating mechanism, which could result in the failure of the emergency fuel shutoff actuating mechanism and resultant engine shutdown, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the aft core cowl nozzle of the engine nacelles in accordance with Learjet Service Bulletin SB 60–71–2, dated May 12, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 22, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13498 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–U

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Freedom of Information Policy and Procedures

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Arms Control and Disarmament Agency (ACDA) proposes to revise and restate in their entirety its rules that govern the availability and release of information. By clarifying these rules, this proposal will help the public to interact better with ACDA and is part of ACDA's effort to update and streamline its regulations. ACDA invites comments from interested groups and members of the public on the proposed regulations.

DATES: To be considered, comments must be delivered by mail or in person to the address, or faxed to the telephone number, listed below by 5:00 p.m. on Monday, July 8, 1996.

ADDRESSES: Comments should be directed to the Office of the General Counsel, United States Arms Control

and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451; FAX (202) 647–0024. Comments will be available for inspection between 8:15 a.m. and 5:00 p.m. at the same address.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451, telephone (202) 647–3596.

SUPPLEMENTARY INFORMATION: ACDA proposes to update, clarify, reorganize, and streamline its rules regarding the availability and release of information under the Freedom of Information Act, as amended. ACDA does not intend these rules to materially affect current ACDA standards, policies, or procedures.

Regulatory Flexibility Act Certification

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866 Determination

ACDA has determined that the proposed rule is not a significant regulatory action within the meaning of section 3(f) of that Executive Order.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act because it does not contain any information collection requirements within the meaning of that Act.

Unfunded Mandates Act Determination

ACDA has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

List of Subjects in 22 CFR Part 602

Freedom of Information Act.

The Proposed Regulations

ACDA proposes to revise 22 CFR Part 602 to read as follows:

PART 602—FREEDOM OF INFORMATION POLICY AND PROCEDURES

Subpart A—Basic Policy

Sec.

602.1 Scope of part.

602.2 Definitions.

602.3 General policy.

Subpart B—Procedure for Requesting Records

- 602.10 Requests for records.
- 602.11 Requests in person.
- 602.12 Availability of records at the ACDA Office of Public Affairs.
- 602.13 Copies of records.
- 602.14 Records of other agencies, governments and international organizations.
- 602.15 Overseas requests.
- 602.16 Responses and time limits on requests.
- 602.17 Time extensions.
- 602.18 Inability to comply with requests.
- 602.19 Predisclosure notification for confidential commercial information.

Subpart C—Fees

- 602.20 Fees for records search, review, copying, certification, and related services.
- 602.21 Waiver or reduction of fees.
- 602.22 [Reserved]
- 602.23 GPO and free publications.
- 602.24 Method of payment.

Subpart D—Denials of Records

- 602.30 Denials.
- 602.31 Exemptions.

Subpart E—Review of Denials of Records

- 602.40 Procedure for appealing initial determinations to withhold records.
- 602.41 Decision on appeal.

Subpart F—Annual Report to the Congress

- 602.50 Requirements for annual report.
- Authority: 5 U.S.C. 552; 22 U.S.C. 2581; and 31 U.S.C. 9701.

Subpart A—Basic Policy**§ 602.1 Scope of part.**

This part 602 establishes the policies, responsibilities and procedures for release to members of the public of records which are under the jurisdiction of the U.S. Arms Control and Disarmament Agency.

§ 602.2 Definitions.

As used throughout this part, the following terms have the meanings set forth in this section:

(a) The term *Agency* and the acronym *ACDA* stand for the U.S. Arms Control and Disarmament Agency.

(b) The term *records* includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Agency in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library or

museum material made or acquired solely for reference or exhibition purposes is not included within the definition of the term "records."

(c) *Deputy Director* means the Deputy Director of the Agency.

(d) The acronym *FOIA* stands for the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 602.3 General policy.

(a) In accordance with section 2 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2551), it is the policy of ACDA to carry out as one of its primary functions the dissemination and coordination of public information concerning arms control, nonproliferation, and disarmament.

(b) In compliance with the FOIA, ACDA will make available upon request by members of the public to the fullest extent practicable all Agency records under its jurisdiction, as described in the FOIA, except to the extent that they may be exempt from disclosure under the FOIA and § 602.31.

Subpart B—Procedure for Requesting Records**§ 602.10 Requests for records.**

(a) A written request for records should be addressed to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. To facilitate processing, the letter of request and envelope should be conspicuously marked "FOIA request."

(b) The request should identify the desired record or reasonably describe it. The identification should be as specific as possible so that a record can be found readily. Blanket requests or requests for "the entire file of" or "all matters relating to" a specified subject will not be accepted. The Agency will make any reasonable effort to assist the requester in sharpening the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum.

(c) If a fee is chargeable under subpart C of this part for search or duplication costs incurred in connection with a request for an Agency record, the request should include the anticipated fee or should ask for a determination of such fee. Any chargeable fee must be paid in full prior to issuance of requested materials. The method of payment is described in § 602.24.

§ 602.11 Requests in person.

A member of the public may request an Agency record by making an appointment to apply in person between the hours of 8:30 a.m. and 4:00 p.m. at

the ACDA Office of Public Affairs, 320 21st Street, N.W., Washington, DC 20451. Form ACDA-21, Public Information Service Request, is available at the ACDA Office of Public Affairs for the convenience of members of the public in requesting Agency records.

§ 602.12 Availability of records at the ACDA Office of Public Affairs.

(a) A current index identifying all available records is kept on file at the ACDA Office of Public Affairs. Copies of this index may be obtained free upon request.

(b) In addition, the ACDA Office of Public Affairs will maintain or have available, unless authorized to be withheld, certain types of unclassified records, including but not necessarily limited to the following:

(1) A copy of the ACDA Manual and other Agency regulations, including a copy of title 22 of the Code of Federal Regulations (CFR) and any other title of the CFR in which Agency regulations have been published;

(2) Copies of arms control and disarmament treaties or agreements in force;

(3) Research contracts between the Agency and universities or other non-Government organizations; and

(4) Reimbursable agreements with other Government agencies.

(c) Copies of records available to the public may be inspected by a requester in the ACDA Office of Public Affairs during the business hours stated in § 602.11. Copies of records made available for inspection may not be removed by any requester from the ACDA Office of Public Affairs.

§ 602.13 Copies of records.

(a) The Agency will provide copies of requested records of the same type and quality that it would provide to personnel of another U.S. Government agency in the course of official business. It will not accept requests for special types of copying processes or for special standards of quality of reproduction.

(b) Copies of records requested will be reproduced as promptly as possible and mailed to the requester. Chargeable fees will be determined according to the schedule set forth in subpart C of this part. The FOIA Officer is authorized to limit copies of each requested record to ten or fewer when there exists an extraordinary demand for the number of available copies or when requirements place excessive demands on the Agency's copying facilities.

§ 602.14 Records of other agencies, governments and international organizations.

(a) Requests for records that were originated by or are primarily the concern of another U.S. Government department or agency shall be forwarded to the particular department or agency involved, and the requester notified in writing.

(b) Requests for records that have been furnished to the Agency by foreign governments or by international organizations will not normally be released unless the organization or government concerned has indicated that the particular information should or may be made public. Where international organizations or foreign governments concerned have not made such a determination, the requester will be so advised, and if possible, furnished the address to which the request may be sent.

§ 602.15 Overseas requests.

Pursuant to the general policy outlined in § 602.3, ACDA has made arrangements to provide the United States Information Agency (USIA) with material for dissemination abroad, such as information on official U.S. positions on arms control and disarmament policy. Requests originating in an area served by a USIA office which are received at Agency headquarters, will be referred to USIA when appropriate for direct response to the requester.

§ 602.16 Responses and time limits on requests.

(a) The FOIA requires an initial determination on a request for an Agency record to be made within ten working days after receipt of the request.

(b) If it is determined that the requested record (or portions thereof) will be made available, the requested material will be forwarded promptly after the initial determination, provided any applicable fee has been paid in full.

(c) If prior to making an initial determination it is anticipated that the costs chargeable for a request will amount to more than \$25.00 or more than the amount of the payment accompanying the request, whichever is larger, the requester shall be promptly notified of the total amount of the anticipated fee or such portion thereof as can readily be estimated. In these instances, an advance deposit in the estimated amount of the search, review, and copying costs may be required. The request for an advance deposit shall extend an offer to the requester to consult with Agency personnel in order to reformulate the request in a manner

that will reduce the fee, yet still meet the needs of the requester.

(d) In instances where the Agency has requested an advance deposit, the date of receipt of the deposit will be considered as the request date which begins the period of response by the Agency.

(e) Receipt of a request for Agency records will be determined by the time and date the request is received.

(f) Where an obvious delay in receipt of a request has occurred, such as in cases where the requester has failed to address the request properly, or where a delay has been caused in the mails, the Agency will dispatch to the requester an acknowledgement of the receipt of the request.

§ 602.17 Time extensions.

(a) In unusual circumstances, the time limit for an initial or final determination may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an Agency record.

(b) "Unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular case:

(1) The need to search for and collect the requested records from other establishments that are physically separate from ACDA headquarters;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 602.18 Inability to comply with requests.

(a) When a request cannot be fulfilled, the requester will be so informed with reasons, and any fees returned after deduction of applicable search costs. Such reasons may include, but are not limited to the following:

(1) Insufficient or vague identifying information which makes identification or location of the record impossible;

(2) No such record in existence;

(3) Record available for purchase from the Government Printing Office or elsewhere; or

(4) Records destroyed pursuant to the Records Disposal Act.

(b) Inability to comply with requests shall be processed the same as denials of records, i.e., notification to the requester shall be in writing, shall set forth the reasons therefor, shall be signed by the name and title of the FOIA Officer, and shall include an

explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.19 Predisclosure notification for confidential commercial information.

(a) *When notification is required.* If a request under the FOIA seeks a record that contains information submitted by a person or entity outside the Federal government that arguably is exempt from disclosure under exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm, the Agency shall notify the submitter that such a request has been made whenever:

(1) The submitter has made a good faith designation of information, less than ten years old, as confidential commercial or financial information, or

(2) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) *Notification to submitter.* The notice to the submitter shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the information. The notice shall afford the submitter a reasonable period of time, based on the amount and/or complexity of the information, within which to object to disclosure.

(c) *Objection by submitter.* Any objection by a submitter to disclosure must be made in writing and sent to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. It should identify the portion(s) of the information to which disclosure is objected, and should include a detailed statement of all claimed grounds for withholding any of the information under the FOIA and, in the case of exemption 4, an explanation of why the information constitutes a trade secret or commercial or financial information that is privileged and confidential, including a specification of any claim of competitive or other business harm that would result from disclosure.

(d) *Notification to requester.* The Agency shall notify the requester in writing when any notification to a submitter is made pursuant to paragraph (a) of this section.

(e) *When notification is not required.* Notification to a submitter is not required if:

(1) The Agency determines that the information requested should not be disclosed;

(2) Disclosure is required by statute (other than FOIA) or by regulation; or

(3) The information has previously been lawfully published or officially made available to the public.

(f) *Notice of intent to disclose.* If the Agency determines that despite the objection of the submitter the requested information should be disclosed, in whole or in part, it shall notify both the requester and the submitter of the decision and shall provide to the submitter in writing:

(1) A brief explanation of why the submitter's objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date that provides a reasonable period of time between receipt of the notice and the disclosure date.

(g) *Notice of lawsuit.* (1) Whenever a requester brings legal action to compel disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the submitter in writing.

(2) Whenever a submitter brings legal action to prevent disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the requester in writing.

Subpart C—Fees

§ 620.20 Fees for records search, review, copying, certification, and related services.

The fees for search, review, and copying services for Agency records under the FOIA or the Privacy Act are as follows:

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs for searching for, reviewing for release, and copying the records sought. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) Requesters from educational and noncommercial scientific institutions will be assessed only copying costs.

(c) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only copying costs.

(d) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for, reviewing for release, and copying records that are responsive to the request.

(e) Requesters from educational and noncommercial scientific institutions,

representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of copying or the first two hours of search time. Commercial use requesters will not be entitled to these free services.

(f) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions.

(g) The fee for paper copy reproduction will be \$.20 per page.

(h) The fee for duplication of computer tape or printout reproduction or other reproduction (e.g., microfiche) will be the actual cost, including operator time.

(i) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(j) A fee may be charged for searches that are not productive and for searches for records or parts of records that subsequently are determined to be exempt from disclosure.

(k) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(l) If search charges are likely to exceed \$25.00, the requester will be notified of the estimated fees unless the requester's willingness to pay whatever fee is assessed has been provided in advance.

(m) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250.00. Requesters who have previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of billing) may be required to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

§ 602.21 Waiver or reduction of fees.

Documents shall be furnished without any charge or at a charge reduced below the fees set forth in § 602.20 if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(a) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government;"

(b) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(c) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the information will contribute to the "public understanding;"

(d) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(e) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(f) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 602.22 [Reserved]

§ 602.23 GPO and free publications.

(a) The index of records available in the Agency's Office of Public Affairs will list the sales offices of records published by the Government Printing Office (GPO). The Agency will refer each requester to the appropriate sales office and refund any fee payments accompanying the request. Published records out of print at the GPO may be copied by the Agency for the requester at the requester's expense in accordance with the fee schedule established for copying service. In some instances the Agency may have extra copies of out of print GPO records. These extra copies will be provided to requesters at the printed GPO price.

(b) The Agency makes some publications or records available to the public without charge. These regulations neither change that practice nor require payment of a fee by a requester unless the original stock has been exhausted and copying services are necessary to satisfy a request.

§ 602.24 Method of payment.

(a) Payment may be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury

of the United States and mailed or delivered to the FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. Cash should not be sent by mail.

(b) A receipt for fees paid will be given upon request.

Subpart D—Denials of Records

§ 602.30 Denials.

(a) Requests for inspection or copies of records may be denied where the information or record is exempt from disclosure for reasons stated in § 602.31.

(b) Denials shall be in writing, shall set forth the reasons therefor, shall be signed by the FOIA Officer and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.31 Exemptions.

The requirements of this part to make Agency records available do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the Agency;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the Agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal

investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

Subpart E—Review of Denials of Record

§ 602.40 Procedure for appealing initial determinations to withhold records.

(a) A member of the public who has requested an Agency record in accordance with subpart B of this part and who has received an initial determination that does not comply fully with the request, may appeal such a determination.

(b) The appeal shall:

(1) Be in writing;

(2) Be initiated within 30 working days of the initial determination denying the request;

(3) Include a copy of the initial written request, a copy of the letter of denial, and the requester's reasons for appealing the denial; and

(4) Be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451.

(c) The 30-day period for appealing a denial begins on the date of the denial letter. The 30-day limitation may be waived by the Agency for good cause shown. The Agency will consider any request closed if, within 30 working days after a complete or partial denial, the requester fails to appeal the denial.

§ 602.41 Decision on appeal.

(a) Review and final determination on an appeal shall be made by the Deputy Director.

(b) [Reserved]

(c) Review of an appeal shall be made on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(d) The final determination on an appeal from a denial shall be made by

the Deputy Director within 20 working days of receipt of the appeal by the Agency.

(e) If the final determination is to release the withheld material, the requester will be notified immediately and the material will be forwarded promptly in accordance with the procedure described in § 602.16 for notifications of initial determinations.

(f) If the final determination is to continue to withhold material in whole or in part, the requester will be notified immediately of the determination, the reasons therefor, and the right to judicial review.

(g) All decisions will be indexed and available for inspection and copying in the same manner as other Agency final orders and opinions, if any, under 5 U.S.C. 552(a)(2).

Subpart F—Annual Report to the Congress

§ 602.50 Requirements for annual report.

(a) On or before March 1 of each calendar year, ACDA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(1) The number of determinations made by ACDA not to comply with requests for records made to the Agency under this part and the reasons for each such determination;

(2) The number of appeals made by persons under subpart E of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary actions was not taken;

(5) A copy of this part 602 and any other rule or regulation made by ACDA regarding 5 U.S.C. 552;

(6) A copy of the fee schedule and the total amount of fees collected by ACDA for making records available under this part; and

(7) Such other information as indicates efforts to administer fully this part.

(b) The FOIA Office will be responsible for preparing the report for review and submission to the Congress.

Dated: May 20, 1996.
 Mary Elizabeth Hoinkes,
General Counsel.
 [FR Doc. 96-13469 Filed 5-29-96; 8:45 am]
 BILLING CODE 6820-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-29-95]

RIN 1545-AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the low-income housing credit. The proposed regulations provide rules for determining the treatment of low-income housing units in a building that are occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). The proposed regulations affect owners of those buildings. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for September 17, 1996, must be received by August 28, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS-29-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS-29-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David Selig, (202) 622-3040; concerning submissions and the hearing, Christina Vasquez, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under

section 42. These amendments are proposed to provide guidance under section 42(g)(2)(D), as amended by section 7108(e)(1) of the Omnibus Budget and Reconciliation Act of 1989, and section 11701(a)(3)(A) and (a)(4) of the Omnibus Budget and Reconciliation Act of 1990. Section 42(g)(2)(D) provides rules for determining the treatment of low-income housing units that are occupied by individuals whose incomes rise above the income limitation applicable under section 42(g)(1).

The general rule in section 42(g)(2)(D)(i) provides that if the income of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). The unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent-skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new resident, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Explanation of Provisions

All Available Units Must Be Rented to Qualified Residents

The heading of section 42(g)(2)(D)(ii) indicates that the next available unit must be rented to a low-income tenant to maintain the low-income status of an over-income unit. Although the heading of section 42(g)(2)(D)(ii) refers to the next available unit, the body of section 42(g)(2)(D)(ii) clarifies that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. Therefore, all available comparable units in the building, not only the next available unit, must be rented to qualified residents to maintain the low-income status of the over-income unit.

A Current Resident May Move Within the Same Low-Income Building

The proposed regulations define a qualified resident under the available unit rule as any person whose income does not exceed the applicable income limitation or any current resident, regardless of the income level of the current resident. Thus, a current resident may move to a different unit in the same low-income building without causing a violation of the available unit rule even if the current resident's income exceeds the applicable income limitation. When a current resident moves to a different unit within the same low-income building, the new unit adopts the status of the vacated unit.

Rule Applies to Each Building Separately

The rules of section 42 generally apply on a building-by-building basis. For example, the amount of credit allowable under section 42(a) is determined for each building in a qualified low-income housing project. The recapture of credit under section 42(j) is determined by examining the qualified basis of each building. In addition, section 42(g)(2)(D)(ii) uses the phrase "any residential rental unit in the building" to identify residential rental units that must be rented to qualified residents to preserve the low-income status of an over-income unit. The proposed regulations provide, therefore, that in a project containing more than one low-income building, the available unit rule applies separately to each building.

Effect of Violation of Available Unit Rule

The proposed regulations further provide that all over-income units in the building lose their status as low-income units if an owner violates the available unit rule. A violation of the rule occurs when a building has one or more over-income units and the owner of the building rents an available comparable unit in the building to a nonqualified resident.

Over-Income Unit Counts Toward Minimum Set-Aside Requirement

The proposed regulations also clarify whether an over-income unit counts towards satisfying the applicable minimum set-aside requirement of section 42(g)(1). The available unit rule provides that an over-income unit maintains its status as a low-income unit as long as the owner does not rent an available comparable unit to a nonqualified resident. Section 42(i)(3), which defines a low-income unit, and section 42(g)(2)(D), which contains rules