

for which an incentive payment has been requested or made.

(c) *DOE determinations.* Upon evaluating the application and any other relevant information, DOE shall determine:

(1) Eligibility of the applicant for receipt of an incentive payment, based on the criteria for eligibility specified in this part; and

(2) The number of kilowatt-hours to be used in calculating the incentive payment, based on the sum of net electric energy generated from a qualified renewable energy source at the qualified renewable energy facility and sold during the prior fiscal year, and any accrued energy.

(d) *Calculating payments.* Subject to the provisions of paragraph (e) of this section, incentive payments under this part shall be determined by multiplying the number of kilowatt-hours determined under § 451.9(c)(2) by 1.5 cents per kilowatt-hour, and adjusting that product for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions calendar year 1993 shall be substituted for calendar year 1979.

(e) *Insufficient Funds.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall determine the extent to which appropriated funds are available to be obligated under this program for each fiscal year. If funds determined to be available under the preceding sentence are not sufficient to make full incentive payments for all approved applications, DOE shall—

(1) Make incentive payments first, and if necessary on a pro rata basis, to owners or operators of qualified renewable energy facilities using solar, wind, geothermal, and closed-loop biomass technologies;

(2) Make incentive payments second, and if necessary on a pro rata basis, to owners or operators of all other qualified renewable energy facilities.

(3) Treat the number of kilowatt-hours for which an incentive payment is not made as a result of insufficient appropriations as accrued energy for which subsequent application for incentive payment may be made.

(f) *Notice to applicant.* After calculating the amount of the incentive payment under paragraphs (e) through (g) of this section, the DOE Deciding Official shall then issue a written notice of the determination to the applicant—

(1) Approving the application as eligible for payment and forwarding a copy to the DOE Finance Office with a request to pay;

(2) Setting forth the calculation of the approved amount of the incentive payment; and

(3) Stating the amount of accrued energy, measured in kilowatt-hours, for each qualified renewable energy facility, if any, and the energy source for same.

(g) *Disqualification.* If the application does not meet the requirements of this part or some of the kilowatt-hours claimed in the application are disallowed as unqualified, the Deciding Official shall issue a written notice denying the application in whole or in part with an explanation of the basis for denial.

§ 451.10 Administrative appeals.

(a) In order to exhaust administrative remedies, an applicant who receives a notice denying an application in whole or in part shall appeal, on or before 45 days from date of the notice issued by the DOE Deciding Official, to the Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with the procedures set forth in subpart C of 10 CFR part 1003.

(b) If an applicant does not appeal under paragraph (a) of this section, the determination of the DOE Deciding Official shall become final for DOE and judicially unreviewable.

(c) If an applicant appeals on a timely basis under paragraph (a) of this section, the decision and order of the Office of Hearings and Appeals shall be final for DOE.

(d) If the Office of Hearings and Appeals orders an incentive payment, the DOE Deciding Official shall send a copy of such order to the DOE Finance Office with a request to pay.

[FR Doc. 95-17753 Filed 7-14-95; 2:32 pm]

BILLING CODE 6450-01-P-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 937 and 939

[No. 95-06]

Repeal of the Nondiscrimination in Federally Assisted Programs and Housing Opportunity Allowance Program Regulations

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Board) is repealing two regulations it has determined are no longer necessary. This is intended to reduce excess regulation, eliminate obsolete regulations and avoid any

public confusion as to the nature of the Board's activities. The two obsolete regulations relate to the housing opportunity allowance program and nondiscrimination in federally assisted programs.

DATES: This final rule is effective on July 19, 1995.

FOR FURTHER INFORMATION CONTACT:

Brandon B. Straus, Attorney-Advisor, Office of General Counsel, (202) 408-2589, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory And Regulatory Background

As a result of an ongoing internal review of its regulations, the Board has identified parts 939 (Nondiscrimination in Federally Assisted Programs) and 937 (Housing Opportunity Allowance Program) as obsolete, for the reasons set forth below. Accordingly, in an effort to meet the goals of the Regulatory Reinvention Initiative of the Vice President's National Performance Review, the Board intends to repeal parts 937 and 939.

A. Part 937

Part 937 of the Board's regulations sets forth the Housing Opportunity Allowance Program (HOAP). See 12 CFR part 937. The HOAP initially appeared in part 527 of the regulations of the Board's predecessor agency, the Federal Home Loan Bank Board (Bank Board). When Congress abolished the Bank Board in 1989, See section 401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 (Aug. 9, 1989), (codified at 12 U.S.C. 1437 note), part 527 was redesignated as part 937 of the Board's regulations. See 54 FR 36759 (Sept. 5, 1989).

The Bank Board established the HOAP to implement section 101 of the Emergency Home Finance Act of 1970 (EHFA). See Pub. L. 91-351, sec. 101, 84 Stat. 450 (July 24, 1970) (codified at 12 U.S.C. 1430 note (1988) (*removed*, 12 U.S.C. 1430 (Supp. IV 1992)). Section 101 of the EHFA authorized the appropriation of \$250 million, without fiscal year limitation, to be used by the Bank Board for disbursement to the Federal Home Loan Banks (Banks) for the purpose of adjusting the effective interest rates on shorter, and long-term advances to members, the proceeds of which were to be used to assist in providing housing for low- and middle-income families. See EHFA sec. 101, 84 Stat. 450.

Since that time, however, the HOAP has ceased operations. Applications for funds under the HOAP have not been accepted since 1978, *see* 43 FR 14508 (Apr. 6, 1978), and none of the Banks now is involved with the HOAP. There have been no further congressional appropriations for use by the HOAP, and the provisions of section 101 of the EHFA no longer appear in the most recent version of the United States Code. *See* 12 U.S.C. 1430. Absent a statutory authorization and funding mechanism or any ongoing program activity, the HOAP is, effectively, non-existent.

B. Part 939

Part 939 of the Board's regulations generally prohibits discrimination on the grounds of race, color, or national origin in connection with any program or activity that receives federal financial assistance from the Board. *See* 12 CFR 939.1. Part 939 initially was promulgated as part 529 of the Bank Board's regulations. When Congress abolished the Bank Board in 1989, part 529 was redesignated as part 939 of the Board's regulations. *See* 54 FR 36759 (Sept. 5, 1989).

The Bank Board initially issued the regulation that is now part 939 to implement the provisions of title VI of the Civil Rights Act of 1964 (title IV). *See* Pub. L. 88-352, tit. VI, secs. 601, 602, 78 Stat. 252 (July 2, 1964). Title VI requires federal agencies that are empowered to extend federal financial assistance to any program or activity to issue rules that ensure that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance. 42 U.S.C. 2000d, 2000d-1.

Part 939 requires applicants for federal financial assistance provided by the Board to furnish assurances that they will comply with the nondiscrimination requirement of part 939. *See id.* § 939.5. Part 939 also sets forth procedures for effecting compliance with the nondiscrimination requirement, including the collection of reports, the conduct of investigations, and the holding of administrative hearings. *See id.* § 939.6-939.10.

Appendix A to part 939 lists the programs and activities to which part 939 applies. *See id.* part 939, Appendix A. The only program or activity listed in appendix A is the HOAP, which, as discussed previously, no longer is in operation. Absent the HOAP, the Board currently is not authorized to extend

federal financial assistance to any program or activity.

II. Analysis of the Final Rule

Since the HOAP is no longer an operating program and the Board does not now extend federal financial assistance to any other programs or activities, the Board is not required to maintain either part 937 or part 939 as part of its regulations.

In fact, retaining parts 937 and 939 as Board regulations published in the Code of Federal Regulations may cause confusion to the public, because part 937 incorrectly indicates that the HOAP remains in operation, and part 939 incorrectly implies that the Board extends federal financial assistance to one or more of the programs or activities it administers. Repeal of parts 937 and 939 will avoid any potential confusion.

Repeal of these regulations also will be consistent with the goal of the Vice President's National Performance Review to reduce the total number of regulations of executive agencies. *See* Report of the National Performance Review 32-33 (September 17, 1993); E.O. 12861, 58 FR 48255 (Sept. 14, 1993).

For the foregoing reasons, the Board has decided to repeal parts 937 and 939 of its regulations, pursuant to its general rulemaking authority under section 2B(a)(1) of the Federal Home Loan Bank Act. *See* 12 U.S.C. 1422b(a)(1).

III. Notice and Public Participation

Publication of notice of a proposed rulemaking is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, because the Board for good cause finds that notice and comment procedure is unnecessary and contrary to the public interest in this instance. *See id.* section 553(b)(3)(B). Compliance with the public notice and comment procedure requirement of APA section 553 is unnecessary because the final rule repeals sections of the Board's regulations that no longer have any effect on the public. Further, the Board believes that it is in the public interest to repeal parts 937 and 939 as soon as possible in order to avoid perpetuating the appearance that these provisions continue to affect the public and the activities of the Board.

IV. Effective Date

The Board finds that under APA section 553(d)(3), there is good cause that the final rule be effective upon publication for the reasons stated in part III of the Supplementary Information.

V. Regulatory Flexibility Act

This final rule will not impose any regulatory requirements on small entities, because it repeals provisions of the Board's regulations. Therefore, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Board hereby certifies that this final rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 937

Federal home loan banks, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 939

Administrative practice and procedure, Civil rights.

Accordingly and under the authority of 12 U.S.C. 1422b(a)(1), chapter IX, title 12, Code of Federal Regulations is hereby amended as follows:

PART 937—[REMOVED]

1. Part 937 is removed.

PART 939—[REMOVED]

2. Part 939 is removed.

Dated: July 13, 1995.

By the Federal Housing Finance Board.

Bruce A. Morrison,
Chairman.

[FR Doc. 95-17684 Filed 7-18-95; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-113; Special Conditions No. 25-ANM-101]

Special Conditions: Modified Boeing Company Model 747-100 and 747-200 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Company Model 747-100 and 747-200 modified by B & D Instruments & Avionics, Inc., of Valley Center, Kansas. This airplane will be equipped with a Flat Panel Engine Instrument Display that will perform critical functions. The applicable regulations do not contain