§ 39.13 [Amended]

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

2001–11–01 McDonnell Douglas: Amendment 39–12242. Docket 2000–NM–207–AD.

Applicability: Model DC–9–32 series airplanes modified per Hexcel Supplemental Type Certificate (STC) SA4371NM, as listed in Hexcel Service Bulletin 110000–25–001, dated March 31, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 detect improper grounding of a water heater, which, coupled with an internal short in the water heater, could result in heat or smoke damage or a fire on the airplane, accomplish the following:

Inspection and Corrective Action

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection to determine if ground wires are installed between the top of the water heater and the sink unit and between the sink unit and the mounting flange of the toilet flush timer module on each lavatory, per Hexcel Service Bulletin 110000–25–001, dated March 31, 2000. If any ground wire is not installed, before further flight, install a ground wire assembly per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 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.

Incorporation by Reference

(d) The actions shall be done in accordance with Hexcel Service Bulletin 110000–25–001, dated March 31, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hexcel Interiors, 3225 Woburn Street, Bellingham, Washington 98226; or Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 5, 2001.

Issued in Renton, Washington, on May 18, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–13181 Filed 5–30–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR 257

[Release No. 35–27404; File No. S7–07–01]

RIN 3235–AI12

Electronic Recordkeeping by Public Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to revise rules under the Public Utility Holding Company Act of 1935 regarding recordkeeping requirements for registered public utility holding companies and their mutual or subsidiary service companies. The current rules were most recently updated in 1984 and allow regulated companies to preserve records using storage media such as paper, magnetic tape, and microfilm. The amendments will expand the approved recordkeeping methods to allow the use of modern information technology resources. The Commission is adopting these rule amendments in response to the passage of the Electronic Signatures in Global and National Commerce Act, which encourages federal agencies to accommodate electronic recordkeeping.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine A. Fisher, Assistant Director, Robert P. Wason, Chief Financial Analyst, or Victoria J. Adraktas, Attorney-Advisor, Office of Public Utility Regulation, (202) 942–0545, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0503.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') today is adopting amendments to rule 1 [17 CFR 257.1],[1] regarding the preservation and destruction of records of registered public utility holding companies and of mutual and subsidiary service companies, under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79] (''Holding Company Act'').

Executive Summary

Federal law requires registered public utility holding companies and their mutual or subsidiary service companies to make and keep books and records.[2] The recordkeeping requirements are a key part of the Commission's public utility holding company regulatory program because they allow us to monitor the operations of companies and to evaluate their compliance with federal law. The recordkeeping rule currently permits records to be preserved and maintained using storage media such as paper, magnetic tape, and microfilm. In light of the advances in information technology since the rule was promulgated in 1984 and in particular the rapid changes in technology in recent years, we believe that we should revise the standards for permissible recordkeeping media to allow the use of current electronic recordkeeping and storage resources in

[1] Unless otherwise noted, all references to rule 1 will be to 17 CFR 257.1.

[2] ''Company'' or ''companies'' means a service company subject to 17 CFR 250.93, or a holding company subject to 17 CFR 250.26, which is not an electric utility company or a gas utility company, and any predecessor or inactive or dissolved associate company, the records of which are in the possession or control of such company.

maintaining required records.[3] Moreover, because the proposed amendments do not specify the use of any particular technologies, they allow for the adoption of new technologies in the future. Finally, we are also interpreting rule 1 to be the exclusive means by which companies can comply with the recordkeeping provisions of the Electronic Signatures in Global and National Commerce Act (''Electronic Signatures Act,'' ''Act,'' or ''ESIGN'').

Last year, Congress passed the Act to facilitate the use of electronic records and signatures in interstate and foreign commerce.[4] Consistent with the purpose and goals of the Electronic Signatures Act, we are amending the Holding Company Act rules to expand the circumstances under which companies may keep their records on electronic storage media. We are also updating our recordkeeping rules and amending them for clarification. The amendments are designed to update rule 1 to reflect and accommodate companies' use of modern information technology resources to maintain and index records.

I. Discussion

A. Amendments to Rule 1

The Commission is amending rule 1 to permit companies to keep their records in an electronic format. We also proposed to clarify the obligation of companies to provide copies of their records to Commission examiners, and to incorporate terminology used in electronic recordkeeping rules under the Securities Exchange Act of 1934 into rule 1.[5] We received six comment letters addressing the proposal.[6] Commenters supported the proposed amendments, and we are adopting them substantially as proposed, with a few changes in response to concerns expressed by commenters.

We are expanding the variety of formats that companies may use to maintain required records to include electronic and micrographic storage media. Under the revised rule 1, companies are permitted to maintain records electronically if they establish and maintain procedures: (i) To safeguard the records from loss, alteration, or destruction, (ii) to limit access to the records to authorized personnel, the Commission, and directors of the company, and (iii) to ensure that electronic copies of non-electronic originals are complete, true, and legible.[7]

We are also amending the rules to clarify the obligation of companies to provide copies of their records to Commission examiners. The amendments make clear that companies may be requested to promptly provide (i) legible, true, and complete copies of records in the medium and format in which they are stored, and printouts of such records; and (ii) means to access, view, and print the records.[8]

We are not adopting a proposed amendment that would have stated that records are to be provided in no case more than one business day after a request.[9] Some commenters were concerned that such an amendment could preclude companies from agreeing to a schedule of record production with the examination staff to produce certain documents immediately and other documents, that are not immediately accessible, on a delayed basis. We agree that such arrangements when entered into and performed in good faith by the examined entity can facilitate the examination process. While the ''promptly'' standard imposes no specific time limit, we expect that a company would be permitted to delay furnishing electronically stored records for more than 24 hours only in unusual circumstances. At the same time, we believe that in many cases companies could, and therefore will be required to, furnish records immediately or within a few hours of request.

In addition, commenters raised concerns that the amendment requires companies to maintain duplicate copies of records. We wish to clarify that this requirement only applies to records stored on electronic or micrographic media. It is not a requirement for records kept in any other type of media. These duplicates may be maintained in any media form.

B. Electronic Signatures Act

Under the Electronic Signatures Act, an agency's recordkeeping requirements may be met by retaining electronic records that accurately reflect the information set forth in the record, and remain accessible to all persons who are entitled to access, in a format that can be accurately reproduced.[10] The Act allows us to interpret this provision pursuant to our authority under the Holding Company Act.[11] Our interpretation of the Electronic Signatures Act must be consistent with the Act and not add to its requirements.[12] The interpretation must be based on findings that (i) our interpreting regulations are substantially justified; (ii) the methods selected to carry out our purposes are substantially equivalent to the requirements imposed on records that are not electronic records and will not impose unreasonable costs on the acceptance and use of electronic records; and (iii) the methods selected to carry out our purposes do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.[13] The Electronic Signatures Act explicitly authorizes agencies to interpret the Act's electronic recordkeeping provisions to specify performance standards to assure accuracy, record integrity, and accessibility of electronically retained records.[14]

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[3] We recognize that the standards for electronic recordkeeping we are adopting for registered public utility holding companies are different from rules we have adopted for broker-dealers, which require brokerage records to be preserved in a non-rewritable, non-erasable (the ''write-once, read many'' or ''WORM'') format. There are, however, significant differences between the industries. In addition, we have not experienced any significant problems with registered holding companies altering stored records. In light of these factors, the costs of requiring registered public utility holding companies to invest in new electronic recordkeeping technologies may not be justified.

[4] Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229 (*see* Preamble).

[5] *See* Electronic Recordkeeping by Public Utility Holding Companies, Holding Company Act Release No. 25357 (Mar. 19, 2001) [66 FR 16158 (Mar. 23, 2001)] (''Proposing Release'') at section I.B.

[6] The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC (File No. S7–07–01).

[7] Rule 1. One commenter expressed concern that the restriction on access to records required to be maintained would restrict companies from allowing access to records by properly authorized employees. We note that ''authorized personnel'' in the text of the rule is intended to permit companies to allow access to required records to any person the company chooses to provide access. The objective of this restriction is to ensure that companies adequately safeguard records from unauthorized access.

[8] Rule 1(e)(2).

[9] *See* proposed rule 1(e)(2)(ii).

[10] ESIGN section 101(d)(1).

[11] Under the Electronic Signatures Act, a federal regulatory agency (like the Commission) that is responsible for rulemaking under any other statute (such as the Public Utility Holding Company Act) ''may interpret section 101 [of the Electronic Signatures Act] with respect to such statute through the issuance of regulations pursuant to a statute; or to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the **Federal Register** in the case of an order or guidance issued by a Federal regulatory agency).'' ESIGN section 104(b).

[12] ESIGN section 104(b)(2)(A) and (B).

[13] ESIGN section 104(b)(2)(C).

[14] ESIGN section 104(b)(3). Such performance standards may be specified in a manner that imposes a requirement in violation of the general prohibition against selecting methods that require or accord greater legal status or effect to the implementation or application of a specific

We interpret the Electronic Signatures Act with respect to the Holding Company Act to require companies to comply with the requirements of rule 1 when they keep required records on electronic storage media. Companies, therefore, can comply with the requirements of the Electronic Signatures Act only by complying with the requirements of amended rule 1. In the proposing release, we asked for comment on whether these interpretations were consistent with the Electronic Signatures Act's requirements.[15] Commenters generally agreed that our interpretation of the Electronic Signatures Act was reasonable. As discussed below, our rules and interpretation satisfy all the requirements of the Electronic Signatures Act.

1. Consistency With Electronic Signatures Act

Rule 1 is consistent with the Electronic Signatures Act. The Act permits federally required records to be retained in an electronic format, and we are amending rule 1 to permit companies to maintain all required records electronically.

2. No Additional Requirements

Rule 1 imposes no requirements in addition to those imposed by the Act. The Electronic Signatures Act requires electronic records to be stored in a manner that ensures that they are accurate, accessible, and capable of being accurately reproduced for later reference.[16] The rule requires companies that maintain their records electronically to comply with certain conditions that are consistent with the requirements of the Act and that are designed to bring about companies' compliance with the Act's requirements.[17]

3. Substantial Justification

Our rule requires companies to maintain a wide variety of documents that we use to verify compliance with the Holding Company Act. The value of these records is entirely dependent on their integrity and accessibility. If companies are not required to protect their records from inadvertent or intentional alteration or destruction [18] and provide examiners with meaningful access to all required records,[19] then the records become unreliable, and the examination process moot. Therefore, we find that our interpretation of the Electronic Signatures Act, that companies must comply with rule 1, is substantially justified.

4. Requirements Equivalent to Requirements for Other Record Formats

Rule 1 subjects electronic records to conditions that are substantially equivalent to conditions under which companies keep paper and micrographic records. These conditions are designed to ensure that the records exist in a form that is legible, authentic, complete, and accessible. While rule 1 stipulates that all records, regardless of format, must comply with certain conditions, other requirements, which would be superfluous for paper records, apply only to electronic and micrographic records.[20]

Companies that maintain records in an electronic format must comply with several requirements that have no micrographic or paper equivalent. For example, companies must have procedures to reasonably protect electronic records from loss, alteration, or destruction,[21] to limit access to electronic records,[22] and to reasonably ensure that electronic records that are created from hard copy are complete, true, and legible.[23] We believe that these additional requirements are necessary because of the unique vulnerability of unprotected electronic records to undetectable alteration and falsification.

5. No Unreasonable Costs on Acceptance and Use of Electronic Records

Rule 1 provides significant flexibility for companies subject to the Act's recordkeeping requirements. In particular, it permits the use of any electronic storage media. We conclude that rule 1 will not impose unreasonable costs on the acceptance and use of electronic recordkeeping.

6. Specific Technology or Technical Specification

The Electronic Signatures Act generally prohibits us from requiring or according greater legal status or effect to the implementation or application of a specific technology or technical specification. However, the Act does permit us to specify performance standards to assure the accuracy, integrity, and accessibility of required records, even if our standards require companies to implement or apply a specific technology or technical specification to their storage system.[24] Rule 1 has been deliberately crafted to be technologically neutral, leaving companies free to adopt any combination of technological and manual protocols that meet the requirements of the rule. In any event, even if the rule was interpreted to favor a specific technology or technical specification, it would nonetheless be a valid exercise of our interpretive authority, as it serves the important governmental objective of assisting us to oversee company compliance with the Holding Company Act, and are substantially related to the achievement of that objective.[25] The continuing accessibility and integrity of company records are critical to the fulfillment of our oversight responsibilities.

C. Effective Date

The effective date for these amendments is May 31, 2001. In most cases, the Administrative Procedures Act (''APA'') requires that a rule amendment be published in the **Federal Register** at least 30 days prior to its effective date unless the promulgating

technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. ESIGN section 104(b)(3).

[15] *See* Proposing Release, *supra* at note 5.

[16] ESIGN section 101(d)(1).

[17] The rules' general requirements that companies have procedures to protect electronic records from alteration, loss, or destruction, to limit unauthorized access, and verify the integrity of electronic copies of hard copy originals ensure that an electronic record is accurate from the outset, and limit the possibility that an electronic record will be corrupted during its retention period. The rule's requirements regarding indexing, and the obligation of companies to provide records to examiners and directors foster the accessibility of electronic records.

[18] *See* rule 1(e)(2)(ii) (requiring procedures to ensure the quality of electronic copies of non-electronic records); rule 1(e)(2)(iii) (requiring that companies separately store duplicates of electronic records); rule 1(e)(3)(ii) (requiring companies to limit access to electronic records); and rule 1(e)(3)(i) (requiring companies to adopt procedures to maintain and preserve electronic records, so as to reasonably safeguard them from loss, alteration, or destruction).

[19] *See* rule 1(e)(2)(ii)(A) (requiring companies to provide promptly a legible, true, and complete copy of an electronically stored record upon request from the Commission or other parties entitled to access the records); rule 1(e)(2)(i) (requiring companies to arrange and index their electronic and micrographic records in a way that permits easy location and retrieval); and rule 1(e)(2)(ii)(C) (requiring companies to provide means to access, view, and print electronic records).

[20] For example, the requirement that companies that keep micrographic or electronic records provide promptly (i) a legible, true, and complete copy of the record in the medium and format in which it is stored, (ii) a legible, true, and complete printout of the record, and (iii) means to access, view, and print the records is unnecessary for paper records, which require no special treatment to make them readable and reproducible.

[21] Rule 1(e)(3)(i).

[22] Rule 1(e)(3)(ii).

[23] Rule 1(e)(3)(iii).

[24] ESIGN section 104(b)(3)(A).

[25] ESIGN section 104(b)(3)(A).

agency can show good cause for shortening this interim period.[26] The Electronic Signatures Act becomes effective on June 1, 2001, at which point companies may opt to store required records electronically, so long as the records are accessible and accurate.[27] As described above, the Electronic Signatures Act authorizes the Commission to interpret these terms. A gap between the effective dates of the Electronic Signatures Act and our rule amendments would needlessly create confusion about the appropriate standards for electronic recordkeeping. During the period between the effective dates, companies would be forced to choose between maintaining their electronic records in accordance with the Act's general, but operative standards, or relying instead on the more specific but as yet not effective standards set in rule 1. We find that there is good cause for these amendments to become effective on May 31, 2001.

The APA also authorizes acceleration of the effective date of a rule that ''relieves a restriction.'' [28] The amendments to rule 1 allow companies to store all of their required records electronically, remove restrictions on the type of electronic storage media that may be used, and effectively eliminate most of the conditions previously placed on the ability of companies to convert paper records to an electronic format.

II. Cost-Benefit Analysis

In proposing the amendments to rule 1, we considered the costs and benefits that the amendments would generate. Although we encouraged commenters to address the proposal's costs and benefits and to submit their own estimates of what they might be, we received no comment specifically addressing this issue.[29]

We believe the amendments will impose few if any costs on companies that are not already required. As described above, the amended rules allow companies to choose to maintain required records on electronic storage media. Electronic storage remains optional with the adoption of these amendments. We assume that companies will not select the electronic storage option provided for in the amended rule unless doing so is less expensive (or otherwise more efficient and, therefore, supported by business considerations). It remains our belief that the amended rule will allow companies greater flexibility to make business decisions about recordkeeping and, when appropriate, opt for electronic storage with potential cost savings and other benefits.

In addition, we are adopting minor amendments to clarify the obligation of companies to provide records to our examination staff and minor technical amendments to conform the language of rule 1 to the recordkeeping rules under the Securities Exchange Act of 1934. We anticipate few if any costs to companies as a result of these amendments.

III. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [U.S.C. 605(b)], the Acting Chairman of the Commission certified that the amendments will not have a significant economic impact on a substantial number of small entities. The certificate was published in the **Federal Register** with the proposal. We received no comments on the certificate.

IV. Paperwork Reduction Act

The amendments do not require a new collection of information. They affect only the manner in which, pursuant to rule 1, registrants can store the information that must be collected under rule 26 [17 CFR 250.26]. In connection with rule 26, the Commission previously submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act, a request for approval and received an OMB control number for the rule, OMB Control No. 3235–0183.

V. Statutory Authority

The Commission is adopting amendments to rule 1 of the Holding Company Act pursuant to authority set forth in sections 15 and 20(a) of the Holding Company Act [15 U.S.C. 79(o) and 15 U.S.C. 79(t)].

List of Subjects in 17 CFR Part 257

Holding companies, Reporting and recordkeeping requirements.

Text of Rule Amendments

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 257—PRESERVATION AND DESTRUCTION OF RECORDS OF REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND OF MUTUAL AND SUBSIDIARY SERVICE COMPANIES

1. The authority citation for Part 257 is added to read as follows:

Authority: 15 U.S.C. 79(o) and 79(t), unless otherwise noted.

2. The authority citations following §§ 257.1 and 257.2 are removed.

3. Section 257.1 is amended by:

a. Removing paragraphs (e) through (h);

b. Adding new paragraph (e); and

c. Redesignating paragraphs (i) through (m), as paragraphs (f) through (j).

The addition reads as follows:

§ 257.1 General instructions.

* * * * *

(e)(1) *Micrographic and electronic storage permitted.* The records required to be maintained and preserved under § 250.26 of this chapter may be maintained and preserved for the required time by, or on behalf of, a company on, among other formats:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The company, or person that maintains and preserves records on its behalf, must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of a record that is stored on micrographic or electronic storage media.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the company, or person that maintains and preserves records on its behalf, must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard

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[26] 5 U.S.C. 553(d)(3).

[27] ESIGN section 101(d)(1).

[28] 5 U.S.C. 553(d)(1).

[29] Commenters' submissions discussed the potential costs of keeping duplicates of all records required to be maintained regardless of their original format, which, as we clarify above, is not the intent of the amendment. In addition, commenters discussed the cost of the proposing release's inclusion of a 24 hour turn around period for document requests, which has been dropped from the amendment.

them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, the directors of the company, and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete and true, and legible when retrieved.

* * * * *

Dated: May 24, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13586 Filed 5–30–01; 8:45 am]

BILLING CODE 8010–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 369

RIN 3220–AB49

Use of the Seal of the Railroad Retirement Board

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to add a part explaining when use of the Board's seal is permitted. Federal law prohibits the use of an agency seal except as authorized by regulation. The Board previously had no such regulation.

EFFECTIVE DATE: This rule is effective May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board is an independent agency in the executive branch of the United States Government which is charged with the administration of the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). Use of agency seals is governed by 18 U.S.C. 701 which prohibits the use of agency seals except as authorized under regulations made pursuant to law. This proscription is intended to protect the public against the use of a recognizable assertion of authority with intent to deceive (*U.S.* v. *Goeltz,* 513 F.2d 193 (C.A. Utah 1975), *cert. den.* 423 U.S. 830). The regulations of the Railroad Retirement Board previously did not include provisions for the authorization of use of the Agency's seal. The Board is adding Part 369 to its regulations to explain when use of the Board's seal is permitted.

The Board published this rule as a proposed rule on January 3, 2001 (66 FR 314–315) and invited comments by March 5, 2001. No comments were received. Accordingly, the proposed rule is adopted as a final rule without change.

In order to comply with the President's June 1, 1998 memorandum directing the use of plain language for all proposed and final rulemaking, the regulatory paragraphs introduced by the above rule changes have been written in plain language.

This rule concerns agency management and is not a regulation as defined in Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 369

Railroad retirement, Seals and insignia.

For the reasons set out in the preamble, the Railroad Retirement Board adds Part 369 to title 20, chapter II, subchapter F of the Code of Federal Regulations as follows:

PART 369—USE OF THE SEAL OF THE RAILROAD RETIREMENT BOARD

Sec.

Authority: 18 U.S.C. 701; 45 U.S.C. 231f.

§ 369.1 Unofficial use of the seal of the Railroad Retirement Board.

Use of the seal of the Railroad Retirement Board for non-Agency business is prohibited unless permission for use of the seal has been obtained in accordance with this part.

§ 369.2 Authority to grant written permission for use of the seal.

The Board hereby delegates authority to grant written permission for the use of the seal of the Railroad Retirement Board to the Director of Administration.

§ 369.3 Procedures for obtaining permission to use the seal.

Requests for written permission to use the seal of the Railroad Retirement Board shall be in writing and shall be directed to the Director of Administration of the Railroad Retirement Board. The request should, at a minimum, contain the following information:

(a) Name and address of the requester.

(b) A description of the type of activity in which the requester is engaged or proposes to engage.

(c) A statement of whether the requester considers the proposed use or imitation to be commercial or non-commercial, and why.

(d) A brief description and illustration or sample of the proposed use, as well as a description of the product or service in connection with which it will be used. This description will provide sufficient detail to enable the Director of Administration to determine whether the intended use of the seal is consistent with the interests of the government.

(e) In the case of a non-commercial use, a description of the requesting organization's function and purpose shall be provided.

§ 369.4 Inappropriate use of the Seal.

The Railroad Retirement Board shall not grant permission for use of the seal in those instances where use of the seal will give the unintended appearance of Agency endorsement or authentication. Situations where use of the seal of the Railroad Retirement Board would be inappropriate include, but are not limited to, the following examples:

(a) A consulting firm makes arrangements with a railroad to conduct a retirement planning seminar for its employees. Included in the material distributed to the seminar attendees is a booklet, prepared by the consulting firm, which displays the seal of the Railroad Retirement Board on the cover and contains information regarding benefits payable under the Railroad Retirement Act.

(b) A former employee of the Railroad Retirement Board owns a coffee and donut shop, frequented by present and past railroad workers. Many of the shop's customers know of the owner's prior employment with the Board and frequently ask him questions related to benefits payable under the Railroad Unemployment Insurance and Railroad Retirement Acts. The shop owner prepares and distributes to his customers a monthly flyer listing benefit questions presented to him during the month, as well as his answers to the questions. The flyer displays the seal of the Board.

(c) A retired railroad employee works part-time in a train hobby shop. The shop owner, at the former railroad worker's suggestion, develops and sells items such as coffee mugs and computer mouse pads with text relevant to benefits paid by the Railroad Retirement Board. The text is taken from