

handlers. The benefits of providing another tool to the industry to assist them in making business decisions far outweigh the estimated 5 minutes it will take to complete the form. Further, any additional reporting may be offset by reduced reporting for those handlers choosing to utilize this option in lieu of other options available for satisfying reserve obligations. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Information generated by State, Federal, and private sector reports pertains to almonds in general and does not contain specific producer and handler information. Therefore, such information would not be detailed enough to be used for the specific purposes required under the order.

The amendment to the marketing order was voted on in a referendum and was overwhelmingly supported by almond growers. This rule will establish procedures to implement the amendment that authorized transfers of reserve obligations. There are no alternatives that would result in the additional flexibility sought by the industry.

In addition, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the February 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Board itself is composed of ten industry members, of which five are handlers and five are growers.

A proposed rule concerning this action was issued by the Department on April 4, 1997, and published in the **Federal Register** on April 10, 1997 (62 FR 17569). It was also made available through the Internet by the Office of the Federal Register. A 60 day comment period was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

The proposed rule regarding the interhandler transfer of almonds also announced the AMS's intent to request a revision to the currently approved information collection requirements issued under the marketing order. The 60 day comment period was also provided to allow interested persons the opportunity to respond to the notice. No comments were received on the information collection requirements.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0071.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In §981.455, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 981.455 Interhandler transfers.

* * * * *

(c) *Transfers of reserve withholding obligation.* A handler may transfer reserve withholding obligation to other handlers pursuant to §981.55 after having filed with the Board an ABC Form 11 executed by both handlers. The Board shall approve the transfer upon receipt of the properly completed form.

* * * * *

Dated: October 23, 1997.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97-28630 Filed 10-28-97; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3150-AF69

Information Collection Requirements; Statutory and Technical Amendments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on October 6, 1997 (62 FR 52184). This action is necessary to correct an erroneous instruction.

EFFECTIVE DATE: October 6, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555-0001, telephone (301) 415-7162.

SUPPLEMENTARY INFORMATION: On page 52188, in the second column, instruction number 24 is corrected to read, "24. In §60.8, paragraph (a) is revised to read as follows:".

Dated at Rockville, MD, this 22nd day of October 1997.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 97-28620 Filed 10-28-97; 8:45 am]

BILLING CODE 7590-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA amends its rules regarding subpoenas seeking nonpublic records or the testimony of NCUA employees. The rule provides procedures, requirements and information on how the NCUA will handle these matters and expressly prohibits any disclosure or testimony except as provided by the rule. The rule also amends the current rule regarding release of NCUA records that are exempt from disclosure under the Freedom of

Information Act to conform with the procedures provided in this proposed rule.

DATES: Effective October 29, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Sheila Albin, Associate General Counsel, or Allan Meltzer, Associate General Counsel, (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

The NCUA receives numerous subpoenas and requests for NCUA employees to provide evidence in litigation. Typically, these subpoenas are for NCUA records that are not available to the public under the Freedom of Information Act (FOIA). Also, we receive numerous subpoenas and requests for NCUA employees to appear as witnesses in litigation in conjunction with a request for nonpublic records or to provide testimony.

In recent years, the number of requests has averaged about two or three a month. Often, these subpoenas and requests relate to litigation involving federally-insured credit unions where there is some issue for which one or both of the parties want to use nonpublic records, such as NCUA examination reports, as evidence in the case. In addition, the parties want to have an NCUA employee, often an examiner, testify to establish the authenticity of the records or explain the information contained in the records. If we provide these records and an examiner appears as a witness, this will mean a significant disruption in the examiner's work schedule. In many cases, parties want to use the examiner as an expert witness on matters such as the financial condition of the credit union or other issues involving opinions. Our experience has been that, in many cases, the parties can deal with these issues through the testimony of other witnesses, including hiring their own independent, expert witness, and using the parties' own records.

Proposed Rule

On April 16, 1997, the NCUA Board issued a proposed rule to revise Part 792.62 FR 19941 (April 24, 1997). The proposed rule was presented in a question and answer format to promote clarity and uses simple terms. It continued the basic prohibition against disclosure of nonpublic records or testimony by NCUA employees without obtaining permission. The proposed rule also set out for the public what

information to submit and what factors the NCUA will consider; and identified filing times, fees, and potential restrictions on disclosures or testimony. The rule identified the proposed charges for witnesses as the same as those provided by the federal courts and the fees related to production of records are the same as those charged under FOIA.

Comments

In the Supplementary Information section of the proposed rule, the NCUA stated its interest in receiving comments on the application of the proposed regulation to former as well as current employees, including its application to proceedings to which NCUA is a party, the exception from coverage for expert testimony by former employees, and any other factors that commenters believed the NCUA should consider in addition to those set out in §792.46 in reaching a final determination. Four comment letters were received: two from national trade associations, one from a state league and one from a federal credit union.

Comments from the two national trade associations indicated their general support for more efficient procedures and recognized the need to protect the confidentiality of examination-related records. Both trade associations commented on NCUA's authority to prevent former employees from testifying. One trade association stated that it questioned NCUA's authority to prevent the testimony of former employees unless it was clear that nonpublic records such as examination records would be divulged.

We first want to note that the rule is substantially similar to regulations issued by our sister financial regulatory agencies that also restrict disclosure of confidential information by former employees or any person in possession of such information. Federal Deposit Insurance Corporation, 12 C.F.R. 309.7; Office of Thrift Supervision, 12 C.F.R. 510.5; The Federal Reserve System, 12 C.F.R. 261.14. The focus of the rule is on requiring that NCUA receive notice of proposed testimony by a former employee. The purpose is not to restrict former employees but to protect the release of confidential records and information that may be in their possession. Even when former employees are not in possession of nonpublic records, they may still have substantial knowledge and information that they recall regarding matters that remain confidential. For this reason, the NCUA wants an opportunity, in advance of testimony being given, to consult with former employees and any party wishing to use their testimony in

order to protect the confidentiality of that information by prohibiting or limiting such testimony as appropriate.

Our view is that the definition of employee makes clear that the NCUA's intent is to protect confidential information. Former employees remain prohibited from testifying about specific matters for which they had responsibility during their active employment, unless permitted to testify as provided in the rule. They would not, however, be barred from appearing on general matters or otherwise employing their expertise as, for example, expert witnesses. Finally, we want to highlight the fact that the final rule, as in the proposed rule, contains a prohibition against release of nonpublic records by any person who may have custody of them.

Both trade associations also commented on § 792.46 that sets out the factors NCUA will consider in reviewing a request. One commented that the factors were too subjective. The other commented that a better rationale would be to rely on a legal basis such as a statute or evidentiary privilege and suggested using the standard used by the Federal Reserve Board which is whether the need for the information outweighs the need for confidentiality and whether disclosure is consistent with Board policy and supervisory and regulatory responsibilities. 12 CFR 261.13(c). We believe that the factors we have listed include several examples of established statutory and evidentiary privileges and that, although phrased differently, the factors in the final rule set the same basic standard used by the Federal Reserve Board but in simpler, more specific language. We do not think the factors are subjective but are necessarily and appropriately flexible. For example, the factor of whether a request is burdensome must be considered on a case-by-case.

Both trade associations commented on the information that a written request must include. One commented that it made difficult for a litigant to know the relevance of what is sought and offered as an alternative that a requester only be required to assert affirmatively that the documents are relevant. We disagree. The regulation is designed to protect nonpublic records and the testimony of employees, which by their nature, will likely contain sensitive and confidential information. Without a basis for concluding that the records or testimony are relevant in a particular matter, the NCUA should not consider releasing them. In addition, merely establishing that records or testimony are relevant is not sufficient. In order to be able to consider the factors set out in § 792.46,

the NCUA must have information about the nature of the proceedings. The NCUA must know something about the proceedings in order to consider whether the litigant can obtain the information or testimony from other sources. For example, if litigants want nonpublic records or the testimony of NCUA employees merely to establish the general financial condition of a credit union, we think they should seek financial records directly from the credit union and hire their own expert witness to testify about them. In response to the comment that it may be difficult for a requester to specify what records it wants because he or she may not know what is available, we think a requester can phrase such a request in terms of the facts or issues that are relevant in much the same way that the Freedom of Information Act requests or discovery requests in civil litigation are prepared. Thus, if a requester cannot identify specific records, the description of the facts or issues involved should be sufficient to permit the NCUA to identify responsive records.

With regard to application of the rule to proceedings to which NCUA is a party, there was one comment that NCUA should have to abide by the same rules of evidence as other litigants. Another comment was to the effect that the statement that NCUA will be subject to applicable rules of civil procedure when it is a party to a proceeding should be more conspicuously placed. This statement appears in the definition of "legal proceedings" and, we believe, states clearly that NCUA will be subject to the applicable rules of procedure when it is a party. As a matter of drafting, we believe that it is appropriately placed in the definition section. That same definition also states clearly that, the rule will still apply to the testimony of former employees even when the NCUA is a party to a proceeding. Unless the NCUA receives notice as provided under the rule, it may not otherwise receive notice of a former employee's testimony even though NCUA is a party to a proceeding. This is because a former employee may otherwise be contacted for testimony in the form of declarations, affidavits, statements or interviews, which could involve the former employee's revealing confidential information without any prior notice to NCUA of the nature of the testimony. For that reason, the rule will still apply to former employees when NCUA is a party to a proceeding. Obviously, where NCUA is a party to a proceeding, it will be in a position to receive notice of any requests for

records or the testimony of current employees.

Comments from the state league and one federal credit union generally were supportive of the proposed regulation but indicated some concern that the regulation should not be used to deny access to records that should be made available. The NCUA reiterates its position stated when it issued the proposed regulation. The final rule is essentially procedural, not substantive. It does not create a right to obtain records or the testimony of an NCUA employee nor does it create any additional right or privilege not already available to NCUA to deny such a request.

Final Rule

The final rule is the same as the proposed rule. It solves some problems that have arisen in the past. It should eliminate or reduce eleventh hour requests. Also, by centralizing the service of subpoenas and the determination of the NCUA's response, it should eliminate attempts to serve subpoenas or present requests for disclosure of nonpublic records to field staff and regional offices. The procedures and criteria will ensure a more efficient use of NCUA resources, minimize the possibility of involving the NCUA in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas and maintain the impartiality of NCUA between private litigants. The final rule will serve NCUA's interest in protecting sensitive, confidential and privileged information and records generated by its supervisory and regulatory work.

The NCUA reiterates its position that, in issuing this regulation, it is not making any waiver of its sovereign immunity. For reference, the NCUA notes that, in addition to the foregoing, a discussion of the legal authority for issuance of this regulation is set out in the Supplemental Information accompanying the publication of the proposed regulation. 62 FR 19941 (April 24, 1997).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, meaning those under \$1 million in assets. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant

economic impact on a substantial number of small credit unions. The reasons for this determination are that the copying and witness fees to be charged to person and entities submitting requests under the regulation are not large and will not create a financial burden. The proposed rule will not create any significant demand for legal, accounting, or consulting expenditures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The NCUA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review. OMB received no comments on the proposed rule. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. OMB has assigned 31330146 as the control number that will be displayed in the table at 12 CFR Part 795.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This final rule is essentially of a procedural nature only governing release of NCUA's own nonpublic records and the appearance of NCUA employees in legal proceedings. The NCUA has determined that the final rule does not constitute a significant regulatory action for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) provides generally for congressional review of agency rules. The reporting requirement is triggered when a final rule is issued. The rule was submitted to OMB for determination of whether this final rule constitutes a major rule as defined under the statute. A major rule is one that OMB finds has resulted in or is likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual, industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic and export markets. OMB has determined that this is not a major rule.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Credit unions, Confidential business information, Freedom of Information Act, Government employees, Reporting and recordkeeping requirement, Subpoenas.

By the National Credit Union Administration Board on October 22, 1997.

Hattie Ulan,

Acting Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to amend 12 CFR part 792 as set forth below:

PART 792—[AMENDED]

1. The authority citation for part 792 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Amend §792.4 to remove paragraph (b)(3) and revise paragraph (a) to read as follows:

§792.4 Release of exempt records.

(a) *Prohibition against disclosure.* Except as provided in paragraph (b) of this section and subpart C of this part, no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of the Agency to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

* * * * *

3. Revise subpart C of part 792 to read as follows:

Subpart C—Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

Sec.

- 792.40 What does this subpart prohibit?
- 792.41 When does this subpart apply?
- 792.42 How do I request nonpublic records or testimony?
- 792.43 What must my written request contain?
- 792.44 When should I make a request?
- 792.45 Where do I send my request?
- 792.46 What will the NCUA do with my request?
- 792.47 If my request is granted, what fees apply?
- 792.48 If my request is granted, what restrictions may apply?
- 792.49 Definitions.

Subpart C—Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

§792.40 What does this subpart prohibit?

This subpart prohibits the release of nonpublic records or the appearance of an NCUA employee to testify in legal proceedings except as provided in this subpart. Any person possessing nonpublic records may release them or permit their disclosure only as provided in this subpart.

(a) *Duty of NCUA employees.* (1) If an NCUA employee is served with a subpoena requiring him or her to appear as a witness or produce records, the employee must promptly notify the Office of General Counsel. The General Counsel has the authority to instruct NCUA employees to refuse appearing as a witness or to withhold nonpublic records. The General Counsel may let an NCUA employee provide testimony, including expert or opinion testimony, if the General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands expert or opinion testimony or testimony beyond authorized subjects contrary to the General Counsel's instructions, an NCUA employee must immediately notify the General Counsel of the order and respectfully decline to comply. An NCUA employee must decline to answer questions on the grounds that this subpart forbids such disclosure and should produce a copy of this subpart, request an opportunity to consult with the Office of General Counsel, and explain that providing such testimony without approval may expose him or her to disciplinary or other adverse action.

(b) *Duty of persons who are not NCUA employees.* (1) If you are not an NCUA employee but have custody of nonpublic records and are served with a subpoena requiring you to appear as a witness or produce records, you must promptly notify the NCUA about the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the contents of this subpart. Notice to the NCUA is made by sending a copy of the subpoena to the General Counsel of the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428. After receiving notice, the NCUA may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this subpart applies and, in addition, may intervene, attempt to have the subpoena quashed or

withdrawn, or register appropriate objections.

(2) After notifying the Office of General Counsel, you should respond to a subpoena by appearing at the time and place stated in the subpoena. Unless authorized by the General Counsel, you should decline to produce any records or give any testimony, basing your refusal on this subpart. If the issuing court or authority orders the disclosure of records or orders you to testify, you should continue to decline to produce records or testify and should advise the Office of General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by the NCUA or as ordered by a federal court after NCUA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former NCUA employees, in addition to the prohibition contained in this subpart, are subject to the restrictions and penalties of 18 U.S.C. 207.

§792.41 When does this subpart apply?

This subpart applies if you want to obtain nonpublic records or testimony of an NCUA employee for legal proceedings. It doesn't apply to the release of records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a, or the release of records to federal or state investigatory agencies under §792.4(b)(2).

§ 792.42 How do I request nonpublic records or testimony?

(a) To request nonpublic records or the testimony of an NCUA employee, you must submit a written request to the General Counsel of the NCUA. If you serve a subpoena on the NCUA or an NCUA employee before submitting a written request and receiving a final determination, the NCUA will oppose the subpoena on the grounds that you failed to follow the requirements of this subpart. You may serve a subpoena as long as it is accompanied by a written request that complies with this subpart.

(b) To request nonpublic records that are part of the records of the Office of the Inspector General or the testimony of an NCUA employee on matters within the knowledge of the NCUA employee as a result of his or her employment with the Office of the Inspector General, you must submit a written request to the Office of the Inspector General. Your request will be handled in accordance with the provisions of this subpart except that the Inspector General will be

responsible for those determinations that would otherwise be made by the General Counsel.

§ 792.43 What must my written request contain?

Your written request for records or testimony must include:

(a) The caption of the legal proceeding, docket number, and name of the court or other authority involved.

(b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance.

(c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.

(d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden on the NCUA to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as a credit union's own books and records, other persons or entities, or the testimony of someone other than an NCUA employee, for example, retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each NCUA employee for interviews, depositions, or testifying.

§ 792.44 When should I make a request?

You should submit your request at least 45 days before the date that you need the records or testimony. If you want to have your request processed in less time, you must explain why you couldn't submit the request earlier and why you need expedited processing. If you are requesting the testimony of an NCUA employee, the NCUA expects you to anticipate your need for the testimony in sufficient time to obtain it by a deposition. The General Counsel may deny a request for testimony at a legal proceeding unless you explain why you could not use deposition testimony. The General Counsel will determine the location of a deposition taking into consideration the NCUA's interest in minimizing the disruption for an NCUA employee's work schedule and the costs and convenience of other persons attending the deposition.

§ 792.45 Where do I send my request?

You must send your request or subpoena for records or testimony to the attention of the General Counsel for the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428. You must send your request or subpoena for records or testimony from the Office of the Inspector General to the attention of the NCUA Inspector General, 1775 Duke Street, Alexandria, Virginia 22314-3428.

§ 792.46 What will the NCUA do with my request?

(a) *Factors the NCUA will consider.* The NCUA may consider various factors in reviewing a request for nonpublic records or testimony of NCUA employees, including:

(1) Whether disclosure would assist or hinder the NCUA in performing its statutory duties or use NCUA resources unreasonably, including whether responding to the request will interfere with NCUA employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter or if you can get the records or testimony you want from sources other than the NCUA.

(3) Whether the request is unduly burdensome.

(4) Whether disclosure would violate a statute, executive order, or regulation, for example, the Privacy Act, 5 U.S.C. 552a.

(5) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 792.48(a) can adequately limit the disclosure.

(6) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper NCUA research or investigatory activities.

(7) Whether the disclosure could result in NCUA appearing to favor one litigant over another.

(8) Any other factors the NCUA determines to be relevant to the interests of the NCUA.

(b) *Review of your request.* The NCUA will process your request in the order it is received. The NCUA will try to respond to your request within 45 days, but this may vary depending on the scope of your request.

(c) *Final determination.* The General Counsel makes the final determination

on requests for nonpublic records or NCUA employee testimony. All final determinations are in the sole discretion of the General Counsel. The General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the General Counsel may contact you to inform you of the requirements of this subpart, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination. You may seek judicial review of the final determination under the Administrative Procedure Act, 5 U.S.C. 702.

§ 792.47 If my request is granted, what fees apply?

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by the NCUA under its Freedom of Information Act regulations, § 792.5.

(c) *Witness fees.* You must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current NCUA employees, you must pay witness fees, allowances, and expenses to the General Counsel by check made payable to the "National Credit Union Administration" within 30 days from receipt of NCUA's billing statement. For the testimony of a former NCUA employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* The NCUA may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of \$5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or

certification or authentication of records may be granted in the discretion of the General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

§ 792.48 If my request is granted, what restrictions apply?

(a) *Records*. The General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the NCUA may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony*. The General Counsel may impose conditions or restrictions on the testimony of NCUA employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The General Counsel may also require you to provide a copy of the transcript of the testimony to the NCUA at your expense.

§ 792.49 Definitions.

Legal proceedings means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When the NCUA is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses, however, this subpart will still apply to the testimony of former NCUA employees.

NCUA employee means current and former officials, members of the Board, officers, directors, employees and agents of the National Credit Union Administration, including contract employees and consultants and their employees. This definition does not include persons who are no longer employed by the NCUA and are retained or hired as expert witnesses or agree to

testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

Nonpublic records means any NCUA records that are exempt from disclosure under §792.3, the NCUA regulations implementing the provisions of the Freedom of Information Act. For example, this means records created in connection with NCUA's examination and supervision of insured credit unions, including examination reports, internal memoranda, and correspondence, and, also, records created in connection with NCUA's enforcement and investigatory responsibilities.

Subpoena means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

Testimony means any written or oral statements made by an individual in connection with a legal proceeding including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

[FR Doc. 97-28585 Filed 10-28-97; 8:45 am]
BILLING CODE 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-84-AD; Amendment 39-10178; AD 97-06-07 R1]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes Equipped With Burns Aerospace Corporation Passenger Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Dornier Model 328-100 series airplanes, that currently requires modification of the restraining systems of certain passenger seats by replacing anchor point fasteners with fasteners that are able to withstand required 16g load conditions. That AD was prompted by a report indicating that the restraining systems on these

seats failed to meet 16g test load requirements during dynamic testing. The actions specified by that AD are intended to prevent the fasteners from failing, which could result in release of the seat restraint and consequent injury to passengers. This amendment revises the applicability of the existing AD to specify serial numbers of the affected passenger seats.

DATES: Effective November 13, 1997.

The incorporation by reference of Dornier Service Bulletin SB-328-25-114, Revision 1, dated April 17, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of November 13, 1997.

The incorporation by reference of Dornier Service Bulletin SB-328-25-114, dated July 10, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 18, 1997 (62 FR 12081, March 14, 1997).

Comments for inclusion in the Rules Docket must be received on or before November 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-84-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2796; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: On March 6, 1997, the FAA issued AD 97-06-07, amendment 39-9964 (62 FR 12081, March 14, 1997), applicable to certain Dornier Model 328-100 series airplanes, to require modification of the restraining systems on certain passenger seats by replacing the anchor point fasteners with new fasteners that are able to withstand the required 16g load conditions. That action was prompted by a report indicating that the restraining systems on these seats failed to meet 16g test load requirements during dynamic testing. The requirements of that AD are intended to prevent the fasteners from failing, which