

- (iii) Speeches;
- (iv) Preliminary drafts;
- (v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

* * * * *

Dated at Rockville, MD, this 6th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97-29884 Filed 11-12-97; 8:45 am]

BILLING CODE 7590-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

The Freedom of Information Act and Privacy Act

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to revise its regulations governing the disclosure of information pursuant to the Freedom of Information Act (FOIA) to reflect recent changes to FOIA brought about by the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA). The proposed rule, among

other things, sets forth new procedures NCUA will employ to implement provisions of E-FOIA, such as expedited treatment of requests and multi-track processing. The proposed rule also clarifies the information which must be included in FOIA requests so that NCUA can process them. Other proposed changes to the rule are designed to provide guidance to the public on how to obtain records contained in the files of the Office of Inspector General.

DATES: Comments must be submitted on or before January 12, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT:

Dianne Salva, Staff Attorney, or Sheila Albin, Associate General Counsel, (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) was enacted in 1966 to establish the right of any member of the public to obtain access to government information. FOIA was amended several times before 1996, when the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231, was enacted. E-FOIA has twin goals of making records contained in government files more easily accessible to the public and improving administration of FOIA programs in the agencies. In particular, Congress moved to amend the FOIA because it found that government agencies were increasingly using computers to conduct agency business and store valuable agency records and information. When the Senate passed FOIA in 1966, the government is reported to have had just 1,826 computers in use. By 1994, in addition to the proliferation of individual personal computers used by government employees, the number of government computers had climbed to almost 35,000. In recognition of the vast amount of information the government maintains in electronic format, E-FOIA was designed to ensure continued public access to government information, including that maintained in electronic format.

FOIA ensures that the public has access to government information by requiring agencies to disclose

information in three ways. First, FOIA requires agencies to disclose basic information about agency structure and general rules of procedure within the agency by publication in the **Federal Register**. Second, FOIA requires agencies to make certain categories of records available for the public to inspect and copy. Many agencies have established public reading rooms to comply with this requirement. And, third, FOIA requires agencies to respond to individual requests for other specific agency records. Records must be released unless one or more of FOIA's nine statutory exemptions applies.

Under E-FOIA, public access to "reading room" records, which are those records that must be made available for inspection and copying, will be enhanced in two ways. The categories of records which fall within the "reading room" provision of FOIA have been expanded. Previously, three categories of records were required to be made available for inspection and copying: Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public. Under E-FOIA two new categories have been added: Records released under the FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests, and a general index of the new category of records.

Public access to reading room records will be further enhanced by the provision in E-FOIA which requires that agencies make their reading room records available electronically, if they are created by the agency on or after November 1, 1996. The "electronic reading room" can be implemented by placing records on the internet.

As for individual requests, E-FOIA clarifies that reasonable efforts must be made to search for records electronically. It also requires agencies to provide requesters with records in the form or format the requester chooses, if the agency can readily do so. Perhaps most fundamental to the new law is its provision that clarifies that records, if they meet other legal requirements, are subject to FOIA even though they are maintained in electronic format.

The other goal of E-FOIA was to improve the administration of FOIA programs in the agencies. Congress found that due to a lack of resources, some agencies suffered stubborn

backlogs. E-FOIA is designed to ensure timely responses to FOIA requests by requiring that specific types of requests be answered on an expedited basis and by encouraging a dialogue between the agency and the requester to frame more targeted requests. E-FOIA also enlarges the time for response to requests from 10 to 20 business days. Agencies are encouraged to employ multi-track processing systems, so that requesters who seek simple information are not made to wait while the agency processes more complex requests or requests for voluminous material.

Proposal

NCUA is proposing changes to 12 CFR part 792 to implement both expedited processing and multi-track processing. In addition, changes are proposed to incorporate the new processing deadlines, appeal rights and other disclosure procedures mandated by E-FOIA. NCUA is also proposing a change to reflect the delegation of authority from NCUA's Board to the Inspector General for records contained in Office of Inspector General files. Subpart A has been reorganized, streamlined and rewritten in question and answer format to improve its readability and simplify its use. A description of the more significant proposed changes is set forth below. Due to the fact that the regulation has been rewritten in question and answer format, the section numbers in the proposed rule in most cases do not correlate to the section numbers in the existing regulation.

Section 792.02 now reflects the additional category of records NCUA will make publicly available for inspection and copying: Records released under FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests.

Section 792.03 sets forth the indices of records made available for public inspection and copying and includes the additional index of popular FOIA responses.

Section 792.04 informs the public that certain records created by NCUA after November 1, 1996 are also available on the NCUA website.

Section 792.06 clarifies that records maintained in electronic format are subject to FOIA.

Section 792.07 identifies the places within NCUA where the public may write to request records. The Office of Inspector General has been added to reflect that the NCUA Board delegated authority to the Inspector General to respond to initial FOIA requests for

records contained in Office of Inspector General files.

Sections 792.08 and 792.09 clarify administrative requirements and procedures for submitting FOIA requests. In order to improve communications between the agency and requesters, requesters are instructed to include their name, address and telephone number with their request. In recognition of the new requirement that agencies honor form or format requests, requesters are also asked to designate their form or format of choice, if other than paper copy, at the time they make their request.

Section 792.10 sets forth the procedures for the multi-track processing system comprised of a fast-track and regular-track. Fast-track processing will apply to records that are easily identifiable by NCUA staff and have been previously cleared for release to the public. Fast-track requests will be handled as expeditiously as possible in the order in which they are received. All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing, but whose request does not meet those standards, may contact the NCUA to try to narrow the scope of the request so that it will qualify for fast-track processing.

Section 792.12 was added to inform requesters that, as long as it is technically feasible and would not harm an interest that a FOIA exemption is intended to protect, then NCUA will indicate where, why and how much information was withheld from its response.

Section 792.13 was added to advise requesters that they may obtain information in any readily reproducible form or format they request. It also clarifies that only one copy of a record will be produced.

Section 792.15 sets forth the new processing time limit of 20 working days. It also sets forth the two exceptions to the 20 working day time limit: the suspension of time for the payment of fees or if unusual circumstances exist.

Section 792.16 describes the criteria for determining whether unusual circumstances exist. The criteria have not changed. The proposed regulation contains a new provision on aggregating multiple requests which, together, cause unusual circumstances to exist. NCUA will now aggregate multiple requests from the same requester or group of requesters acting in concert, if it believes they constitute a single request, and if, taken together, the requests satisfy the unusual circumstances

criteria. This section also contains a new provision advising requesters that, if NCUA sends them a notice extending the processing time due to unusual circumstances, it will also tell them that they may reduce the scope of their request so that it can be processed within the statutory time frame or agree to an alternative time frame.

Section 792.18 has been added to implement the expedited processing provision of E-FOIA. It sets forth the criteria for a requester seeking to establish a compelling need to support a request for expedited processing. E-FOIA permits two categories of requests involving compelling needs to be granted expedited treatment: Those which entail an imminent threat to the life or physical safety of an individual or those which are filed by persons primarily engaged in disseminating information and involve an urgency to inform the public concerning actual or alleged government activity. For ease of administration and consistency, the proposed rule uses the term "representative of the news media" to describe a person primarily engaged in disseminating information, because the term has been used for many years in other provisions of the regulation and is familiar to the public and agency staff. In keeping with Congress' express intent that the specified criteria for compelling need be narrowly applied, expedited processing will only be granted in those extraordinary cases meeting the specific requirements of the regulation. H.R. Rep. 795, 104th Cong., 2d Sess. 26 (1996). As the legislative history states, "the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest." *Id.* To meet the criterion of an urgency to inform the public concerning an actual or alleged Federal Government activity, the requester must show that a delay in the release of the information would compromise a significant recognized interest, and that the requested information pertains to a matter of current exigency to the American public. This section also informs the public of the right of appeal for denial of a request for expedited processing.

Section 792.19 has been amended to reflect that the current fee schedule is available on the NCUA website. The current regulation sets out that searches for records responsive to a FOIA request will be conducted by computer using existing programming. The proposal strikes the reference to existing programming and adds language to say

that no modification of existing programming or system will be made if it would significantly interfere with the operation of an NCUA automated information system.

Section 792.28 clarifies that appeals are permitted when NCUA denies a request for a fee waiver or reduction.

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 proposal simplifies some of the procedures regarding the release of information and requires disclosure of information in certain instances in accordance with law. The disclosure requirements are imposed on the NCUA, therefore, they should not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act Analysis

These regulations, if adopted, will impose no additional information collection, reporting or record keeping requirements subject to the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Executive Order 12,612

The NCUA Board certifies that the proposal will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Confidential business information, Credit unions, Freedom of Information Act, Privacy.

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

Hattie M. Ulan,

Acting Secretary of the Board.

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

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.

§§ 792.20–792.37 (Subpart B)

[Redesignated as §§ 792.52–792.69 (Subpart E)]

2. Redesignate subpart B (§§ 792.20–792.37) as subpart E (§§ 792.52–792.69) and reserve subpart B.

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

Subpart A—The Freedom of Information Act

General Purpose

Sec.

792.01 What is the purpose of this subpart?

Records Publicly Available

792.02 What records does NCUA make available to the public for inspection and copying?

792.03 How will I know which records to request?

792.04 How can I obtain these records?

792.05 What is the significance of records made available and indexed?

Records Available Upon Request

792.06 Can I obtain other records?

792.07 Where do I send my request?

792.08 What must I include in my request?

792.09 What if my request does not meet the requirements of this section?

792.10 What will NCUA do with my request?

792.11 What kind of records are exempt from public disclosure?

792.12 How will I know what records were determined to be exempt?

792.13 Can I get the records in different forms or formats?

792.14 Who is responsible for responding to my request?

792.15 How long will it take to process my request?

792.16 What unusual circumstances can delay NCUA's response?

792.17 What can I do if the time limit passes and I still have not received a response?

Expedited Processing

792.18 What if my request is urgent and I cannot wait for the records?

Fees

792.19 How does NCUA calculate the fees for processing my request?

792.20 What are the charges for each fee category?

792.21 Will NCUA provide a fee estimate?

792.22 What will NCUA charge for other services?

792.23 Can I avoid charges by sending multiple, small requests?

792.24 Can NCUA charge me interest if I fail to pay my bill?

792.25 Will NCUA charge me if the records are not found or are determined to be exempt?

792.26 Will I be asked to pay the fees in advance?

Fee Waiver or Reduction

792.27 Can fees be reduced or waived?

Appeals

792.28 What if I am not satisfied with the response I receive?

Submitter Notice

792.29 If I send NCUA confidential commercial information, can it be disclosed under FOIA?

Release of Exempt Records

792.30 Is there a prohibition against disclosure of exempt records?

792.31 Can exempt records be disclosed to credit unions, financial institutions and state or federal agencies?

792.32 Can exempt records be disclosed to investigatory agencies?

Subpart A—The Freedom of Information Act

General Purpose

§ 792.01 What is the purpose of this subpart?

This subpart describes the procedures you must follow to obtain records from NCUA under the Freedom of Information Act (FOIA), (5 U.S.C. 552).

Records Publicly Available

§ 792.02 What records does NCUA make available to the public for inspection and copying?

Except for records that are exempt from public disclosure under FOIA as amended (5 U.S.C. 552) or are promptly published and copies are available for purchase, NCUA routinely makes the following five types of records available for you to inspect and copy:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(b) Statements of policy and interpretations which have been adopted by the agency but not published in the **Federal Register**;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Copies of all records, regardless of form or format, which have been released after March 31, 1997, in response to a FOIA request and which, because of the nature of their subject matter, NCUA determines have been or are likely to become the subject of subsequent requests; and

(e) Indices of the documents referred to in this paragraph.

§ 792.03 How will I know which records to request?

NCUA maintains current indices providing identifying information for the public for any matter referred to in § 792.02, issued, adopted, or promulgated after July 4, 1967. The listing of material in an index is for the convenience of possible users and does not constitute a determination that all of the items listed will be disclosed. NCUA has determined that publication of the indices is unnecessary and impractical. You may obtain copies of indices by making a request to the Office of Administration, at NCUA, 1775 Duke Street, Alexandria, VA 22314-2387 or, as indicated, on the NCUA website. The indices are available for public

inspection and copying and are provided at their duplication cost. The indices are:

(a) NCUA Publications List: Manuals relating to general and technical information, booklets published by NCUA, and the Credit Union Directory. The NCUA Publications list is available on the NCUA Website.

(b) Directives Control Index: A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions, and certain internal manuals.

(c) Popular FOIA Index: Records released in response to a FOIA request, which NCUA determines are likely to be the subject of subsequent requests because of the nature of their subject matter. The Popular FOIA Index will be available on the NCUA website on or before December 31, 1999.

§ 792.04 How can I obtain these records?

You may obtain these types of records or information in the following ways:

(a) You may obtain copies of the records referenced in § 792.02 by obtaining the index referred to in § 792.03 and following the ordering instructions it contains, or by making a request to the FOIA Officer, NCUA, Office of General Counsel at 1775 Duke Street, Alexandria, Virginia 22314-3428.

(b) If they were created by NCUA on or after November 1, 1996, records referenced in § 792.02 are available on the NCUA website, found at <http://www.ncua.gov>.

§ 792.05 What is the significance of records made available and indexed?

The records referred to in § 792.02 may be relied on, used, or cited as precedent by NCUA against a party, provided:

(a) The materials have been indexed and either made available or published; or

(b) The party has actual and timely notice of the materials' contents.

Records Available Upon Request

§ 792.06 Can I obtain other records?

Except with respect to records routinely made available under § 792.02 or published in the **Federal Register**, or to the extent that records are exempt under the FOIA, if you make a request for records in accordance with this section, NCUA will make such records available to you, including records maintained in electronic format, as long as you agree to pay the actual, direct costs.

§ 792.07 Where do I send my request?

(a) You must send your request to one of NCUA's Information Centers. The

Central Office, Regional Offices, Office of Inspector General and the Asset Management and Assistance Center are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices. The Inspector General is responsible for the operation of the Office of Inspector General Information Center.

(b) If you think that the records are located at one of NCUA's Regional Offices, then you should send your request to the appropriate Regional Director, whose address can be found in § 790.2(c) of this chapter.

(c) If you think that the records are located at the Asset Management and Assistance Center, then you should send your request to the President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759-8490.

(d) If you think that the records you want are in the files of the Office of Inspector General, then you should send your request to the Inspector General, NCUA, 1775 Duke Street, Alexandria, Virginia 22314-3428.

(e) When you are not sure of the location of records, or if you think that the records you want are located in the Central Office, you should send your request to the Freedom of Information Officer at NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428.

§ 792.08 What must I include in my request?

Your request must include the following:

(a) Your name, address and a telephone number where you can be reached during normal business hours.

(b) A reasonable description of the records you seek. A reasonable description is one which enables an NCUA employee, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(c) A statement agreeing to pay all applicable fees or to pay fees up to a certain maximum amount, or requesting a fee reduction or waiver in accordance with § 792.27. If the actual fees are expected to exceed the maximum amount you indicate in your request, NCUA will contact you to see if you are willing to pay the estimated fees. If you do not want to pay the estimated fees, your request will be closed and no bill will be sent.

(d) If other than paper copy, you must identify the form and format of responsive information you are requesting.

§ 792.09 What if my request does not meet the requirements of this subpart?

NCUA need not accept or process your request if it does not comply with the requirements of this subpart. NCUA may return such a request to you with an explanation of the deficiency. You may then submit a corrected request, which will be treated as a new request.

§ 792.10 What will NCUA do with my request?

(a) On receipt of any request, the Information Center assigns it to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to NCUA by another agency, is the date the appropriate Information Center actually receives the request.

(b) NCUA has a multi-track processing system. Requests for records that are readily identifiable by the Information Center and have already been cleared for public release may qualify for fast-track processing. All other requests will be handled under normal processing procedures.

(c) The Information Center will make the determination whether a request qualifies for fast-track processing. You may contact the Information Center to learn whether your request has been assigned to fast-track processing. If your request has not qualified for fast-track processing, you will be given an opportunity to limit the scope of material requested in order to qualify for fast-track processing. Limitations of requests must be in writing.

(d) In accordance with sound administrative procedure, the Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion a particular request may be processed out of turn.

(e) Upon a determination by the appropriate Information Center to comply with your initial request for records, the records will be made promptly available to you. If we notify you of a denial of your request, we will include the names and titles or positions of each person responsible for the denial.

§ 792.11 What kind of records are exempt from public disclosure?

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and exempt

from disclosure, except as otherwise provided in this part, if they are:

(1) Records 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 an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to:

(i) The personnel records of the NCUA;

(ii) The personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and

(iii) Files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

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

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

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

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

(iv) 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 which 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 on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source;

(v) Would disclose techniques and procedures for law enforcement investigation 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

(vi) Could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

(b) We will provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt from disclosure under this section.

§ 792.12 How will I know what records NCUA has determined to be exempt?

As long as it is technically feasible and does not threaten an interest protected by the FOIA, we will:

(a) Mark the place where we redacted information from documents released to

you and note the exemption that protects the information from public disclosure; or

(b) Make reasonable efforts to include with our response to you an estimate of the volume of information withheld.

§ 792.13 Can I get the records in different forms or formats?

NCUA will provide a copy of the record in any form or format requested, such as computer disk, if the record is readily reproducible by us in that form or format, but we will not provide more than one copy of any record.

§ 792.14 Who is responsible for responding to my request?

The appropriate Regional Director, the Inspector General, the President of the Asset Management and Assistance Center, or the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to an NCUA employee who is familiar with the subject area of the request. Other NCUA staff members may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in § 792.15 unless the request involves an unusual circumstance as provided in § 792.16.

§ 792.15 How long will it take to process my request?

NCUA will respond to requests within 20 working days, except:

(a) Where the running of such time is suspended for payment of fees pursuant to § 792.26;

(b) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and § 792.16, the time limit may be extended for:

(1) An additional 10 working days as provided by written notice to you, stating the reasons for the extension and the date on which a determination will be sent; or

(2) Such alternative time period as mutually agreed by you and the Information Office, when NCUA notifies you that the request cannot be processed in the specified time limit.

§ 792.16 What unusual circumstances can delay NCUA's response?

(a) In unusual circumstances, the time limits for responding to your request (or your appeal) may be extended by NCUA. If NCUA extends the time it will

provide you with written notice, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Our notice will not specify a date that would result in an extension for more than 10 working days, except as set forth in paragraph (c) of this section. The unusual circumstances that can delay NCUA's response to your request are:

(1) The need to search for, and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(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 will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of NCUA having substantial subject-matter interest therein.

(b) If you, or you and a group of others acting in concert, submit multiple requests which NCUA believes actually constitute a single request, which would otherwise satisfy the unusual circumstances criteria specified in this section, and the requests involve related matters, then NCUA may aggregate those requests and the provisions of § 792.15(b) will apply.

(c) If NCUA sends you an extension notice, it will also advise you that you can either limit the scope of your request so that it can be processed within the statutory time limit or agree to an alternative time frame for processing your request.

§ 792.17 What can I do if the time limit passes and I still have not received a response?

You can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. But if NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court will consider your refusal to reasonably modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

Expedited Processing

§ 792.18 What if my request is urgent and I cannot wait for the records?

You may request expedited processing of your request if you can show a compelling need for the records. In cases where your request for expedited processing is granted or if NCUA has determined to expedite the response, it will be processed as soon as practicable.

(a) To demonstrate a compelling need for expedited processing, you must provide a certified statement. The statement, certified by you to be true and correct to the best of your knowledge and belief, must demonstrate that:

(1) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a representative of the news media, as defined in § 792.20, and there is urgency to inform the public concerning actual or alleged NCUA activity.

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten days of receipt of the request. If the Information Center denies your request for expedited processing, you may file an appeal pursuant to the procedures set forth in § 792.28, and NCUA will expeditiously respond to the appeal.

(c) Priority of responses. The Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion, a particular request may be processed out of turn.

Fees

§ 792.19 How does NCUA calculate the fees for processing my request?

We will charge fees that recoup the full allowable direct costs we incur, unless those costs are less than our cost of processing your remittance. Direct costs means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request. Search means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer. Search does not include modification of an existing program or system that would significantly interfere with the operation of an automated information system.

Review means examining documents to determine whether any portion should be withheld and preparing documents for disclosure. Fees are subject to change as costs increase. The current rate schedule is available on our website at <http://www.ncua.gov>.

We may contract with the private sector to locate, reproduce or disseminate records. In no case will NCUA contract out responsibilities which the FOIA requires us alone to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. The following labor and duplication rate calculations apply:

(a) NCUA will charge fees at the following rates for manual searches for and review of records:

(1) If search/review is done by clerical staff, the hourly rate for CU-5, plus 16 percent of that rate to cover benefits;

(2) If search/review is done by professional staff, the hourly rate for CU-13, plus 16 percent of that rate to cover benefits.

(b) NCUA will charge fees at the hourly rate for CU-13, plus 16 percent

of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(c) NCUA will charge the following duplication fees:

(1) The per-page fee for paper copy reproduction of a document is \$.25;

(2) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(3) If any other method of duplication is used, NCUA will charge the actual direct cost of duplication.

§ 792.20 What are the charges for each fee category?

The fee category definitions are:

(a) *Commercial use request* means 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) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate

higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

(c) *Noncommercial scientific institution* means an institution that is not operated for a "commercial" purpose as that term is used in paragraph (a) of this section and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(d) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

Included within the meaning of public is the credit union community. The term news means information that is about current events or that would be of current interest to the public. You may consult the following chart to find the fees applicable to your request:

If your fee category is	You'll receive	And you'll be charged
Commercial use	0 hours free search 0 hours free review 0 free pages	Search time. Review time. Duplication.
Educational institution, noncommercial scientific institution, newsmedia.	Unlimited free search hours Unlimited free review hours 100 free pages	Duplication.
All others	2 hours free search Unlimited free review hours 100 free pages	Search time. Duplication.

§ 792.21 Will NCUA provide a fee estimate?

NCUA will notify you of the estimated amount if fees are likely to exceed \$25, unless you have indicated in advance a willingness to pay fees as high as those anticipated. You will then have the opportunity to confer with NCUA personnel to reformulate the request to meet your needs at a lower cost.

§ 792.22 What will NCUA charge for other services?

Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

§ 792.23 Can I avoid charges by sending multiple, small requests?

You may not file multiple requests, each seeking portions of a document or similar documents, solely in order to avoid payment of fees. If this is done,

NCUA may aggregate any such requests and charge you accordingly.

§ 792.24 Can NCUA charge me interest if I fail to pay my bill?

NCUA can assess interest charges on an unpaid bill starting on the 31st day following the date of the bill. If you fail to pay your bill within 30 days, interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 792.25 Will NCUA charge me if the records are not found or are determined to be exempt?

NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

§ 792.26 Will I be asked to pay fees in advance?

NCUA will require you to give an assurance of payment or an advance payment only when:

(a) NCUA estimates or determines that allowable charges that you may be required to pay are likely to exceed \$250. NCUA will notify you of the likely cost and obtain satisfactory assurance of full payment where you have a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case where you have no history of payment; or

(b) You have previously failed to pay a fee charged in a timely fashion. NCUA may require you to pay the full amount owed, plus any applicable interest, or demonstrate that you have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before we begin to process a new request or a pending request from you.

(c) If you are required to make an advance payment of fees, then the administrative time limits prescribed in § 792.16 will begin only after NCUA has received the fee payments described.

Fee Waiver or Reduction

§ 792.27 Can fees be reduced or waived?

You may request that NCUA waive or reduce fees if disclosure of the information you request 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 your commercial interest.

(a) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(b) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(1) Whether you have a commercial interest that would be furthered by the requested disclosure; and if so

(2) Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(c) If the required public interest exists and your commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(d) If you are not satisfied with our determination on your fee waiver or reduction request, you may submit an appeal to the General Counsel in accordance with § 792.28.

Appeals

§ 792.28 What if I am not satisfied with the response I receive?

If you are not satisfied with NCUA's response to your request, you can file an administrative appeal. Your appeal must be in writing and must be filed within 30 days from receipt of the initial determination (in cases of denials of an entire request, or denial of a request for fee waiver or reduction), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials.) In its response to your initial request, the Freedom of Information Act Officer, Inspector General, President of the Asset

Management and Assistance Center, or responsible Regional Director, (or designee,) will notify you that you may appeal any adverse determination to the Office of General Counsel. The General Counsel, or designee, as set forth in this paragraph, will:

(a) Make a determination with respect to any appeal within 20 days (except Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is, in whole or in part, upheld, the Office of General Counsel will notify you of the provisions for judicial review of that determination under FOIA. Where you do not address your request or appeal to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in the General Counsel's stead will make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(c) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA-APPEAL." Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(1) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

§ 792.29 If I send NCUA confidential commercial information can it be disclosed under FOIA?

(a) If you submit confidential commercial information to NCUA, it may be disclosed in response to a FOIA request in accordance with this section.

(b) For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under § 792.11(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Submitters of business information must use good faith efforts to designate, by appropriate markings, either at the

time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under § 792.11(a)(4). Such a designation shall expire ten years after the date of submission.

(d) We will provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under § 792.11(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under § 792.11(a)(4).

(e) A copy of the notice to the submitter will also be provided to the FOIA requester.

(f) Through the notice described in paragraph (d) of this section, NCUA will afford the submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. The statement must describe why the information is confidential commercial information and why it should not be disclosed.

(g) Whenever we decide that we must disclose confidential commercial information over the objection of the submitter, we will send both the submitter and the FOIA requester, within a reasonable number of days prior to the specified disclosure date, a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained; and

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

(3) A specified disclosure date.

(h) If a requester brings suit to compel disclosure of confidential commercial information, we will promptly notify the submitter.

(i) The notice requirements of paragraph (d) of this section do not apply if:

(1) We determine that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that in such case, NCUA will provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to the specified disclosure date.

Release of Exempt Information:**§ 792.30 Is there a prohibition against disclosure of exempt records?**

Except as provided in §§ 792.31–792.32, 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 NCUA 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.

§ 792.31 Can exempt records be disclosed to credit unions, financial institutions and state or federal agencies?

The NCUA Board, in its sole discretion, or any person designated by it in writing, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

§ 792.32 Can exempt records be disclosed to investigatory agencies?

The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of federal or state, civil or criminal law.

[FR Doc. 97–28586 Filed 11–12–97; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 96–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require modification of certain passenger doors. This proposal is prompted by reports that certain passenger doors could not be opened due to the escape slide shelf assembly and escape slide falling onto the girt bar lifting mechanism of the door. The actions specified by the proposed AD are intended to prevent the escape slide shelf assembly and escape slide from falling on the girt bar of a passenger door due to failed rivets of the escape slide shelf assembly, and consequent inability to open the passenger door and to use the escape slide at that door during an emergency evacuation of the airplane.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that various passenger doors (Number 1, 2, or 4) could not be opened. Investigation revealed that the escape slide shelf assembly and escape slide had fallen onto the girt bar lifting mechanism of the passenger door due to failure of four rivets of the shelf assembly. Such failure, if not corrected, could result in inability to open the Number 1, 2, or 4 passenger door, and consequent inability to use the escape slide at the door during an emergency evacuation of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–25–0175, dated May 30, 1996, and Revision 1, dated March 6, 1997, which describes procedures for modifying the escape slide shelf assemblies of the Number 1, 2, and 4 passenger doors. The modification entails replacing the four existing rivets of the escape slide shelf assembly of the passenger doors with steel rivets. The modification will ensure that the escape slide shelf assembly and escape slide do not fall onto the girt bar lifting mechanism.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the escape slide shelf assemblies of the Numbers 1, 2,