

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 602

RIN 3052-AB84

#### Releasing Information

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend FCA regulations concerning the release of information under the Freedom of Information Act (FOIA) to:

- Reflect revised fees and make it easier for the public to obtain FCA records;
- Revise the procedures for requests for testimony by FCA employees on official matters and for the production of FCA documents in litigation when FCA is not a named party; and
- Add procedures for requesting records in public rulemaking files.

The proposed regulation is more concise and easier to understand.

**DATES:** Please submit comments on or before April 7, 1999.

**ADDRESSES:** You may send us your comments via E-mail to "reg-comm@fca.gov" through the Pending Regulations section of our interactive website at "www.fca.gov." You may also mail or deliver your comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or send them by facsimile transmission to FAX number (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

#### FOR FURTHER INFORMATION CONTACT:

John Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444, or  
Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit

Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** In addition to streamlining the regulation, we propose to add the following new provisions:

1. *§ 602.2(b)* expresses the FCA policy that permits a Farm Credit System institution to disclose its report of examination to its officers, directors, and agents, such as attorneys and accountants, if they agree to keep the report confidential.

2. *§ 602.2(d)* outlines when FCA may release documents to governmental entities without waiving any exemption.

3. *§ 602.3* includes definitions of common FOIA terms. They are recited as an aid to the public and are not intended to affect any individual's rights under the FOIA.

4. *§ 602.4(a)* provides addresses for forwarding requests by mail, facsimile, and E-mail.

5. *§ 602.4(f)* provides that the Office of Congressional and Public Affairs will make available copies of public documents.

6. *§ 602.5(c)* explains when FCA will refer a document request to another Federal agency.

7. *§ 602.8(a)* provides that the time for an appeal begins to run from the date of the FCA letter granting or denying the request and not from the date the requester receives it. This change ensures clarity in determining the appeal period. It also provides addresses for forwarding appeals by mail, facsimile, and E-mail.

8. *§ 602.12(b)* establishes that FCA will automatically waive FOIA fees when assessable fees are less than \$15.00. Current *§ 602.268(b)* does not establish a threshold level. This change ensures uniform treatment of minimal FOIA fees.

9. *§ 602.20(c)* adds that FCA counsel may represent FCA's interests at a deposition.

10. *§ 602.22* (currently *§ 602.287*) makes the fee structure for obtaining privileged documents in litigation when the FCA is not a party the same as those assessed under the FOIA.

11. *§ 602.25* addresses public rulemaking files. It explains how to obtain documents in public rulemaking files and what FCA will charge for reproduction costs.

12. *General.* We have changed the language throughout the regulation to

reflect that: (1) FCA examines entities other than Farm Credit System institutions; (2) privileges apply to all FCA reports of examination; and (3) computer records and other nonpaper records are FCA records.

Finally, we propose to delete the following sections from the current regulation:

1. *§ 602.205*, which distinguished between the consent required for the disclosure of regular and special FCA reports of examination. Proposed *§ 602.2* eliminates this distinction.

2. *§ 602.215*, which addresses the confidentiality of borrower and applicant data and prohibits FCA employees from releasing it. This section addresses internal FCA procedures and is redundant with portions of *§ 618.8320* of this chapter. Despite this deletion, we will continue to prohibit FCA employees from disclosing confidential information.

3. *§ 602.250(a)(8)* discusses exemption (b)(8) of the FOIA and certain reports filed with FCA. The portion that we propose to delete provides that, notwithstanding the application of exemption (b)(8) of the FOIA, reports to shareholders and items in reports of condition and performance filed with FCA that are essentially the same as those disclosed to shareholders are available to the public on request for a reasonable fee. We deleted this discussion because it merely illustrates how FCA typically applies, and makes an exception to, exemption (b)(8) of the FOIA. Despite this deletion, we will continue to release such information upon request in appropriate circumstances.

#### List of Subjects in 12 CFR Part 602

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, part 602 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

#### PART 602—RELEASING INFORMATION

##### Subpart A—Information and Records Generally

Sec.

602.1 Purpose and scope.

602.2 Disclosing reports of examination.

**Subpart B—Procedures for the Disclosure of Records Under the FOIA**

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- 602.4 Requirements for making a request.
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- 602.6 FOIA exemptions.
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- 602.10 Definitions.
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- 602.19 Request for testimony or production of documents.
- 602.20 Testimony of FCA employees.
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- 602.24 Responses to demands served on non-FCA employees or entities.

**Subpart E—Release of Records in Public Rulemaking Files**

- 602.25 General.

**Authority:** Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 301, 552; 52 FR 10012; E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235.

**Subpart A—Information and Records Generally****§ 602.1 Purpose and scope.**

This part contains FCA's rules for disclosing FCA records or information; processing requests for records under the Freedom of Information Act (5 U.S.C. 552, as amended)(FOIA); FOIA fees; disclosing otherwise exempt information in litigation when FCA is not a party; and disclosing documents in public rulemaking files. Consult part 603 of this chapter to request records about yourself under the Privacy Act of 1974, 5 U.S.C. 552a.

**§ 602.2 Disclosing reports of examination.**

(a) *Generally.* Reports of examination are FCA property. They are prepared for the confidential use of FCA and the institution examined. FCA does not provide reports of examination to the public. Only the FCA Chairman or the Chairman's designee may consent to disclosing reports of examination of Farm Credit System institutions and other institutions subject to FCA examination.

(b) *By Farm Credit System institutions.* An institution examined by FCA may disclose its report of

examination to its officers, directors, and agents, such as its attorney or accountant, if they agree to keep the report confidential. In addition, banks may disclose their reports of examination to their affiliated associations, associations may disclose their reports to their supervisory bank, and service corporations may disclose their reports of examination to the institutions that own them. An institution may not disclose these institutions' reports of examination to any other person without FCA's written permission.

(c) *By FCA.* Only the FCA Chairman or the Chairman's designee can give permission. You may send a written request to FCA's General Counsel that explains why we should give permission.

(d) *Disclosure to governmental entities.* Without waiving any privilege, we will disclose reports of examination or portions of reports of examination to other Federal government entities:

- (1) In response to a Federal court order;
- (2) In response to a request of either House, a Committee or a Subcommittee of Congress; or
- (3) To authorized representatives of other Federal agencies when requested for confidential use in an official investigation. For any other use, the FCA Chairman must approve the disclosure.

**Subpart B—Procedures for the Disclosure of Records Under the FOIA****§ 602.3 Definitions.**

(a) *Appeal* means a request under the FOIA asking for the reversal of a decision.

(b) *Business information* means trade secrets or other commercial or financial information that is privileged or confidential.

(c) *Business submitter* means any person or entity that provides business information to the government.

(d) *FOIA request* means a written request for FCA records, made by any natural person or entity that either explicitly or implicitly invokes the FOIA or this part.

(e) *Record* means all documentary materials, such as books, papers, maps, photographs, and machine readable materials, regardless of physical form or characteristics (e.g., electronic form or format) in FCA's possession and control at the time the FOIA request is made.

**§ 602.4 Requirements for making a request.**

(a) *How to make and address a request.* Your request for records must

be in writing and addressed to the FOIA Officer, Farm Credit Administration, as follows:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102-5090;

(2) By facsimile to (703) 790-0052; or

1. By E-mail to "foiaofficer@fca.gov."

(b) *Description of requested records.* You must describe the requested records in enough detail to enable us to locate them with a reasonable effort. If the description is inadequate, we will ask you to provide additional information and the 20-day response period under § 602.5(a) will not begin until we receive your reply.

(c) *Expedited processing.* You may ask for expedited processing of your FOIA request by providing a statement, certified to be true, that you have a "compelling need."

The FOIA Officer will notify you within 10 calendar days after receiving the request whether FCA has granted expedited processing. If so, we will process your request as soon as we can. For the purposes of this paragraph, "compelling need" means:

(1) Your or someone's life or physical safety may be in danger if processing is not expedited; or

(2) You urgently need to inform the public about actual or alleged Federal government activity as a representative of the news media.

(d) *Request for personal information.* If you or your representative requests your personal information, FCA may require you to submit a notarized request, identify yourself under penalty of perjury, or provide other proof of your identity.

(e) *Fees.* When making a request, you must specify the amount you are willing to pay. You may also want to state your identity and the purpose of your request so FCA can categorize your request for fee purposes.

(f) *Other requests.* To ensure that the public has timely information about FCA activities, the Office of Congressional and Public Affairs will make available copies of public documents, such as FCA's annual report and media advisories.

**§ 602.5 FCA response to requests for records.**

(a) *Response time.* The FOIA Officer will tell you within 20 business days of receiving your request whether it was granted or denied. If your request is addressed incorrectly, the 20-day response period will not begin until the FOIA Officer actually receives your request (or would have received it with the exercise of due diligence by FCA.)

(b) *Extension of response time.* In "unusual circumstances," the FOIA

Officer may extend the 20-day response time for up to 10 more business days by telling you in writing why an extension is needed and the date a determination should be mailed. As used in this paragraph, "unusual circumstances" means the need to:

(1) Search for and collect the requested records from field offices or other separate establishments;

(2) Search for, collect, and review a voluminous amount of records identified in a single request;

(3) Consult with another Federal agency having a substantial interest in the request; or

(4) Consult with two or more FCA offices having a substantial interest in the request.

(c) *Referrals.* If you request records in FCA's possession originated by another Federal agency, we will refer the request to the originating agency and inform you of the referral. If your request should have been addressed to another Federal agency, FCA will refer the request to that agency and so advise you.

#### § 602.6 FOIA exemptions.

The FOIA exempts from mandatory disclosure records in these categories:

(a) *Exemption 1.* Records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under criteria established by an Executive order of the President;

(b) *Exemption 2.* Records related solely to internal personnel rules and FCA practices, including matters that are for the guidance of FCA personnel;

(c) *Exemption 3.* Records that are specifically exempted from disclosure by a statute that permits no discretion on the issue;

(d) *Exemption 4.* Records containing trade secrets and commercial or financial information obtained from any person or organization that is privileged or confidential;

(e) *Exemption 5.* Records containing inter-agency or intra-agency memorandums or letters that would not be available by law to a party (other than a Federal agency) in litigation with FCA;

(f) *Exemption 6.* Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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

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

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

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

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

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

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

(h) *Exemption 8.* Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit System institutions or institutions that are regulated and/or examined by FCA that are prepared by, on behalf of, or for FCA's use; and

(i) *Exemption 9.* Records containing geological and geophysical information and data (including maps) concerning wells.

#### § 602.7 Confidential business information.

(a) *In general.* FCA may disclose business information provided to FCA by a business submitter only under this section. This section will not apply if:

(1) FCA determines that the business submitter has no valid basis to object to disclosure;

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

(3) Law (other than 5 U.S.C. 552) requires disclosure of the information.

(b) *Notification.* Upon receipt of a request for confidential business information, the FOIA Officer will promptly notify the requester and the business submitter in writing that the responsive records may be exempt from disclosure under 5 U.S.C. 552(b)(4). FCA will give the business submitter a reasonable time to object to the proposed disclosure of the responsive records and so inform the requester whenever:

(1) The business submitter has in good faith designated the information as

a trade secret or commercial or financial information that is privileged or confidential. FCA will provide such notice for 10 years after receiving the information unless the business submitter justifies the need for a longer period; or

(2) FCA believes that disclosing the information may result in commercial or financial injury to the business submitter.

(c) *Objection to release.* A business submitter who objects to releasing the requested information should tell FCA in writing why the information is a trade secret or commercial or financial information that is privileged or confidential.

(d) *FCA response.* (1) We will consider carefully a business submitter's objections. If we decide to disclose business information over the submitter's objection, the FOIA Officer in writing will explain to the submitter why we disagreed with the submitter's objection and describe the business information to be disclosed.

(2) We will notify the requester and the submitter at the same time of the proposed disclosure date.

(3) If a submitter sues to prevent release, we will promptly notify the requester and not disclose the business information until after the court's decision.

(4) If a requester sues to compel disclosure, we will promptly notify the business submitter.

#### § 602.8 Appeals.

(a) *How to appeal.* You may appeal a total or partial denial of your FOIA request within 30 calendar days of the date of the denial letter. Your appeal must be in writing and addressed to the Director, Office of Resources Management (ORM), Farm Credit Administration, as follows:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102-5090;

(2) By facsimile to (703) 893-2608; or

(3) By E-mail to foiaappeal@fca.gov.

(b) *FCA action on appeal.* The ORM Director will act upon an appeal within 20 business days of receiving the appeal and will inform you of the determination in writing. If your appeal is improperly addressed, the 20-day time period will not begin until the appeal is received or would have been received with the exercise of due diligence in the Office of the Director, ORM.

(c) *Unusual circumstances.* In "unusual circumstances," as defined in § 602.5(b), the ORM Director may extend the 20-day response time by telling you in writing why an extension is needed and the date a determination

should be mailed. The total of all extensions, including any extension of the response time for the initial request, may not exceed 10 business days.

#### § 602.9 Current index.

FCA will make available for public inspection and copying a current index as required by 5 U.S.C. 552(a)(2)(C). Publication of the index in the **Federal Register** is unnecessary and impractical because we rarely receive requests for indexed material. However, we will provide a copy of the index upon request at a cost not to exceed the actual duplication cost.

### Subpart C—FOIA Fees

#### § 602.10 Definitions.

(a) *Commercial use request* means a request for information on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of that individual or entity.

(b) *Direct costs* means the costs FCA incurs in searching for and reproducing documents to respond to a FOIA request. For a commercial use request, it also means the costs we incur in reviewing documents to respond to the request. Direct costs include the salary of the employees performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. They do not include overhead expenses.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research.

(d) *Noncommercial scientific institution* means an institution operated solely to conduct scientific research that is not intended to promote any particular product or industry and not for a commercial, trade, or profit basis.

(e) *Pages* refers to paper copies sized 8½ x 11 inches or 11 x 14 inches.

(f) *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. "News" means information that is about current events or that would be of current interest to the public.

(g) *Reproduce and reproduction* means making a copy of a record to respond to a FOIA request by paper copy, microfilm, audiovisual materials, or machine readable documentation, magnetic tape, or disk.

(h) *Review* means the process of examining documents located in response to a FOIA request to determine whether any portion should be withheld. It does not include the time spent resolving legal or policy issues.

(i) *Search* means all time spent looking for material responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents.

#### § 602.11 Fees by type of requestor.

Depending on your identity and the purpose of your request, the FCA may charge you the direct costs of searching for responsive records, reviewing the records, and reproducing them. If necessary, we will seek clarification before categorizing the request.

(a) *Educational institutions and noncommercial scientific institutions.* FCA charges fees for reproduction costs only. The first 100 pages are free. You must show that the request is authorized by an educational or noncommercial scientific institution and that the records are sought to further scholarly or scientific research and are not for a commercial use.

(b) *Representatives of the news media.* FCA charges fees for reproduction costs only. The first 100 pages are free. You must be a representative of the news media, and the request must not be made for a commercial use. A request for records supporting news dissemination is not a request for a commercial use.

(c) *Commercial use.* FCA charges the direct cost for search, review, and reproduction. Commercial use requesters are not entitled to free search time or free reproduction. You will be charged even if no records are disclosed.

(d) *All others.* The first 2 hours of search time and the first 100 pages of reproduction are free. Thereafter, FCA will charge you search and reproduction costs. You will be charged for a search even if no records are disclosed.

#### § 602.12 Fees.

(a) FCA may charge:

(1) For manual searches for records and for review, the salary rate (i.e., basic pay plus 16 percent) of the employees.

(2) For computer searches for records, the direct costs of computer search time including the cost of special supplies or materials.

(3) For each page made by photocopy or similar process, fifteen cents per page and for other copy forms, the direct costs.

(4) The direct costs of elective services, such as certifying records as true copies or sending records by special methods.

(b) We will not charge fees when total assessed fees are less than \$15.00.

(c) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to the Treasury of the United States.

(d) A request about yourself is treated under Privacy Act fee provisions.

#### § 602.13 Fee waiver.

FCA may waive or reduce fees if we determine that disclosure is in the public interest because it will advance public understanding of the government's operations or activities, and it is not primarily in your commercial interest.

#### § 602.14 Advance payments—notice.

(a) If fees will be more than \$25.00 and you have not indicated in advance that you will pay estimated fees, FCA will notify you of the amount of estimated fees and ask that you agree to pay them. Except as noted in this section, we will begin processing the FOIA request upon receiving your agreement to pay.

(b) If estimated fees exceed \$250.00 and you have a history of promptly paying fees charged for information requests, we may process your request based on your agreement to pay the estimated fees.

(c) If the estimated fees exceed \$250.00 and you have no history of paying fees charged for information requests, FCA may require you to pay the estimated fees in advance.

(d) If you have previously failed to pay fees for information requests or paid them late, you must pay any fees still owed, plus interest, and the estimated fees before we will process a new or a pending request.

(e) If we require advance payment or your agreement in advance to pay fees, we will not consider the request to be received and will not process it until you meet the requirement.

#### § 602.15 Interest on unpaid fees.

If you have failed to pay fees on time, FCA may charge you interest starting on the 31st calendar day following the date we bill you. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, starting on the day the bill was sent.

#### § 602.16 Aggregating requests.

You may not file multiple requests at the same time solely to avoid paying fees. When FCA reasonably believes that you, or a group acting together, is attempting to break a request down into a series of requests to avoid fees, we will

aggregate the requests and charge accordingly. We will assume that multiple requests of this type made within a 30-day period have been made to avoid fees. Where requests are separated by a longer period, we will aggregate the requests only when we determine there is a basis for aggregation.

#### **Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA Is Not a Named Party**

##### **§ 602.17 Policy.**

(a) The rules in this subpart maintain the confidentiality of FCA's documents and information, conserve FCA employees' time for official duties, maintain FCA's impartiality in litigation, and authorize the FCA Chairman to determine when to permit testimony and to produce documents. This subpart does not affect access to documents under the FOIA or the Privacy Act. See subpart B of this part and part 603 of this chapter.

(b) Generally, FCA will not voluntarily produce documents and FCA employees will not appear voluntarily as witnesses in any legal proceeding. However, in limited circumstances, the FCA Chairman may permit the production of documents or testimony when the Chairman determines it would be in the best interest of FCA or the public. The Chairman may delegate this authority. All privileged documents made available under this subpart remain FCA property. Any employee in possession of information or privileged documents may disclose them only as authorized by the Chairman.

##### **§ 602.18 Definitions.**

(a) *Court* means any entity conducting a legal proceeding.

(b) *Demand* means any order, subpoena, or other legal process for testimony or documents.

(c) *Direct costs* means the costs FCA incurs in searching for, reviewing, and reproducing documents to respond to a request. Direct costs include the salary of employees performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment.

(d) *Document* means any record or other documentary materials, such as books, papers, maps, photographs, and machine readable materials, regardless of physical form or characteristics (e.g., electronic form or format) in FCA's possession and control at the time of the request.

(e) *Employee* means any FCA employee or former employee, any FCA Board member or former Board member, any former Federal Farm Credit Board member, any present or former FCA-appointed receiver or conservator, or any agent or independent contractor presently or formerly acting on behalf of FCA even if the appointment or contract has terminated.

(f) *FCA Counsel* means the General Counsel, a Department of Justice attorney, or counsel authorized by FCA to act on behalf of FCA or an employee.

(g) *General Counsel* means the General Counsel of FCA or the General Counsel's designee.

(h) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a discovery proceeding, before a court when FCA is not a named party or when FCA has not instituted the legal proceeding.

##### **§ 602.19 Request for testimony or production of documents.**

How to make and address a request. Your request for an FCA employee's testimony about official matters or the production of FCA documents must be in writing and addressed to the FCA General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

(a) Your request must contain the following:

- (1) Title of the case;
- (2) Forum;
- (3) Your interest in the case;
- (4) Summary of the litigation issues;
- (5) Reasons for the request;
- (6) Why the confidential information is important; and
- (7) An explanation of why the desired testimony or document is not reasonably available from another source. If testimony is requested, you must also state how you intend to use the testimony, provide a summary of the testimony requested, and explain why a document could not be used instead of testimony.

(b) The General Counsel may ask you to consider limiting your request to make it less burdensome or to provide information necessary to determine if providing documents or testimony would be in the public interest.

##### **§ 602.20 Testimony of FCA employees.**

(a) An FCA employee may testify only as permitted by the FCA Chairman's written authorization. Generally, an employee may testify only by deposition or written interrogatory. An employee may give only factual testimony and may not give opinion testimony.

(b) If, in response to your request, the Chairman determines that an employee may testify, you must serve the

employee with a subpoena under applicable Federal or State rules of procedure and simultaneously send a copy of the subpoena by registered mail to the General Counsel.

(c) Normally, depositions will be taken at the employee's office, at a time convenient to the employee and the office. FCA counsel may represent FCA's interests at the deposition.

(d) If you request the deposition, you must provide the General Counsel a copy of the deposition transcript at no charge.

##### **§ 602.21 Production of FCA documents.**

(a) An FCA employee may produce FCA documents only as permitted by the FCA Chairman.

(b) Before FCA will release any documents, the requesting party must obtain an acceptable protective order from the court before which the action is pending that will preserve the confidentiality of the documents to be released.

(c) Upon request, we may provide certified or authenticated copies of FCA documents.

##### **§ 602.22 Fees.**

(a) For documents released under this subpart, FCA will charge:

(1) The direct costs of searching for responsive records, including the use of a computer, reviewing the records, and reproducing them. We will charge for the direct cost of other services and materials not identified in this section.

(2) Fifteen cents per copy for each page made by photocopy or similar process.

(3) The direct costs for each certification or authentication of documents.

(b) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to FCA. We will waive fees of \$15.00 or less. We will forward the documents after we receive your payment.

##### **§ 602.23 Responses to demands served on FCA employees.**

(a) An FCA employee served with a demand or a subpoena in a legal proceeding must immediately notify the General Counsel of such service, of the desired testimony or documents, and of all relevant facts.

(b) When the FCA Chairman does not permit testimony or production of documents, FCA counsel will provide the regulations in this subpart to the party or court issuing the demand and explain that the employee may not testify or produce documents without the Chairman's prior approval.

(c) If the court rules that the employee must comply with the demand regardless of the Chairman's instructions not to do so, the employee must respectfully refuse to comply.

(d) FCA's determination under this subpart to comply or not to comply with any demand will not be a waiver or an assertion of privilege, or an objection based on relevance, technical deficiency, or any other ground. We may oppose any demand on any legal ground.

**§ 602.24 Responses to demands served on non-FCA employees or entities.**

If you are not an FCA employee as defined in § 602.18(e) and are served with a demand or a subpoena in a legal proceeding directing you to produce or testify about an FCA report of examination, other document generated or adopted by FCA, or any related document, you must object and immediately notify the General Counsel of such service, the testimony and documents described in the demand, and all relevant facts. You must also object to the production of the documents on the basis that the documents are FCA's property and cannot be released without FCA's consent. You should inform the requester that the production of documents or testimony must follow the procedures in this part.

**Subpart E—Release of Records in Public Rulemaking Files**

**§ 602.25 General.**

FCA compiles a public rulemaking file for each regulation. You may obtain documents in the public rulemaking file by sending a written request to the Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. We will charge fifteen cents per copy for each page made by photocopy or similar process. If the requested records are maintained in an electronic format, we will charge for the actual reproduction costs. We will waive fees of \$15.00 or less.

Dated: March 2, 1999.

**Vivian L. Portis,**

*Secretary, Farm Credit Administration Board.*  
[FR Doc. 99-5550 Filed 3-5-99; 8:45 am]

BILLING CODE 6705-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 98-NM-326-AD]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes. That AD currently requires a revision to the Airplane Flight Manual (AFM) to specify restrictions on operations during icing conditions, and installation of tufts and triangular decals on the inboard side of the wing upper surfaces, and a revision to the AFM to specify restrictions on operations when such tufts or decals are missing. This action would require installation of an overwing heater blanket system or a primary wing ice detection system, and a new revision to the AFM to advise the flightcrew of the hazards associated with ice accumulation on wing surfaces. This proposal is prompted by incidents in which ice accumulation on the wing upper surfaces shed into the engines during takeoff. The actions specified by the proposed AD are intended to prevent such ice accumulation, which could result in ingestion of ice into one or both engines and consequent loss of thrust from one or both engines.

**DATES:** Comments must be received by April 22, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-326-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 The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5346; fax (562) 627-5210.

**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 98-NM-326-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-114, Attention: Rules Docket No. 98-NM-326-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

On January 3, 1992, the FAA issued AD 92-03-02, amendment 39-8156 (57 FR 2014, January 17, 1992), applicable to all McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, to require a revision to the