

apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1026 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026.

Initial Certificate Effective Date: February 15, 2001.

Amendment Number 1 Effective Date: May 14, 2001.

Amendment Number 2 Effective Date: January 28, 2002.

SAR Submitted by: BNFL Fuel Solutions.

SAR Title: Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System.

Docket Number: 72–1026.

Certificate Expiration Date: February 15, 2021.

Model Number: WSNF–220, WSNF–221, and WSNF–223 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters.

* * * * *

Dated at Rockville, Maryland, this 25th day of October, 2001.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 01–28512 Filed 11–13–01; 8:45 am]

BILLING CODE 7590–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1707

Testimony by DNFSB Employees and Production of Official Records in Legal Proceedings

AGENCY: Defense Nuclear Facilities Safety Board (DNFSB).

ACTION: Proposed rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB) is issuing a proposed rule that sets forth procedures that requesters would have to follow when making demands or requests to a DNFSB employee to produce official records or information or to provide testimony relating to official information in connection with a legal proceeding in which the DNFSB is not a party. This proposed rule establishes procedures to respond to such demands and requests in an orderly and consistent manner. The rule, among other benefits, promotes uniformity in decisions, protects confidential information, provides guidance to requesters, and reduces the potential for both inappropriate

disclosures of official information and wasteful allocation of agency resources.

DATES: Comments must be received on or before December 14, 2001.

ADDRESSES: Send comments to Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT:

Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, telephone: 202–694–7062; FAX: 202–208–6518.

SUPPLEMENTARY INFORMATION:

Background

The Defense Nuclear Facilities Safety Board may receive subpoenas and requests for DNFSB employees to provide evidence in litigation in which the DNFSB is not a party. These subpoenas and requests may also be for DNFSB records that are not available to the public under the Freedom of Information Act. Also, DNFSB could receive subpoenas or requests for DNFSB employees to appear as witnesses in litigation in conjunction with a request for nonpublic records.

Responding to such demands and requests could divert DNFSB resources from their congressionally mandated functions. The proposed regulation will ensure a more efficient use of DNFSB resources, minimize the possibility of involving DNFSB in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas, and maintain impartiality of DNFSB in matters that are in dispute between other parties. It also serves DNFSB's duty to protect sensitive, confidential, and privileged information and records.

Furthermore, responding to such demands and requests could also result in significant disruption in a DNFSB employee's work schedule. The result is that employees may be diverted from performing their official duties in order to respond to requests from parties in litigation. In order to address this problem, many agencies over the years have issued "Touhy" regulations that are similar to this proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. Such a regulation was upheld by the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

In *Touhy*, the Supreme Court held that a Department of Justice (DOJ) official, acting on order of the Attorney

General, could not be held in contempt for declining to produce records in response to a subpoena. The employee's refusal was based upon a DOJ regulation that prohibited disclosure of agency files, documents, records, or information without the express approval of the Attorney General. The Court upheld the validity of the DOJ regulation, reasoning that it was appropriate for the Attorney General to prescribe regulations not inconsistent with law for the custody, use, and preservation of records, papers, and property pertaining to the Department of Justice.

Briefly summarized, this proposed rule would prohibit disclosure of nonpublic official records or testimony by DNFSB employees unless authorization is provided pursuant to the rule (§§ 1707.201 and 1707.203). The proposed rule identifies the factors that DNFSB will consider in making determinations in response to such requests and what information requesters must provide (§§ 1707.202 and 1707.203). The proposed rule also specifies when the request should be submitted (§ 1707.203), the time period for review (§ 1707.205), potential fees (§ 1707.301), and, if a request is granted, any restrictions that may be placed on the disclosure of records or the appearance of a DNFSB employee as a witness (§§ 1707.207 and 1707.208). The charges for witnesses are the same as those provided by the Federal courts; and the fees related to production of records are the same as those charged under FOIA. The charges for time spent by an employee to prepare for testimony and for certification of records by DNFSB are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

The proposed rule applies to a broad range of matters in any legal proceeding in which DNFSB is not a named party. It also applies to former and current DNFSB employees (as well as DNFSB consultants and advisors). Former employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the proposed rule. They would not be barred from appearing to testify about general matters unconnected with the specific matters for which they had responsibility.

The proposed DNFSB rule is internal to the agency, and is essentially procedural, not substantive. It would not create a right to obtain official records or the testimony of a DNFSB employee nor would it create any additional right or privilege not already

available to DNFSB to deny any demand or request therefor. However, failure to comply with the procedures in the proposed rule would be a basis for denying a demand or request submitted to DNFSB.

Matters of Regulatory Procedure

Administrative Procedure Act

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 30-day comment period. Interested persons are invited to submit written comments to DNFSB on this proposed regulation, to be received on or before December 14, 2001. The Defense Nuclear Facilities Safety Board will review all comments received and consider any modifications to this proposal which appear warranted in issuing its final rule.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6), the rule will not have a significant economic impact on a substantial number of small entities. The rule addresses only the procedures to be followed in the production or disclosure of DNFSB materials and information in litigation where DNFSB is not a party.

Accordingly, DNFSB has determined that a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this regulation, the Defense Nuclear Facilities Safety Board has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive Order since it is not a significant regulatory action within the meaning of the Executive Order.

Executive Order 12988

The Defense Nuclear Facilities Safety Board, has reviewed this regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certifies that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval by the Office of Management and Budget. The Defense Nuclear Facilities Safety Board expects the collection of information that is called for by the regulation would involve fewer than ten persons each year.

Congressional Review Act

The Defense Nuclear Facilities Safety Board has determined that this rulemaking does not involve a rule within the meaning of the Congressional Review Act (5 U.S.C. chapter 8).

List of Subjects in 10 CFR Part 1707

Administrative practice and procedure, Conflict of interests, Courts, Government employees, Records, Subpoenas, Testimony.

Approved: November 8, 2001.

John T. Conway,

Chairman, Defense Nuclear Facilities Safety Board.

Accordingly, for the reasons set forth in the preamble, the Defense Nuclear Facilities Safety Board proposes to add a new part 1707 to 10 CFR to read as follows:

PART 1707—TESTIMONY BY DNFSB EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

- 1707.101 Scope and purpose.
- 1707.102 Applicability.
- 1707.103 Definitions.

Subpart B—Requests for Testimony and Production of Documents

- 1707.201 General prohibition.
- 1707.202 Factors DNFSB will consider.
- 1707.203 Filing requirements for demands or requests for documents or testimony.
- 1707.204 Service of subpoenas or requests.
- 1707.205 Processing demands or requests.
- 1707.206 Final determination.
- 1707.207 Restrictions that apply to testimony.
- 1707.208 Restrictions that apply to released records.
- 1707.209 Procedure when a decision is not made prior to the time a response is required.
- 1707.210 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

- 1707.301 Fees.

Subpart D—Penalties

- 1707.401 Penalties.

Authority: Enabling Statute of the Defense Nuclear Facilities Safety Board, 42 U.S.C. 2286b(c); 44 U.S.C. 3101–3107, 3301–3303a, 3308–3314.

Subpart A—General Provisions

§ 1707.101 Scope and purpose.

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the Defense Nuclear Facilities Safety Board (DNFSB) to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The Defense Nuclear Facilities Safety Board intends these provisions to:

- (1) Promote economy and efficiency in its programs and operations;
- (2) Minimize the possibility of involving DNFSB in controversial issues not related to our functions;
- (3) Maintain DNFSB's impartiality among private litigants where DNFSB is not a named party; and
- (4) Protect sensitive, confidential information and the deliberative processes of DNFSB.

(c) In providing for these requirements, DNFSB does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of DNFSB. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1707.102 Applicability.

This part applies to demands and requests to employees for factual, opinion, or expert testimony relating to official information, or for production of official records or information, in legal proceedings whether or not the United States or the DNFSB is a named party. However, it does not apply to:

(a) Demands upon or requests for a DNFSB employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of DNFSB;

(b) Demands upon or requests for a former DNFSB employee to testify as to matters in which the former employee was not directly or materially involved while at the DNFSB;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(d) Congressional demands and requests for testimony or records.

§ 1707.103 Definitions.

Demand means a subpoena, or an order or other demand of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of a DNFSB employee that is issued in a legal proceeding.

DNFSB means the Defense Nuclear Facilities Safety Board.

DNFSB employee or *employee* means:

- (1) Any current or former officer or employee of DNFSB;
 - (2) Any contractor or contractor employee working on behalf of the DNFSB or who has performed services for DNFSB; and
 - (3) Any individual who is serving or has served in any advisory capacity to DNFSB, whether formal or informal.
- (4) Provided, that this definition does not include persons who are no longer employed by DNFSB and who are retained or hired as expert witnesses or who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with DNFSB.

General Counsel means the General Counsel of DNFSB or a person to whom the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

Records or official records and information mean:

- (1) All documents and materials which are DNFSB agency records under the Freedom of Information Act, 5 U.S.C. 552;
- (2) All other documents and materials contained in DNFSB files; and
- (3) All other information or materials acquired by a DNFSB employee in the performance of his or her official duties or because of his or her official status.

Request means any formal or informal request, by whatever method, for the production of records and information or for testimony which has not been demanded by a court or other competent authority.

Testimony means any written or oral statements, including but not limited to depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Requests for Testimony and Production of Documents

§ 1707.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 1707.202 Factors DNFSB will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;
- (c) DNFSB has an interest in the decision that may be rendered in the legal proceeding;
- (d) Allowing such testimony or production of records would assist or hinder DNFSB in performing its statutory duties or use DNFSB resources where responding to the request will interfere with the ability of DNFSB employees to do their work;
- (e) Allowing such testimony or production of records would be in the best interest of DNFSB or the United States;
- (f) The records or testimony can be obtained from other sources;
- (g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;
- (h) Disclosure would violate a statute, executive order or regulation;
- (i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, or otherwise protected information, or would otherwise be inappropriate for release;
- (j) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings;
- (k) Disclosure would compromise constitutional rights;
- (l) Disclosure would result in DNFSB appearing to favor one litigant over another;
- (m) Disclosure relates to documents that were produced by another agency;
- (n) A substantial Government interest is implicated;

- (o) The demand or request is within the authority of the party making it; and
- (p) The demand or request is sufficiently specific to be answered.

§ 1707.203 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to a DNFSB employee for official records, information, or testimony.

(a) Your request must be in writing and must be submitted to the General Counsel. If you serve a subpoena on DNFSB or a DNFSB employee before submitting a written request and receiving a final determination, DNFSB will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance of the testimony, records, or information you seek from the DNFSB;

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

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on DNFSB to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a DNFSB employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

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

(9) An estimate of the amount of time that the requester and other parties will require with each DNFSB employee for time spent by the employee to prepare

for testimony, in travel, and for attendance in the legal proceeding.

(c) The Defense Nuclear Facilities Safety Board reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 45 days before the date that records or testimony is required. Requests submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 1707.204 Service of subpoenas or requests.

Subpoenas or requests for official records or information or testimony must be served on the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004-2901.

§ 1707.205 Processing demands or requests.

(a) After service of a demand or request to testify, the General Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) The Defense Nuclear Facilities Safety Board will process requests in the order in which they are received. Absent exigent or unusual circumstances, DNFSB will respond within 45 days from the date that we receive it. The time for response will depend upon the scope of the request.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of the DNFSB or the United States or for other good cause.

§ 1707.206 Final determination.

The General Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions

that the General Counsel may impose on the release of records or information, or on the testimony of a DNFSB employee.

§ 1707.207 Restrictions that apply to testimony.

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

(b) The DNFSB may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose classified, privileged, or otherwise protected information;

(2) Testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of DNFSB unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805 for current employees).

§ 1707.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, DNFSB may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original DNFSB records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official DNFSB records, nor are they to be marked or altered. In lieu of the original records, certified copies will be

presented for evidentiary purposes (see 28 U.S.C. 1733).

§ 1707.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in § 1707.201, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand or request is being reviewed, and seek a stay of the demand or request pending a final determination.

§ 1707.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay the demand, the employee upon whom the demand is made, unless otherwise advised by the General Counsel, will appear at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). A written response may be offered to a request, or to a demand, if permitted by the court or other competent authority.

Subpart C—Schedule of Fees

§ 1707.301 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to DNFSB.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by DNFSB in its Freedom of Information Act fee regulations at 10 CFR part 1703.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent

by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must pay witness fees for current DNFSB employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former DNFSB employees, you must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records.* The Defense Nuclear Facilities Safety Board may certify that records are true copies in order to facilitate their use as evidence. If you seek certification, you must request certified copies from DNFSB at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of \$15.00 for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees will not be assessed if the total charge would be \$10.00 or less.

Subpart D—Penalties

§ 1707.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by DNFSB or as ordered by a Federal court after DNFSB has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former DNFSB employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current DNFSB employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

[FR Doc. 01-28543 Filed 11-13-01; 8:45 am]

BILLING CODE 3670-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-CE-10-AD]

RIN 2120-AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This proposed AD would require you to install a new strainer draining system in the cabin fuselage. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this proposed AD are intended to prevent water from accumulating in the fuselage, then freezing and interfering with or causing the elevator controls to seize. This could result in loss of elevator control with consequent loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 12, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE-10-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from SOCATA-Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930-F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894-1160; facsimile: (954) 964-4191. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;