



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

May 17, 1991

Willis C. Darby, Jr.
Attorney at Law
200 St. Anthony Street
P.O. Box 2565
Mobile, Alabama 36652

Subject: Federal Credit Union Bylaws

Dear Mr. Darby:

I am responding to your request for information regarding a definition of an "institution-affiliated party."

The term, "institution-affiliated party" is found at 12 U.S.C. §1786(r) and is broadly defined within the statute to permit agency jurisdiction (as defined in this and other statutes) over a stated category of parties normally associated with credit unions. The statute also allows institution-affiliation status to other parties that are "determined by the [NCUA] Board (by regulation or on a case-by-case basis)" to participate in the conduct of the affairs of an insured credit union.

The NCUA has not made any regulatory or case-by-case determinations since this provision was added to the Federal Credit Union Act, 12 U.S.C. §1752 et seq. In February 1990, the NCUA Board approved rules applicable to formal investigations. A majority of the rule's preamble is dedicated to a discussion of institution-affiliation. I am providing you with a copy of that discussion.

Please let me know if you need further information.

Sincerely,

Richard S. Schulman
Trial Attorney
Office of General Counsel

GC/RSS:bhs
SSIC 12500
91-04-34
Enclosure

the Federal Credit Union Act, and NCUA Rules and Regulations.

The NCUA Board may issue an Interpretative Ruling and Policy Statement or NCUA Letter in the future discussing the major criteria it will consider in making case-by-case determinations of "institution-affiliation." In the interim, the NCUA Board will define "institution-affiliated parties" on a "case-by-case basis" pursuant to section 206 of the Federal Credit Union Act, 12 U.S.C. 1786(r). The authority to determine "institution-affiliation" has not been delegated by the NCUA Board. When, and if, the NCUA Board determines that a list of affiliated parties is productive and necessary, the Board will further address the matters raised by the comments already received in a proposed regulation and reopen the period for additional comments.

The Board wishes to clarify several areas raised by the comment letters concerning "institution-affiliation." In two comments, there appeared to be confusion over the extent of the Board's authority over institution-affiliation parties. Several commenters thought that the Board will extend its credit union examination and supervisory authority to cover, for example, those parties defined in the statute, such as a joint venture partner or consultant. Neither these final rules nor FIRREA give the Board this power.

The Board's authority extends to established administrative or civil remedies against the credit union or institution affiliated party, as defined, to eliminate or remedy a violation and compensate for losses. When the Board is asked to impose administrative measures against a party, they will have to determine whether the party meets the Federal Credit Union Act's definition of "institution-affiliation." See section 206(r) of the Federal Credit Union Act.

(b) Other Comments

One commenter recommended that investigative targets not be sequestered from the testimony of witnesses. The practice of witness sequestration is common throughout the federal government and with sound basis. Investigations require access to information. The NCUA Board believes that the presence of targets and their counsel will do more to inhibit than encourage complete and honest testimony and will discourage witnesses from providing documents which might be subject to third party inspection at an open deposition. The presence of interested spectators will act to defeat the limited use and protection of subpoenaed testimony and documents.

A commenter suggested that information regarding investigations and the order of investigation should be available under the Freedom of Information Act ("FOIA") (5 U.S.C. 552). Another commenter argued against public disclosure. It is the NCUA Board's opinion that such information is compiled for law enforcement purposes and thereby exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(7)).

One commenter wanted a definition of "informal" investigations within the rules beyond that set forth in § 747.1003(b). These rules intentionally do not contain set standards for "conducting" informal investigations. The Board expects its staff to be informally investigating matters related to insured credit unions every day through, for example, routine credit union examinations and contacts. The use of the term "informal" within the rule is merely a convenient device to distinguish formal investigations.

One commenter wanted a definition of the term "fitness" as it is used in § 747.1003(a). Fitness is a standard that varies from case to case. The Board believes that creating a definitive standard of "fitness" would not be beneficial. Such a definition would have the negative effect of prescribing a Board imposed character and qualification composite of an ideal credit union employee, officer or director.

One commenter recommended amendment of the NCUA Board's delegation to the General Counsel in § 747.1003 because it would conflict with § 747.115(b) of the NCUA Rules and Regulations. Section 747.115 addresses hearings before the NCUA Board after it has issued an order as described in § 747.101(a) of the NCUA Rules and Regulations. As such, it is inapplicable for the purposes of this rule. The Board and the General Counsel will be cautious to avoid actual or apparent conflicts.

One commenter stated that further delegation of investigatory power could lead to abusive powers by the officer conducting the investigation. The Board is satisfied that checks and balances exist within the agency to protect the public from unwarranted investigations. The officer conducting the investigation is limited to investigating matters within the investigatory order.

Another commenter recommended disclosure of investigative orders to witnesses and the public. Disclosure of investigative orders to the public could injure innocent parties and interfere in the investigative process. The investigative order is normally made

part of the record at a deposition and is available for inspection by the witness and counsel during the course of any testimony. The Board's subpoena also contains information to the witness regarding the purpose of the investigation. This is referred to in the subpoena as "principal uses of information." This information provides the witness background into the inquiry and the jurisdictional authority of NCUA over the matter under investigation. It also gives the witness the ability to assess potential culpability in the matter under investigation.

The staff raised a concern that the delegation language in § 747.1003(c) should include language that investigation authority extends to the NCUA Board's power as liquidator and conservator. Although silent, the proposed rule intended to include these functions within the scope of investigatory powers. However, to avoid doubt, we are adding the clarifying language proposed by the staff.

The Board may in appropriate cases, such as liquidation and conservatorship actions, rely on outside counsel and other experts for assistance. These individuals may be delegated much of the authority of an officer conducting the investigation. The Board does not intend, however, to delegate the power to issue subpoenas to outside counsel or other experts. Outside counsel and other experts may otherwise fully participate in all aspects of any such investigation. The delegation language under § 747.1003(c) has, therefore, been clarified.

There were several comments regarding the clarity of § 747.1003(a). Since this section defines the scope of NCUA's investigative authority, the commenters sought clarification. The Board believes this section is sufficiently clear given the breadth of its authority.

One commenter on § 747.1103(c), recommended that witness fees should be prepaid by NCUA. The commenter believed that requiring a witness to prepay expenses was an unfair burden. Another commenter recommended that witness fees be reimbursed within thirty days from the date of appearance.

The Board recognizes the temporary burden placed upon a witness subpoenaed to testify in an investigation. NCUA will make every effort to reimburse a witness as soon as possible. However, a rule requiring witness fees to be paid in advance may unduly delay an investigation. Moreover, NCUA will not prepay a witness when there is no guarantee that the funds will be applied to the

witnesses appearance. Finally, it is easier for individuals to make their own travel plans. The Board is not insensitive to the needs of potential witnesses and instructs its staff accordingly. When a situation arises where financial constraints makes it difficult for a witness to comply, the Board will respond appropriately.

One commenter believed the "notice" provisions of § 747.1103(b) were less than adequate to assure "actual" notice. The Board believes the current language is sufficient. The final rule at § 747.1103(d) contains language for enforcing an applicable subpoena. The commenter is apparently concerned with possible negative implications or effect upon a deponent who fails to appear before the investigating officer for lack of notice. When a deponent fails to appear on a scheduled date, the investigating officer will determine the cause of this failure. When it is determined that the deponent has been served and is deliberately avoiding appearance, the NCUA Board must apply to the federal courts for enforcement. When it appears that the deponent did not receive notice of the hearing, the investigating officer will take steps to ensure proper notice.

Several commenters suggested that all deposed parties be sworn and an official transcript made. Both suggested that witnesses have an undeniable right to possess a copy of their testimony upon payment of costs. One commenter suggested in the interest of gathering facts, that witnesses be permitted to tape record their own testimony.

While the prospect of a deposed witness not being sworn and recorded is unforeseen at this time, the potential should be recognized through the regulation. Witnesses and their counsel are free to take notes during a deposition. However, the witnesses are present to give testimony and not to pay attention to extraneous devices such as tape recorders. In all foreseeable cases, the witness would be entitled to review and/or purchase transcripts of their own testimony. See, *Securities and Exchange Commission v. Sprecher*, 594 F.2d 317 (2d Cir. 1979).

Finally, one commenter recommended placing these rules at the beginning of part 747 since an investigation logically precedes an adjudicative proceeding. The Board does not believe that the current placement will lead to confusion. Nevertheless, the title "Investigations" is being added to part 747.

Regulatory Procedures:

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). It will not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The Board, pursuant to Executive Order 12612, has determined that this rule 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 the various levels of government. Further the new rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 747

Administrative actions, Adjudicative hearings, and Rules of Practice and Procedure.

By the National Credit Union Administration Board on February 7, 1970.
Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 747 as follows:

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

Authority: 12 U.S.C. 1766, 12 U.S.C. 1784, 12 U.S.C. 1785, 12 U.S.C. 1787, 12 U.S.C. 1789, 12 U.S.C. 1995c.

2. The Table of Contents of part 747 is revised to read as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE AND INVESTIGATIONS

Sec.

747.01 Scope.

Subpart A—Rules of Practice and Procedure

747.101 Scope.

747.102 Appearance and practice before the Administration.

747.103 Notice of hearing.

747.104 Answer.

747.105 Failure to appear.

747.106 Conduct of hearing.

747.107 Subpoenas.

747.108 Rules of evidence.

747.109 Motions.

Sec.

747.110 Proposed findings and conclusions and recommended decision.

747.111 Exceptions.

747.112 Briefs.

747.113 Oral argument before the Board.

747.114 Notice of submission to the Board.

747.115 Decision of the Board.

747.116 Filing papers.

747.117 Service.

747.118 Copies.

747.119 Computing time.

747.120 Documents in proceedings confidential.

747.121 Formal requirements as to papers filed.

747.122 Availability to public of final orders.

Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

747.201 Scope.

747.202 Grounds for termination of insurance.

747.203 Notice of charges.

747.204 Notice of intention to terminate insured status.

747.205 Order terminating insured status.

747.206 Consent to termination of insured status.

747.207 Notice of termination of insured status.

747.208 Duties after termination.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

747.301 Scope.

747.302 Grounds for cease-and-desist orders.

747.303 Notice of charges and hearing.

747.304 Issuance of order.

747.305 Effective date.

747.306 Temporary cease-and-desist orders.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

747.401 Scope.

747.402 Grounds for assessment of civil money penalties.

747.403 Relevant considerations.

747.404 Notice of assessment.

747.405 Period within which penalty is payable.

747.406 Notice of opportunity for hearing.

747.407 Request for hearing.

747.408 Hearing and order.

747.409 Collection.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Suspension and Removal Actions

747.501 Scope.

747.502 Grounds for removal or prohibition.

747.503 Notice of intent to remove or prohibit; notice of hearing.

747.504 Issuance of removal order and effective date.

747.505 Suspension and immediate prohibition.

747.506 Effect of removal prohibition, or suspension.

747.507 Remainder of the board of directors.

**Subpart F—Rules and Procedures
Applicable to Suspensions and Prohibitions
Where Felony Charged**

- Sec.
- 747.601 Scope.
 - 747.602 Rules of practice.
 - 747.603 Notice of suspension or prohibition.
 - 747.604 Removal or permanent prohibition.
 - 747.605 Effectiveness of suspension or removal until completion of hearing.
 - 747.606 Notice of hearing.
 - 747.607 Hearing.
 - 747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
 - 747.609 Decision of the Board.
 - 747.610 Reconsideration by the Board.
 - 747.611 Relevant considerations.

**Subpart G—Rules and Procedures
Applicable to Proceedings Relating to the
Suspension or Revocation of Charters and
to Involuntary Liquidations**

- 747.701 Scope.
- 747.702 Grounds for suspension or revocation of charter and for involuntary liquidation.
- 747.703 Notice of intent to suspend or revoke charter; notice of suspension.
- 747.704 Notice of hearing.
- 747.705 Issuance of order.
- 747.706 Cancellation of charter.

**Subpart H—Rules and Procedures
Applicable to Proceedings Relating to the
Termination of Membership in the Central
Liquidity Facility (Reserved)**

**Subpart I—Rules and Procedures
Applicable to Recovery of Attorneys Fees
and Other Expenses Under the Equal
Access to Justice Act in Board
Adjudications**

- 747.901 Purpose and scope.
- 747.902 Eligibility of applicants.
- 747.903 Prevailing party.
- 747.904 Standards for awards.
- 747.905 Allowable fees and expenses.
- 747.906 Contents of application.
- 747.907 Statements of net worth.
- 747.908 Documentation of fees and expenses.
- 747.909 Filing and service of applications.
- 747.910 Answer to application.
- 747.911 Comments by other parties.
- 747.912 Settlement.
- 747.913 Further proceedings.
- 747.914 Recommended decision.
- 747.915 Decision of the Board.
- 747.916 Payment of award.

**Subpart J—Rules and Procedures
Applicable to Investigations**

- 747.1001 Applicability.
- 747.1002 Information obtained in investigations.
- 747.1003 Authority to conduct investigations.

**Subpart K—Formal Investigative
Proceedings**

- 747.1101 Applicability.
- 747.1102 Non-public formal investigative proceedings.
- 747.1103 Subpoenas.
- 747.1104 Oath; false statements.
- 747.1105 Self-incrimination; Immunity.
- 747.1106 Transcripts.

**Sec.
747.1107 Rights of witnesses.**

3. A new subpart J of part 747 is added to read as follows:

**Subpart J—Rules and Procedures
Applicable to Investigations**

§ 747.1001 Applicability.

The rules in this subpart apply only to informal and formal investigations conducted by the Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the Board's staff.

**§ 747.1002 Information obtained in
investigations.**

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the Board, shall be deemed non-public, but the Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his behalf or at his direction to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the Board or its General Counsel pursuant to delegated authority.

**§ 747.1003 Authority to conduct
investigations.**

(a) The General Counsel and persons acting on his behalf and at his direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the Federal Credit Union Act, the Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union. The General Counsel and persons acting on his behalf may investigate whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his designee, in his discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the Board's subpoena power

and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he delegates authority to act on his behalf and at his direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his behalf and at his direction. This delegation also extends to the Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

4. A new Subpart K to part 747 is added as follows:

**Subpart K—Formal Investigative
Proceedings**

§ 747.1101 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the Board, before one or more of its members, or before any officer designated by the Board or its General Counsel, as described in Subpart J, and with or without the assistance of such other counsel as the Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

**§ 747.1102 Non-public formal investigative
proceedings.**

Unless otherwise ordered by the Board, all formal investigative proceedings shall be non-public.

§ 747.1103 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer

conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner: (1) *Service upon a natural person.* Delivery of a copy of a subpoena to a natural person may be effected by (i) handing it to the person; (ii) leaving it at his office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there; (iii) leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or (iv) mailing it by registered or certified mail to him at his last known address. In the event that personal service as described in paragraph (b)(1) (i) through (iv) of this section is impracticable, any other method whereby actual notice is given to the respondent may be employed. (2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by (i) handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; (ii) mailing it by registered or certified mail to any such representative at his last known address; or (iii) any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need to be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than thirty days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.1104 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly

and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.1105 Self-incrimination, immunity.

(a) *Self-incrimination.* Except as provided below, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction. (2) If the Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, the Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he has previously refused to provide on the basis of self-incrimination. (3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the Board requiring him to testify or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.1106 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative

proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the Board may for good cause deny such request or the Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

§ 747.1107 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to specific order entered by the Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request be shown a copy of the Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any formal investigative proceeding and to have this attorney (i) advise such person before, during and after such testimony, (ii) question such person briefly at the conclusion of his testimony to clarify any answers such person has given, and (iii) make summary notes during such testimony solely for the use of such person.

(2) The Board realizes that, from time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his counsel to attend non-public investigative proceedings. Thus, for example, the officer may deem it appropriate that outside counsel to the Board attend and

advise him concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his counsel in order to assist counsel in understanding technical issues. The Board wishes to emphasize that these latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, or oversee or supervise the testimony of any witness, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

[FR Doc. 90-3483 Filed 2-15-90; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-02-AD; Amdt. 39-6513]

Airworthiness Directives; Cessna Models 208, 208A and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 208, 208A and 208B airplanes which requires inspection of the right flap bellcrank for cracks, deformation and/or incomplete welds and replacement as necessary. The FAA has received reports of failure of this bellcrank which would result in inadvertent retraction of the flaps and loss of the airplane. The actions specified in this AD will preclude such inadvertent flap retractions and the resultant loss of airplane control.

EFFECTIVE DATE: March 5, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Letter CAB89-34, dated December 22, 1989, applicable to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67217. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316-946-4409.

SUPPLEMENTARY INFORMATION: During an approach for landing a Cessna Model 208 airplane experienced a sudden, unexpected retraction of the flaps. This occurrence resulted from the failure of the Part Number (P/N) 2622083-18 bellcrank assembly caused by incomplete welding of the assembly. The FAA has also become aware of two similar failures in other Cessna 208 series airplanes. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued, applicable to Cessna Models 208, 208A, and 208B airplanes, requiring inspection of the P/N 2622083-18 bellcrank for correct welding, cracks or deformation, and replacement as necessary. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action

involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation. Aircraft, Aviation safety. Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—(AMENDED)

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 (Amended)

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

Cessna. Applies to Model 208 and 208A (Serial Numbers 20800001 through 20800173), and 208B (Serial Numbers 208B0001 through 208B0202) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the Part Number (P/N) 2622083-18 bellcrank assembly and the resulting unexpected retraction of the flaps, accomplish the following:

(a) Visually inspect the P/N 2622083-18 bellcrank assembly for cracks, deformation, and incomplete welds in accordance with Cessna Service Bulletin CAB 89-34, dated December 22, 1989.

(1) If any cracks or deformations are found, prior to further flight replace the P/N 2622083-18 bellcrank with an airworthy bellcrank.

(2) If any incomplete welds are found, within the next 50 hours TIS replace the P/N 2622083-18 bellcrank with an airworthy bellcrank.

(3) If any bellcranks are to be replaced, inspect the replacement part in accordance with Cessna SB CAB 89-34 dated 12-22-89 before installation.

(b) Airplanes may be flown in accordance with FAR 21.187 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft