

physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved in writing by the Administrator. A perimeter fence is not required:

(1) Where the outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(2) Where the outdoor housing facility is protected by an effective natural barrier that restricts the animals to the facility and restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(3) Where appropriate alternative security measures are employed and the Administrator gives written approval; or

(4) For traveling facilities where appropriate alternative security measures are employed; or

(5) Where the outdoor housing facility houses only farm animals, such as, but not limited to, cows, sheep, goats, pigs, horses (for regulated purposes), or donkeys, and the facility has in place effective and customary containment and security measures.

Done in Washington, DC, this 8th day of October 1999.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99-27135 Filed 10-15-99; 8:45 am]

BILLING CODE 3410-34-U

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 741**

**RIN 3133-AC22**

#### **Requirements for Insurance**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is issuing a final rule that revises NCUA rules concerning capitalization of the share insurance fund through the maintenance of a deposit by each insured credit union, payment of an insurance premium, and equity distribution. NCUA is making these revisions to conform its regulation with changes to the Federal Credit Union Act required under the Credit Union Membership Access Act (CUMAA).

**DATES:** This rule is effective January 1, 2000.

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

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Winans, Chief Financial Officer, Office of the Chief Financial Officer, at the above address or telephone: (703) 518-6570; or Regina M. Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

CUMAA was enacted into law on August 7, 1998. Public Law 105-21. Section 302 of CUMAA amends section 202 of the Federal Credit Union Act providing for requirements for obtaining and maintaining share insurance coverage from the National Credit Union Share Insurance Fund (NCUSIF). 12 U.S.C. 1782. The revisions concern capitalization of the share insurance fund through the maintenance of a one percent deposit by each insured credit union, payment of an insurance premium, and distribution of fund equity. CUMAA also adds provisions concerning the NCUSIF's equity ratio and available assets ratio. The amendments to the Federal Credit Union Act will become effective January 1, 2000. Accordingly, on May 27, 1999, NCUA issued a proposed rule with request for comments revising § 741.4 to implement the provisions of section 302 of CUMAA. 64 FR 28415 (May 26, 1999). The Board also requested comments on the level at which it should set the normal operating level of the NCUSIF for the year 2000. After reviewing the comments, the NCUA Board is adopting the final rule unchanged from the proposed rule.

##### **Summary of Comments**

NCUA received 18 comment letters: 12 from credit unions, four from credit union trade associations, and two from bank trade associations.

##### **General Comments**

Although CUMAA specifically mandates most of the amendments in the proposed rule, NCUA received several comments on these statutorily required provisions. NCUA also received several other comments that fell outside the scope of the proposed rule and we have noted this in the specific sections below. The majority of relevant comments were recommendations concerning the NCUSIF's normal operating level. These

comments are discussed in the section on the normal operating level below.

##### **Section 741.4(c) One Percent Deposit**

This paragraph incorporates the provision of CUMAA that requires NCUA to adjust the deposit amount semiannually for insured credit unions with assets of \$50 million or more, while retaining the annual adjustment requirement for credit unions with less than \$50 million in assets. NCUA received two comments on this paragraph. The first comment from a bank trade association suggested that credit unions be required to expense the one percent "deposit insurance premium" and to exclude the premium from both assets and net worth when assessing capital adequacy. This comment mistakenly identifies the one percent insurance deposit as a "premium" and is outside the scope of this regulation. The nature of the one percent insurance deposit is established by statute. 12 U.S.C. 1782a(c)(1). The second commenter on this paragraph, a state credit union league, suggested that NCUA adjust the one percent deposit amount semiannually for all credit unions regardless of size. NCUA is not adopting this suggestion; it would exceed the requirements of CUMAA and, further, create accounting burdens for both the NCUSIF and insured credit unions. Including credit unions with less than \$50 million in assets in the semiannual calculation would have only a minimal impact on the NCUSIF.

##### **Section 741.4(d) Insurance Premium Charges**

As required by CUMAA, the section requires the NCUA Board, as of January 1, 2000, to calculate the amount of the premium not more than twice in any calendar year based on the amount of the NCUSIF's equity ratio. The NCUA Board may only assess an insurance premium if the NCUSIF equity fund ratio is less than 1.3 percent. The premium charge must not exceed the amount necessary to restore the equity ratio to 1.3 percent. If the amount of the equity ratio is less than 1.2 percent, the NCUA Board must assess an insurance premium in an amount to restore the equity ratio to 1.2 percent. The NCUA Board will require staff to report annually on the issue of an insurance premium charge after the availability of the December 31 Call Report data.

The NCUA received four comment letters on insurance premium charges: one from a bank trade association and three from credit unions. Three comment letters concerned requirements mandated by CUMAA over which NCUA has no discretion.

One comment letter from a credit union suggested that NCUA calculate the equity ratio semiannually for large credit unions when the one percent deposit amount is computed, allowing premiums to be assessed. This has been NCUA's approach and is permitted under the proposed and final regulation.

#### *Section 741.4(e) Distribution of NCUSIF Equity*

This paragraph incorporates the CUMAA provision that requires the NCUA Board to make a distribution of NCUSIF equity to insured credit unions after each calendar year when NCUSIF's available assets ratio exceeds one percent, and the NCUSIF exceeds its normal operating level. One commenter suggested that the NCUA Board calculate the available assets ratio and equity ratio twice yearly, allowing equity to be distributed to credit unions, but CUMAA mandates that NCUA calculate and make the equity distribution after each calendar year. Under the final rule, the NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio to determine whether to distribute NCUSIF equity. The NCUA Board will require staff to report annually on the issue of an equity distribution after the availability of the December 31 Call Report data.

One commenter requested that NCUA give each credit union a choice of its preferred form of the distribution of the fund equity but provided no business reason for doing so. CUMAA and the final rule permit NCUA to determine the form of equity distributions to the credit unions from the NCUSIF, including a waiver of insurance premiums, premium rebates, or distributions from NCUSIF equity in the form of dividends. As a practical matter, if a premium is to be assessed in a year following a year for which a dividend is to be paid, NCUA's practice is to net the amounts so that a credit union will receive either a dividend or a premium depending on its circumstances. Both premiums and dividends are calculated on the basis of insured shares for a specific period, therefore, the form of a distribution of the fund equity for a specific period should be the same for all insured credit unions.

#### *Section 741.4(f) Invoices*

This paragraph states that the NCUA will provide copies of invoices to all federally insured credit unions in connection with the amount of their one percent deposit and any premium

payment. The final rule updates and clarifies the current rule, in addition to incorporating changes required under CUMAA. Three commenters suggested that the final rule establish a deadline from the invoice date for credit unions to adjust their one percent deposit amounts and forward their premium payments. Two of these commenters recommended 30 calendar days and one recommended 60 days. NCUA's current practice is to provide credit unions with a specific calendar due date on invoices that is approximately 45 calendar days after sending the invoice. This practice provides the NCUA with more flexibility than would a regulatory deadline and has worked well because there is no need for the credit union to calculate when the due date is, so NCUA sees no need to establish a regulatory deadline at this time.

#### *Normal Operating Level for Year 2000*

In the proposed rule, the Board requested comments on the appropriate percentage, not less than 1.2 percent and not more than 1.5 percent of the aggregate of all insured shares at the end of the year, for the normal operating level for the year 2000. Ten of the sixteen commenters on this issue, including the two national credit union trade associations, recommended that NCUA keep the normal operating level for the year 2000 at 1.3 percent, its current level. Four commenters suggested that NCUA lower the normal operating level for the year 2000 below 1.3 percent, with one of these commenters recommending that NCUA increase the percent gradually over five years. The remaining two commenters suggested that NCUA raise the normal operating level above 1.3 percent, with one of these commenters recommending that NCUA increase the percent gradually over five years and one over ten years. The NCUA Board has decided to set the normal operating level for the year 2000 at 1.3 percent.

NCUA received various other general comments about the normal operating level. Six of the sixteen commenters on this issue recommended that any increase in the normal operating level should be in small increments gradually over a period of years. Two of the sixteen commenters suggested that NCUA establish a long-term policy for operation and soundness of the NCUSIF and the normal operating level. Two commenters suggested that NCUA should conduct a thorough study on the NCUSIF's performance, including investment income, loss record, and whether the amount allocated for provision for credit union losses is on target. NCUA does conduct this type of

research on a continual basis regarding the NCUSIF. Five commenters recommended that NCUA not base its decisions on the NCUSIF on how the other financial regulatory agencies manage their funds, because credit unions have a different type and amount of risk than banks.

### **Regulatory Procedures**

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small entities (primarily those under \$1 million in assets). The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

#### *Paperwork Reduction Act*

NCUA has determined that the amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

#### *Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. As does the current rule, the amendments will apply to federal credit unions and federally-insured state-chartered credit unions. NCUA has determined that the amendments 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.

#### *Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act, 5 U.S.C. 551. The Office of Management and Budget is reviewing this rule to determine that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

### **List of Subjects in 12 CFR Part 741**

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on October 6, 1999.  
**Becky Baker,**  
*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration amends 12 CFR part 741 as follows:

## **PART 741—REQUIREMENTS FOR INSURANCE**

### **Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations**

1. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766, and 1781–1790.  
 Section 741.4 is also authorized by 31 U.S.C. 3717.

#### **§ 741.4 [Amended]**

2. Amend § 741.4 as follows:
- In paragraph (a), remove the word “annual.”
  - In paragraph (g), remove the words “insurance year” from wherever they appear and add, in their place, the words “calendar year.”
  - In paragraph (j), remove the words “insurance year” and add, in their place, the words “calendar year.”
  - Remove paragraph (b)(3), redesignate paragraph (b)(2) as paragraph (b)(3), revise paragraph (b)(1), add new paragraphs (b)(2), (b)(4) and (b)(5), and revise paragraphs (c), (d), (e), (f), and (h) to read as follows:

$$\frac{(\text{cash} + \text{market value of unencumbered investments}) - (\text{liabilities} + \text{contingent liabilities for which no provision for losses has been made})}{\text{aggregate amount of all insured shares from final reporting period of calendar year}}$$

(2) *Equity ratio* means the ratio of:

- The amount of NCUSIF's capitalization, meaning insured credit unions' one percent capitalization deposits plus the retained earnings balance of the NCUSIF (less contingent

liabilities for which no provision for losses has been made) to:

- The aggregate amount of the insured shares in all insured credit unions.

#### **§ 741.4 Insurance premium and one percent deposit.**

(b) *Definitions.* For purposes of this section:

(1) *Available assets ratio* means the ratio of:

- The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses has been made, from the sum of cash and the market value of unencumbered investments authorized under 12 U.S.C. 1783(c), to:

- The aggregate amount of the insured shares in all insured credit unions.

- Shown as an abbreviated mathematical formula, the available assets ratio is:

- Shown as an abbreviated mathematical formula, the equity ratio is:

$$\frac{\text{insured credit unions' 1.0\% capitalization deposits} + (\text{NCUSIF's retained earnings} - \text{contingent liabilities for which no provision for losses has been made})}{\text{aggregate amount of all insured shares}}$$

\* \* \* \* \*

(4) *Normal operating level* means an equity ratio not less than 1.2 percent and not more than 1.5 percent, as established by action of the NCUA Board.

(5) *Reporting period* means calendar year for credit unions with total assets of less than \$50,000,000 and means semiannual period for credit union with total assets of \$50,000,000 or more.

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each reporting period a deposit in an amount equaling one percent of the total of the credit union's insured shares at the close of the preceding reporting period. For credit unions with total assets of less than \$50,000,000, insured shares will be measured and adjusted annually based on the insured shares reported in the credit union's semiannual 5300 report due in January of each year. For credit unions with total assets of \$50,000,000 or more, insured shares will be

measured and adjusted semiannually based on the insured shares reported in the credit union's quarterly 5300 reports due in January and July of each year.

(d) *Insurance premium charges.* (1) *In general.* Each insured credit union will pay to the NCUSIF, on dates the NCUA Board determines, but not more than twice in any calendar year, an insurance premium in an amount stated as a percentage of insured shares, which will be the same for all insured credit unions.

(2) *Relation of premium charge to equity ratio of NCUSIF.* (i) The NCUA Board may assess a premium charge only if the NCUSIF's equity ratio is less than 1.3 percent and the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(ii) If the equity ratio of NCUSIF falls below 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to

restore the equity ratio to, and maintain that ratio at, 1.2 percent.

(e) *Distribution of NCUSIF equity.* If, as of the end of a calendar year, the NCUSIF exceeds its normal operating level and its available assets ratio exceeds 1.0 percent, the NCUA Board will make a proportionate distribution of NCUSIF equity to insured credit unions. The distribution will be the maximum amount possible that does not reduce the NCUSIF's equity ratio below its normal operating level and does not reduce its available assets ratio below 1.0 percent. The distribution will be after the calendar year and in the form determined by the NCUA Board. The form of the distribution may include a waiver of insurance premiums, premium rebates, or distributions from NCUSIF equity in the form of dividends. The NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the

NCUSIF's equity ratio and available assets ratio for purposes of this paragraph.

(f) *Invoices.* The NCUA provides invoices to all federally insured credit unions stating any change in the amount of a credit union's one percent deposit and the computation and funding of any premium payment due. Invoices for federal credit unions also include any annual operating fees that are due. Invoices are calculated based on a credit union's insured shares as of the most recently ended reporting period. The invoices may also provide for any distribution the NCUA Board declares in accordance with paragraph (e) of this section, resulting in a single net transfer of funds between a credit union and the NCUA.

\* \* \* \* \*

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the NCUSIF shall immediately fund its one percent deposit based on the total of its insured shares as of the close of the month prior to conversion and, if any premiums have been assessed in that calendar year, will pay a prorated premium amount to reflect the remaining number of months in that calendar year. The credit union will be entitled to a prorated share of any distribution from NCUSIF equity declared subsequent to the credit union's conversion.

\* \* \* \* \*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-363-AD; Amendment 39-11363; AD 99-21-18]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by Pratt & Whitney JT9D-7R4 Series Turbofan Engines or General Electric CF6-80A Series Turbofan Engines**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires repetitive inspections to detect certain discrepancies of the cables, fittings, and pulleys of the engine thrust control cables; and repair, if necessary. For

certain airplanes, this amendment also requires replacement of certain pulleys with new pulleys, and re-rigging of the engine thrust control cable. This amendment is prompted by reports of engine thrust control cable failures. The actions specified by this AD are intended to prevent such failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

**DATES:** Effective November 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 22, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1357; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on April 14, 1999 (64 FR 18386). That action proposed to require modification of the engine thrust control cable installation; repetitive inspections to detect certain discrepancies of the cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. For certain airplanes, that action also proposed to require replacement of certain pulleys with new pulleys, and re-rigging of the engine thrust control cable.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### **Support for the Proposal**

One commenter supports the proposed AD.

#### **Request for Clarification on Allowable Part Numbers**

One commenter requests clarification on which part numbers of aluminum pulleys will satisfy the intent of paragraph (b) of the proposed AD. This commenter states that it has accomplished Boeing Service Bulletin 767-76-0010, dated April 19, 1985, on its fleet. That bulletin specifies replacement of the non-metallic pulleys of the engine thrust control cable that are located in the leading edge of the wing adjacent to the left and right engine strut, with aluminum pulleys having the part number 255T1232-1. The proposed AD would require pulleys to be replaced in accordance with Boeing Service Bulletin 767-76-0010, Revision 1, dated February 20, 1992. That bulletin specifies that replacement with aluminum pulleys having the part number 255T1232-3 is preferred, but use of aluminum pulleys having the part number 255T1232-1 is allowed. The commenter states that, if aluminum pulleys having the part number 255T1232-3 are the only approved pulleys, the lack of availability of that pulley may cause unplanned delays in the accomplishment of the proposed AD.

The FAA intends that paragraph (b) of this AD require replacement of non-metallic pulleys of the engine thrust control cable that are located in the leading edge of the wing adjacent to the left and right engine strut, with aluminum pulleys having the part number 255T1232-1 or -3. Pulleys having the part number 255T1232-3 are preferred because they use a different bearing that has high temperature grease. After reviewing Boeing Service Bulletin 767-76-0010, dated April 19, 1985, the FAA finds that accomplishment of the replacement specified in that service bulletin is acceptable for compliance with the replacement required by paragraph (b) of the final rule; therefore, a note stating this has been added to the final rule.

#### **Request for Information on Other Relevant Rulemaking**

One commenter notes that the proposed rule states that the damage criteria in Appendix 1., "Thrust Control Cable Inspection Procedure," is based on the requirements in the Boeing 757 Maintenance Manual, which are more stringent than the requirements for the Model 767 series airplane. The commenter requests information regarding similar rulemaking for the Boeing Model 757 series airplane. No specific change to the rule is requested.