end June 30), and October (for quarter-end September 30) of each year.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 742

Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: The National Credit Union Administration (NCUA) is modifying the eligibility criteria for its Regulatory Flexibility Program by reducing the minimum net worth, and extending the duration that it must be maintained, to qualify for the Program. Federally-insured credit unions that qualify are exempt in whole or in part from a series of regulatory restrictions and also are allowed to purchase and hold an expanded range of eligible obligations.

DATES: This rule is effective February 24, 2006.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, at 703/518–6557; or Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, at 703/518–6396.

SUPPLEMENTARY INFORMATION:

A. Background

1. RegFlex Program Under Part 742

The NCUA Board established a Regulatory Flexibility Program (''RegFlex'') in 2002 to exempt qualifying credit unions in whole or in part from a series of regulatory restrictions, and grants them additional powers. 12 CFR part 742 (2005); 66 FR 58656 (Nov. 23, 2001). A credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director.

To qualify automatically for RegFlex, a credit union must have a composite CAMEL rating of ''1'' or ''2'' for two consecutive examination cycles and, under existing part 742, also must achieve a net worth ratio of 9 percent (200 basis points above the net worth ratio to be classified ''well capitalized'') for a single Call Reporting period. If the credit union is subject to a risk-based net worth (''RBNW'') requirement, however, the credit union's net worth must surpass that requirement by 200 basis points. 12 CFR 742.1 (2005).

A credit union that is unable to qualify automatically for RegFlex may apply to the appropriate Regional Director for a RegFlex designation. To be eligible to apply, a credit union must either have a CAMEL rating of ''3'' or better or meet the present 9 percent net worth criterion, but not both. 12 CFR 742.2 (2005). A Regional Director has the discretion to grant RegFlex relief in whole or in part to an eligible credit union.

A federal credit union's RegFlex authority can be lost or revoked. A credit union that qualified for RegFlex automatically is disqualified once it fails, as the result of an examination (but not a supervision contact), to meet either the CAMEL or net worth criteria in § 742.2(a). 12 CFR 742.6 (2005). RegFlex authority can be revoked by action of the Regional Director for ''substantive and documented safety and soundness reasons.'' § 742.2(b) (2005). The decision to revoke is appealable to NCUA's Supervisory Review Committee,[1] and thereafter to the NCUA Board. 12 CFR 742.7 (2005). RegFlex authority ceases when that authority is lost or revoked (even if an appeal of a revocation is pending). *Id.*; 12 CFR 742.6 (2005). But past actions taken under that authority are ''grandfathered,'' *i.e.*, they will not be disturbed or undone.

2. RegFlex Relief

As originally adopted, the RegFlex program gave qualifying credit unions relief from a variety of regulatory restrictions, 12 CFR 742.4(a) and 742.5 (2005):

- *Fixed assets.* The maximum limit on fixed assets (5 percent of shares and retained earnings), 12 CFR 701.36(c)(1).
- *Nonmember deposits.* The maximum limit on non-member deposits (20 percent of total shares or $1.5 million, whichever is greater), 12 CFR 701.32(b).
- *Charitable contributions.* Conditions on making charitable contributions (relating to the charity's location, activities and purpose, and whether the contribution is in the credit union's best interest and is reasonable relative to its size and condition), 12 CFR 701.25.
- *Discretionary control of investments.* The maximum limit on investments over which discretionary control can be delegated (100 percent of credit union's net worth), 12 CFR 703.5(b)(1)(ii) and (2).
- *Zero-coupon securities.* The maximum limit on the maturity length of zero-coupon securities (10 years), 12 CFR 703.16(b).
- ''*Stress testing*'' *of investments.* The mandate to ''stress test'' securities holdings to assess the impact of a 300-basis points shift in interest rates, 12 CFR 703.12(c) (2001).
- *Purchase of eligible obligations.* Restrictions on the purchase of eligible obligations, 12 CFR 701.23(b), thus expanding the range of loans RegFlex credit unions could purchase and hold as long as they are loans those credit unions would be authorized to make (auto, credit card, member business, student and mortgage loans, as well as loans of a liquidating credit union up to 5 percent of the purchasing credit union's unimpaired capital and surplus).

With the overhaul of parts 703 (investments) and 723 (member business loans) in 2003,[2] RegFlex credit unions received further relief from the following restrictions:

- *Member business loans.* The requirement that principals personally guarantee and assume liability for member business loans. 12 CFR 723.7(b).
- *Borrowing repurchase transactions.* The maturity limit on investments purchased with the proceeds of a borrowing repurchase transaction. 12 CFR 703.13(d)(3).
- *Commercial mortgage-related securities.* The restriction on purchasing commercial mortgage-related securities of issuers other than the government-sponsored enterprises.[3] 12 CFR 703.16(d).

3. 2005 Proposed Rule

In 2005, the NCUA Board reassessed the RegFlex program to ensure its availability to credit unions that are least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the Share Insurance Fund. Experience indicates that such credit unions consistently maintain a high net worth ratio and a high CAMEL rating. Accordingly, the NCUA Board issued a proposed rule reducing from 9 to 7 percent the minimum net worth ratio to qualify for RegFlex, but extending from one to six quarters the period the minimum net worth must be maintained to qualify. 70 FR 43769 (July

[1] *See* Interpretive Ruling and Policy Statement 95–1, 60 FR 14795 (March 20, 1995).

[2] *See* 68 FR 32960, 32966 (June 3, 2003) *and* 68 FR 56537, 56542, 56553 (Oct. 1, 2003).

[3] Federal credit unions are permitted to invest in commercial mortgage-related securities issued by the government-sponsored enterprises (''GSEs'') enumerated in 12 U.S.C. 1757(7)(E). ''Subject to such regulations as the Board may prescribe,'' 12 U.S.C. 1757(15)(B), federal credit unions also may invest in commercial mortgage-related securities of issuers other than GSEs. Section 742.4(a)(9) of the final rule prescribes conditions under which RegFlex credit unions may invest in commercial mortgage-related securities of non-GSEs.

29, 2005). The proposed rule also eliminated the need for NCUA to notify a credit union that qualifies automatically for RegFlex. *Id.*

NCUA received sixteen comments in response to the proposed rule—eight from federally-chartered credit unions, two from State-chartered credit unions, two from State credit union leagues, one from a credit union industry trade association, and three from banking industry trade associations. These comments, as well as comments suggesting revisions beyond those introduced in the proposed rule, are addressed below.

B. Analysis of Comments on Proposed Rule

1. Minimum Qualifying Net Worth

Existing part 742 required a credit union to achieve a net worth of 9 percent—200 basis points in excess of the 7 percent net currently needed to be classified ''well capitalized'' [4]—to qualify for RegFlex automatically or by application. The proposed rule reduced the qualifying minimum net worth classification to ''well capitalized,'' which presently requires a minimum net worth of 7 percent. 12 U.S.C. 1790d(c)(1)(A)(i). Credit unions that are subject to an RBNW requirement would qualify for RegFlex if they remained ''well capitalized'' after applying the RBNW requirement. *See* 12 U.S.C. 1790d(c)(1)(A)(ii).

Eleven commenters endorsed reducing the minimum qualifying net worth to the 'well capitalized' net worth category. Of these, two favored an absolute 200 basis point reduction to 7 percent because linking the reduction to the ''well capitalized'' category would allow the minimum qualifying net worth to fluctuate automatically with any PCA-driven adjustment to the minimum net worth for that category. As the proposed rule acknowledged, should Congress by statute adjust the minimum net worth to be classified ''well capitalized'' under PCA,[5] the minimum qualifying net worth for RegFlex would change accordingly. 70 FR at 43797 n.4. Such an adjustment to the minimum net worth to be ''well capitalized'' under PCA would reflect Congress's judgment that it is unnecessary for credit unions at or above that net worth level to undertake any PCA whatsoever to improve their financial health. Following that lead, there is no compelling reason why NCUA should require credit unions to meet a higher standard to obtain the benefits of RegFlex than that set by Congress to be free of PCA—whether it is higher or lower than the present 7 percent—especially now that part 742 requires the minimum qualifying net worth to be maintained for 6 consecutive quarters.

Among the banking industry trade associations that commented, three oppose any reduction at all in the present 9 percent minimum qualifying net worth for RegFlex on the assumption that it would impair the financial strength of the credit union industry. Absent an explanation to support this blanket assumption, there is no evidence to indicate that the flexibility permitted under RegFlex for ''well capitalized'' credit unions would significantly increase the risk to the Share Insurance Fund. On the contrary, credit unions in that net worth category generally have a sufficient margin of safety to withstand unexpected events and normal business cycle fluctuations.

Another bank commenter urged reversing course and increasing the minimum qualifying net worth to ''the standard for ''well capitalized'' as established by the FDIC Improvement Act [FDICIA, 12 U.S.C. 1831o] of ten percent.'' This commenter is comparing apples to oranges in two respects. First, ten percent is the ''total risk-based capital ratio'' that FDICIA regulations require of a 'well capitalized' institution; the ''leverage ratio'' required of such an institution—the equivalent of the ''net worth ratio'' for credit unions—is five percent. 57 FR 44866, 44878 (Sept 29, 1992); 12 CFR 325.103(b)(1). Second, FDICIA applies to PCA for all Federally-insured financial institutions except credit unions. Congress specified separate net worth criteria exclusively for the PCA net worth categories it established for credit unions. 12 U.S.C. 1790d(c)(1). The NCUA Board prefers to follow the minimum net worth Congress established for ''well capitalized'' credit unions: 7 percent. 12 U.S.C. 1790d(c)(1)(A)(i). Accordingly, the final rule reduces the minimum qualifying net worth for RegFlex to the ''well capitalized'' net worth category. § 742.2(a)(2).

2. Minimum Qualifying Net Worth Duration

Existing part 742 required a credit union to achieve the minimum qualifying net worth for just a single quarter. § 742.2 (2005). The proposed rule requires a credit union to maintain the minimum qualifying net worth for six consecutive quarters [6] (coinciding with the average eighteen-month examination schedule that applies to most RegFlex qualifying credit unions). 70 FR at 43797–43798.

The reason for extending the duration of the minimum qualifying net worth is that a single quarter's ''snapshot'' of net worth is too fleeting to be evidence of sustained superior performance; only successive ''snapshots'' of net worth would suffice to demonstrate such performance. From a risk standpoint, the proposed rule strikes a proper balance—compensating for the decreased minimum qualifying net worth by substantially extending the number of quarters that the minimum qualifying net worth must be maintained.

As the proposed rule explained by way of example: With no limit on the amount of fixed assets it can acquire, a RegFlex credit union is entitled to build or purchase a new building that increases its aggregate fixed assets to an inordinate proportion of total assets. If however, in the very next quarter, that credit union no longer qualifies for RegFlex due to a decline in net worth, part 742's ''grandfathering'' provision, 12 CFR 742.8 (2005), would entitle the ex-RegFlex credit union to keep the building, as well as the burden of absorbing the expenses of maintenance, debt service and depreciation, etc., thus putting profitability and net worth at risk.

Before this final rule, the ex-RegFlex credit union would have a net worth cushion of at least 200 basis points to absorb losses due to expenses of maintaining its fixed assets.[7] But once this final rule reduces the minimum qualifying net worth, that cushion no longer exists. Credit unions that demonstrate sustained superior performance as evidenced by a qualifying net worth ratio lasting over a series of quarters, instead of just one, will be better equipped to prepare for

[4] June 2005 Call Report data indicates that 74 percent of all RegFlex credit unions have a net worth in excess of 11 percent—fully 200 basis points above the qualifying minimum net worth. In contrast, only 6 percent of RegFlex credit unions have a net worth of 9.5 percent or less—within fifty basis points of the qualifying minimum net worth.

[5] The Credit Union Regulatory Improvements Act of 2005, H.R. 2317, 109th Cong. § 101 (2005), currently pending before Congress, contains a proposal to reduce the minimum net worth for the ''well capitalized'' net worth category to 5 percent.

[6] A credit union that is unable to maintain the minimum net worth for six consecutive quarters still would be eligible to apply to the appropriate Regional Director for a RegFlex designation provided the credit union is rated a CAMEL ''2'' or better.

[7] A net worth ratio of 6.99 percent or lower triggers a single PCA requirement: to make quarterly transfers of earnings to net worth. 12 U.S.C. 1790d(e); 12 CFR 702.201(a). A net worth ratio of 5.99 percent or below triggers three additional PCA mandatory supervisory actions: a freeze on assets, a freeze on member business lending, and the requirement to submit a Net Worth Restoration Plan. 12 U.S.C. 1790d(f)–(g); 12 CFR 702.202(a).

and manage the risks to profitability and net worth.

Eight commenters endorsed the proposal to extend the duration of the minimum qualifying net worth from 1 to 6 quarters. Allowing for a one-quarter downward fluctuation, a commenter contended that 5 out of 6 quarters would suffice to demonstrate sustained superior performance. Two commenters believe that goal would be met by maintaining the minimum qualifying net worth for 4 quarters. Finally, overlooking the ''single snapshot'' problem, one commenter insisted on leaving the duration at a single quarter, believing that low net worth is not an indicator of greater risk if a credit union is otherwise well-operated.

A 4-quarter net worth duration was considered, as was the suggested ''5 out of 6 quarters'' formulation. To adequately compensate for reducing the minimum qualifying net worth, the NCUA Board has concluded that a duration of 6 consecutive quarters provides the most compelling evidence of sustained superior performance. Further, the 6-quarter duration coincides with NCUA's Risk-Based Examination Scheduling Program (explained in section 4. below). Therefore, the final rule adopts the 6-quarter duration for the minimum qualifying net worth. § 742.2(a)(2).

3. Notification to Automatically Qualifying Credit Unions

Existing part 742 requires NCUA to notify a credit union on three occasions: when it first qualifies automatically for RegFlex; during an examination to confirm that it still qualifies or has become ineligible; and after it applies to the appropriate Regional Director for a RegFlex designation. § 742.3 (2005). The proposed rule eliminated the requirement to notify credit unions that qualify automatically for RegFlex, but left intact the requirement to notify a credit union that has applied for RegFlex designation whether it has been granted or denied. 70 FR at 43798. As the proposed rule explained, the requirement to notify credit unions that qualify automatically was redundant because the minimum qualifying worth and CAMEL criteria are discrete and as apparent to credit unions themselves as to NCUA. *Id.* The seven commenters who addressed this modification unanimously endorsed it. Therefore, the final rule eliminates the requirement to notify credit unions that qualify automatically for RegFlex.

4. RegFlex Relief

No substantive revisions at all were proposed for the RegFlex relief (fully described in section A.2. above) that part 742 already provides. However, in response to the proposed rule's invitation, NCUA received two comments suggesting further substantive RegFlex relief.

Member Business Loans. Noting that RegFlex already exempts qualifying credit unions from requiring principals to personally guarantee member business loans (''MBLs''), 12 CFR 723.10(e), a commenter recommended expanding this relief to waive the other seven member business loan requirements and restrictions that can be waived upon request under part 723.[8] 12 CFR 723.10(a)–(d) and (f)–(h). The NCUA Board continues to believe that these MBL requirements and restrictions are not proper candidates for RegFlex relief due to their complexity and the potential for negative financial impact if improperly utilized. For these reasons, it is important that waivers of these restrictions and requirements be carefully supported and evaluated on a case-by-case basis—a function best performed at the Regional Office level.

Fixed Assets. Noting that RegFlex credit unions are not bound by the maximum limit on fixed assets (5 percent of shares and retained earnings), 12 CFR 701.36(c)(1), two commenters recommended also exempting them from the requirement to partially utilize within 3 years any real property acquired for future expansion. 12 CFR 701.36(d)(1). One commenter would extend this exemption to all RegFlex credit unions; the other would extend it only to those that remain within the 5 percent limit on fixed assets. Noting that in 2001 credit unions were granted the ''incidental power'' to sell or lease excess capacity, 12 CFR 721.3(d), another commenter advocated further relief from the § 701.36 fixed asset restrictions because ''credit unions with the proven track record necessary for RegFlex should have the discretion to plan for the retention or disposition of unused assets as it deems appropriate.''

Neither of these recommendations is adopted in the final rule because both disregard the goal of the fixed asset limitations: that a credit union should acquire real property primarily to occupy and use for its own operation—not for real estate speculation or leasing—which it should be able to do within three years of acquiring it. In this regard, it makes no difference whether or not a RegFlex credit union surpasses the 5 percent limit on fixed assets.

Frequency of examinations. Because they present relatively fewer safety and soundness issues, one commenter suggested that RegFlex credit unions be examined less frequently than other credit unions, and charged a reduced operating fee. Because one function (oversight) polices the other (regulatory compliance), it has always been NCUA policy to avoid linking the examination process with regulatory relief initiatives. However, most RegFlex credit unions already are on extended examination cycles because they qualify for NCUA's Risk-Based Examination Scheduling Program. *See* NCUA Letter to Federal Credit Unions No. 01–FCU–05 issued August 2001. Two of the six criteria for this Program require a CAMEL rating of ''1'' or ''2'' and a ''well capitalized'' net worth classification, just as the RegFlex Program does. Credit unions in the Risk-Based Examination Scheduling Program can be examined as little as twice in a thirty-six month period and on average are examined once every 18 months (coinciding with the 6-quarter duration for the minimum qualifying net worth for RegFlex), instead of annually.

Extended examination cycles do not justify charging a reduced operating fee to those credit unions within the Risk-Based Examination Scheduling Program. The number and frequency of on-site examination contacts is but one factor in assessing the fee. While the frequency of contacts may decrease, the number of hours to conduct examinations does not necessarily decline. Particularly since the inception of the Risk-Based Examination Program in 2002, more and more examiner time and resources are devoted to off-site monitoring and to analysis of quarterly Call Report and other data.

5. Other Comments

Minimum qualifying CAMEL rating. One commenter suggested that CAMEL ratings should not be a criterion for RegFlex eligibility because ''this allows too much examiner control.'' Instead, the commenter suggests basing RegFlex eligibility on a credit union's success in providing ''better services, lower loan rates, and/or higher dividends.'' While these are all essential ingredients for member satisfaction, they are not necessarily indicia of a credit union's safety and soundness and are not subject to uniform, objective measurement. The NCUA Board maintains that CAMEL ratings, combined with quarterly net worth

[8] Appraisal requirements, 12 CFR 723.3(a); aggregate construction and development loan limits, § 723.3(a); minimum borrower equity requirements for construction and development loans, § 723.3(a); loan-to-value ratio requirements, § 723.7(a); maximum unsecured loans to one member or group, § 723.7(c)(2); maximum aggregate unsecured loan limit, § 723.7(c)(3); and maximum aggregate outstanding MBL balance to any one member or group, § 723.8.

ratios, are the best measures of safety and soundness and, in turn, indicate how much risk a credit union presents to the Share Insurance Fund.

To qualify automatically for RegFlex, part 742 requires the minimum CAMEL rating to be met in both of the two most recent examinations. Attempting to relax this requirement, another commenter suggested requiring a credit union to achieve the minimum qualifying CAMEL rating in either of the two most recent examinations. In practice, this proposal would automatically qualify a credit union for RegFlex after achieving the minimum qualifying CAMEL rating for just a single quarter—precisely the ''single snapshot'' problem that formerly affected the minimum qualifying net worth for RegFlex (addressed in section B.1. above). To avoid that problem with the CAMEL criterion, the final rule leaves intact the requirement that the minimum qualifying CAMEL rating must be met for two consecutive examination cycles. § 742.2(a)(1).

To be sure, some credit unions will be unable to automatically qualify for RegFlex due to an insufficient CAMEL rating. For them, the final rule preserves the option to apply to the appropriate Regional Director, on the basis of sufficient net worth alone, for a RegFlex designation. 12 CFR 742.2(b)(2).

RegFlex for FISCUs. One commenter lamented that RegFlex is not available to Federally-insured State-chartered credit unions (''FISCUs''). Regulatory relief is, in fact, available to FISCUs but not from NCUA. Only one of the regulatory restrictions that RegFlex moderates applies to FISCUs: the limit on nonmember deposits in 12 CFR 701.32(b). 12 CFR 741.204(a). The rest apply to Federally-chartered credit unions only. As a matter of policy, NCUA does not assume the authority to extend regulatory relief to FISCUs; that relief is the province of the appropriate State Supervisory Authority (''SSA''). However, to ensure that SSAs have the opportunity to grant equivalent relief to their FISCUs, NCUA notifies the SSAs when RegFlex moderates for Federally-chartered credit unions a regulation that also applies to FISCUs. Some SSAs have granted equivalent relief from the limit on nonmember deposits.

Informal suggestions for additional relief. A commenter proposed establishing an informal procedure, outside the formal rulemaking process, for ''credit unions to submit their ideas regarding additional exemptions'' through NCUA Regional Offices to the Office of General Counsel ''for inclusion in future rule changes to the RegFlex program.'' No such procedure is necessary, however, because NCUA welcomes feedback on ways to reduce regulatory burden generally and to improve specific regulations. Feedback on specific regulations is routinely routed to staff responsible for future rulemaking on that regulation.

''Grandfathering'' past actions. Both existing part 742 and the proposed rule provide that neither the disqualification from, nor revocation of, RegFlex authority will undo past actions duly undertaken in reliance on RegFlex authority. One commenter contends that this ''grandfathering'' of past actions should be allowed only when the credit union succeeds in restoring its RegFlex designation ''within a meaningful period of time (4 to 8 quarters)''; otherwise, the credit union should be required to divest its past RegFlex actions. Divestiture is a safety and soundness remedy imposed on a case-by-case basis. Since NCUA has the authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons, there is no need to mandate divestiture within uniform deadline.

Appeal of denial of RegFlex designation. The proposed rule left intact the right to appeal Regional Director decisions revoking a RegFlex designation to NCUA's Supervisory Review Committee. § 742.7 (2005). A commenter urged that the final rule extend that right to Regional Director decisions denying an application for a RegFlex designation. Supervisory Review Committee jurisdiction is limited by law to ''material supervisory determinations.'' 12 U.S.C. 4806(a). These include determinations relating to examination ratings (CAMEL ''3'', ''4'' and ''5'' in the case of credit unions), adequacy of loan loss reserves, and loan classifications of significant loans. 12 U.S.C. 4806(f)(1)(A); 60 FR at 14799.

The denial of a RegFlex designation—as opposed to revocation of RegFlex authority for ''substantive, documented safety and soundness reasons'' (which has happened only once)—does not rise to the level of a ''material supervisory decision'' because the designation is essentially a privilege. As an accommodation to eligible credit unions that do not qualify automatically for RegFlex, part 742 extends the opportunity to apply for a RegFlex designation. It is up to the applicant to subjectively demonstrate that it is entitled to RegFlex relief despite not qualifying under the objective net worth and CAMEL criteria. Because evaluating such applications is necessarily a subjective exercise, the NCUAB believes it is appropriate for the Regional Director to have the final say, without recourse to an appeal.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions. NCUA considers credit unions having less than ten million dollars ($10,000,000) to be small for purposes of the RFA. The final rule reduces the minimum net worth, while increasing the duration that it must be maintained, to qualify for RegFlex, without imposing any additional regulatory burden. The final rule will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. Neither this final rule nor the regulations it relaxes has 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. Accordingly, the final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

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. NCUA submitted the rule to the Office of Management and Budget, which has determined that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 19, 2006.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth above, 12 CFR part 742 is revised to read as follows:

PART 742—REGULATORY FLEXIBILITY PROGRAM

Sec.

Authority: 12 U.S.C. 1756, 1766.

§ 742.1 Regulatory Flexibility Program.

NCUA's Regulatory Flexibility Program (RegFlex) exempts from all or part of the NCUA regulatory restrictions identified elsewhere in this part credit unions that demonstrate sustained superior performance as measured by CAMEL rating and net worth classification. RegFlex credit unions also are authorized to purchase and hold an expanded range of obligations.

§ 742.2 Criteria to qualify for RegFlex designation.

(a) *Automatic qualification.* A credit union automatically qualifies for RegFlex designation, without formal notification, when it has:

(1) *CAMEL.* Received a composite CAMEL rating of ''1'' or ''2'' for the two (2) preceding examinations; and

(2) *Net worth.* Maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for six (6) consecutive preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for six (6) consecutive preceding quarters after applying the applicable RBNW requirement.

(b) *Application for designation.* A credit union that does not automatically qualify under paragraph (a) of this section may apply for a RegFlex designation, which may be granted in whole or in part upon notification by the appropriate Regional Director, provided the credit union has either:

(1) *CAMEL.* Received a composite CAMEL rating of ''3'' or better for the preceding examination; or

(2) *Net worth.* Maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for less than six (6) consecutive quarters or, if subject to an RBNW requirement under part 702 of this chapter, has remained ''well capitalized'' for less than six (6) consecutive preceding quarters after applying the applicable RBNW requirement.

§ 742.3 Loss and revocation of RegFlex designation.

(a) *Loss of authority.* RegFlex authority is lost when a credit union that qualified automatically under the CAMEL and net worth criteria in § 742.2(a) no longer meets either of those criteria. Once the authority is lost, the credit union may no longer claim the exemptions and authority set forth in § 742.4.

(b) *Revocation of authority.* The Regional Director may revoke a credit union's RegFlex authority under § 742.2, in whole or in part, for substantive, documented safety and soundness reasons. When revoking RegFlex authority, the regional director must give written notice to the credit union stating the reasons for the revocation. The revocation is effective upon the credit union's receipt of notice from the Regional Director.

(c) *Appeal of revocation.* A credit union has 60 days from the date of the regional director's determination to revoke RegFlex authority to appeal the action, in whole or in part, to NCUA's Supervisory Review Committee. The Regional Director's determination will remain in effect unless and until the Supervisory Review Committee issues a different determination. If the credit union is dissatisfied with the decision of the Supervisory Review Committee, the credit union has 60 days from the date of the Committee's decision to appeal to the NCUA Board.

(d) *Grandfathering of past actions.* Any action duly taken in reliance upon RegFlex authority will not be affected or undone by subsequent loss or revocation of that authority. Any actions exercised after RegFlex authority is lost or revoked must comply with all applicable regulatory requirements and restrictions. Nothing in this part shall affect NCUA's authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons.

§ 742.4 RegFlex Relief.

(a) *Exemptions.* RegFlex credit unions are exempt from the following regulatory restrictions:

(1) *Charitable contributions.* Section 701.25 of this chapter concerning charitable contributions;

(2) *Nonmember deposits.* Section 701.32(b) and (c) of this chapter concerning the maximum amount of non-member deposits a credit union can accept; and

(3) *Fixed assets.* Section 701.36(a), (b) and (c) of this chapter concerning the maximum amount of fixed assets a credit union can acquire;

(4) *Member business loans.* Section 723.7(b) of this chapter concerning the personal liability and guarantee of principals for member business loans.

(5) *Discretionary control of investments.* Section 703.5(b)(1)(ii) and (2) of this chapter concerning the maximum amount of investments over which discretionary control can be delegated;

(6) *''Stress testing'' of investments.* Section 703.12(c) of this chapter concerning ''stress testing'' of securities holdings to assess the impact of an extreme interest rate shift;

(7) *Zero-coupon securities.* Section 703.16(b) of this chapter concerning the maximum maturity length of zero-coupon securities;

(8) *Borrowing repurchase transactions.* Section 703.13(d)(3) of this chapter, concerning the maturity of investments a credit union purchases with the proceeds received in a borrowing repurchase transaction, provided the value of the investments that mature later than the borrowing repurchase transaction does not exceed 100 percent of the federal credit union's net worth;

(9) *Commercial mortgage related security.* Section 703.16(d) of this chapter prohibiting the purchase of a commercial mortgage related security of an issuer other than a government-sponsored enterprise enumerated in 12 U.S.C. 1757(7)(E), provided:

(i) The security is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization;

(ii) The security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in § 703.2 of this chapter;

(iii) The security's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(iv) The aggregate total of commercial mortgage related securities purchased

by the Federal credit union does not exceed 50 percent of its net worth.

(b) *Purchase of obligations from a FICU.* A RegFlex credit union is authorized to purchase and hold the following obligations, provided that it would be empowered to grant them:

(1) *Eligible obligations.* Eligible obligations pursuant to § 701.23(b)(1)(i) of this chapter without regard to whether they are obligations of its members, provided they are purchased from a federally-insured credit union only;

(2) *Student loans.* Student loans pursuant to § 701.23(b)(1)(iii) of this chapter, provided they are purchased from a federally-insured credit union only;

(3) *Mortgage loans.* Real-state secured loans pursuant to 701.23(b)(1)(iv) of this chapter, provided they are purchased from a federally-insured credit union only;

(4) *Eligible obligations of a liquidating credit union.* Eligible obligations of a liquidating credit union pursuant to § 701.23(b)(1)(ii) of this chapter without regard to whether they are obligations of the liquidating credit union's members, provided that such purchases do not exceed 5 percent (5%) of the unimpaired capital and surplus of the purchasing credit union.

[FR Doc. 06–685 Filed 1–24–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22793; Directorate Identifier 2005–NM–161–AD; Amendment 39–14462; AD 2006–02–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires replacing the Gask-O-Seal in the coupling of the refuel/defuel shut-off valves. This AD results from a report that Gask-O-Seals that did not incorporate an integral restrictor to limit fuel flow rate and fuel pressure during refueling were installed on certain airplanes. We are issuing this AD to prevent a buildup of excessive static charge, which could create an ignition source inside the fuel tank.

DATES: This AD becomes effective March 1, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That NPRM was published in the **Federal Register** on October 27, 2005 (70 FR 61920). That NPRM proposed to require replacing the Gask-O-Seal in the coupling of the refuel/defuel shut-off valves.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received.

Request To Reference Latest Issue of Service Bulletin

One commenter requests that the NPRM reference Bombardier Alert Service Bulletin A601R–28–064, Revision 'A,' dated September 15, 2005 (Bombardier Alert Service Bulletin A601R–28–064, dated April 21, 2005, was referenced as the appropriate source of service information for doing the actions in the NPRM). The commenter notes that Revision 'A' of the alert service bulletin is the latest issue with updated information.

We agree with the commenter. The actions in Revision 'A' of the alert service bulletin are essentially the same as the actions in the original issue. We have revised this AD to reference Revision 'A' of the alert service bulletin. We have also added paragraph (g) to this AD to give credit for actions done in accordance with the original issue of the alert service bulletin and reidentified subsequent paragraphs accordingly.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement	1	$65	$0	$65	720	$46,800