Description of document:	National Credit Union Administration (NCUA) response to November 9, 2011 letter from Senator Tim Johnson, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, asking questions on the regulation of financial institutions
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National Credit Union Administration

August 8, 2012

Via E-Mail

This letter responds to your July 25, 2012 Freedom of Information Act (FOIA) request. You requested a copy of the NCUA response to the November 9, 2011 letter from Senator Tim Johnson, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, asking questions on the regulation of financial institutions.

Your request is granted in full. Attached is the record you requested.

If you have any questions related to this request, please contact this office at FOIA@ncua.gov or at 703-518-6540.

Sincerely,

for Regina Metz
Staff Attorney

Attachments

GC/CS:bhs
12-FOI-00103

National Credit Union Administration

Office of the Chairman

December 21, 2011

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Re: Financial Rulemaking

Dear Chairman Johnson:

This letter responds to your correspondence of November 9, 2011, that asks the independent financial services regulatory agencies to provide you with information about our rulemaking processes. As noted in your letter, I wholeheartedly agree with you that financial services regulators need to craft "clear, effective, and robust financial regulations that build a stronger foundation for sustainable economic growth."

The National Credit Union Administration (NCUA) is very much committed to working with Congress to ensure the development of smart, strong, clear, and efficient financial services regulations. In fact, I believe that NCUA has an exemplary record of balancing prudent and robust safety-and-soundness rules with responsible regulatory relief. For example, I am pleased to report that under our current rulemaking process, NCUA conducts regular reviews of all of our rules on a rolling three-year basis, invites public participation through multiple channels, facilitates coordination with other agencies, and integrates financial and economic data into our safety-and-soundness rulemakings.

Moreover, under my recently announced Regulatory Modernization Initiative, NCUA is publicizing our commitment to *effective*, not excessive, regulation. Where current rules are ineffective or overly burdensome, NCUA will eliminate or streamline those regulations. Where new risks arise and current rules become outdated or insufficient, NCUA will modernize those regulations or draft new rules.

The following analysis describes in greater detail NCUA's current rulemaking and regulatory review process, our plan to advance the Regulatory Modernization Initiative, our efforts to assist small credit unions, and our interagency outreach efforts.

Regulatory Review and Modernization

NCUA's rules, policies, and procedures for promulgating regulations are set out in Part 791 of our regulations and Interpretive Ruling and Policy Statement (IRPS) 87-2 (as amended by IRPS 03-2), which the public may view on NCUA's website.[1] NCUA has a well-established regulatory review policy, a copy of which is attached. Since 1987, NCUA has adhered to this policy to ensure that, among other things, our regulations impose only the minimum required burdens on credit unions, consumers, and the public. This policy also requires us to issue final rules only after full public participation in the rulemaking process.

In accordance with this policy, NCUA reviews all of our existing regulations every three years. To accomplish this review, our Office of General Counsel maintains a rolling review schedule that identifies one-third of existing regulations under review each year. We update and post this schedule on NCUA's website at the beginning of each year and invite the public to comment on all regulations proposed for review.

Through this review process, NCUA, for the past 24 years, has regularly updated, clarified, and simplified existing regulations, as well as eliminated redundant and unnecessary provisions.

Additionally, I recently announced to the credit union industry a comprehensive Regulatory Modernization Initiative.[2] This initiative builds upon NCUA's ongoing efforts to review and improve our regulations.

For rules that NCUA can control, the Regulatory Modernization Initiative will ensure that those rules are in sync with the modern marketplace, clearly written, and targeted to areas of risk. NCUA's new regulatory focus will target risky behaviors in credit unions, rather than require all credit unions to comply with a rule irrespective of their level of risk.

In the last several years, we have experienced an unprecedented number of market innovations that have the unintended consequence of syndicating the inherent risks in financial products. At the same time, many credit unions have grown more complex and now engage in more sophisticated risk-taking ventures. While this increased sophistication is generally a positive trend for the credit union industry, it also presents a significant challenge to the regulator. When adopted by many credit unions, a new product, service, tool, or relationship can post significant risks to the National Credit Union Share Insurance Fund (NCUSIF).

In order to keep credit unions safe and sound while relieving regulatory burdens, the Regulatory Modernization Initiative will balance two key principles: first, safety and soundness, by strengthening regulations necessary to protect the 91 million credit union members and the NCUSIF; and second, regulatory relief, by eliminating or revising regulations that limit flexibility and growth.

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[1] 12 C.F.R. §791.8; IRPS 87-2, 52 Fed. Reg. 35231 (Sept. 18, 1987); IRPS 03-2, 63 Fed. Reg. 31949 (May 29, 2003). NCUA regulations are listed section-by-section on NCUA's website at http://www.ncua.gov/Legal/Regs/Pages/Regulations.aspx.

[2] My speech with further details on the Regulatory Modernization Initiative is available online at http://www.ncua.gov/News/Documents/SP20110919Matz.pdf.

In the coming months, NCUA is planning to modernize three significant rules in an effort to strengthen safety and soundness by addressing marketplace practices and emerging risks:

- *Loan Participation Protection.* The modernized rule will require originators of risky loans that sell participation interests in those loans to a widespread group of credit unions to retain some of the original loan risk on their balance sheets. It will also require purchasers of participation loans to perform due diligence on an ongoing basis.

- *Credit Union Service Organization Risk Transparency.* NCUA is the only prudential Federal Financial Institution Examination Council (FFIEC) agency without statutory examination and enforcement authority over vendors of federally insured financial institutions. To the extent permitted by law, this modernized rule will provide a clearer picture to NCUA and to credit unions of the off-balance sheet risks at credit union-owned organizations that sell high-risk services to credit unions.

- *Interest Rate Risk Management.* The modernized rule will require certain credit unions to have an appropriate policy to manage interest rate risk. Targeting only those credit unions with sufficient size and/or interest rate risk that poses a threat to the NCUSIF, the proposed rule applies to only 43 percent of all credit unions, yet covers more than 96 percent of all credit union assets. For affected credit unions, the proposed rule allows each credit union to customize the interest rate risk policy to the credit union's risk profile.

Balancing these three safety-and-soundness rules is an equal number of regulatory relief measures:

- *Community Development Revolving Loan Fund Access.* On October 27, 2011, the NCUA Board approved a final rule to improve access to the Community Development Revolving Loan Fund. The rule reduces costs, eliminates outdated processes, expands transparency, and creates a streamlined user-friendly rule.

- *Regulatory Flexibility.* On December 15, 2011, the NCUA Board approved a proposed rule for public comment that will extend provisions of NCUA's Regulatory Flexibility (RegFlex) program to all federal credit unions. It currently applies to only credit unions that have CAMEL codes of 1 or 2.

- *Derivatives as an Interest Rate Risk Hedge.* To provide a new tool for credit unions subject to the Interest Rate Risk Management Rule, NCUA is considering a proposal to allow qualified credit unions to use simple derivatives as an interest rate risk hedge.
- *Zero-Risk Weights.* NCUA is considering a proposed rule that would allow credit unions to assign a zero-risk weight to most U.S. Treasury securities.

Finally, your letter asks whether any statutory impediments prevent NCUA from streamlining any duplicative or inefficient rules. At this time, we have no statutory impediments to revising or eliminating rules. Pending legislative proposals to impose a rulemaking moratorium could, however, have the unintended consequence of temporarily preventing agencies from proceeding

with rulemakings designed to eliminate outdated regulations, streamline existing standards, and make current rules more user friendly.

Integrating Financial Data

NCUA collects and produces volumes of publicly available data to report on the financial conditions of each federally insured credit union. Each quarter, NCUA aggregates this financial data. The NCUA Board uses this data, together with data compiled by NCUA's Chief Economist and other public and confidential sources, to identify current and emerging risks, and to formulate policy. In addition, NCUA collects and aggregates private financial data obtained through examinations and other confidential supervisory contacts.

The NCUA Board carefully considers all relevant data during the rulemaking process. Whenever appropriate, we also summarize and discuss available public data in the preambles to our proposed and final rules.

Further, many of NCUA's rulemakings involve improving credit union risk-management processes or increasing the regulatory information to facilitate identification of potential risks. These rules typically have limited and generally indirect impacts on lending, investment, and job growth. These rules also often have important—but difficult to quantify—benefits in terms of reducing losses to the credit union system. The cost-benefit analysis for most NCUA rules will therefore have a degree of uncertainty related to both effects on economic activity, which are generally very small, and benefits, which sometimes accrue years in the future and are generally characterized as avoided negative outcomes, such as failures of credit unions and losses to the NCUSIF.

Inviting Public Participation

NCUA encourages members of the public to contact us and recommend that the agency develop a regulation, or revise or repeal an existing regulation.[3]

Twice each year, NCUA adopts an agenda of proposed regulations that we have issued or expect to issue, and currently effective regulations that we have under review. We also include information on regulations finalized since publication of the last agenda. NCUA voluntarily submits each semiannual agenda to the Office of Management and Budget for inclusion in the "Unified Agenda of Federal Regulations" usually published in the *Federal Register* in April and October of each year.

Before proposing a significant regulatory change, NCUA Board members and staff personally discuss rulemaking plans with stakeholders, through speeches, webinars, town hall summits, and meetings with credit union and trade association officials. Information obtained from these public interactions helps determine the scope, structure, and timing of NCUA rulemaking priorities.

[3] 12 C.F.R. §791.8(c)

Once the NCUA Board acts on a rule, to encourage public participation in the rulemaking process, we publish all proposed and final rules in the *Federal Register* and make these rulemakings available online at www.regulations.gov and www.ncua.gov. The public may submit comments on our proposed regulations via both websites, too.

Additionally, as a matter of policy, NCUA generally gives the public at least 60 days to comment on a proposed regulation. If the comment period is less than 60 days, NCUA publishes a statement in the *Federal Register* explaining the change.

Working with Small Credit Unions

NCUA formed the Office of Small Credit Union Initiatives (OSCUI) to foster small credit union development and the ability of these financial institutions to deliver financial services effectively, facilitate expansion of credit union services through new charters and field of membership expansions, and coordinate efforts with third-party organizations to improve the viability and successful operation of credit unions.[4] OSCUI's programs for small credit unions include direct assistance (one-on-one consulting); online and in-person training; and partnerships with government, non-profit, and private organizations.

OSCUI also administers the Community Development Revolving Loan Fund (CDRLF), which provides financial assistance (grants and loans) to support low-income designated credit unions serving low-income communities with low-interest loans or deposits. As noted above, the NCUA Board recently issued a final rule to improve the CDRLF Program.[5] The final rule— which represented a complete overhaul of the former regulation—removed outdated processes, enhanced transparency, and created a more user-friendly and streamlined regulation, in order to improve access to financial assistance for small credit unions. The modernized rule will provide additional flexibility and relief to credit unions applying for CDRLF program assistance.

Interagency Outreach and Coordination

To help restore integrity in the markets and strengthen the public's trust in the financial system, NCUA coordinates with the other federal financial regulators as a member of the Financial Stability Oversight Council (FSOC), a broad interagency body developing regulations and supervision strategies to ensure the safety and soundness of entities that are systemically significant to the U.S. financial system. During the past year, NCUA and the other FSOC regulators have, working together, made significant progress toward implementing the initiatives mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including issuing a number of important studies, proposed and final rules, as well as establishing a framework for identifying and analyzing emerging risks. I believe the FSOC is a critical institution that will have an important role in the financial system's stability for many years to come.

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[4] NCUA's OSCUI recently launched the first in a series of free videos designed to ensure small credit unions are informed of the NCUA resources available to help them succeed. This first introductory video provides an overview of OSCUI's role within NCUA and highlights the programs available for small credit unions. The first introductory video is available online at http://www.ncua.gov/News/Pages/NW20111206OSCUIVideo.aspx.

[5] 76 Fed. Reg. 67583 (Nov. 2, 2011).

NCUA also benefits from other opportunities for interagency coordination and cooperation. To minimize inconsistent or overlapping regulatory requirements across agencies, NCUA coordinates with other federal financial regulators as a member of FFIEC, which I currently chair. FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions.[6]

Additionally, NCUA's Office of Consumer Protection coordinates with the Consumer Financial Protection Bureau (CFPB) on a routine basis, which is essential given the respective enforcement roles of NCUA and CFPB. Currently, only three federally insured credit unions exceed the $10 billion threshold to receive consumer compliance examinations from CFPB. NCUA and/or state regulators continue to examine the remaining 7,176 federally insured credit unions subject to all CFPB regulations.

Moreover, NCUA facilitates a unique relationship with the National Association of State Credit Union Supervisors (NASCUS), based on our ability to exchange confidential supervisory information regulator-to-regulator. NCUA's coordination with NASCUS empowers federal and state regulators to share examination experiences and work collaboratively to strengthen the regulatory framework.

In sum, NCUA remains committed to ensuring our regulations are reasonable, innovative, and cost-effective, and to encouraging full and robust public participation in the rulemaking process. Please feel free to contact me with any questions or comments.

Sincerely,

Debbie Matz
Chairman

Enclosure

[6] FFIEC members include NCUA, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC). In 2006, the State Liaison Committee (SLC) Chairman became a voting member of the FFIEC. The SLC consists of representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS). In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) eliminated the Office of Thrift Supervision (OTS) and added the Director of the Consumer Financial Protection Bureau (CFPB) as a member of the FFIEC.

INTERPRETIVE RULING AND POLICY STATEMENT NUMBER 87-2 (as amended by Interpretive Ruling and Policy Statement 03-2)

DEVELOPING AND REVIEWING GOVERNMENT REGULATIONS

I. Statement of Policy and Coverage

It is the policy of NCUA to ensure that its regulations:
-- impose only minimum required burdens on credit unions, consumers, and the public;
-- are appropriate for the size of the financial institutions regulated by NCUA;
-- are issued only after full public participation in the rule making process; and
-- are clear and understandable.

II. Procedures for the Development of Regulations

1. Proposed Regulations

The Office of General Counsel (OGC) will oversee the development of regulations. Input on regulations will be obtained from other NCUA offices when appropriate, OGC will prepare a draft of the proposed regulation for submission to the NCUA Board for approval. The proposed regulation will then be published in the Federal Register and other appropriate publications,

2. Initial Regulatory Flexibility Analysis

When NCUA is required by 5 U.S.C. § 553, or any other law, to publish a general notice of proposed rule making for any proposed regulation, NCUA will prepare and make available for public comment an initial regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. Credit unions having less than ten million dollars in assets will be considered to be small entities. Such analysis will describe the impact of the regulation upon small entities, and will be published in the Federal Register at the time of general notice of proposed rule making for the regulation. A copy of the analysis will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The content of the initial regulatory flexibility analysis will be in accordance with the provisions of 5 U.S.C. § 603. In addition, NCUA staff will consult applicable U.S. Small Business Administration guidance, including The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, when interpreting and implementing the requirements of the Regulatory Flexibility Act.

3. Compliance With the Paperwork Reduction Act

If a proposed regulation contains an information collection request such as a recordkeeping or reporting requirement that, if adopted, will be imposed upon ten or more persons (including credit unions), the proposed regulation will be sent to the office of Management and Budget (OMB) prior to publication in the Federal Register, OMB will then have 60 days after publication to comment on the information collection request. If OMB thereafter disapproves of the information collection request, the NCUA can override this by a majority vote and certify such override to OMB in the manner described in 44 U.S.C. § 3507(c).

4. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis will be prepared for all regulations that required the publication of a general notice of proposed rule making and that will have a significant economic impact on a substantial number of small entities. The content of the final regulatory flexibility analysis will be in conformance with 5 U.S.C. § 604. Initial and final regulatory flexibility analyses need not be prepared if the Board certifies that a regulation will not have a significant economic effect on a substantial number of small entities. The certification will be published in the Federal

Register with the final rule, along with a statement providing the factual basis for such certification. A copy of the certification and statement will be provided to the Chief Counsel for Advocacy of the SBA.

5. Final Rule

OGC will prepare a draft final regulation to be presented to the NCUA Board for approval. Following Board approval, the final regulation will be published in the Federal Register and other appropriate publications.

III. Opportunity for Public Participation

A member of the public may recommend that NCUA develop a regulation or revise an existing regulation. A number of methods will be used by NCUA to encourage public participation in the development and review of regulations, including: notifying the public of the status of regulations being reviewed and developed through publication of the semiannual agenda; publication of advance notices of proposed rule making with requests for public comment; the use of questionnaires to solicit information; publication of articles; and by making copies of proposed regulations available to the public.

When any regulation is promulgated which will have a significant economic impact on a substantial number of small entities, the NCUA will assure that small entities have been given an opportunity to participate in the rule making process through the types of methods listed in 5 U.S.C. § 609.

NCUA will continue to solicit public comment on proposed regulations as required by 5 U.S.C. § 553. As a matter of policy, NCUA believes that the public should be given at least 60 days to comment on a proposed regulation. If the comment period is less than 60 days, or is extended beyond 60 days, NCUA will publish a statement in the Federal Register explaining the change.

IV. Review of Existing Regulations

NCUA shall periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions. 5 U.S.C. § 610 requires that regulations having a significant economic impact on a substantial number of small entities will be reviewed every ten years, As a matter of policy, NCUA will continue with its efforts to review all its existing regulations every three years. To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

V. Semiannual Agenda

Twice each year, NCUA will adopt an agenda of proposed regulations that the Agency has issued or expects to issue and currently effective regulations that are under NCUA review, Incorporated into the agenda, when necessary, will be the regulatory flexibility agenda required by 5 U.S.C. § 602, Each semiannual agenda will be voluntarily submitted to the Office of Management and Budget for inclusion in the "Unified Agenda of Federal Regulations" published in the Federal Register in April and October of each year.
The semiannual agenda will contain the following: a brief description of the subject area being considered and a summary of the nature of any regulation which NCUA expects to propose or promulgate; the objectives and legal basis for the issuance of the regulation; an approximate schedule for completing action on any regulation for which NCUA has issued a general notice of proposed rulemaking; and the name and number of an NCUA official knowledgeable with respect to each agenda item. The agenda will identify any regulation that the NCUA expects to have a significant economic impact on a substantial number of small entities. When there are proposed regulations listed in the agenda that will have such an impact on small entities, NCUA will endeavor to provide notice of the agenda to small entities in the manner set forth in 5 U.S.C. § 602(c). Where the regulatory flexibility agenda is incorporated into the semiannual agenda, the latter will be transmitted to the Chief Counsel for Advocacy of the SBA for comment.

rinderpest or foot-and-mouth disease exists; and

* * * * *

(4) Except as provided in § 94.21 for fresh (chilled or frozen) beef from Uruguay,

* * * * *

(d) Except as otherwise provided in this part, fresh (chilled or frozen) meat of ruminants or swine raised and slaughtered in a region free of foot-and-mouth disease and rinderpest, as designated in paragraph (a)(2) of this section, and fresh (chilled or frozen) beef exported from Uruguay in accordance with § 94.21, which during shipment to the United States enters a port or otherwise transits a region where rinderpest or foot-and-mouth disease exists may be imported provided that all of the following conditions are met:

* * * * *

■ 3. A new § 94.21 is added to read as follows:

§ 94.21 Restrictions on importation of beef from Uruguay.

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef from Uruguay may be exported to the United States under the following conditions:

(a) The meat is beef from bovines that have been born, raised, and slaughtered in Uruguay.

(b) Foot-and-mouth disease has not been diagnosed in Uruguay within the previous 12 months.

(c) The beef came from bovines that originated from premises where foot-and-mouth disease has not been present during the lifetime of any bovines slaughtered for the export of beef to the United States.

(d) The beef came from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The beef came from bovines that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The beef consists only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Bovine parts that may not be imported include all parts of bovine heads, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the beef.

(h) The beef has not been in contact with meat from regions other than those listed in § 94.1(a)(2).

(i) The beef came from bovine carcasses that were allowed to maturate at 40 to 50° F (4 to 10° C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both *longissimus dorsi* muscles. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Done in Washington, DC, this 21st day of May 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–13248 Filed 5–28–03; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observance of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule, Interpretive Ruling and Policy Statement (IRPS) 03–2, amends the Regulatory Flexibility Act provisions of NCUA's IRPS 87–2, Developing and Reviewing Government Regulations. The Regulatory Flexibility Act generally requires federal agencies to prepare analyses to describe the impact of proposed and final rules on small entities. Since 1981, the NCUA has defined small entity in this context to mean those credit unions with less than one million dollars in assets. This final rule redefines small entity to mean those credit unions with less than ten million dollars in assets. In addition, the rule amplifies a provision regarding NCUA's policy of reviewing all existing regulations every three years by stating that one-third of existing regulations will be reviewed each year and the public will receive notice of those regulations under review. The rule also updates IRPS 87–2 with a reference to the U.S. Small Business Administration guidance on implementation of the Regulatory Flexibility Act and to a Small Business Regulatory Enforcement Fairness Act requirement for publication of the factual basis supporting any certification that a particular rule will not have a significant economic impact on a substantial number of small entities.

DATES: This rule is effective June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6555.

SUPPLEMENTARY INFORMATION:

A. Background

In 1981, the NCUA defined small credit union for purposes of the Regulatory Flexibility Act (RFA), Pub. L. 96–354, as any credit union having less than one million dollars in assets. NCUA IRPS 81–4, 46 FR 29248, June 1, 1981. IRPS 87–2 superseded IRPS 81–4 but continued the definition of small credit unions for purposes of the RFA as those with less than one million dollars in assets. 52 FR 35231, 35232, September 8, 1987. IRPS 87–2 is incorporated by reference into NCUA's current rule governing the promulgation of regulations. 12 CFR 791.8(a).

The Board believes that NCUA's current definition of small credit union as one with less than one million dollars in assets, adopted in 1981, is now outdated. On November 21, 2002, the Board issued a Notice of Proposed Rulemaking (NPRM) to amend the definition of small credit union in IRPS 87–2. 67 FR 72113, December 4, 2002. The Board proposed to change the qualifying asset size for a small credit union from less than one million dollars in assets to less than ten million dollars in assets. This final rule adopts the proposed rule's definition of small credit union.

As discussed in the NPRM, the RFA is intended in part to encourage federal agencies to give special attention when making rules to the inability of smaller entities to handle incremental compliance burdens created by new rules. Credit unions with ten or more million dollars in assets have staff that may devote some of their time to compliance issues and incremental compliance burdens, but credit unions with significantly less than ten million

dollars in assets may be forced to seek and pay for outside assistance when addressing incremental compliance burdens. Accordingly, credit unions with more than ten million dollars in assets should be able to handle incremental compliance burdens more easily than credit unions with less than ten million dollars in assets.

A definition of small credit union as one with less than ten million dollars in assets is also consistent with recent statutes and NCUA regulations providing credit unions with regulatory compliance relief. For example, in 1998 Congress amended the Federal Credit Union Act to require that credit unions follow generally accepted accounting principles, but at the same time excused credit unions with less than ten million dollars in assets under a *de minimus* exception. 12 U.S.C. 1782(a)(6)(C)(i), (iii). Another 1998 amendment to the FCUA requires NCUA to provide "small credit unions," defined as those under ten million dollars in assets, with special assistance in meeting prompt corrective action requirements. 12 U.S.C. 1790d(f)(2). Finally, NCUA regulations provide that federally insured credit unions with less than ten million dollars in assets may file a short form call report in the spring and fall. 12 CFR 741.6(a).

The Board also notes that by increasing the threshold from one million dollars in assets to ten million dollars in assets the percentage of federally insured credit unions considered to be small will return to a percentage much closer to the percentage captured by the size standard first adopted in 1981.

The Board also proposed to add a provision in Section IV of IRPS 87–2 stating how NCUA carries out the policy of reviewing all existing regulations every three years and providing for notice to the public of that portion of the regulations that are under review each year. The final rule includes this provision.

This final rule includes a reference to *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies* (U.S. Small Business Administration, November, 2002) and requires NCUA staff to consult it when interpreting and implementing the requirements of the RFA. While a regulatory flexibility analysis is unnecessary if the Board certifies a regulation will not have a significant economic effect on a substantial number of small entities, the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires that agencies publish a statement "providing the factual basis for" any such certification in the **Federal Register**. Pub. L. 104–121, 5 U.S.C. 605(b). IRPS 87–2 has provided that the certification will be published with a statement "explaining" the certification. This final rule replaces "explaining" with "providing the factual basis for."

B. Summary of Comments

NCUA received seventeen comment letters on the proposed rule: two from federal credit unions, five from state credit unions, eight from credit union trade organizations, one from a bank trade organization, and one from the National Association of State Credit Union Supervisors.

All of the commenters expressed support for changing the definition of small credit union to include more credit unions in the definition, with most of the commenters agreeing that small credit union should be redefined as a credit union with less than ten million dollars in assets. In addition, all the commenters who addressed the proposal to provide public notice of those regulations NCUA is reviewing each year as part of its three-year rolling review expressed approval for that notice.

Comments on the Asset Size Threshold for Small Credit Unions

The eleven commenters who supported a ten million dollar threshold generally noted it was consistent with current statutory definitions of small credit union and with the effects of inflationary changes since 1981 and would result in a reasonable percentage of all credit unions (about 52%) being considered small. One commenter supported the ten million dollar threshold but stated it should not be greater than ten million.

Five commenters thought the asset threshold should be greater than ten million dollars. Of these commenters, two thought the threshold should be 20 million dollars, one thought it should be 25 million dollars, one thought it should be at least 50 million dollars, and another thought it should be 100 million dollars.

The commenters supporting thresholds of 20 and 25 million dollars note that the percentage of credit unions under one million dollars in assets in 1981, when the current definition of small credit union was established, was roughly 63% of all credit unions, and that the percentages of credit unions today under 20 million and 25 million dollars (66% and 70%, respectively) are close to 63%. One of these commenters also states that "credit unions with 20 million dollars in assets, although slightly larger than those with ten million dollars in assets, typically still do not have the resources to devote staff time solely to compliance issues."

The commenter who supported a 50 million dollar threshold stated that: (1) only 10% of credit unions under 20 million dollars in assets have "paid compliance directors," (2) only 16% of credit unions under 50 million dollars in assets have such directors, and (3) only 31% of credit unions between 50 million and 100 million dollars in assets have such directors. This commenter also noted that the federal banking regulators and the U.S. Small Business Administration generally set the RFA's small entity threshold for their regulated financial entities at 150 million dollars in assets. The commenter who supported a 100 million dollar threshold also made similar comments.

The Board appreciates the comments of those who supported a more expansive definition of small credit union but notes that a majority of the commenters supported the proposed definition. Further, the proposed is consistent with other statutory uses of the term small credit union while more expansive definitions would not be. In addition, while credit unions with ten million dollars or more in assets may not have staff devoted exclusively to compliance issues, the Board concludes, as noted in the NPRM, they are likely to have some staff that can devote time to compliance. This analysis is appropriate in light of the legislative history of the RFA discussed in the NPRM. Accordingly, the Board has decided to adopt the definition of small credit union from the proposed rule.

Miscellaneous Comments on the Definition of Small Credit Union and Applicability of the RFA

A few commenters thought the asset threshold for small credit unions should be adjusted periodically: one suggested revisiting the threshold each year; two suggested tying it to inflation; and another suggested that NCUA should reset the threshold yearly by declaring as small that group of the smallest credit unions whose combined assets equal 10% of the aggregate assets of all credit unions. The Board believes that annual adjustment is unnecessary and might have undesirable consequences. For example, with inflation levels likely to remain low for the foreseeable future, the Board does not think the threshold needs to be revisited each year. In addition, the rulemaking process for particular rules often spans more than one calendar year, and it would be difficult and confusing to change the definition for rules in progress every year. Finally, the use of a fixed, round

number makes it easier to assess which credit unions are small and to explain how NCUA is applying the RFA analysis in a particular rulemaking. The Board will revisit the definition of small credit union as necessary in the future.

One commenter thought that, for rules in which the NCUA determines the RFA does not apply, the NCUA should publish details of its determination. As discussed above, this final rule amends IRPS 87–2 to reflect the SBREFA requirement that NCUA publish the factual basis for each certification in the **Federal Register**.

Two commenters thought the NCUA should go beyond the requirements of the RFA and should undertake and publish a detailed analysis of the economic impact of each rule on all credit unions, regardless of asset size. The Board does not believe an RFA-type analysis is needed for every rulemaking, but notes that it is NCUA's longstanding policy, as stated in IRPS 87–2, that it will impose only minimum required burdens on credit unions.

Miscellaneous Comments About Public Notice of Regulations Under NCUA Review

One commenter suggested that each year at its December meeting the Board announce which regulations would be reviewed by the NCUA Office of General Counsel in the coming year and which provisions in those regulations were specifically under consideration for change. The commenter thought this notice should be published both on the agency's website and in the **Federal Register**. Another commenter wanted the notice of regulations under review published twice a year and a designated contact point at NCUA for all questions and comments about a regulation under review.

The Board will publish notice of the regulations under rolling review in a particular year far enough in advance of the review to give interested parties a meaningful opportunity for input. The notice may be published on NCUA's website, in the **Federal Register**, or in other appropriate media as determined by NCUA. NCUA also publishes a semi-annual regulatory agenda in the **Federal Register** as part of the federal government's Unified Agenda of Federal Regulatory and Deregulatory Actions. That agenda, generally published each November and May, includes contact information and a description of rules that are in process or on which regulatory action is anticipated for the next 12 months.

One commenter thought that NCUA should add the following statement to IRPS 87–2: "Nothing in the Office of General Counsel's rolling review schedule prohibits the review of existing regulations ahead of schedule." While the Board believes that this is a true statement, the Board does not believe it need be added to IRPS 87–2.

Other Miscellaneous Comments

Two commenters thought the definition of small credit union in the Small Credit Union Program (SCUP) should be changed to correlate with the RFA definition. Another commenter stated the NCUA should also provide a definition of large credit unions. Since this rule applies only to NCUA rulemaking and the requirements of the RFA and does not affect the SCUP or large credit unions, these two issues are not addressed in the final rule.

Regulatory Procedures

Regulatory Flexibility Act

The RFA requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, currently meaning those under one million dollars in assets. This final rule, when effective, will change the definition of small credit union to increase the number of credit unions receiving the procedural benefits of the RFA and will provide notice to the public and opportunity to comment on regulations under internal review. This final rule is procedural in nature and will not have any ascertainable economic impact on credit unions. Accordingly, the NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. No regulatory flexibility analysis is required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule 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. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Paperwork Reduction Act

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

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

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

Small Business Regulatory Enforcement Fairness Act

The SBREFA provides for congressional review of agency rules. A reporting requirement is generally triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. Rules relating to management, personnel, or agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties are exempt from congressional review. 5 U.S.C. 804(3). The NCUA Board has determined that this final rule, which deals with agency procedures and does not substantially affect the rights or obligations of non-agency parties, is exempt from congressional review.

List of Subjects in 12 CFR Part 790

Organization and functions (government agencies).

By the National Credit Union Administration Board on May 22, 2003.

Becky Baker,

Secretary of the Board.

Interpretative Ruling and Policy Statement 03–2, Developing and Reviewing Government Regulations

For the reasons stated above, IRPS 03–2 amends IRPS 87–2 (52 FR 35231, September 18, 1987) by revising the second sentence in Section II, paragraph 2.; adding a sentence to the end of Section II, paragraph 2; revising the fourth sentence in Section II, paragraph 4; and adding a sentence to the end of Section IV to read as follows:

II. Procedures for the Development of Regulations

* * * * *

2. * * * Credit unions having less than ten million dollars in assets will be considered to be small entities. * * * In addition, NCUA staff will consult

applicable U.S. Small Business Administration guidance, including *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies,* when interpreting and implementing the requirements of the Regulatory Flexibility Act.

* * * * *

4. * * * The certification will be published in the **Federal Register** with the final rule, along with a statement providing the factual basis for such certification. * * *

* * * * *

IV. Review of Existing Regulations. * * * To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

* * * * *

Conforming Amendment to NCUA Regulations, 12 CFR Part 791

■ For the reasons stated above, amend 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

■ 1. The authority for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

■ 2. Amend § 791.8 by revising paragraph (a) to read as follows:

§ 791.8 Promulgation of NCUA rules and regulations.

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2 as amended by Interpretive Ruling and Policy Statement 03–2.

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[FR Doc. 03–13342 Filed 5–28–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–290–AD; Amendment 39–13166; AD 2003–11–07]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd. Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Israel Aircraft Industries, Ltd. Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, that requires removing the existing oxygen shutoff valve and installing a new oxygen shutoff valve. This action is necessary to prevent rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator due to a shutoff valve that can be opened quickly, which could result in overheating of the oxygen system, and consequent fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective July 3, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

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 all Israel Aircraft Industries, Ltd. Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes was published in the **Federal Register** on February 21, 2003 (68 FR 8473). That action proposed to require removing the existing oxygen shutoff valve and installing a new oxygen shutoff valve.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 300 Israel Aircraft Industries, Ltd. Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $900 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $414,000, or $1,380 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may