interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington-Oregon prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Additionally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2009–10 fiscal period began on April 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all assessable prunes handled during such fiscal period; (2) the Washington-Oregon prune harvest and shipping season is expected to begin in early August; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 924

Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is proposed to be amended as follows:

PART 924—PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On or after April 1, 2009, an assessment rate of $2.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 20, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–17601 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AD63

National Credit Union Share Insurance Fund Premium and One Percent Deposit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Section 741.4 of NCUA's rules describes the procedures for the capitalization and maintenance of the National Credit Union Share Insurance Fund (NCUSIF). The current rule, however, does not adequately address how credit unions that enter or depart the NCUSIF system in a given calendar year are affected by any NCUSIF premium or deposit replenishment assessments in that same year. Due to the unprecedented level of NCUSIF expenses in 2009, which required the NCUA to announce both such assessments, NCUA is now proposing amendments to § 741.4 to clarify these procedures. The proposal makes other minor changes to 741.4 and conforming changes to § 701.6 relating to the payment of operating fees by Federal credit unions.

DATES: Comments must be received by August 24, 2009.

ADDRESSES: You may submit comments by any of the following methods. (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Insurance Premium and One Percent Deposit'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540; and Paul Peterson, Director, Applications Section, Office of General Counsel, National Credit Union Administration, at the same address and telephone number.

SUPPLEMENTARY INFORMATION:

A. Background

Congress created the National Credit Union Share Insurance Fund (NCUSIF) in 1970 to provide share insurance coverage to all Federal credit unions and to those State chartered credit unions that apply and meet minimum qualification standards. The NCUSIF provides insurance coverage for each of an insured credit union's members, similar to the coverage provided by the Federal Deposit Insurance Corporation's (FDIC's) Deposit Insurance Fund (DIF).

Unlike the DIF, however, the NCUSIF was not capitalized at its inception by tax revenues. From 1971 through 1980, the capital of the NCUSIF was established solely through the annual insurance premium contributions of insured credit unions. During the period from 1971 through the end of calendar year 1980, the capital of the fund (*i.e.,*

equity as a percentage of insured shares) grew, but the years 1981–1983 saw a reversal of this trend, due to both record share growth in insured credit unions and liquidation and problem credit union expenses. As an alternative to the premium approach to establishing a strong and viable insurance fund, the NCUA Board developed a legislative proposal which, with the support of the entire credit union system, Congress enacted in 1984. The NCUSIF was then capitalized with a deposit by each credit union of an amount equaling one percent of the credit union's total insured shares.

As required by the 1984 legislation, and subsequent amendments in 1998, NCUA maintains the NCUSIF's equity ratio at a percentage between 1.2% and 1.5%, but no greater than the normal operating level as established from time to time by the Board. If the NCUSIF's equity ratio exceeds this normal operating level at the end of any given year, NCUA will, generally, distribute any excess funds to insured credit unions. If the NCUSIF's equity ratio falls below 1.2%, the NCUSIF must assess a premium, and if the ratio falls below 1.0%, depleting the one percent deposit provided by each credit union, the NCUSIF must also assess an amount sufficient to replenish the one percent deposit.

In 1984, the Board adopted a rule establishing procedures for the capitalization and maintenance of the NCUSIF. 49 FR 40561 (Oct. 17, 1984). The rule, originally codified at 12 CFR 741.5 but now located in § 741.4, dealt broadly with five issues: (1) The funding of the one percent deposit, (2) the return of the deposit, (3) the use of the deposit by the NCUSIF and its replenishment by insured credit unions, (4) the insurance agreement, and (5) NCUA reports to Congress.

The content of § 741.4 today is much the same as its 1984 counterpart, having been modified only slightly in the past 25 years. For example, while the current rule addresses some issues associated with the expense and replenishment of the one percent deposit, it does not contain much detail on this issue.[1] In addition, the current rule does not adequately address how credit unions that enter or depart the NCUSIF system, such as through insurance or bank conversions, are affected by NCUSIF premium or deposit replenishment assessments in that same calendar year. Due to the unprecedented level of NCUSIF expenses in 2009, which required the NCUA to announce both premium and deposit replenishment assessments, NCUA is now proposing amendments to § 741.4 to clarify these issues and other related issues.

B. Relevant Statutory Provisions

The Federal Credit Union Act contains several relevant provisions on the return and replenishment of the one percent deposit and the timing and amount of NCUSIF premiums. These provisions are set forth below.

With regard to the deposit, Section 202(c)(1)(A) of the Act states:

> Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares. * * *

12 U.S.C. 1782(c)(1)(A). Section 202(c)(1)(B) of the Act also states:

> (i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.
>
> (ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.
>
> (iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.
>
> (iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

12 U.S.C. 1782(c)(1)(B). With regard to the premium, Section 202(c)(2) of the Act states:

> (A) In general. Each insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).
>
> (B) Relation of premium charge to equity ratio of fund. The Board may assess a premium charge only if—
>
> (i) the Fund's equity ratio is less than 1.3 percent; and
>
> (ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.
>
> (C) Premium charge required if equity ratio falls below 1.2 percent. If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

12 U.S.C. 1782(c)(2). Section 206(d)(3) of the Act also states:

> In the event of a conversion of a credit union from status as an insured credit union under this Act under subsection (a)(2) of this section, premium charges payable under section 202(c) of this Act shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this Act . * * *

12 U.S.C. 1786(d)(3). Subsection (a)(2) in the quotation above refers to the conversion from a federally-insured credit union to a nonfederally-insured credit union.

C. Proposed Amendments to Section 741.4

The proposal includes several amendments to clarify the NCUSIF premium and deposit replenishment obligations and procedures for credit unions and other entities that enter or depart from NCUSIF coverage. Most of these proposed amendments are located in § 741.4(i), Conversion to Federal insurance, and § 741.4(j), Conversion from, or termination of, Federal share insurance. The Board is, however, also proposing minor changes to other paragraphs in § 741.4. A paragraph-by-paragraph description and discussion of all the proposed amendments follows.

Paragraph (a)—Scope

Section 741.4 provides for the capitalization and maintenance of the NCUSIF. The proposal does not change the scope of § 741.4, and the proposal does not amend this paragraph.

Paragraph (b)—Definitions

The proposal includes three amendments to the existing definitions.

The proposal amends the definition of *insured shares* to include, for a credit union or other entity that is not federally insured, the amount of deposits of shares that would have been insured by the NCUSIF had the institution been federally insured on the date of measurement. This amended definition is necessary for calculating

[1] The preamble to the proposed rule in 1984 stated:

> The legislation provides that the NCUSIF may utilize the deposit funds if necessary to meet its expenses, in which case the amount used is to be expensed and replenished by insured credit unions in accordance with procedures established by the Board. Given the history of the Fund and the condition of insured credit unions, it seems unnecessary to anticipate at this time any possible utilization of the deposit funds to meet the Fund's expenses. This authority is clearly intended to meet a catastrophic economic set of circumstances, as evidenced by the fact that it can only be exercised after the Fund has utilized all investment income and all of its 0.3% nondeposit equity. Thus, ample time would exist for development of expense and replenishment procedures and guidelines. Accordingly, such procedures are not proposed at this time.

49 FR 30740 (Aug. 1, 1984).

NCUSIF premiums, deposit replenishments, and equity distributions for entities that enter the NCUSIF insurance system.

The proposal adds a definition of the term *premium/distribution ratio* as the number of full remaining months in the calendar year following the date of the institution's conversion or merger, divided by 12. This term is used in the NCUSIF premium, deposit replenishment, and equity distribution calculations involving credit unions and other entities that enter the NCUSIF insurance system. The ratio represents the fraction of the year that an institution entering the NCUSIF system was insured by the NCUSIF.

The proposal also adds a definition of the term *modified premium/distribution ratio* as one minus the premium/distribution ratio. This term is used in the NCUSIF premium, deposit replenishment, and equity distribution calculations involving credit unions that depart the NCUSIF insurance system. This ratio represents the fraction of the year that an institution departing the NCUSIF system was insured by the NCUSIF.

Also, the proposal deletes the paragraph numbers in the current version, consistent with Office of the Federal Register drafting recommendations for definitions sections that list the terms defined in alphabetical order.

Paragraph (c)—One Percent Deposit

This paragraph describes the one percent deposit requirement and the periodic adjustments based on changes in insured shares. For credit unions with less than $50 million in assets, the adjustments occur after the annual reporting period ending on December 31. For credit unions with $50 million or more in assets, the adjustments occur after the semiannual reporting periods ending on June 30 and December 31 each year.

The proposal does not amend this paragraph.

Paragraph (d)—Insurance Premium Charges

Paragraph (d)(1) provides that the Board may assess premium charges, in an amount stated as a percentage of insured shares, no more than twice annually. Subparagraph (d)(2)(i) states the relation of the premium charge to the equity ratio. The proposal does not amend these provisions.

Subparagraph (d)(2)(ii) states that if the ratio of the NCUSIF falls below 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent. This provision is confusing because it does not delineate between premium assessments and assessments to replenish the one percent deposit as required by § 202 of the Federal Credit Union Act. Accordingly, the proposal amends subparagraph(d)(2)(ii) to read as follows:

> If the equity ratio of the NCUSIF falls to between 1.0 and 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to, and maintain that ratio at, at least 1.2 percent. If the equity ratio of the NCUSIF falls below 1.0 percent, the NCUA Board is required to assess a deposit replenishment charge in an amount it determines is necessary to restore the equity ratio to 1.0 percent and to assess a premium charge in an amount it determines is necessary to restore the equity ratio to, and maintain the ratio at, at least 1.2 percent.

Paragraph (e)—Distribution of NCUSIF Equity

This paragraph describes the mandatory year-end distribution of NCUSIF equity when the NCUSIF exceeds both its normal operating level and its available assets ratio as described in § 202(c)(3) of the Federal Credit Union Act. The proposal does not amend this paragraph.

Paragraph (f)—Invoices

This paragraph describes invoices for premiums and deposit adjustments. For clarity, the proposal amends this paragraph to specifically include invoices for deposit replenishment.

Paragraph (g)—New Charters

This paragraph permits new charters to delay the funding of their one percent deposit until the year following their chartering. The proposal does not amend this paragraph.

Paragraph (h)—Depletion of One Percent Deposit

The proposal adds a new paragraph(h) to read as follows:

> Depletion of one percent deposit. All or part of the one percent deposit may be used by the NCUSIF if necessary to meet its expenses, and the fund will expense the amount so used. The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion, but must invoice credit unions no later than the adjustment described in paragraph (c) of this section based on insured shares as of December 31 of the year of the depletion.

The first sentence of this provision restates the Board's authority under § 202(c)(1)(B)(iv) of the Federal Credit Union Act. The second sentence clarifies that NCUA may invoice insured credit unions for the deposit replenishment at any time after the deposit has been depleted, but requires that NCUA send the invoice no later than the date NCUA first adjusts the deposit for changes in insured share levels in the year following the depletion.

The proposal takes the current paragraph (h), entitled *Conversion to Federal Insurance,* expands on that paragraph, and incorporates it into the proposed paragraph (i). This is discussed further below.

Paragraph (i)—Conversion to Federal Insurance

The proposal amends paragraph (i) to address, in detail, how a nonfederally insured credit union that converts to Federal insurance is affected by a NCUSIF declaration of a premium assessment, deposit replenishment assessment, or an equity distribution. Paragraph (i)(1) addresses a direct conversion to Federal insurance, and paragraph (i)(2) addresses an indirect conversion through the merger of a nonfederally insured credit union or entity into a federally insured credit union. The term ''merger'' includes not only mergers but also purchase and assumption transactions in which the continuing credit union obtains all, or substantially all, of the assets of the other entity. The current paragraph (i), entitled *Mergers of nonfederally insured credit unions,* is expanded and subsumed into the proposed paragraph (i)(2).

This proposed paragraph (i), along with the proposed paragraph (j), constitute the most significant and complex of the proposed amendments to § 741.4. Accordingly, the discussion below is detailed and includes hypotheticals illustrating each subparagraph.

Proposed paragraph (i)(1) addresses a direct conversion to NCUSIF insurance. Proposed paragraph (i)(1)(i) provides that:

> A credit union or other institution that converts to insurance coverage with the NCUSIF will: (i) Immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion. * * *

To illustrate the application of this provision, consider the following hypothetical. Assume Main Street Credit Union completes its conversion from nonfederal to Federal insurance on May 15 of Year One. Assume further that Main Street credit union had 1,000 insured shares for the end of month in December of the previous year (Year zero), 1,100 insured shares at the end of

May, the month of conversion, and 1,200 insured shares at the end of June. This information is presented in this Table A: [2]

TABLE A

	End of month, December, Year Zero	End of month, May, Year One (month conversion completed)	End of month, June, Year One
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200

Proposed paragraph (i)(1)(i) requires that on the date of its conversion, Main Street fund its one percent deposit based on ''the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion.'' Since Main Street has less than $50,000,000 in assets, its reporting period is annual, and ends on December 31. 12 CFR 741.4(b)(6) (definition of ''reporting period''). Main Street had $1,000 in insured shares on that date, and one percent of that is $10, and so that is the amount Main Street must immediately remit to the NCUSIF to establish its one percent deposit.

Proposed paragraph (i)(1)(ii) provides that:

> A credit union or other institution that converts to insurance coverage with the NCUSIF will: * * * (ii) If the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio. * * *

To illustrate the application of paragraph (i)(1)(ii), take the same facts in hypothetical A related to the conversion of Main Street from nonfederal to Federal insurance. Now, further assume that on the previous March 15, NCUA had declared a premium assessment, and on September 15 following the conversion NCUA sent out the invoices for the March 15 assessment. Also assume that Main Street had grown to 1,300 insured shares at the end of September, the month the invoices were sent to Main Street and other credit unions. This information is presented in this Table B:

TABLE B

	End of month, December, Year Zero	End of month, May, Year One (month conversion completed)	End of month, June, Year One	End of month September, Year One (month invoice sent)
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200	1,300

Paragraph (i)(1)(ii) requires Main Street pay a premium based on the institution's ''insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio.'' Again, because Main Street is under $50 million in assets, the most recently ended reporting period preceding the September 15 invoice date is all the way back to December of Year Zero, when Main Street had $1,000 in shares. Main Street's ''premium/distribution ratio,'' as defined in proposed § 741.4(b)(5), is ''the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.'' Since Main Street completed its conversion in May, there are seven full months remaining in the calendar year (June through December), and Main Street's premium/distribution ratio is seven divided by 12. Accordingly, Main Street's premium will be assessed on $1,000 times seven divided by 12, or about $583.[3] Note that if Main Street's assets had exceeded $50 million as of June 30, it would have had semiannual reporting periods under § 741.4(b)(6), and its ''insured shares as of the last day of the most recently ended reporting period preceding the invoice date'' would have been its insured shares as of June 30, Year One, and not as of December 31, Year Zero.

Proposed paragraphs (i)(1)(iii) and (iv) describe the responsibility of a credit union or other entity converting to Federal insurance to replenish a depleted NCUSIF deposit, as follows:

> A credit union or other institution that converts to insurance coverage with the NCUSIF will * * * (iii) If the NCUSIF declares, in the calendar year of conversion but on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment; (iv) If the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date. * * *

Paragraph (i)(1)(iii) clarifies that a converting credit union has no responsibility to pay anything toward the replenishment of a depleted deposit that is declared on or before the date of conversion, even if NCUA sends out invoices related to the depletion after the date of conversion. Paragraph (i)(1)(iv) requires that a converting credit union replenish its deposit with regard to a depletion declared after the date of conversion through the end of the calendar year. Again, assume the same facts for Main Street as in Table B, but that the deposit depletion was announced in June, after Main Street converted, and that NCUA sent the invoices in September.

[2] Although Main Street Credit Union was not Federally insured as of December 31 of Year Zero, proposed 741.4(b)(3) provides that ''For a credit union or other entity that is not Federally insured, 'insured shares' means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been Federally insured on the date of measurement.''

[3] Main Street's actual premium charge will be this $583 divided by the aggregate insured shares of all Federally insured credit unions times the aggregate premium for all Federally insured credit unions.

TABLE B

	End of month, December, Year Zero	End of month, May, Year One (month conversion completed)	End of month, June, Year One	End of month September, Year One (month invoice sent)
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200	1,300

Main Street would receive an invoice amount ''based on the [Main Street's] insured shares as of the last day of the most recently ended reporting period preceding the invoice date.'' Since Main Street has less than $50 million in shares, the most recently ended reporting period preceding the September invoice date was December 31, Year Zero, and it would pay for the replenishment based on $1,000 in insured shares. If Main Street, however, had had $50 million or more in assets on June 30, its most recently ended reporting period preceding the invoice date would have been the semiannual period ending on June 30, and Main Street would have used its insured shares as of June 30 to calculate the replenishment amount due to the NCUSIF.

Under the Federal Credit Union Act, distributions, if any, are declared once a year, early in the year, based on excess funds in the NCUSIF as of the prior December 31. Proposed paragraph (i)(1)(v) describes the right of a credit union or other entity converting to Federal insurance to receive a distribution from the NCUSIF, specifically:

> (1) A credit union or other institution that converts to insurance coverage with the NCUSIF will: * * * (v) If the NCUSIF declares a distribution in the year following conversion based the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity at the end of the preceding year, the converting institution will receive no distribution.

To illustrate how proposed paragraph (i)(1)(v) works, assume that Main Street Credit Union converts to Federal insurance in May of Year One, and that the NCUA declares a distribution in January of Year Two based on the NCUSIF equity as of December 31 of Year One. Then Main Street will be entitled to a pro rata portion of the distribution, calculated on its insured shares as of December 31 of Year One times its premium/distribution ratio. Since it converted in May of Year One, and there were seven full months remaining in Year One at on the date of conversion, Main Street's premium/distribution ratio under proposed § 741.4(b)(6) equals seven divided by 12.

On the other hand, if the NCUA declared a distribution a year earlier, that is, in January of Year One based on the NCUSIF's equity ratio as of December 31 in Year Zero, then under proposed paragraph (i)(1)(v) Main Street would receive no part of this distribution. Main Street is not entitled to any part of this distribution because Main Street, which completed its conversion in Year One, did not contribute in any way to the excess funds in the NCUSIF as of the end of Year Zero.

While proposed paragraph (i)(1), and the examples given above, involve the conversion of a credit union or entity directly to Federal insurance with the NCUSIF, such conversions can also happen indirectly through the merger of a nonfederally insured credit union or entity into a federally insured credit union.

Proposed paragraph (i)(2) addresses the NCUSIF premiums, deposit replenishments, and distributions in this context.

Proposed paragraph (i)(2)(i) provides that:

> (2) A federally insured credit union that merges with a nonfederally-insured credit union or other non-federally insured institution (the ''merging institution''), where the federally-insured credit union is the continuing institution, will: (i) Immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger * * *.

To illustrate this provision, and the other provisions of paragraph (i)(2) related to mergers of nonfederally insured entities into federally-insured credit unions, consider the following hypothetical. Nonfederally-insured Credit Union A merges into federally-insured Credit Union B on August 15 of Year One. The relevant insured shares of Credit Union A and Credit Union B at various dates before and after the merger are reflected in Table D:

TABLE D

	End of month December, Year Zero	End of month June, Year One	End of month August, Year One (month merger completed)	End of month September, Year One (month invoice sent)
Credit Union A insured shares	1,000	1,100	N/A	N/A
Credit Union B insured shares	9,000	9,900	12,900	14,000

Proposed paragraph (i)(2)(i) requires that Credit Union B, the continuing credit union, immediately increase the amount of its deposit with the NCUSIF in an amount ''equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger.'' Since Credit Union A, the merging institution, has less than $50 million in assets, its reporting period is the calendar year, and its most recently ended reporting period preceding the August merger date is December 31 in Year Zero. Credit Union A had $1,000 in insured shares on that date. Accordingly, Credit Union B, the continuing credit union, must immediately increase the amount of its deposit with the NCUSIF by one percent

of $1,000, or $10. Note that if Credit Union A had been a larger credit union, with $50 million or more in assets on June 30 in Year One, then Credit Union B would have used Credit Union A's insured shares as of June 30 in this calculation.

Proposed paragraph (i)(2)(ii), relating to NCUSIF premium assessments, provides that the continuing institution will:

> (ii) With regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described in subparagraph (1)(ii) above, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger. * * *

Paragraph (i)(2)(ii) provides for a two-part calculation, with the first part relating to the merging credit union and the second part relating to the continuing credit union. If we assume the facts as in Table D, and assume the premium is assessed sometime in Year One, then we calculate the insured shares of Credit Union A, the merging credit union, as we did in the example for paragraph (i)(1)(ii), which would be $583. Then we calculate the insured shares of Credit Union B, the continuing credit union, ''as of the last day of its most recently ended reporting period preceding the merger date.'' Since Credit Union B is also under $50 million in assets, ''the last day of the most recently ended reporting period'' is also December 31 of Year Zero. Credit Union B's insured shares on that date were $9,000, and so the combined insured shares for purposes of the premium assessment is $9,583. Note that if Credit Union B had $50 million or more in assets on June 30 of Year One, then Credit Union B's ''most recently ended reporting period preceding the merger date'' would have been June 30 of Year One, and not December 31 of Year Zero. The Board is aware that the NCUA might declare a NCUSIF premium, invoice it, and receive the premiums in Year One from the continuing institution before the continuing institution consummates its merger. In that case, the Board would invoice the continuing credit union again after the merger, but only for the difference between the amount previously invoiced and the amount calculated under proposed paragraph (i)(2)(ii).

Proposed paragraph (i)(2)(iii) prescribes the procedures for calculating the NCUSIF distribution when a nonfederally-insured credit union or entity merges into a federally insured credit union. Proposed paragraph (i)(2)(iii) provides that the federally-insured credit union will:

> [i]f the NCUSIF declares a distribution in the year following the merger based on the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

This formula recognizes that the merging institution did not contribute to the NCUSIF equity as of the end of the year preceding the merger and so no distribution is allotted against the merging institution's shares. As for distributions based on the NCUSIF equity at the end of the year of merger, this formula does not include any pro rata reduction for the merging institution's contribution. The Board determined that a pro rata reduction was unnecessary, given the generally small relative size of merging institutions to continuing institutions, and the fact that the Federal Credit Union Act does not require any sort of pro rata reduction or other pro rata calculation with regard to distributions.

For credit unions converting to NCUSIF coverage, the proposal changes the date for calculating the one percent deposit from insured shares as of the close of the month before conversion to insured shares as of the most recently ended reporting period before conversion. NCUA is proposing this change to make the calculation method for credit unions entering NCUSIF consistent with the calculation method for federally-insured credit unions' one percent deposit adjustment. Likewise, for federally-insured credit unions merging with nonfederally-insured credit unions, the proposal clarifies that the date used for calculation of the merged credit union's increased one percent is insured shares of the nonfederally-insured credit union as of the most recently ended reporting period before conversion. Again, this change makes the calculation method for credit unions increasing insured shares by merger consistent with the calculation method for federally-insured credit unions' one percent deposit adjustment.

Paragraph (j)—Conversion From, or Termination of, Federal Share Insurance

The proposal amends paragraph (j) to address, in detail, how a federally insured credit union that converts to insurance other than that provided by the NCUSIF, or that loses or terminates its NCUSIF insurance, is affected by a NCUSIF declaration of a premium assessment, deposit replenishment assessment, or equity distribution. Proposed subparagraph (j)(1) addresses direct insurance conversions and conversions by merger. Proposed subparagraph (j)(2) addresses liquidations and insurance termination.

Proposed paragraph (j)(1)(i) provides that:

> A federally-insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will: (i) Receive the full amount of its NCUSIF deposit, less any announced depletion, immediately after the final date on which any shares of the credit union are NCUSIF-insured. * * *

The current paragraph (j) does not mention the possibility of deposit depletion, and this has been clarified in the proposed paragraph (j). To illustrate the application of this paragraph (j)(1)(i), consider the following hypothetical. Assume Anytown Credit Union, a credit union with $30 million in assets, converts from Federal to nonfederal insurance on November 15. Also assume Anytown Credit Union had $20 million in insured shares as of the previous December 31, the end of its most recent reporting period. 12 CFR 741.4(b)(5), (c). The NCUSIF would return one percent of $20 million, or $200,000 to Anytown Credit Union immediately following the effective date of its conversion. Note that, if Anytown Credit Union had reported $50 million or more in assets on June 30, then June 30 would have been the end of its most recent reporting period. Now further assume that, on July 15 of that same year, the NCUSIF had announced an expense that reduced the equity ratio from 1.3 to .75, which would have included a write-off (depletion) of 25 percent, or 25 basis points, of the one percent deposit. The amount of the deposit returned to Anytown would be reduced by 25 percent, from $200,000 to $150,000. If the NCUSIF had announced expenses reducing the equity ratio to .75 after the November 15 conversion date, this announcement would have no effect on Anytown and it would still receive $200,000 from the NCUSIF.

Proposed paragraph (j)(1)(ii) provides that:

> A federally-insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will: * * * (ii) If the NCUSIF declares a distribution at the end of the calendar year

of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio. * * *

To illustrate the application of this paragraph (j)(1)(ii), again assume Anytown Credit Union converts to nonfederal insurance on November 15, and in January of the following year, the NCUSIF declares a distribution based on the NCUSIF's equity ratio as of December 31. Anytown would receive a pro rata distribution calculated as its $20 million in insured shares multiplied by the modified premium/distribution ratio. Anytown's modified premium/distribution ratio, from the definition in § 741.4(b)(5), is one minus Anytown's premium/distribution ratio, which is one minus the ratio of the full number of months remaining in the year divided by twelve, which is one minus (one divided by twelve), which is eleven divided by twelve. So Anytown would receive a pro rata distribution based on $20 million of insured shares times eleven twelfths, or about $18.33 million in shares.[4]

The current rule provides credit unions departing the NCUSIF system with the option to leave ''a nominal sum on deposit with NCUSIF until the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.'' For several reasons, the proposal eliminates this option. First, the current rule is ambiguous because it does not specify how the requisite nominal sum is calculated or how the prorated share of future distributions is calculated. Second, this option, if exercised, imposes a lengthy recordkeeping burden on the NCUSIF, as it can be many years between NCUSIF equity distributions. Third, although several credit unions have departed the NCUSIF system in recent years, the Board is not aware that any of these credit unions exercised this option. Finally, the proposed amendments will allow credit unions departing the NCUSIF to receive a pro rata share of any future distribution *without* leaving any sum on deposit with the NCUSIF, but only for a dividend declared on NCUSIF equity as of the close of the year of departure. The Board believes this simplification is appropriate, particularly since the contribution of a departing credit union to future distributions diminishes with the passage of time.

[4] Anytown's actual distribution would be $18.33 million times the aggregate amount of the distribution divided by the aggregate amount of all insured shares at all federally insured credit unions.

Proposed paragraph (j)(1)(iii) provides that:

> A federally-insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will: * * * (iii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

To illustrate these premium provisions, again assume Anytown Credit Union is a credit union with $30 million in assets that converts from Federal to nonfederal insurance on November 15 of Year One, and that Anytown Credit Union had $20 million in insured shares as of the previous December 31 (of Year Zero), the end of its most recent reporting period. Further assume that NCUA declares a premium on February 12 of Year One and invoices the premium on November 15. Since the premium was declared ''on or before the day in which [Anytown's] conversion [was] completed,'' § 741.4(i)(1)(iii) applies. Anytown would then pay a premium based on $20 million (its ''insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date'') times eleven twelfths (its ''modified premium/distribution ratio''), or about $18.33 million. Note that NCUA might have already have invoiced Anytown for the premium sometime between February 12 and Anytown's merger on November 15. If so, Anytown will likely receive a refund of some of this earlier premium, as provided in the last sentence of § 741.1(i)(1)(iii), since it may have overpaid the earlier premium.

Proposed paragraph (j)(2), dealing with liquidations, states the following:

> Notwithstanding the requirements of paragraph (j)(1) of this section: (i) Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit; (ii) Any solvent credit union that is closed due to voluntary or involuntary liquidation will be entitled to a return of its deposit, less any announced depletion, prior to final distribution of member shares; and (iii) The Board reserves the right to delay return of the deposit to any credit union converting from or terminating its Federal insurance, or voluntarily liquidating, for up to one year if the Board determines that immediate repayment would jeopardize the NCUSIF.

These provisions are identical to provisions in the current paragraph (j), except that the proposal adds the phrase ''less any announced depletion'' in paragraph (j)(2)(ii) for clarity.

Paragraph (k)—Assessment of Administrative Fee and Interest for Delinquent Payment

This paragraph describes procedures for assessing fees for delinquent payments of the capitalization deposit and insurance premium. The proposal clarifies that paragraph (k) applies to delinquent deposit replenishment payments as well as premium payments. The proposal also deletes overlapping provisions for imposing both the ''costs of collection'' and an ''administrative fee'' in the current rule and changes the interest rate to a fixed rate of six percent per year. The delinquency fee will be calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid. The Office of the Chief Financial Officer has determined that switching to a fixed rate and imposing the delinquency fee based on the number of days the balance is outstanding will allow NCUA to automate the billing process, thus eliminating the need for additional administrative fees.

Finally, the proposal restates provisions from the Act that: (a) Give the Board authority to collect a penalty of up to $20,000 per day for each day the balance related to a premium or deposit remains unpaid; and (b) prohibit insured credit unions from paying dividends or distributing assets while in default on insurance deposits or premiums, with possible punishment of fines up to $1,000 or imprisonment of one year for directors or officers who knowingly violate this prohibition.

D. Temporary Corporate Credit Union Stabilization Fund

In the Spring of 2009, Congress enacted the ''Helping Families Save Their Homes Act of 2009,'' Pub. L. 111–22. Section 204(f) of that Act established the Temporary Corporate Credit Union Stabilization Fund (CCSUF).

The CCUSF is separate from the NCUSIF, and the CCUSF will make assessments on federally-insured credit unions separate and apart from any NCUSIF assessments. The CCUSF, unlike the NCUSIF, is funded by Treasury borrowings and not credit union capitalization deposits. Accordingly, the CCUSF does not make assessments to replenish capital deposits, nor does it make assessments

to reestablish a particular equity ratio. Instead, the CCUSF only makes assessments on insured credit unions as necessary to repay CCUSF borrowings from the Treasury. Accordingly, much of § 741.4 of NCUA's rules is inapplicable to the CCUSF, and the CCUSF is not specifically addressed in the text of this rulemaking.

While the obligation of a particular credit union to replenish its NCUSIF deposit or make a NCUSIF premium payment can be rather complicated, the obligation for a particular credit union to pay a particular CCUSF assessment is straightforward. CCUSF assessments are effective on the date the NCUA Board acts to order an assessment as authorized by Public Law 111–22. Any credit union whose shares are covered by Federal insurance on that date must pay its share of that particular assessment; but any credit union that is not covered by Federal insurance on that date is not obligated to pay any part of that assessment. The dollar amount of each credit union's portion of a CCUSF assessment is calculated based on that credit union's insured shares as of the end of its last reporting period preceding the date of the Board action.

E. Proposed Amendment to Section 701.6

Section 701.6(d) of NCUA's regulations addresses delinquent payment of the operating fee paid by FCUs. The proposal updates this section to parallel the revised provisions for delinquent payment of insurance premium and deposit replenishment expenses. As in § 741.4(k), the proposed amendments to § 701.6(d) delete potentially duplicative provisions allowing both administrative fees and costs of collection, and replace the variable interest rate with a fixed interest rate of six percent per year. The delinquency fee will be calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid.

F. 30-Day Comment Period

NCUA seeks public comment on the proposed amendments discussed above.

As a matter of agency policy, the NCUA Board general provides a 60-day comment period for proposed regulations. NCUA's Interpretive Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (Sept. 18, 1987), as amended by IRPS 03–02, 68 FR 31949 (May 29, 2003). In this case, the NCUA Board believes a 30-day comment period will suffice because the proposal clarifies an existing rule.

NCUA also seeks comment on whether the examples that appear above illustrating the various proposed amendments should be placed in a formal Appendix and be published in the Code of Federal Regulations with the rule text.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule clarifies existing requirements and will not impose any new regulatory requirements. The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

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. The proposed rule would not have substantial direct effects on the States, on the connection 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 proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

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

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Operating fee.

List of Subjects in 12 CFR Part 741

Credit unions, insurance.

By the National Credit Union Administration Board on July 16, 2009.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, NCUA proposes to amend 12 CFR parts 701 and 741 as follows.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise paragraph (d) of § 701.6 to read as follows:

§ 701.6 Fees paid by Federal credit unions.

* * * * *

(d) *Assessment of interest for delinquent payment.* Each Federal credit union must pay to the Administration interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is post-marked later than the date stated in the notice to the credit union provided under § 701.6(c). The National Credit Union Administration may waive the collection of interest if circumstances warrant.

(1) The interest rate charged on any delinquent payment is six percent per annum of the unpaid balance for the number of days the balance remains unpaid. The delinquency fee is calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid.

(2) If a credit union makes a combined payment of its operating fee and its share insurance deposit and/or insurance premium as provided in § 741.4 of this chapter and such payment is delinquent, interest will be charged on the combined amount.

PART 741—REQUIREMENTS FOR INSURANCE

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

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d: 31 U.S.C. 3717.

4. Revise § 741.4 to read as follows:

§ 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an insurance premium.

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

Available assets ratio means the ratio of:

(i) The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses has been made, from the sum of cash and the market value of unencumbered investments authorized under Section 203(c) of the Act (12 U.S.C. 1783(c)), to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the available assets ratio is:

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

Equity ratio means the ratio of:

(i) The amount of NCUSIF's capitalization, meaning insured credit unions' one percent capitalization deposits plus the retained earnings balance of the NCUSIF (less contingent liabilities for which no provision for losses has been made) to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the equity ratio is:

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

Insured shares means the total amount of a federally-insured credit union's share, share draft and share certificate accounts, or their equivalent under State law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent State law), but does not include amounts in excess of insurance coverage as provided in part 745 of this chapter. For a credit union or other entity that is not federally insured, ''insured shares'' means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been federally insured on the date of measurement.

Modified premium/distribution ratio means one minus the premium/distribution ratio.

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

Premium/distribution ratio means the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.

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

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

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

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

(ii) If the equity ratio of the NCUSIF falls to between 1.0 and 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to, and maintain that ratio at, at least 1.2 percent. If the equity ratio of the NCUSIF falls below 1.0 percent, the NCUA Board is required to assess a deposit replenishment charge in an amount it determines is necessary to restore the equity ratio to 1.0 percent and to assess a premium charge in an amount it determines is necessary to restore the equity ratio to, and maintain the ratio at, at least 1.2 percent.

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

form of dividends. The NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio for purposes of this paragraph.

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

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the calendar year in which it has obtained its charter will not be required to pay an insurance premium for that calendar year. The credit union will fund its one percent deposit on a date to be determined by the NCUA Board in the following calendar year, but will not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Depletion of one percent deposit.* All or part of the one percent deposit may be used by the NCUSIF if necessary to meet its expenses, and the fund will expense the amount so used. The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion, but must invoice credit unions no later than the adjustment described in paragraph (c) of this section based on insured shares as of December 31 of the year of the depletion.

(i) *Conversion to Federal insurance.*

(1) A credit union or other institution that converts to insurance coverage with the NCUSIF will:

(i) Immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion;

(ii) If the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio;

(iii) If the NCUSIF declares, in the calendar year of conversion on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment;

(iv) If the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date; and

(v) If the NCUSIF declares a distribution in the year following conversion based the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity from the end of the preceding year, the converting institution will receive no distribution.

(2) A federally insured credit union that merges with a nonfederally-insured credit union or other non-federally insured institution (the ''merging institution''), where the federally-insured credit union is the continuing institution, will:

(i) Immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger;

(ii) With regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described in subparagraph (1)(ii) above, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger; and

(iii) If the NCUSIF declares a distribution in the year following the merger based the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

(j) *Conversion from, or termination of, Federal share insurance.*

(1) A federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will:

(i) Receive the full amount of its NCUSIF deposit, less any announced depletion, immediately after the final date on which any shares of the credit union are NCUSIF-insured;

(ii) If the NCUSIF declares a distribution at the end of the calendar year of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio; and

(iii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

(2) Notwithstanding the requirements of paragraph (j)(1) of this section:

(i) Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit;

(ii) Any solvent credit union that is closed due to voluntary or involuntary liquidation will be entitled to a return of its deposit, less any announced depletion, prior to final distribution of member shares; and

(iii) The Board reserves the right to delay return of the deposit to any credit union converting from or terminating its Federal insurance, or voluntarily liquidating, for up to one year if the Board determines that immediate repayment would jeopardize the NCUSIF.

(k) *Assessment of interest and penalties for delinquent payment.*

(1) Each federally insured credit union must pay to the NCUA interest on any delinquent payment of its capitalization deposit, including any delinquent deposit replenishment, and on any delinquent insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The interest rate charged on any delinquent payment is six percent per annum of the unpaid

balance for the number of days after the due date the balance remains unpaid. The delinquency fee is calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid. The NCUA may waive or abate collection of interest, if circumstances warrant.

(2) The Act contains specific penalties and other consequences for delinquent payments, including, but not limited to:

(i) Section 202(d)(2)(B) of the Act (12 U.S.C. 1782(d)(2)(B)) provides that the Board may assess and collect a penalty from an insured credit union of not more than $20,000 for each day the credit union fails or refuses to pay any deposit or premium due to the fund; and

(ii) Section 202(d)(3) of the Act (12 U.S.C. 1782(d)(3)) provides, generally, that no insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge due to the fund. Section 202(d)(3) further provides that any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned more than one year, or both.

[FR Doc. E9–17310 Filed 7–23–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: There have been several cases of wing leading edge anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Upon investigation, it was determined that ducts manufactured since May 2000 are susceptible to cracking due to the process used to drill holes in the ducts. This cracking may cause air leakage, with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability, without annunciation to the flight crew [and consequent reduced controllability of the airplane]. It has subsequently been determined that faulty ducts may also have been installed in a number of leading edge assemblies built as spares and whose current locations are not specifically known.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 24, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On November 4, 2008, we issued AD 2008–23–16, Amendment 39–15737 (73 FR 67363, November 14, 2008). That AD required actions intended to address an unsafe condition on the products listed above. The preamble to AD 2008–23–16 explains that we consider those requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary to require the previously optional terminating action, and this proposed AD follows from that determination. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, previously issued Canadian Airworthiness Directive CF–2008–30, dated October 7, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products.

The unsafe condition is cracked piccolo ducts, which could result in air leakage, a possible adverse effect on the anti-ice distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane. Required actions include revising the airplane