or more types of scars the seriousness of which exceeds the maximum allowed for any one type:

(1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(3) Light colored, smooth scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(4) Twig or limb scratches which are not well healed or which have an aggregate length of more than one-half inch; and

(g) Russeting which exceeds any of the following aggregate areas of any one type of russeting, or a combination of two or more types of russeting the seriousness of which exceeds the maximum allowed for any one type:

(1) Rough russeting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter;

(2) Slightly rough russeting when the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;

(3) Fairly smooth or smooth russeting when the area exceeds 15 percent of the fruit surface: *Provided,* That discoloration occurring as yellow to brown staining of the skin shall not be considered as russeting and shall be considered as causing damage only when materially detracting from the appearance of the nectarine, and that speckling characteristic of certain varieties shall not be considered as russeting or discoloration.

17. Section 51.3159 is amended by revising paragraphs (c) and (g)(1) to read as follows:

§ 51.3159 Serious damage.

* * * * *

(c) Scab or bacterial spot when the aggregate area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(g) * * *

(1) Dark or rough scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one inch in diameter on fruit larger than 2 inches in diameter;

* * * * *

Dated: September 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–24349 Filed 9–24–02; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its rule that permits a Federal credit union to provide reasonable retirement benefits to its employees and officers. These amendments clarify the scope of the rule and the investments federal credit unions may use to fund employee benefits. This proposal is substantially similar to an earlier proposal issued in December 2001, but, as a result of comments received in response to the earlier proposal, addresses additional investment issues related to particular benefit plans.

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or email comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In December 2001, NCUA issued a proposed rule with request for comments to clarify that the scope of § 701.19(a), which currently states that a federal credit union (FCU) may provide reasonable retirement benefits for its employees and officers, is not limited only to retirement benefits, but is more broadly applicable to other employee benefit plans. 66 FR 65662 (December 20, 2001). NCUA received fifteen comments: seven from credit union trade associations and eight from federal credit unions. All of the comments were generally supportive of the proposal.

Having considered those comments, the Board has determined that it will issue this second proposed rule to address certain issues raised in the comments, including the need to distinguish defined contribution plans from various kinds of defined benefit plans. This revised proposal is, however, substantially similar to the first proposal issued in December 2001 and contains much of the same background information from the first proposal.

As competition to attract and retain highly qualified employees has increased and the employee benefit marketplace has become more sophisticated, FCUs are increasingly providing more diverse and less traditional forms of employee benefits including, for example, deferred compensation plans and stock option plans. As a result, FCUs need flexibility to use safe, reasonable and efficient methods to fund their employee benefit obligations. In addition to providing this flexibility, this proposed rule updates the regulatory language to reflect current employee benefits terminology including renaming the rule ''Benefits for Employees of Federal Credit Unions.''

An FCU investing on its own behalf is subject to the investment provisions of the Federal Credit Union Act (Act) and NCUA regulations. 12 U.S.C. 1757(7), (8), (15); 12 CFR part 703. In legal opinion letters, the NCUA's Office of General Counsel has stated that these investment provisions do not apply when an FCU is acting under its authority to provide and fund retirement or other employee benefits. 12 U.S.C. 1761b(12); 12 CFR § 701.19. NCUA's long-standing legal interpretation is that an FCU may purchase an otherwise impermissible investment to fund an employee benefit obligation as long as there is a direct connection between the investment and the employee benefit obligation it serves to fund. In that context, NCUA has also

stated that once the obligation ceases to exist, the FCU must divest itself of the impermissible investment.

For example, an FCU is generally not permitted to purchase equity investments when investing for its own account. An FCU that is obligated under an employee benefit plan to provide an employee with 100 shares of XYZ Corporation stock on a specific date, however, may purchase and hold 100 shares of that stock for that purpose. It may not, however, purchase 100 shares of *ABC* Corporation stock. In that instance, there would not be a sufficient connection between the investment and the obligation to be funded.

NCUA is aware that for-profit corporations often provide employee benefits that contain investment options an employee may exercise after he or she has separated or retired from the employer. For example, an employer may grant an employee the option to purchase a fixed number of shares in a mutual fund for a fixed price on a specific date after the employee separates or retires from the employer. These post-separation or post-retirement options would require a prudent FCU to buy and hold shares in that mutual fund to fund the potential obligation it faces after its employee has separated or retired. In legal opinion letters, the NCUA's Office of General Counsel has also taken the position that an FCU may hold an impermissible investment to fund an ongoing employee benefit obligation after the employee separates or retires provided the investment option period is reasonable. Upon the exercise or expiration of the option, the FCU must divest itself of the impermissible investment. This proposed regulation incorporates the positions taken by the Office of General Counsel in these legal opinion letters.

B. Comments

Defined Contribution Plans and Defined Benefit Plans

Comments received in response to the first proposed rule raised issues about interpretation of the requirement that an investment be ''directly related'' to an FCU's obligation to fund an employee benefit plan. A direct relationship is necessary between the investment and the employee benefit obligation it is intended to fund as it is the legal basis on which NCUA permits FCUs to make otherwise impermissible investments. Without a direct relationship between the investment and the employee benefit obligation, an FCU is merely investing for its own account and, as noted above, is subject to the general statutory and regulatory limitations applicable to FCU investments. The absence of a direct relationship between the investment and the employee obligation also raises safety and soundness concerns as an FCU is investing without statutory or regulatory limits. Specifically, the existence of a direct relationship is an issue in defined benefit plans.

Previously issued legal opinions have generally analyzed issues involving the funding of employee benefit obligations under defined contribution plans, not defined benefit plans. Under defined contribution plans, a credit union's obligation is to make a fixed contribution, for example, to contribute a fixed dollar amount at a particular time or over a period of time, and the level of benefits vary depending on the return on the investments. Thus, the risk of investment performance is on the employee under a defined contribution plan.

NCUA has more recently had cause to analyze issues involving the funding of employee benefit obligations under defined benefit plans. Under defined benefit plans, a credit union typically promises to pay a specified dollar amount to an employee at a specified time. Thus, with defined benefit plans, the risk of investment performance is on the credit union.

The differences between defined contribution plans and defined benefit plans are significant, and defined benefit plans warrant different treatment under NCUA's employee benefits rule for two primary reasons. First, with defined benefit plans, the investment risk is on the credit union. Poor investment performance not only can result in a loss of all or part of the principal a credit union invests, but, after sustaining losses, a credit union is still obligated to fulfill its employee benefit obligation. Second, it is much more difficult to determine if there is a direct relationship between investments a credit union chooses and the obligation it is intended to fund. This is because a credit union's obligation under a defined benefit plan typically is for a fixed dollar amount, as opposed to, for example, a specified number of shares of a particular company's stock.

For example, if a credit union obligates itself to pay a senior executive an employee benefit of $500,000 on a certain date, it may want to purchase and hold investments to meet that future obligation. If the performance of those investments cannot be conservatively predicted with any degree of certainty, then it is difficult to conclude there is a direct relationship between the investment and the obligation it is intended to fund. NCUA is concerned that this difficulty in predicting the return on an investment could result in credit unions underfunding the investment and not meeting their employee benefit obligations. NCUA is also concerned that other credit unions could overfund the investment in hopes of obtaining a return in excess of their employee benefit obligations. For both legal and safety and soundness concerns, NCUA cannot permit credit unions to make impermissible, speculative investments for their own accounts when funding an employee benefit obligation under § 701.19.

The revised proposal permits FCUs to offer defined benefit plans yet addresses the legal and safety and soundness concerns they raise by distinguishing between defined benefit plans covered by the fiduciary responsibilities of Employee Retirement Income Security Act (ERISA) and those that are not. 29 U.S.C. 1101–14. NCUA believes the ERISA fiduciary requirements, which provide for a trust and places obligations on the trustee to act prudently on behalf of the credit union and its employees, are a sufficient safeguard against the risks about which NCUA is concerned.

FCUs may still make investments, otherwise impermissible by statute and regulation, to fund a defined benefit plan not covered by ERISA fiduciary requirements, but must meet certain additional criteria. The proposed rule provides that these investments must have a fixed rate of return, mature on or before the date of the employee benefit obligation, and be rated by a nationally recognized statistical rating organization in one of the four highest rating categories. These broad criteria support the determination that an investment is directly related to the employee benefit the investment is intended to fund and, in addition, address the safety and soundness concerns these otherwise unrestricted investments present. An FCU investing to fund a defined benefit plan that is not covered by ERISA may invest in a registered investment company or collective investment fund that restricts investments to those permitted by the proposed rule, except for the maturity restriction. Although not included as a requirement for defined benefit plans not covered by ERISA, an FCU should consider sufficiently diversifying its investments to control the risk of loss.

Regardless of what kind of investment plan is used, an FCU must comply with safety and soundness standards by ensuring that the kind and amount of employee benefits it offers are reasonable given its size, financial

condition, and the duties of the employees. Furthermore, an FCU's authority to offer and fund an employee benefit plan does not guarantee the permissibility or treatment of the plan under other laws, such as ERISA and the Internal Revenue Code.

FCUs with assets of $10 million or greater are reminded that they are required to account for their employee benefit plans in accordance with generally accepted accounting principles (GAAP). FCUs with assets under $10 million are not required to follow GAAP, but are encouraged to do so in this context. All FCUs are encouraged to seek the advice of an independent accountant if they have questions regarding the proper accounting for these benefit plans.

Finally, § 701.19(b) provides that an FCU acting as a fiduciary, as defined in ERISA, must obtain appropriate liability coverage as provided in § 410(b) of ERISA. NCUA wishes to clarify that section 410(b) of ERISA describes certain kinds of insurance coverage and permits certain parties to purchase that insurance, but does not require any party to purchase insurance. 29 U.S.C. 1110.

Additional Issues Raised in Comments

Several commenters noted that it was not clear if the first proposed rule applied to corporate credit unions because it did not contain a reference to the investment authority for corporate credit unions provided in part 704 of NCUA's rules. The revised proposal has been modified in response to this comment to include a reference so it is clear the rule applies to corporates as well.

Several comments suggested that, because the title of the rule will refer more generally to employee benefits instead of retirement benefits, it should also state that other benefits, including non-monetary forms of compensation, are included and should specify those benefits such as fringe benefits, welfare benefits, training, and so forth. The Board believes this change is unnecessary. The rule states generally that FCUs may provide benefits and that the kind and amount of benefits must be reasonable in relation to the size and financial condition of the credit union and the duties of the employees. The Board is concerned that by specifying particular benefits, even in broad categories, that the rule could be interpreted as being restrictive. Another change in this revised proposal, namely, the provisions regarding plan trustees and custodians are stated in a separate subsection, makes the general statement of FCU authority more clearly applicable to non-monetary benefits as well as monetary benefits.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The proposed rule only clarifies that credit unions have additional options and flexibility to manage their employee benefit obligations without imposing any regulatory burden. The proposed rule would 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.

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR part 701

Credit unions.

By the National Credit Union Administration Board on September 19, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS 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, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 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 § 701.19 to read as follows:

§ 701.19 Benefits for employees of federal credit unions.

(a) *General authority.* A Federal credit union may provide employee benefits, including retirement benefits, to its employees and officers who are compensated in conformance with the Act and the bylaws, individually or collectively with other credit unions. The kind and amount of these benefits must be reasonable given the Federal credit union's size, financial condition, and the duties of the employees.

(b) *Plan trustees and custodians.* Where a Federal credit union is the benefit plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. Where the benefit plan trustee or custodian is a party other than a federal credit union, the benefit plan must be maintained in accordance with applicable laws governing employee benefit plans, including any applicable rules and regulations issued by the Secretary of Labor, the Secretary of the Treasury, or any other federal or state authority exercising jurisdiction over the plan.

(c) *Investment authority.* A Federal credit union investing to fund an employee benefit plan obligation is not subject to the investment limitations of the Act and part 703 or, as applicable, part 704, of this chapter and may purchase an investment that would otherwise be impermissible if the investment is directly related to the Federal credit union's obligation or potential obligation under the employee

benefit plan and the Federal credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

(d) *Additional investment requirements for defined benefit plans.* A Federal credit union may invest to fund a defined benefit plan if the investment meets the conditions provided in paragraph (c) of this section, and only if the plan is subject to the fiduciary responsibility provisions of part 4 of the Employee Retirement Income Security Act of 1974. If a defined benefit plan is not subject to the fiduciary responsibility provisions of part 4 of the Employee Retirement Income Security Act of 1974, then the investment must yield a fixed rate of return, mature on or before the date of the employee benefit obligation, and be rated by a nationally recognized statistical rating organization in one of the four highest rating categories.

(e) *Liability insurance.* No Federal credit union may occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and the rules and regulations issued by the Secretary of Labor, unless it has obtained appropriate liability insurance as described and permitted by section 410(b) of the Employee Retirement Income Security Act of 1974.

(f) *Definitions.* For this section, defined benefit plan has the same meaning as in 29 U.S.C. 1002(35) and employee benefit plan has the same meaning as in 29 U.S.C. 1002(3).

[FR Doc. 02–24288 Filed 9–24–02; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier CL–600–2C10 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate functional and operational checks of the active and standby actuators of the rudder travel limiter (RTL) system. This action is necessary to prevent a significant latent failure in the RTL, which could lead to a critical loss of RTL function under certain conditions, and consequent loss of controllability of the airplane or structural damage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–93–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–93–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model CL–600–2C10 series airplanes. TCCA advises that a significant latent failure may exist in the rudder travel limiter (RTL) system. A failure of the active actuator lane (actuator #1 and spoiler stabilizer command module (SSCM) channel 1A) may lead to a critical loss of function of the RTL under either of the following two conditions:

1. A dormant failure of the RTL on SSCM channel 1B, 2A, or 2B, or an undetected mechanical jam may be present in the RTL (standby) actuator #2; or

2. An undetected mechanical jam may be present in the RTL active actuator in the range of 4 to 8 degrees.