(i) The credit union has been chartered for less than two years; or

(ii) The credit union meets the definition of troubled condition in paragraph (b)(3) or (4) of this section.

(2) *Waiver of Prior Notice*—(i) *Waiver requests.* Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest.

(ii) *Automatic waiver.* In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, the prior 30-day notice is automatically waived and the individual may immediately begin serving, provided that a complete notice is filed with the appropriate Regional Director within 48 hours of the election. If NCUA disapproves a director or credit committee member, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent on NCUA approval.

(iii) *Effect on disapproval authority.* A waiver does not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver or within 30 days of any subsequent required notice.

(3) *Filing procedures*—(i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union, with the Director of the Office of Corporate Credit Unions. All references to Regional Director will, for corporate credit unions, mean the Director of Office of Corporate Credit Unions. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

(ii) *Contents.* The notice must contain information about the competence, experience, character, or integrity of the individual on whose behalf the notice is submitted. The Regional Director or his or her designee may require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of the individual by a state or federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect.

(iii) *Processing.* Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional, specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time the credit union takes to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(d) *Commencement of Service.* A proposed director, committee member, or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (c)(3)(iii) of this section, unless the NCUA disapproves the notice before the end of the period.

* * * * *

[FR Doc. 04–24002 Filed 10–26–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending the collateral and security requirements of its member business loans (MBL) rule to enable credit unions subject to the rule to participate more fully in Small Business Administration (SBA) guaranteed loan programs.

DATES: This final rule is effective November 26, 2004.

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

SUPPLEMENTARY INFORMATION:

A. Background

In 2003, NCUA amended its MBL rule and other rules related to business lending to enhance credit unions' ability to meet their members' business loans needs. 68 FR 56537 (October 1, 2003). In addition to comments on those amendments, NCUA received other suggestions on how it could improve the MBL rule. Among the most significant of these, commenters suggested NCUA amend the MBL rule ''so that it could be better aligned with lending programs offered by the Small Business Administration,'' such as the SBA's Basic 7(a) Loan Program. *Id.* at 56538. While NCUA recognized the merits of this suggestion, NCUA could not include it in the final rulemaking because it addressed issues outside the scope of the rulemaking. The Administrative Procedure Act generally prohibits Federal Government agencies from adopting rules without affording the opportunity for public comment. 5 U.S.C. 553. NCUA noted in the final rule, however, that it would review this suggestion to determine if it would be appropriate to act on it in a subsequent rulemaking.

As a result of that review, NCUA issued a proposed amendment to its MBL rule in June 2004 to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule's lending requirements. 69 FR 39873 (July 1, 2004). NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, these SBA programs are ideally suited to the mission of many credit unions to satisfy their members' business loans needs.

NCUA noted in the proposal that it recognizes NCUA's collateral and security requirements for MBLs, including construction and development loans, are generally more restrictive than those of the SBA's guaranteed loan programs and could hamper a credit union's ability to participate fully in SBA loan programs. As a result, the MBL rule's collateral and security requirements could prevent a credit union from making a particular loan that it could otherwise make under SBA's requirements. NCUA issued the proposal to provide relief from these more restrictive requirements and to

help enable credit unions to better serve their members' business loans needs.

B. Clarification of Existing Authority

NCUA discussed in the proposal that its Office of General Counsel in Legal Opinion 03–0911, dated May 20, 2004, clarified that NCUA's general lending rule and the Federal Credit Union Act (Act) permit federal credit unions (FCUs) to make MBLs under the terms of the SBA's guaranteed loan programs to the extent the terms and conditions under which the guarantee is provided are consistent with the requirements and limitations in the MBL rule. 12 CFR 701.21(e); 12 U.S.C. 1757(5)(A)(iii). Specifically, the opinion identified loan maturity limits, usury ceilings and prepayment penalties as terms of the SBA's guaranteed loan programs that an FCU could use in lieu of corresponding terms in NCUA's rules. The opinion stated, however, that a credit union could not rely on the exception for government guaranteed loan programs in NCUA's general lending rule and the Act with regard to collateral requirements for MBLs. 12 CFR 701.21(e); 12 U.S.C. 1757(5)(A)(iii). The opinion explained the MBL rule expressly sets collateral requirements for MBLs in the form of maximum loan-to-value ratios. The collateral requirements of the SBA's guaranteed loan programs are not consistent with those of the current MBL rule and, therefore, cannot be used. The proposed amendments to the MBL rule remove that impediment by exempting SBA guaranteed loans from the MBL rule's collateral requirements.

The proposal also noted that there could be circumstances where a business loan made under an SBA loan program would not be subject to the MBL rule. For example, a $40,000 business loan with an SBA guarantee to a member who has no other loans with the originating credit union would be too small to meet the definition of an MBL. Thus, the credit union in this example can rely on the authority provided by § 701.21(e) of NCUA's rules and make a business loan as part of an SBA loan program under all of the terms and conditions required or permitted by the program.

The MBL rule applies to all FCUs and to most federally-insured state credit unions (FISCUs). The proposal noted that a FISCU is exempt from the MBL rule only if, after August 7, 1998, the enactment of the Credit Union Membership Access Act (CUMAA), Public Law 105–21, its state supervisory authority (SSA) has adopted its own business loan rule, with the approval of the NCUA Board, for use instead of NCUA's MBL rule. The amendments regarding collateral requirements apply to all credit unions subject to the MBL rule, but it is important to note that legal opinion OGC 03–0911 applies only to FCUs, not FISCUs. FISCUs follow state law and regulation with respect to loan maturity, interest rate and prepayment penalties. For those issues, the relationship between any state law limitations and SBA's requirements should be determined by FISCUs in consultation with their state supervisory authority.

Finally, the proposal noted that, while NCUA believes many credit unions would greatly benefit from participating in SBA programs, NCUA also believes that programs of this type can create some additional safety and soundness concerns. For example, the loans being guaranteed are often riskier than other loans made by credit unions, and most credit unions would not make these kinds of loans without the security the SBA guarantees provide. NCUA noted it is aware that SBA guarantee programs generally place stringent requirements on participating lenders to comply with program requirements or face losing the guarantee. Accordingly, the proposal recommended that, before a credit union becomes a participating lender, it makes certain it fully understands the terms of the program and has procedures in place to assure its compliance with all program requirements.

C. Summary of Comments

NCUA received twenty-four comment letters regarding the proposed rule: four from FCUs, three from state credit unions, one from a private individual, seven from credit union trade organizations, one from a credit union service organization, one from a certified development company, one from a certified development company trade organization, one from a professional association representing state and territorial regulatory agencies, one from a bank, and four from banking trade organizations. All commenters supported the proposal except the bank and banking trade organizations.

Many of the commenters supporting the proposal also offered additional comments. For example, seven commenters asked NCUA to clarify that the proposal applies to SBA's Certified Development Company (504) Loan Program in addition to SBA's Basic 7(a) Loan Program. NCUA confirms the proposal applies to the 504 Loan Program and highlights that the proposal expressly states it applies to MBLs made *as part of* an SBA guaranteed loan program.

Four commenters suggested NCUA expand the scope of the proposal to include other government guaranteed loan programs. Three of them specifically named the Farm Service Agency or United States Department of Agriculture loan programs. Two of them suggested all government guaranteed loan programs be included. As noted in the preamble to the proposal, NCUA is willing to consider other government guaranteed loan programs as it becomes apparent there is demand for the program among credit unions.

Two commenters suggested NCUA reference Part 702 Prompt Corrective Action (PCA) in § 723.4 of the MBL rule to indicate PCA applies to member business lending. These commenters also stated it is burdensome for credit unions to have to track and report MBLs differently for different purposes. Specifically, they noted credit unions must do this when calculating net member business loan balances (NMBLB) under the MBL rule and risk-based net worth (RBNW) requirement under PCA. One of these commenters asked NCUA to explore ways of minimizing this burden. The other suggested using the NMBLB for purposes of calculating the RBNW requirement and permit credit unions to exclude MBLs that have been paid down below $50,000 from the calculation of the RBNW requirement. Part 702 is currently referenced in § 723.1 but not in § 723.4. NCUA is including a reference to part 702 in § 723.4 in the final rule. While NCUA recognizes there is some degree of inconvenience associated with tracking and reporting MBLs differently when calculating NMBLB and RBNW, NCUA believes the risks associated with making MBLs necessitate this form of accounting. Additionally, this system helps preserve the flexibility a credit union has to exclude MBLs from its NMBLB when they have been paid down below $50,000.

Three commenters asked NCUA to clarify how an SBA loan term could be both less restrictive than an NCUA requirement and still consistent with the MBL rule. This is possible when an SBA term is less restrictive than an NCUA requirement that is not specifically addressed in the MBL rule. For example, maturity limits are not specifically addressed in the MBL rule but are in the Act and elsewhere in NCUA's regulations.

The bank and four banking trade organizations opposed the proposal stating, among other things, it contradicts congressional intent to limit credit unions' ability to make MBLs. NCUA disagrees. The proposal does not

increase any congressional limits on the kind or amount of MBLs a credit union may make. Moreover, the legal authority allowing credit unions to make MBLs under the terms of an SBA guaranteed loan program is in the Act and, therefore, directly reflecting congressional intent. Finally, congressional representatives have urged NCUA to use its authority, conferred by Congress, to facilitate MBL lending and to refrain from imposing any limitations on credit unions in this context not explicitly called for by Congress in CUMAA. 68 FR 56537, 56538 (October 1, 2003).

Accordingly, except for technical amendments, NCUA adopts the proposed amendments to part 723 as final without change.

D. Net Member Business Loan Balance

The MBL rule uses the phrase ''net member business loan balance'' to describe the outstanding loan balance plus any unfunded commitments reduced by a number of factors. Section 723.10(h) uses the phrase ''outstanding member business loan balance'' instead of ''net member business loan balance.'' This inconsistent use of language was inadvertent and is corrected by amending § 723.10(h) to read ''net member business loan balance.''

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 (those under ten million dollars in assets). This rule permits credit unions to more fully participate in SBA loan programs, without imposing any additional regulatory burden. The final 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 final 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. This final 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 final 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 final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 21, 2004.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 723 as follows:

PART 723—MEMBER BUSINESS LOANS

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

■ 2. Revise the introductory sentence of § 723.3 to read as follows:

§ 723.3 What are the requirements for construction and development lending?

Except as provided in § 723.4 or unless your Regional Director grants a waiver, loans granted for the construction or development of commercial or residential property are subject to the following additional requirements.

* * * * *

■ 3. Revise § 723.4 to read as follows:

§ 723.4 What other regulations apply to member business lending?

(a) The provisions of § 701.21(a) through (g) and part 702 of this chapter apply to member business loans granted by credit unions to the extent they are consistent with this part. Except as required by part 741 of this chapter, federally insured State-chartered credit unions are not required to comply with the provisions of § 701.21(a) through (g) of this chapter.

(b) If a federal credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by NCUA, then the federal credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program to the extent they are consistent with this part. A federally insured State-chartered credit union that is subject to this part and makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by NCUA may follow the loan requirements of the relevant Small Business Administration guaranteed loan program to the extent they are consistent with this part if its state supervisory authority has determined that the credit union has authority to do so under State law.

(c) The collateral and security requirements of § 723.3 and § 723.7 do not apply to member business loans made as part of a Small Business Administration guaranteed loan program.

■ 4. Revise § 723.7(a) introductory text to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Except as provided in § 723.4 or unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (c), (d), and (e) of this section, must be secured by collateral as follows:

* * * * *

■ 5. Revise § 723.10(h) to read as follows:

§ 723.10 What waivers are available?

* * * * *

(h) Maximum aggregate net member business loan balance to any one

member or group of associated members under § 723.8.

[FR Doc. 04–24001 Filed 10–26–04; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–91–AD; Amendment 39–13829; AD 2004–22–01]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes on Which Cargo Restraint Strap Assemblies Have Been Installed per Supplemental Type Certificate (STC) ST01004NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY. This amendment requires revising the airplane flight manual to include a procedure for discontinuing the use of certain cargo restraint strap assemblies installed per STC ST01004NY, if used as the only cargo restraint. This amendment also requires revising the airplane weight and balance manual to include the same procedure described previously. The actions specified by this AD are intended to prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 1, 2004.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stuart Ave., suite 410, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 4, 2004 (69 FR 47028). That action proposed to require revising the airplane flight manual (AFM) to include a procedure for discontinuing the use of certain cargo restraint strap assemblies installed per STC ST01004NY, if used as the only cargo restraint. That action also proposed to add a requirement to revise the airplane weight and balance manual (WBM) to include the same procedure described previously.

Comments

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

Conclusion

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

Cost Impact

There are approximately 1,150 transport category airplanes of the affected design in the worldwide fleet. We estimate that 735 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators is estimated to be $47,775, or $65 per airplane.

It will take approximately 1 work hour per airplane to accomplish the WBM revision, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the WBM revision on U.S. operators is estimated to be $47,775, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–01 Transport Category Airplanes: Amendment 39–13829. Docket 2002–NM–91–AD.

Applicability: The following transport category airplanes, certificated in any category, on which cargo restraint strap assemblies part number (P/N) 1519–MCIDS have been installed per Supplemental Type Certificate (STC) ST01004NY: