security-related aspects. Incorporating the above attributes may promote more efficient and effective design reviews. However, the listing of a particular attribute does not necessarily mean that specific licensing criteria will attach to that attribute. Designs with some or all of these attributes are also likely to be more readily understood by the general public. Indeed, the number and nature of the regulatory requirements may depend on the extent to which an individual advanced reactor design incorporates general attributes such as those listed previously.

In addition, the Commission expects that the safety features of these advanced reactor designs will be complemented by the operational program for Emergency Planning (EP). This EP operational program, in turn, must be demonstrated by inspections, tests, analyses, and acceptance criteria to ensure effective implementation of established measures. The Commission also expects that advanced reactor designs will comply with the Commission's safety goal policy statement (51 FR 28044; August 4, 1986, as corrected and republished at 51 FR 30028; August 21, 1986), and the policy statement on conversion to the metric measurement system (61 FR 31169; June 19, 1996).

To provide for more timely and effective regulation of advanced reactors, the Commission encourages the earliest possible interaction of applicants, vendors, other government agencies, and the NRC to provide for early identification of regulatory requirements for advanced reactors and to provide all interested parties, including the public, with a timely, independent assessment of the safety and security characteristics of advanced reactor designs. Such licensing interaction and guidance early in the design process will contribute towards minimizing complexity and adding stability and predictability in the licensing and regulation of advanced reactors.

While the NRC does not develop new reactor designs, the Commission intends to develop the capability, when appropriate, for timely assessment and response to innovative and advanced reactor designs that might be presented for NRC review. Prior experience has shown that new reactor designs—even variations of established designs—may involve technical problems that must be solved to ensure adequate protection of the public health and safety. The earlier these design problems are identified, the earlier satisfactory resolution can be achieved. Prospective applicants are reminded that, while the NRC will undertake to review and comment on new design concepts, the applicants are responsible for documentation and research necessary to support a specific application. Research activities would include testing of new safety or security features that differ from existing designs for operating reactors, or that use simplified, inherent, passive means to accomplish their safety or security function. The testing shall ensure that these new features will perform as predicted, will provide for the collection of sufficient data to validate computer codes, and will show that the effects of system interactions are acceptable.

During the initial phase of advanced reactor development, the Commission particularly encourages design innovations that enhance safety, reliability, and security (such as those described previously) and that generally depend on technology that is either proven or can be demonstrated by a straightforward technology development program. In the absence of a significant history of operating experience on an advanced concept reactor, plans for the innovative use of proven technology and/or new technology development programs should be presented to the NRC for review as early as possible, so that the NRC can assess how the proposed program might influence regulatory requirements.

Finally, the NRC also believes that it will be in the interest of the public as well as the design vendors and the prospective license applicants to address security issues early in the design stage to achieve a more robust and effective security posture for future nuclear power reactors.

Dated at Rockville, Maryland, this 7th day of October 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–24268 Filed 10–10–08; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AD54

Share Insurance for Revocable Trust Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its share insurance rules to simplify coverage for revocable trust accounts. The amendments will make the rules easier to understand and apply without decreasing coverage, result in faster share insurance determinations in the event of a credit union closing, and help improve public confidence in the credit union system. The amendments eliminate the concept of ''qualifying beneficiaries.'' Also, for members with revocable trust accounts totaling no more than $500,000, coverage will be determined without regard to the proportional beneficial interest of each beneficiary in the trust.

Under the amended rules, a trust account owner with up to five different beneficiaries named in all of his or her revocable trust accounts at one NCUA-insured institution will be insured up to $100,000 per beneficiary. Revocable trust account owners with more than $500,000 and more than five different beneficiaries named in the trust(s) will be insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary.

DATES: This rule is effective on October 14, 2008. Written comments must be received on or before December 15, 2008.

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 Share Insurance for Revocable Trust Accounts'' 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 *OGCMail@ncua.gov.*

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

SUPPLEMENTARY INFORMATION:

I.

A. Background

NCUA insures member share accounts in all federally-chartered credit unions and the vast majority of state-chartered credit unions. This accounts for approximately 98% of all credit unions in the United States. Despite NCUA's best efforts to provide clear information on insurance coverage for revocable trust accounts and recent rule changes to simplify that determination, NCUA recognizes there is still significant public and industry confusion about the insurance coverage of revocable trust accounts. See NCUA Web site at *http://www.ncua.gov/ShareInsurance/index.htm;* 68 FR 75111 (December 30, 2003); 69 FR 8798 (February 26, 2004). This is evidenced by the great volume of share insurance inquiries NCUA has received as a result of recent events in the financial markets and is particularly true of living trust accounts, one of the two types of revocable trust accounts NCUA insures. This is largely due to the increasingly complex nature of living trusts.[1] NCUA believes the amendments in this interim rule will further clarify how revocable trust accounts are covered, enhance NCUA's ability to help maintain public confidence and stability in the credit union system, and protect insured members.

B. Current Share Insurance Rules for Revocable Trust Accounts

NCUA insures informal and formal revocable trust accounts under its share insurance rules. 12 CFR Part 745. Informal trust accounts are comprised simply of a signature card on which the member designates the beneficiaries to whom the funds in the account will pass upon the member's death. These are the most common type of revocable trust accounts and generally are referred to as ''payable-on-death'' (POD) accounts or in-trust-for (ITF) accounts or *Totten Trust* accounts. Throughout this preamble, NCUA will refer to all informal trust accounts as POD accounts. Formal revocable trust accounts are established in connection with a formal written revocable trust document. They are increasingly popular trusts created for estate planning purposes and are often referred to as: Living trusts, family trusts, marital trusts, survivor's trusts, by-pass trusts, generation-skipping trusts, AB trusts or special needs trusts. Throughout this preamble, NCUA will refer to all formal revocable trusts as living trusts. Like an informal revocable trust, a living trust is created by a member, also known as a grantor or settlor, over which the member as owner retains control during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable. NCUA insures POD and living trust accounts under § 745.4 of its share insurance rules. 12 CFR 745.4.

NCUA's rules provide that all revocable trust accounts (both POD accounts and living trust accounts) are insured up to $100,000 per ''qualifying beneficiary'' designated by the owner of the account. *Id.* If there are multiple owners of a revocable trust account, coverage is available separately for each owner, per qualifying beneficiary as to each owner. Qualifying beneficiaries are defined as the owner's spouse, children, grandchildren, parents and siblings. 12 CFR 745.4(b).

The per-qualifying beneficiary coverage available on revocable trust accounts is separate from the insurance coverage afforded to members in connection with other accounts they own in other ownership capacities at the same NCUA-insured credit union. For example, if a member has a single-ownership account with a balance of $100,000 and a POD account (naming at least one qualifying beneficiary) with a balance of $100,000 at the same NCUA-insured credit union, both accounts would be insured separately for a combined coverage amount of $200,000.

Under our current rules, separate, per-beneficiary insurance coverage is available for revocable trust accounts only if the account satisfies certain requirements including: (1) The account must evidence the owner's intent that the funds shall belong to the designated beneficiaries upon the owner's death; (2) each beneficiary must be a qualifying beneficiary; and (3) for POD accounts, the beneficiaries must be specifically named in the account records of the credit union. Under the current rules, the beneficiaries of a living trust need not be indicated in the credit union's records. 12 CFR 745.4(e).

If a revocable trust account owner names one or more non-qualifying beneficiaries in the account or trust, the funds corresponding to those non-qualifying beneficiaries are considered the single-ownership funds of the owner and insured under that category of coverage. For example, assume a member owns a POD account (and no other accounts at the same credit union) that names his spouse and a friend as beneficiaries. The account has a balance of $200,000. The coverage would be $100,000 under the revocable trust coverage rules because he has named one qualifying beneficiary, and $100,000 would be insured under the single-ownership coverage rules because the funds attributable to the non-qualifying beneficiary (the friend) would be considered the owner's single-ownership funds and thus insured under that category of ownership. If the account owner in this example also had a single-ownership account with a balance of $50,000, then the $100,000 (attributable to the non-qualifying beneficiary) from his POD account would be added to the $50,000 held in the single-ownership account and insured to a limit of $100,000. Thus, $50,000 would be uninsured.

As discussed above, both POD accounts and living trust accounts are types of revocable trust accounts insured under the revocable trust account category in NCUA's share insurance rules. Consequently, all funds that a member holds in living trust accounts and POD accounts naming the same beneficiaries are aggregated for insurance purposes and insured to the applicable coverage limits. For example, if a member has a living trust account for $200,000 naming his children, A and B, and also has a $200,000 POD account naming A and B, the combined coverage on the two aggregated accounts would be $200,000 in total, not $200,000 per account.

II. The Interim Rule

A. Overview

In this rulemaking, NCUA seeks to make the insurance coverage rules for revocable trust accounts easy to understand and apply, without decreasing coverage currently available for revocable trust account owners, and retain reasonable limitations on coverage levels for revocable trust account owners. Under the interim rule, a trust account owner with up to $500,000 in revocable trust accounts at one NCUA-insured institution is insured up to $100,000 per beneficiary. NCUA believes this is the scenario that will apply to the vast majority of

[1] Because of the complexities of living trusts, NCUA's insurance determinations on those accounts could be time consuming and delay members receiving their insured account proceeds.

revocable trust account owners. Revocable trust account owners with more than $500,000 in those accounts and more than five different beneficiaries named in the trust(s) are insured differently. They will be insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary. Under the interim final rule, coverage is based on the existence of *any* beneficiary named in the revocable trust, as long as the beneficiary is a natural person, or a charity or other non-profit organization. If in establishing a POD account, the owner names a living trust as the beneficiary, we will consider the beneficiaries of the trust to be the beneficiaries of the POD account. As discussed below, under the interim rule the concept of ''qualifying beneficiaries'' is eliminated. For an account owner with combined revocable trust account balances of $500,000 or less, the maximum available coverage would be determined simply by multiplying the number of beneficiaries by $100,000.

A living trust account with a balance of $400,000, for example, would be insured for up to $400,000 as long as there are at least four beneficiaries named in the trust.[2] Different proportional ownership interests of the beneficiaries in the trust assets would not affect the share insurance coverage. So, in this example, the maximum coverage would be $400,000 even if the trust provided that beneficiaries A and B are entitled to twenty percent each of the trust assets and beneficiaries C and D are entitled to thirty percent each of the trust assets. As under the current rules, however, a member would receive a combined maximum coverage amount of $100,000 for the same beneficiary named in more than one revocable trust account he or she owns at one credit union. For example, if a member has a POD account naming her son as a beneficiary and a living trust account at the same credit union naming the same son as a beneficiary, the member would be entitled to no more than $100,000 with respect to having named her son a beneficiary of her revocable trust accounts.

B. Eliminating the Concept of ''Qualifying Beneficiaries''

As explained above, previous revocable trust account coverage was based, in large part, on the number of qualifying beneficiaries named in the trust(s). In the most recent revocable trust account rule amended by this interim final rule, qualifying beneficiaries were defined as the revocable trust account owner's spouse, children, grandchildren, parents and siblings. 12 CFR 745.4(b). In previous versions of that rule, the definition included only the owner's spouse, children and grandchildren. The rationale for expanding the definition of qualifying beneficiaries to include the account owner's parents and siblings was to recognize other family members likely to be named in a person's revocable trust(s).

Before and since the expansion of the definition of qualifying beneficiaries, members and industry participants have questioned the fairness of limiting the coverage on revocable trust accounts to only certain beneficiaries. Many have stated the definition of qualifying beneficiaries should include, among others, an account holder's nieces and nephews, in-laws, great-grandchildren, cousins, friends and charities. Historically, in response to these complaints, NCUA has taken the position that there must be a reasonable limitation of the amount of coverage available on revocable trust accounts, otherwise, there would be potentially unlimited coverage under this account category. Accordingly, NCUA has been reluctant to amend the rules to provide coverage for any beneficiary(ies) named in a revocable trust without limitation. Under the interim rule, however, the NCUA believes that it can achieve greater fairness under the revocable trust rules by basing coverage on the naming of any beneficiary in a revocable trust, but concurrently imposing the coverage qualifications discussed below on accounts over $500,000.

In addition to addressing the fairness issue, eliminating the concept of ''qualifying beneficiaries'' makes the coverage rules easier to understand. Members and credit unions no longer need to know who is a qualifying beneficiary and who is not. Also, this revision will obviate the need for NCUA claims agents, upon a credit union's failure to confirm that a beneficiary named in a revocable trust account is a ''qualifying beneficiary.'' Thus, under the interim rule, the NCUA anticipates being able to make quicker share insurance determinations on revocable trust accounts, if necessary.

C. Accounts With Aggregate Balances of $500,000 or Less; Determining Coverage Without the Necessity of Discerning Each Beneficiary's Interest in the Trust(s)

Previously, one of the most complex and confusing aspects of determining revocable trust account coverage was having to discern and consider unequal beneficial interests in revocable trusts. This issue typically arises in the context of a living trust that, for example, provides either varying lump-sum payments for designated beneficiaries or different percentage interests in trust assets to certain beneficiaries, or different ''remainder'' interests in the assets to the same or other beneficiaries. The method for determining coverage in some situations involving unequal beneficial interests necessitates the formulation and solving of simultaneous equations. Credit unions and members alike find applying these equations far too complex. NCUA agrees. Accordingly, a key component of the interim rule is the ability to determine coverage available to account owners without regard to unequal interests of the beneficiaries named in the revocable trust(s). NCUA believes this rule change, coupled with the recognition of all beneficiaries, will make the revocable trust account rules simpler and more transparent.

D. Retaining Current Coverage Levels for Revocable Trust Accounts With More Than $500,000 and More Than Five Beneficiaries Named in the Trust(s)

NCUA believes the vast majority of revocable trust account owners have less than $500,000 in revocable trust accounts at one NCUA-insured institution. In this scenario, under the interim rule, coverage for an account owner's revocable trust accounts will be determined simply by multiplying the number of different beneficiaries named in the trust(s) by $100,000.

To set reasonable limits on the maximum coverage available to revocable trust account owners and also retain the coverage levels available to revocable trust account owners under previous rules, the interim rule provides special treatment for members with revocable trust accounts over $500,000 naming more than five beneficiaries. Under the interim rule, revocable trust account owners with more than $500,000 and more than five beneficiaries named in the trusts are insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary. This coverage is no less than the coverage afforded to such account owners under previous rules, particularly because under the interim rule the coverage is based on the number of beneficiaries, not the number of qualifying beneficiaries. Also, as discussed below, under the interim rule, life-estate interest holders are deemed to

[2] This assumes the account owner has no other revocable trust accounts at the same credit union.

have a $100,000 interest in the trust assets.

For example, assume a member has a living trust account that provides a life estate interest for the member's spouse, $15,000 for his college alma mater, $5,000 for each of three brothers and the remaining amount to his friend. The balance in the account is $600,000. The analysis begins with recognizing the account balance exceeds $500,000 and the number of beneficiaries exceeds five. Accordingly, under the interim rule, the maximum coverage would be the greater of either: $500,000 or the aggregate beneficial interests of all the beneficiaries (up to a limit of $100,000 per beneficiary). The beneficial interests are: $100,000 for the spouse's life estate interest, $15,000 for the college, $5,000 for each brother (totaling $15,000), and $100,000 for the friend (because of the per-beneficiary limitation of $100,000). The total beneficial interests, therefore, are $230,000. Hence, the maximum coverage afforded to the account owner would be $500,000, the greater of $500,000 or $230,000.

NCUA believes basing the coverage of trust accounts in excess of $500,000 with more than five different beneficiaries, on the ownership interest of each beneficiary named in the applicable trust(s) would prevent the potential of having to provide unlimited coverage with respect to revocable trust accounts. Without such a limitation, a member could name a limitless number of beneficiaries each with a nominal interest in the trust and obtain coverage up to $100,000 for naming each such beneficiary. For example, a revocable trust account held in connection with a trust entitling one beneficiary to $1 million and entitling each of nine other beneficiaries to $1 would be insured for $1 million, without the limitation discussed above being imposed as part of the interim rule.

E. Treatment of Life-Estate Interests

Another complicating factor in determining the coverage for living trust accounts is determining the value of life estate interests. A life estate interest usually means the life-estate beneficiary is entitled to the income on the trust assets during his or her lifetime. A large percentage of living trusts provide a life estate interest for one or more beneficiaries. The most typical situation is where a married person creates a trust providing a life estate interest for his or her surviving spouse and a remainder interest for their children. NCUA's previous rules provide that, in such situations, each life-estate holder and each remainder-man (also known as residuary beneficiaries) is deemed to have an equal interest in the trust assets for account insurance purposes. 12 CFR 745.4(e). This rule has proven difficult to apply, especially where the living trust provides for lump-sum gifts for certain beneficiaries, life estate interests for others and different percentage interests for the remainder-men, who may be the same as or different from the other beneficiaries. To simplify the coverage rules, the interim rule revises the previous valuation method for life estate interests by deeming each such interest to be $100,000, for purposes of determining deposit insurance coverage. The example above, involving a trust providing for a spousal life estate interest and bequests to the owner's college alma mater, brothers and friend, demonstrates how the interim rule would apply to a living trust providing for a life-estate interest.

F. Treatment of Irrevocable Trusts Springing From a Revocable Trust

Another complexity in determining coverage for living trust accounts is that, when it is created, a living trust is a revocable trust but, when the owner dies, the trust becomes irrevocable.[3] At that stage in the lifecycle of the living trust, the funds corresponding to the irrevocable trust are insured under NCUA's rules for irrevocable trust accounts.[4] Under those rules, coverage is based on the *non-contingent* interest of each beneficiary named in the trust. In effect, when a living trust evolves from a revocable trust to an irrevocable trust the insurance coverage available on the account is based on a different set of rules, the irrevocable trust account rules. As such, the coverage on the account often decreases from what it had been when the trust was insured solely under the revocable trust rules.

To eliminate this complexity and the confusion it generates, the interim final rule provides that the methods for determining the coverage of the living trust account will remain the same when the trust (or part of the trust) converts to an irrevocable trust. For example, a grantor has a living trust account naming three beneficiaries, each of whom receives a specified share of the trust assets if he or she graduates from college by age 25. Under the previous insurance rules, when the grantor is alive (meaning that the trust is still a revocable trust) the maximum coverage on the account is $300,000—one grantor times three beneficiaries times $100,000. Also under the previous rules, upon the grantor's death (allowing for the six-month grace period during which coverage would remain the same), the coverage reduces to $100,000 (if none of the beneficiaries has graduated from college yet) because of the *contingent* nature of the beneficial interests provided for in the trust. Under the interim rule, contingencies would continue to be irrelevant for coverage purposes after the grantor's death, even though the trust has evolved into an irrevocable trust. In this example, under the interim rule the coverage would still be up to $300,000.

NCUA believes the continuity of coverage provided for under this component of the interim rule will greatly simplify previous methods for determining coverage for living trust accounts. It is important to note, however, that under the interim rule the coverage on a living trust account could still change during the lifecycle of the trust. For example, when both grantors in a co-grantor trust are alive, the maximum coverage on the account would be $1,000,000, because the formula for determining coverage would be: two grantors times five beneficiaries times $100,000.[5] If one of the grantors dies, then the maximum coverage would be one grantor times five beneficiaries times $100,000.[6] Coverage would likewise decrease if one or more of the beneficiaries named in the revocable trust died, assuming the death of the beneficiary(ies) would cause the total number of beneficiaries to drop below five.

G. Effective Date of the Interim Rule

The interim rule is effective on October 3, 2008, the date on which the NCUA Board approved the interim rule by notation vote. 12 CFR 791.4. It is also the date this interim rule was filed for public inspection with the Office of the Federal Register. In this regard, NCUA invokes the ''good cause'' exception to the requirements in the Administrative Procedure Act[7] (APA) that, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of thirty days from the publication date. NCUA believes good cause exists for making the interim rule effective immediately because, based on recent experience, it is clear that many members and credit unions do not fully

[3] For jointly-owned living trusts, upon the death of one of the owners, typically part of the trust remains revocable and part becomes irrevocable.

[4] 12 CFR 745.9–1.

[5] This assumes neither grantor has any other revocable trust accounts at the same insured institution.

[6] Of course, NCUA's rules provide for a six-month grace period after the death of a member during which the coverage would be the same as if the member (grantor) were still alive. 12 CFR 745.2(e).

[7] 5 U.S.C. 553.

understand the insurance rules for revocable trust accounts. Also, the Federal Deposit Insurance Corporation has recently issued an almost identical interim rule and it is important for NCUA to do the same immediately to maintain parity between the nation's two federal deposit/share insurance programs. The interim rule simplifies the coverage rules for revocable trust accounts and, therefore, will provide greater certainty to members and credit unions as to how and to what extent revocable trust accounts are insured.

Importantly, under the interim rule, no member will be insured for an amount less than he or she would have been entitled to under the previous revocable trust account rules. Some members will be entitled to greater coverage under the interim rule than under previous rules, especially because the interim rule eliminates the requirement that a beneficiary be a ''qualifying beneficiary'' for the account owner to be insured on a per-beneficiary basis. Moreover, NCUA believes the interim final rule will result in faster share insurance determinations after a credit union closing and will help improve public confidence in the credit union system.

For these reasons, NCUA has determined that the public notice and participation that ordinarily are required by the APA before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date.[8] Nevertheless, NCUA desires to have the benefit of public comment before adopting a permanent final rule and invites interested parties to submit comments during a 60-day comment period. In adopting the final regulation, NCUA will revise the interim final rule, if appropriate, in light of the comments received.

III. Request for Comments

NCUA requests comments on all aspects of the proposed rulemaking including comments on: (1) Whether ''over $500,000'' is the proper threshold for determining coverage for revocable trust account owners based on the beneficial interests of the trust beneficiaries; (2) whether NCUA's irrevocable trust account rules, 12 CFR 745.9–1, should be revised so that all trusts are covered by substantially the same rules; and (3) what effect the interim rule will have on the level of insured shares.

[8] *Id.*

IV. 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 entities (primarily those under ten million dollars in assets). This interim final rule simplifies and clarifies certain share insurance coverages. Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

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

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) 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 APA. 5 U.S.C. 551. NCUA does not believe this interim final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

Agency Regulatory Goal

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

List of Subjects

12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board, this 3rd day of October 2008.

Paul Peterson,

Acting Secretary of the Board.

■ For the reasons discussed above, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 2. Section 745.4 is revised to read as follows:

§ 745.4 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by a member and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured from other types of accounts the owner has at the same NCUA-insured credit union in an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMSIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as *payable-on-death accounts, in-trust-for* accounts or *Totten Trust* accounts, and such formal trusts are commonly referred to as *living trusts* or *family trusts.* **Example 1:** A member has a living trust account with four beneficiaries named in the trust. The account owner has no other revocable trust accounts at the same NCUA-insured credit union. The maximum insurance coverage would be $400,000, determined by multiplying 4 (the number of beneficiaries) times $100,000 (the current SMSIA). **Example 2:** A member has a payable-on-death account naming his niece and cousin as beneficiaries and, at the same NCUA-insured credit union, has another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $300,000. This is because the account owner has named three different beneficiaries in the revocable trust accounts. The naming of the same beneficiary in more than one revocable trust account, whether a payable-on-death account or living trust account, does not increase the total coverage amount.

(b) *Required intention.* The required intention in paragraph (a) of this section

that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the title of the account or elsewhere in the account records of the credit union using commonly accepted terms such as, but not limited to, *in trust for, as trustee for, payable-on-death* to, or any acronym therefore, or by listing one or more beneficiaries in the account records of the credit union. In addition, for informal revocable trust accounts, the beneficiaries must be specifically named in the account records of the credit union. The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(c) *Definition of beneficiary.* For purposes of this section, a beneficiary includes natural persons as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of *beneficiary* in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMSIA per owner. **Example**: if a member establishes an account payable-on-death to a pet, the account would be insured as a single-ownership account.

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMSIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by a member in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMSIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMSIA or the aggregate amount of the ownership interests of each different beneficiary named in the trusts, to a limit of the SMSIA per different beneficiary. **Example:** A has a living trust account with a balance of $600,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $50,000, A's friend is entitled to $5,000 and a designated charity is entitled to $70,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse. In this case, because the balance of the account is over $500,000, which is five times the current SMSIA of $100,000, and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $500,000 or the aggregate of each different beneficiary's interest to a limit of $100,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $50,000 for each of the children (totaling $150,000), $5,000 for the friend, $70,000 for the charity, and $100,000 for the spouse ($375,000, subject to the $100,000 limit per beneficiary). The aggregate beneficial interests, thus, are $325,000. Hence, the maximum coverage afforded to the account owner would be $500,000, the greater of $500,000 or $325,000.)

(f) *Joint revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMSIA, subject to the limitation imposed in paragraph (e) of this section. **Example 1:** A and B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same NCUA-insured credit union. The maximum coverage afforded to A and B would be $600,000, determined by multiplying the number of owners (2) times the SMSIA (currently $100,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $300,000 and B would be entitled to revocable trust coverage of $300,000. **Example 2:** A and B, two individuals, establish a payable-on-death account naming their two children, two cousins and a charity as beneficiaries. The balance in the account is $700,000. Neither A nor B has any other revocable trust accounts at the same NCUA-insured credit union. The maximum coverage would be determined under paragraph (a) of this section by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $100,000, or $1 million. Because the account balance is less than the maximum coverage amount, the account would be fully insured.

Example 3: A and B, two individuals, establish a living trust account with a balance of $1.5 million. Under the terms of the trust, upon the death of both A and B, each of A's and B's three children is entitled to $200,000, B's cousin is entitled to $150,000, A's friend is entitled to $30,000, and the remaining amount ($720,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each joint account owner, would be the greater of $500,000 or the aggregate amount (as to each joint owner) of the interest of each different beneficiary named in the trust, to a limit of $100,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner A are: $300,000 for the children (three times $100,000), $75,000 for the cousin, $15,000 for the friend, and $100,000 for the charity ($360,000 subject to the $100,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for share insurance coverage is $490,000. Hence, the maximum coverage afforded to joint account owner A would be $500,000, the greater of $500,000 or $490,000 (the aggregate of all the beneficial interests attributable to A, limited to $100,000 per beneficiary). The same analysis and coverage determination also would apply to B.

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a joint revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under section 745.8 and shall not be insured under the provisions of this section. **Example:** If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement under paragraph (a) of this section that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.

(g) For accounts held in connection with a living trust that provides for a life-estate interest for designated beneficiaries, NCUA shall value each such life estate interest as the SMSIA for purposes of determining the insurance coverage available to the account owner.

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 745.9–1 on the insurance coverage of irrevocable trust accounts, a revocable trust account shall continue to be insured under the provisions of this section even if the corresponding revocable trust, upon the death of one or more of the owners thereof, converts, in part or entirely, to an irrevocable trust. **Example:** Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased

grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.

(i) This section shall be effective as of October 14, 2008 for all existing and future revocable trust accounts and for existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

Appendix to Part 745—[Amended]

■ 3. The appendix to part 745 is amended by removing Section B and by redesignating Sections C through G as B through F respectively.

[FR Doc. E8–23922 Filed 10–10–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0983; Airspace Docket No. 08–ASO–14]

Modification of Class D Airspace; MacDill AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies Class D Airspace at MacDill AFB, FL. The MacDill AFB Air Traffic Control Tower no longer operates on a full time basis; therefore, the Class D Airspace associated with the tower operations must be modified to reflect the times when the controlled airspace is effective. This action enhances the National Airspace System by relaxing the restrictions to the controlled airspace areas in the vicinity of MacDill AFB, FL.

DATES: Effective 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before November 28, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0983; Airspace Docket No. 08–ASO–14, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting public comment on this rulemaking action. An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0983; Airspace Docket No. 08–ASO–14.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace at MacDill AFB, FL, by adding to the description of the controlled airspace area the hours of operation of the Air Traffic Control Tower (ATCT) at MacDill AFB. The ATCT at MacDill AFB operates on an other than full-time basis and, therefore, the Class D Airspace associated with the tower operations must be modified to reflect the times when the controlled airspace is effective. Controlled airspace extending upward from the surface of the Earth is required to encompass the airspace necessary for instrument approaches for aircraft operating under Instrument Flight Rules (IFR). The current Class D airspace areas are sufficient for these approaches, so no additional controlled airspace must be defined. Effective times for the MacDill AFB Class D airspace areas will be published first by Notice to Airman, and then thereafter published continuously