of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). This rule will raise the fee charged to businesses for voluntary inspection and grading services for dairy and related products and the evaluation of food processing equipment. Even though the fee will be raised, the increase is approximately 10.7% for nonresident service and 11.8% for resident service and will not significantly affect these entities. These businesses are under no obligation to use these voluntary user-fee based services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. The AMS estimates that overall this rule would yield an additional $522,000 annually. This action reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act.

The AMS regularly reviews its user-fee financed programs to determine if fees are adequate and if costs are reasonable. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy. Without a fee increase, total revenue projections—including travel revenue—for Fiscal Year 2004 would be $5.71 million. Total costs—including travel costs—for the same period of time are projected to increase to $5.95 million. The shortfall, if allowed to continue, would translate into a trust fund balance of $431 thousand or 0.8 months of operating reserve at the end of FY 2007, which is below the Agency policy requirement.

This action raises the hourly fees charged to users of Federal dairy inspection and grading services. AMS estimates this action will provide the Dairy Grading Branch an additional $522 thousand annually. This will generate revenue to recover program costs, automate business practices to minimize the extent of future fee increases, and enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection information to users of these services.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal dairy grading and inspection services.

Comments and Responses

AMS published a proposed rule in the **Federal Register** on October 3, 2003 (68 FR 57882) to increase the fees for Federal dairy grading and inspection services and requested comments by November 3, 2003. The Agency did not receive comments on this proposal.

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

■ For the reason set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

■ 1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

§ 58.43 [Amended]

■ 2. In § 58.43, ''$56.00'' is removed and ''$62.00'' is added in its place, and ''$61.60'' is removed and ''$68.20'' is added in its place.

§ 58.45 [Amended]

■ 3. In § 58.45, ''$51.00'' is removed and ''$57.00'' is added in its place.

Dated: February 20, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4222 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance; Living 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 them and maintain parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendment changes the existing rules concerning coverage for beneficial interests in living trust accounts. The rules are amended by eliminating the provisions that would limit insurance coverage where the interest of the beneficiary is subject to a defeating contingency in a living trust agreement. With the amendment, share insurance coverage of up to $100,000 is provided per qualifying beneficiary who, as of the date of an insured credit union's failure, would become the owner of assets in the living trust upon the account owner's death. The FDIC recently amended its deposit insurance rules by making a similar change. This amendment is adopted as an interim rule to provide parity between NCUA and FDIC insurance regulations and aid the public and prevent confusion over the amount of Federal account insurance available on those accounts.

DATES: This final rule is effective on April 1, 2004. Comments must be received on or before April 26, 2004.

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 e-mail 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: Ross Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6562.

SUPPLEMENTARY INFORMATION:

A. Background

Living trusts have become an increasingly popular way for individuals to transfer assets outside of probate while retaining control of the funds during their lifetime. Where a grantor establishes a share account with funds that are subject to a separate living trust agreement, share insurance coverage is provided in accordance with NCUA's rules that govern revocable trust accounts. 12 CFR 745.4. The NCUA believes, based on its experience and upon the experience of the FDIC, that many persons who have established living trust accounts do not understand the impact under the current rules of a defeating contingency on the availability of separate insurance

coverage for beneficial interests in the account, even for ''qualifying beneficiaries'' (the spouse, child, grandchild, parent or sibling of the grantor).

The rules were designed to cover a straightforward ''payable on death'' account, sometimes simply referred to as a ''POD'' account, that provides for the payment of any balance remaining in an account upon its owner's death to specified beneficiaries. Evidence of the intent of the account owner to pass funds to one or more beneficiaries may be as simple as a designation in the account signature card such as ''POD.'' By contrast, a living trust arrangement involves a separate, often complex trust document that may specify that an identified beneficiary's right to receive some portion of the account balance is dependent upon certain conditions.

Currently, if the interest of a qualifying beneficiary in an account established under the terms of a living trust agreement is contingent upon fulfillment of a specified condition, referred to as a defeating contingency, separate insurance is not available for that beneficial interest. Instead, the beneficial interest would be added to any individual account(s) of the grantor and insured to a maximum of $100,000. Because the coverage for these types of accounts is under the same rules that govern a simple ''payable on death'' account, members and credit unions sometimes mistakenly believe that interests in living trusts are automatically insured up to $100,000 per qualifying beneficiary.

An example of a defeating contingency is where an account owner names his son as a beneficiary but specifies in the living trust document that his son's ability to receive any share of the trust funds is dependent upon him successfully completing college. Another common example is where a grantor's will provides that funds in the living trust account can be used to satisfy a legacy made in the will. A third example is where the interest of one beneficiary is dependent upon another beneficiary's surviving the grantor. In each case, the current rule operates to prevent separate insurance coverage, even for a qualifying beneficiary, because his or her interest is contingent.

Even though the existing rules contain a definition of a defeating contingency and an explanation of how such a contingency can defeat separate insurance coverage, our experience, consistent with that of the FDIC, is that the operation of the rule is not widely understood. NCUA recognizes that the rules governing the insurance of living trust accounts are complex and confusing. The FDIC reports that it has had to deny separate insurance coverage for some beneficiaries of living trusts in cases where it was clear that the grantor was not aware of the impact of language in the trust agreement. NCUA staff have reviewed recent examples of trust agreements that appear to have inadvertently created defeating contingencies that would thwart separate insurance for otherwise qualifying beneficiaries. In addition, the current rules may require a detailed review of the trust documents to determine if a defeating contingency exists. This effort is both difficult and time consuming.

B. Parity With FDIC Deposit Insurance Rules

The changes will minimize confusion about the application of NCUA's insurance rules to these types of accounts and maintain parity with FDIC insurance on similar accounts at banks and savings associations. The policy of the NCUA Board is to maintain parity with the FDIC, since the account insurance funds administered by both agencies are backed by the full faith and credit of the Federal Government. NCUA believes it important that members of the public who use living trust accounts for the future transfer of ownership of family assets without loss of control during the owner's life receive the same protection, whether the accounts are maintained at credit unions or other federally insured institutions.

C. The Interim Rule

NCUA has revised the current living trust account rules to provide for insurance coverage of up to $100,000 per qualifying beneficiary who, as of the date of a credit union's failure, would become entitled to the living trust assets upon the owner's death. While this approach provides insurance coverage for qualifying beneficial interests irrespective of defeating contingencies, a beneficiary's trust interest that is dependent upon the *death* of another trust beneficiary will still not qualify for separate insurance. If a beneficiary's interest is subordinate only to a life estate of another beneficiary, that interest will be insured. The amended rule allows for separate insurance for both the life estate and the remainder interest for qualified beneficiaries.

An example that illustrates the basic rule is where an account established under a living trust provides that the trust assets go in equal shares to the grantor's three children upon the grantor's death. This account would be eligible for $300,000 of deposit insurance coverage. The coverage would still be $300,000 even if the trust provides that the funds would go to the children only if each graduates from college before the owner's death because defeating contingencies will no longer be relevant for deposit insurance purposes.

Another example would be where a living trust provides that the owner's spouse becomes the owner of the trust assets upon the owner's death but, if the spouse predeceases the owner, the three children then become the owners of the assets. In this case, if the spouse is alive when the credit union fails, the account will be insured up to a maximum of $100,000, because only the spouse is entitled to the assets upon the owner's death. If at the time of the credit union failure, however, the spouse had predeceased the owner, then the account would be eligible for up to $300,000 coverage because there would be three qualifying beneficiaries entitled to the trust assets upon the owner's death.

Consistent with the FDIC's position, the NCUA has also determined not to require a credit union to maintain records disclosing the names of living trust beneficiaries and their respective trust interests. The FDIC solicited comment specifically on this matter and concluded that to do so would be unnecessary and burdensome. The NCUA Board concurs with that judgment, recognizing that a grantor may elect to change the beneficiaries or their interests at any time before his or her death and that requiring a credit union to maintain a current record of this information is impractical and unnecessarily burdensome. The general principles governing share insurance coverage in NCUA's regulations, however, require that the records of the credit union disclose the basis for any claim of separate insurance. 12 CFR 745.2(c). This obligation may be met if the title of the account or other credit union records refer to a living trust. The final rule makes reference to this fact, but specifically disclaims any requirement that the credit union's records must identify beneficiaries or disclose the amount or nature of their interest in the account.

NCUA believes the final rule achieves two important objectives: simplifying the existing rule and providing consistency in how insurance coverage is determined for all types of revocable trust accounts. With the amendment, both living trust accounts and ''payable on death'' accounts will have insurance coverage calculated in the same fashion. In each case, coverage is based upon the interest of the beneficiaries who will

receive the account funds when the owner dies, determined as of the date of the credit union's failure, regardless of any contingencies or conditions affecting those interests. In addition, the amendment will provide credit unions and their members with a better understanding of the share insurance coverage rules and will help to eliminate the present confusion surrounding the coverage of living trust accounts.

Non-qualifying beneficiaries

The amendment does not change the way in which non-qualifying beneficiaries are treated for share insurance purposes. As is the case with traditional revocable trust accounts, a beneficiary must be the spouse, child, grandchild, parent or sibling of the grantor in order to qualify for separate insurance coverage. The interest of any non-qualifying beneficiary will be added to any other single-ownership or individual funds of the grantor and insured to a maximum of $100,000.

Life estate and remainder interests

Living trusts sometimes provide for a life estate interest for designated beneficiaries and a remainder interest for other beneficiaries. The final rule addresses this situation by deeming each life estate holder and each remainder beneficiary to have an equal interest in the trust assets and provides up to $100,000 coverage per qualifying beneficiary. For example, assume a grantor creates a living trust providing for a spouse to have a life estate interest in the trust assets with the remaining assets going to their two children upon the spouse's death. The assets in the trust are $300,000 and a living trust account is opened for that full amount. Unless otherwise indicated in the trust, the NCUA would deem each of the beneficiaries to own an equal share of the $300,000, and the full amount would be insured. This result would be the same even if the spouse has the power to invade the principal of the trust, because, under the amended rule, defeating contingencies are no longer relevant for insurance purposes.

Another example would be where the living trust provides for a life estate interest for the grantor's spouse and remainder interests for two nephews. As in the preceding example, each beneficiary would be deemed to have an equal ownership interest in the trust assets, unless there were an indication specifying different ownership interests. Here the life estate holder is a qualifying beneficiary, the grantor's spouse, but the remainder beneficiaries, the grantor's nephews, are not. As such, assuming an account balance of $300,000, the living trust account would be insured for *at least* $100,000 because the grantor's spouse is a qualifying beneficiary. The $200,000 attributable to the grantor's nephews would be insured as the grantor's single-ownership funds. If the grantor has no other single-ownership funds at the same credit union, then only $100,000 would be insured. Thus, the $300,000 in the living trust account would be insured for a total of $200,000 and $100,000 would be uninsured. The NCUA believes this is a simple, balanced approach to insuring living trust accounts where the living trust provides for one or more life estate interests and is also consistent with the FDIC's approach.

Appendix

The interim rule makes a corresponding change to Example 4, under part B of the appendix to part 745, to reflect this amendment. It removes language that had been in that example discussing the need to determine whether a defeating contingency adds an example to illustrate the operation of the rule in cases involving a life estate and remainder interests.

D. Request for Comments

The Administrative Procedure Act requires that an agency must provide an opportunity for public comment before issuing a final rule unless it finds for ''good cause'' that public comment is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The NCUA Board has determined that public comment is unnecessary and contrary to the public interest because: The rule preserves parity with recently amended account insurance rules administered by the FDIC, 69 FR 2825 (January 21, 2004); the rule benefits credit union members and employees by simplifying how to determine the amount of coverage available on a commonly used account; it increases the amount of coverage that is available for the benefit of credit union members; and it does not prejudice credit union members or credit unions or require changes to current practices. Nevertheless, this is an interim final rule, and the Board will accept comments for a period of 60 days following the date of publication in the **Federal Register**. All comments will be considered and the rule may be changed in light of the comments received.

E. Effective Date

To avoid confusion and preserve parity with the FDIC, this interim rule will become effective on April 1, 2004, the beginning of the next calendar quarter following publication in the **Federal Register**. Consistent with the FDIC's approach, the rule will apply as of that date to all living trust accounts unless, upon the failure of an insured credit union, a member who established a living trust account prior to April 1, 2004, elects coverage under the previous living trust account rules. If a credit union fails between the date of publication in the **Federal Register** and April 1, 2004, NCUA will apply the final rule if doing so will result in greater coverage for a living trust account.

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, defined as those under ten million dollars in assets. This rule only clarifies the share insurance coverage available to credit union members, without imposing any regulatory burden. The final amendments 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. The 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 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. NCUA has obtained the determination of the Office of Management and Budget 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 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on February 19, 2004.

Becky Baker,

Secretary of the Board.

■ Accordingly, 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 amended by revising paragraph (e) to read as follows:

§ 745.4 Revocable trust accounts.

* * * * *

(e) *Living Trusts.* Insurance treatment under this section also applies to revocable trust accounts held in connection with a so-called ''living trust,'' meaning a formal trust that an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the share account held in connection with the living trust may be eligible for share insurance under this section, assuming compliance with all the provisions of this part. This coverage applies only if, at the time an insured credit union fails, a qualifying beneficiary would be entitled to his or her interest in the trust assets upon the grantor's death and that ownership interest would not depend upon the death of another beneficiary. If there is more than one grantor, the beneficiary's entitlement to the trust assets must be upon the death of the last grantor. The coverage provided in this paragraph (e) is irrespective of any other conditions in the trust that might prevent a beneficiary from acquiring an interest in the share account upon the account owner's death. The rules in paragraph (c) of this section on the interests of non-qualifying beneficiaries apply to living trust accounts. For living trust accounts that provide for a life estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life estate holder and each remainder-man will be deemed to have equal interests in the trust assets for share insurance purposes. Coverage will then be provided under the rules in this paragraph (e) up to $100,000 per qualifying beneficiary. For a living trust account to qualify for coverage provided under this paragraph (e), the records of the credit union must reflect that the funds in the account are held pursuant to a formal revocable trust, but the credit union's records need not indicate the names of the beneficiaries of the living trust or their ownership interests in the trust. Effective April 1, 2004, this paragraph (e) will apply to all living trust accounts, unless, upon an insured credit union failure, a member who established a living trust before April 1, 2004, chooses coverage under the previous living trust account rules. For any insured credit union failures occurring between February 19, 2004 and April 1, 2004, the NCUA will apply the living trust account rules in this revised paragraph (e) if doing so would benefit living trust account holders of such insured credit union.

* * * * *

■ 3. The appendix to part 745 is amended by revising Example 4 and adding new Example 5 under section B to read as follows:

Appendix to Part 745–Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

B. How Are Revocable Trust Accounts Insured?

* * * * *

Example 4

Question: Member H invests $200,000 in a revocable trust account held in connection with a living trust with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds would normally be insured under the rules governing revocable trust accounts up to $100,000 as to each beneficiary, (§ 745.4(b)). However, because this account is held in connection with a living trust whose named beneficiaries are qualifying beneficiaries under § 745.4, it must be scrutinized to determine whether the account complies with all other provisions of this part. Assuming that the account complies with all other requirements of this part, then it will be treated as any other revocable trust. In this instance, it will be insured up to $100,000 as to each beneficiary (§ 745.4(e)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

Example 5

Question: H creates a living trust providing for his wife to have a life estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are $300,000 and a living trust share account is opened for that full amount. What is the coverage amount?

Answer: Unless otherwise indicated in the trust, each beneficiary (all of whom here are qualifying beneficiaries) would be deemed to own an equal share of the $300,000; hence, the full amount would be insured. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as defeating contingencies are not relevant for insurance purposes.

* * * * *

[FR Doc. 04–4217 Filed 2–25–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NE–05–AD; Amendment 39–13488; AD 2004–04–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding two existing airworthiness directives (ADs) for GE CF6–80 series turbofan engines with certain stage 1 high-pressure turbine (HPT) rotor disks. Those ADs currently require initial and repetitive inspections of certain stage 1 HPT rotor disks for cracks in the bottom of the dovetail slot. This action retains the