(B) The insured branch has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the Board, FDIC, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) *Discretionary standards.* In determining whether an insured branch that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the FDIC may consider additional factors, including whether:

(i) Any of the individual components of the ROCA supervisory rating of an insured branch is rated ''3'' or worse;

(ii) The results of any off-site monitoring indicate a deterioration in the condition of the insured branch;

(iii) The size, relative importance, and role of a particular insured branch when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the parent foreign bank gives rise to such a need.

(c) *Authority to conduct more frequent examinations.* Nothing in paragraphs (a) and (b) of this section limits the authority of the FDIC to examine any insured branch as frequently as it deems necessary.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of April, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–27624 Filed 10–21–99; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Statutory Lien

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Pursuant to its practice of periodically reviewing existing regulations and policy statements, NCUA proposed to update, clarify and convert to a regulation the provisions of an existing Interpretive Ruling and Policy Statement implementing the statutory lien authority granted by the Federal Credit Union Act. As revised to reflect comments on the proposed rule and to incorporate other improvements, the final rule implements the statutory right of federal credit unions to impress a lien against the shares and dividends of their members, and to enforce that lien to satisfy members' outstanding financial obligations due and payable to the credit union, even when such obligations are not secured by shares.

DATES: Effective November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Division of Litigation & Liquidations, Office of General Counsel, at the above address or telephone: (703) 518–6557.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prior Interpretations of Statutory Authority

Section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11) (hereinafter ''§ 1757(11)''), provides that a federal credit union ''shall have [the] power * * * to impress and enforce a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or charges payable by him.'' Beginning in 1979, NCUA took the position that a federal credit union could enforce the lien granted by § 1757(11) only after it had obtained a court judgment on the debt, unless state law allowed enforcement of the lien without first obtaining such a judgment. NCUA, *Manual of Laws Affecting Federal Credit Unions* 1–17 (6/78 ed.); NCUA, *Credit Manual for Federal Credit Unions* 29 (12/79 ed.). Once the prerequisite judgment was obtained, the credit union could apply the member's shares to his or her outstanding loan balance.

In 1982, NCUA reconsidered this interpretation of § 1757(11) because experience indicated that it placed credit unions at a disadvantage compared to other financial institutions, which generally can offset a borrower's loan without first obtaining a court judgment. 47 FR 44340 (October 7, 1982). As a result, NCUA issued Interpretive Ruling and Policy Statement No. 82–5 (''IRPS 82–5''), reinterpreting § 1757(11) to authorize a credit union to enforce the lien on the shares and dividends of a member without first obtaining a court judgment against the member, state law to the contrary notwithstanding. 47 FR 57483 (December 27, 1982). The NCUA Board concluded, and still maintains, that the reinterpretation of § 1757(11) is more consistent with Congressional intent.

B. Proposed Rule

In 1987, NCUA issued Interpretive Ruling and Policy Statement No. 87–2 entitled ''Developing and Reviewing Government Regulations,'' 52 FR 35231 (Sept. 18, 1987) (''IRPS 87–2''). IRPS 87–2 established the policy of reviewing all existing NCUA regulations every three years for the purpose of updating, clarifying and simplifying them, and eliminating redundant and unnecessary provisions. *Id.* at 35232.

To fulfill the purpose of IRPS 87–2, NCUA issued a proposed rule updating, clarifying and converting to a regulation the provisions of IRPS 82–5. 63 FR 57943 (October 29, 1998). By the comment deadline of January 27, 1999, NCUA received 27 comments in response to the proposed rule. Comments were submitted by nine state credit union leagues, ten individual credit unions, four attorneys who represent credit unions, three national credit union trade associations, and one banking industry trade association.

C. Final Rule

There are two principal differences between the proposed rule and the final rule. The first is that, consistent with the overwhelming consensus of comments, the final rule abandons the shift in policy since IRPS 82–5 toward limiting application of the statutory lien to loan-related indebtedness to the credit union, e.g., unpaid loan principal and interest and charges such as a late fee and collection expenses. The final rule reads § 1757(11) expansively to apply the statutory lien to outstanding member financial obligations of any kind owed to the credit union. § 701.39(a)(5). The second principal difference is that, instead of requiring separate disclosure at the time a lien is impressed, the final rule codifies credit unions' nearly uniform practice of putting members on notice in advance, in account opening and loan documentation, of the credit union's right to impress a lien and to enforce it without further notice. § 701.39(a)(4).

II. Section-by-Section Analysis of Comments

Six commenters favored retaining the statutory lien authority in an IRPS instead of converting it to a rule, one favored the rule over an IRPS, and one wished to eliminate both the IRPS and the rule in favor of the language of § 1757(11) itself. Converting IRPS 82–5 to a regulation is consistent with NCUA's preference for using regulations

to implement statutory mandates and using IRPSs to offer guidance and articulate policy.

Those who oppose conversion to a rule generally contend that credit unions may be misled to believe that the rule comprehensively addresses the statutory lien when in fact its operation may in certain respects rely on state laws which the rule neither expressly preempts nor expressly incorporates by reference. As described below, the final rule addresses this problem by itemizing preempted state law prerequisites in one case, § 701.39(d)(3), and elsewhere by inserting the proviso ''except as otherwise provided by law,'' which the rule defines. § 701.39(a)(1).

Two commenters requested that NCUA republish a proposed rule on statutory liens for a second round of public comments. This suggestion is premature, having been made before NCUA had even had an opportunity to react to the comments it received in response to the proposed rule. Furthermore, now that NCUA has reviewed those comments, a substantial number of suggested revisions have been adopted in the final rule. As a result, the final rule is quite different from the proposed rule, yet for the most part does not depart from the substance of IRPS 82–5. Thus, NCUA has concluded that a further round of comments is unwarranted.[1]

A. Section 701.39(a)—Definitions

The proposed rule had no separate section devoted to definitions used in the rule, although several terms were defined in the text of the rule, e.g., ''statutory lien'' and ''member.'' NCUA concurs with commenters who suggested improving the rule by defining certain terms used frequently throughout. Thus, the final rule combines the existing and the new definitions in § 701.39(a).

1. ''*Except as otherwise provided by law*'' or ''*except as otherwise provided by federal law*.'' The proposed rule expressly provided that ''A statutory lien pursuant to section 107(11) of the Act, 12 U.S.C. 1757(11), preempts state laws governing the right of a creditor to impress and enforce a lien, as well as the common law right of set-off.'' The purpose of this ''preemption'' provision was to put credit unions in parity with other federally-insured financial institutions by exempting them from state laws requiring a creditor to obtain a court judgment on the debt before enforcing a lien.

Two commenters complained that the language of the provision as proposed is overbroad, sweeping within its ambit state laws that may benefit credit unions and on which they should be free to rely. Both commenters suggest that the final rule enumerate which state laws it preempts and which ones it does not preempt. One commenter advocates not preempting the common law right of set-off, so it will remain available to credit unions which prefer that over the statutory lien.

To eliminate ambiguity caused by the proposed rule's blanket preemption provision, the final rule deletes that provision. In its place, NCUA has inserted the qualifying language ''except as otherwise provided by law'' or ''by federal law'' as a preface to several provisions of the rule.[2] *See* §§ 701.39(b), (c) and (d)(1). This proviso is defined as ''a federal and/or state law, as the case may be, which supersedes a requirement of [the rule.]'' ''Except as otherwise provided *by law*'' refers to both state *and* federal laws; ''except as otherwise provided *by federal law*'' refers to federal laws only. (emphasis added.) Section 701.39(a)(1) not only signals the possible existence of superseding federal and/or state law requirements, but alerts credit unions of their responsibility to ''ascertain whether such statutory or case law exists and is applicable.''

2. ''*Impress*.'' NCUA recognizes that ''impress'' is a term of art which may be unfamiliar. Therefore, the final rule defines it as the act of attaching a lien to a member's account, which makes the lien enforceable against the funds in that account. § 701.39(a)(2).

3. ''*Member*.'' The proposed rule defined a ''member'' for statutory lien purposes to include not only the maker of a note or equivalent instrument establishing indebtedness to the credit union, but also co-makers and guarantors. Four commenters supported the effort to extend the reach of the statutory lien to accommodation parties, but suggested expanding the definition to encompass *any* member who is responsible for repayment of an obligation to the credit union. This would address the practice by credit unions of using various different terms to refer to different levels of responsibility for repayment, such as maker, co-maker, guarantor, co-signer, endorser, surety, accommodation party. To that end, the final rule expands the definition of ''member'' to include ''any member who is primarily or secondarily responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party.'' § 701.39(a)(3).

4. ''*Notice*.'' In response to comments about the vagueness and timing of the ''notice'' credit unions must give when impressing a statutory lien, *see* § 701.39(c), the final rule defines the term ''notice'' as written notice disclosing that the credit union has the right to impress and enforce a statutory lien in the event of failure to satisfy a financial obligation, and may do so without further notice to the member. § 701.39(a)(4). In a significant departure from the proposed rule, the definition now provides that notice may be given at the time, *or at any time before*, the member incurs the financial obligation. In recognition of the increasing use of paperless electronic transactions, NCUA interprets ''written notice'' to include a notice conveyed in writing electronically, *e.g.*, ''on-line'' or via e-mail, unless otherwise required by federal law or regulation. The rule contemplates a notice disclosing in plain language the practical effect of a statutory lien, rather than a technical definition of that term.

5. ''*Statutory lien*.'' The proposed rule defined a statutory lien under § 1757(11) as a security interest in a member's shares and dividends. Seven commenters insisted that this definition is technically incorrect and inappropriate for three reasons. First, because the statutory lien is a right conferred by statute, whereas a security interest is given voluntarily or consensually. *Compare* 11 U.S.C. 101(51) *with* 11 U.S.C. 101(53). Second, because a security interest is by definition an interest generally limited to tangible property or fixtures. *See* Black's Law Dictionary 1357, 1413 (6th ed. 1990) (''security interest'' and ''statutory lien''); UCC § 1–201(37); 26 U.S.C. 6323(h). Third, because ''security interest'' is a term of art associated with the Uniform Commercial Code (UCC), the statutory lien authority may be subject to interpretations under UCC Article 9 affecting attachment and enforceability.[3] These criticisms are well taken. Therefore, the final rule redefines the term ''statutory lien'' as ''a right in or claim to a member's shares and dividends equal to the amount of

[1] Two commenters requested that NCUA delay the effective date of the final rule to allow them to amend by-laws, policies and account and loan documentaiton to accommodate the proposed separate notice requirement. Because the final rule abandons that proposal, the request is declined.

[2] In one provision § 701.39(d)(3), the final rule enumerates two specific prerequisites of state law from which the rule exempts federal credit unions when enforcing a statutory lien.

[3] The UCC expressly provides that Article 9 ''does not apply * * * to a lien given by statute or other rule of law * * *.'' UCC §§ 9–102(2), 9–104(c).

that member's outstanding financial obligations to the credit union, as that amount varies from time to time.'' § 701.39(a)(5).[4]

The proposed rule limited application of the statutory lien to outstanding indebtedness to the credit union consisting of ''loan principal and interest and other charges'' owed by a member as either maker, co-maker or guarantor of the indebtedness. This provision reflected a policy shift, articulated since IRPS 82–5, toward narrowing the scope of the statutory lien to loan-related indebtedness. NCUA received 23 comments overwhelmingly challenging this interpretation of § 1757(11). As the commenters uniformly insisted, the statutory language of § 1757(11) imposes no such limitation and, as noted in the preamble of the proposed rule, ''can be read to apply to member financial obligations beyond [loan-related] indebtedness to the credit union.'' 63 FR 57994. The comments caused NCUA to reconsider and to abandon its interpretation limiting the scope of § 1757(11) to loan-related indebtedness. Accordingly, the final rule expands the definition of ''statutory lien'' to encompass any ''outstanding financial obligation to the credit union,'' not just loan-related indebtedness. § 701.39(a)(5).

B. Section 701.39(b)—Superior Claim

1. *Subordination.* The proposed rule provided that a statutory lien ''gives the federal credit union priority over all other creditors when claims are asserted against members' account(s).'' Five commenters contend that this is an overstatement because the credit union's lien remains subordinate to certain limited types of claims, *e.g.*, an IRS levy and a perfected security interest in a share certificate. NCUA agrees. Instead of attempting to enumerate all possible instances where a statutory lien does *not* have priority, NCUA has revised the final rule to read: ''Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).'' § 701.39.

2. *Exemptions.* Similarly, the proposed rule contained an ''exemptions'' provision enumerating three instances in which federal law bars resort to a statutory lien to offset an outstanding financial obligation.[5] Nine commenters raised two principal objections to this provision. First, that an itemized list of exemptions which is less than complete—as they contend was the case in the proposed rule—is ''a trap for the unwary'', who may be misled to rely on it as the sole, comprehensive source of interpretation of federal law exemptions. These commenters advocate either eliminating the proposed ''exemption'' provision altogether from the final rule, or making it truly comprehensive by completely enumerating all federal law exemptions. Second, that the final rule should not attempt to itemize specific statutory lien exemptions because, far from being uniformly settled, the applicability of each is subject to evolving interpretation of the law based on the facts of each case. Taking account of these comments, NCUA has decided to omit an ''exemptions'' provision from the final rule and, instead, to put credit unions on notice by prefacing the sections on impressing and enforcing a statutory lien (§§ 701.39(b) and (c)) with the qualifying language ''except as otherwise provided by federal law''—a proviso which the rule defines. § 701.39(a)(1).[6]

C. Section 701.39(c)—Impressing a Statutory Lien

Following IRPS 82–5, the proposed rule authorized credit unions to impress a statutory lien in either of three ways: (1) By noting the existence of the lien in the credit union's records of the member's account(s); (2) by reciting in a loan document signed by the member that shares and dividends are subject to the lien; or (3) by duly adopting a by-law or policy of the board of directors establishing a statutory lien to satisfy its members' delinquent indebtedness. *See, e.g., Federal Credit Union Bylaws*, Art. III, § 5(d) (12/87 ed.). In contrast to IRPS 82–5, the proposed rule required written disclosure to the member at the time a statutory lien is impressed by notation on a member's account record, or through a duly adopted by-law or policy. Under the definition of ''member,'' this also would require notice to accommodation parties. *See* § 701.39(a)(2). The final rule modifies the proposed options as follows.

1. *Separate notice proposal.* Eight commenters oppose the new so-called ''separate notice'' requirement altogether, and three prefer it in modified form, despite acknowledging its purpose—to ensure that members are aware when their credit union exercises its right to impress a lien on their accounts. The commenters object that the separate notice requirement imposes an undue regulatory burden because: (1) It is redundant if a credit union already has included such notice in the member's account opening documentation; (2) it could be interpreted as demanding an explanation of the literal term ''statutory lien,'' instead of or in addition to disclosure of its *effect* on a member's account, thereby forcing credit unions to modify and reprint account and loan forms; and (3) there is no apparent record of disclosure problems justifying additional notice to members. One commenter condemned the entire provision on impressing a lien as a regulatory burden at odds with the Regulatory Flexibility Act; compliance with that statute is addressed below in section III of the preamble.

NCUA has determined that its disclosure objective still can be accomplished by a notice requirement that is consistent with credit unions' nearly uniform practice of disclosing the right to impress and enforce a statutory lien in advance in account opening and loan documentation. The final rule's definition of ''notice'' codifies this practice. § 701.39(a)(4). Moreover, the definition abandons the proposal to require separate notice at the time a loan is granted or a financial obligation is incurred even when such notice already was given by a method prescribed in the rule. This relaxation of the original separate notice proposal should minimize, if not completely eliminate, any additional regulatory burden.

2. *Account documentation.* The language from IRPS 82–5 allowing a lien to be impressed ''by noting the existence of the lien of the on the credit union's records of the member's account(s)'' is archaic. The modern equivalent of ''noting the existence of the lien'' is to give members advance notice of the right to impress and enforce it, and the

[4] A statutory lien is a ''floating'' lien, meaning it ''floats'' as the outstanding balance of the obligation varies from time to time, and as the member's account balance is reduced by withdrawals or increased by deposits or dividend payments. When the statutory lien is enforced, it applies to all funds in the account at that point, which may be less than the outstanding balance of the obligation.

[5] Impressing a lien upon an Individual Retirement Account, 26 U.S.C. 408(a)(4); enforcing a lien to offset credit card debt, 12 CFR 226.12(d); and enforcing a lien on a member's account which is the subject of an ''automatic stay'' in bankruptcy. 11 U.S.C. 362(a)(7).

[6] Four commenters criticized guidance in the preamble (but not in the proposed rule itself) for failing to take account of the impact of state law definitions of ownership interests in a credit union account e.g., partnerships, trusts, tenants by the entirety. To prevent unequal treatment of federal credit unions and state-chartered credit unions, the final rule does not preempt these definitions. Thus, the definition of an ownership interest may restrain a credit union from enforcing a lien on the account of a member who falls outside the definition of the member who has failed to satisfy a financial obligation to the credit union. For example, if an individual member fails to repay a loan to the credit union, the credit union may impress and enforce a lien on that member's other personal accounts at the credit union; however, the credit union may *not* enforce a lien on an account owned by that member as tenant by the entirety with his or her spouse.

modern equivalent of a ''credit union's record(s) of the member's account(s)'' in which that disclosure is made is an account agreement or other account opening documentation. To reflect this reality, the final rule permits credit unions to impress a statutory lien ''by giving notice thereof in the member's account agreement(s) or other account opening documentation.'' § 701.39(c)(1).

3. *Signature requirement.* Two commenters questioned the signature requirement for a loan document reciting that shares and dividends are subject to a lien, pointing out that loan documents such as credit card agreements do not require the borrower's signature, and that loans increasingly are contracted for through paperless electronic transactions in which a signature is anachronistic. To account for these developments, the final rule provides that a loan document must be ''signed or otherwise acknowledged by the member(s).'' § 701.39(c)(2).

4. *Board policy.* Seven commenters who advocated permitting a statutory lien to be impressed by means of a duly-adopted policy of the board of directors apparently overlooked the proposed rule's provision exactly to that effect. It is retained without modification in the final rule. § 701.39(b)(3).

D. Section 701.39(d)—Enforcing a Statutory Lien

1. *Application of funds.* Under proposed rule, a statutory lien is enforced on a member's account ''by debiting the balance of funds in the account and applying it to offset the member's outstanding indebtedness * * *.'' Although no comment addressed this subsection, the following conforming and technical revisions have been made. First, the proviso ''Except as otherwise provided by federal law'' now precedes the text of the subsection. § 701.39(d)(2). Second, the words ''applying [the balance] to offset the member's indebtedness, including unpaid loan principal and interest, and fees and charges attributable to the indebtedness'' have been replaced by the words ''applying [funds] to the extent of any of the member's outstanding financial obligations due and payable to the credit union.'' *Id.*

2. *Default required.* The proposed rule required that a member be in default on his or her indebtedness to the credit union before it can enforce its statutory lien.[7] The one comment addressing this provision suggested defining ''default'' for enforcement purposes as ''the failure to satisfy a financial obligation.'' The final rule adopts this suggestion, but also inserts the word ''outstanding'' preceding ''financial obligation.'' § 701.39(d)(2). NCUA interprets the words ''financial obligation'' to encompass not only a repayment obligation, but related nonmonetary obligations such as a restriction on the sale of collateral securing a loan.

3. *Neither judgment nor set-off required.* The proposed rule provides that a court judgment on the member's debt is not a prerequisite to enforcement of a statutory lien. This provision expressly preempts state laws to the contrary. No comment addressed this subsection. However, to indicate that credit unions also need not exercise the equitable right of set-off as a prerequisite to enforcing a statutory lien, a clause to that effect has been inserted within this subsection. § 701.39(d)(3).

E. Withdrawal of Current Interpretive Ruling and Policy Statement

Concurrent with the effective date of the final rule implementing the statutory lien, the NCUA Board withdraws the current IRPS 82–5, 47 FR 57483 (December 27, 1982).

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The final rule on the statutory lien would reduce existing regulatory burdens. Therefore, the NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final rule has no information collection requirements. Therefore, no Paperwork Reduction Act analysis is required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule does not apply to State-chartered credit unions and, thus, would not effect State interests. Therefore, no analysis is required.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Insurance, Liens, Mortgages, Reporting and recordkeeping requirements, Surety bonds, Statutory liens

By the National Credit Union Administration Board on October 6, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR chapter VII is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C 4311–4312.

2. Part 701 is amended to add § 701.39, which reads as follows:

§ 701.39 Statutory lien.

(a) *Definitions.* Within this section, each of the following terms has the meaning prescribed below:

(1) *Except as otherwise provided by law* or *except as otherwise provided by federal law* is a qualifying phrase referring to a federal and/or state law, as the case may be, which supersedes a requirement of this section. It is the responsibility of the credit union to ascertain whether such statutory or case law exists and is applicable;

(2) *Impress* means to attach to a member's account and is the act which makes the lien enforceable against that account;

(3) *Member* means any member who is primarily, secondarily or otherwise responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party;

(4) *Notice* means written notice to a member disclosing, in plain language, that the credit union has the right to impress and enforce a statutory lien against the member's shares and dividends in the event of failure to satisfy a financial obligation, and may enforce the right without further notice to the member. Such notice must be given at the time, or at any time before,

[7] Default as a prerequisite for enforcement distinguishes a statutory lien from a loan secured by the member's pledge of his or her shares (commonly known as a ''share secured loan''). Until a statutory lien is enforced following a member's default, the member is permitted to make withdrawals from the impressed account(s) even to a level below that of the outstanding obligation. In the case of a share secured loan, however, the member never can make withdrawals below the level of the outstanding obligation.

the member incurs the financial obligation;

(5) *Statutory lien* means the right granted by section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11), to a federal credit union to establish a right in or claim to a member's shares and dividends equal to the amount of that member's outstanding financial obligation to the credit union, as that amount varies from time to time.

(b) *Superior claim*. Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).

(c) *Impressing a statutory lien*. Except as otherwise provided by federal law, a credit union can impress a statutory lien on a member's account(s)—

(1) *Account records.* By giving notice thereof in the member's account agreement(s) or other account opening documentation; or

(2) *Loan documents.* In the case of a loan, by giving notice thereof in a loan document signed or otherwise acknowledged by the member(s); or

(3) *By-Law or policy*. Through a duly adopted credit union by-law or policy of the board of directors, of which the member is given notice.

(d) *Enforcing a statutory lien*. (1) *Application of funds.* Except as otherwise provided by federal law, a federal credit union may enforce its statutory lien against a member's account(s) by debiting funds in the account and applying them to the extent of any of the member's outstanding financial obligations to the credit union.

(2) *Default required.* A federal credit union may enforce its statutory lien against a member's account(s) only when the member fails to satisfy an outstanding financial obligation due and payable to the credit union.

(3) *Neither judgment nor set-off required.* A federal credit union need not obtain a court judgment on the member's debt, nor exercise the equitable right of set-off, prior to enforcing its statutory lien against the member's account.

[FR Doc. 99–26755 Filed 10–21–99; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–19–AD; Amendment 39–11381; AD 99–22–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary; and installation of a protective spiral wrap on the fuel manifold drain hose. This amendment also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by reports of chafing between the fuel manifold drain hose and the access panel due to contact between the two components over time. The actions specified by this AD are intended to prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources.

DATES: Effective November 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on August 23, 1999 (64 FR 45925). That action proposed to require repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary; and installation of a protective spiral wrap on the fuel manifold drain hose. That action also provides for an optional terminating action for the repetitive inspections.

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.

Correction of Address

The FAA has been informed that the title of the location where service information may be obtained has changed. The FAA has made this change in the final rule.

Conclusion

After careful review of the available data, including the change noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection on the fuel manifold drain hose and access panel, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the required installation of the spiral wrap on the fuel manifold drain hose, at an average labor rate of $60 per work hour. Required parts will cost approximately $10 per airplane. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $700, or $70 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of