rules and regulations

[7535-01]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Final Rule—Share Draft Programs

AGENCY: National Credit Union Administration.

ACTION: Final Rule.

SUMMARY: This regulation prescribes the requirements for the establishment and implementation of permanent share draft programs by Federal credit unions. A share draft program allows Federal credit union members to write drafts on their share accounts to obtain cash or to pay for goods or services. It eliminates the delay and inconvenience in making withdrawals by mail or in person.

EFFECTIVE DATE: February 6, 1978.

ADDRESS: National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On February 28, 1977, this Administration published a proposed rule (42 FR 11247) which prescribed the requirements for the establishment and implementation of share draft programs for Federal credit unions. Public comment was invited to be received on or before May 2, 1977. A total of 47 comments was received.

On March 22, 1977, the public was notified that an Administrative Hearing would be convened on April 19, 1977, to receive testimony on the proposed rule (42 FR 15427). Over a two day period, 18 witnesses offered testimony.

On June 30, 1977, this Administration announced that the period for comments on the proposed rule would be extended until August 1, 1977. Consequently, two additional comments were received.

Upon review of the comments received and after a thorough reconsideration of the proposed rule, various changes, as set forth below, have been made. Additionally, many questions were raised that did not necessarily require an amendment to the proposed rule but did necessitate interpretative rulings. To the extent possible, this Administration has attempted to address those issues.

Report on Share Draft Programs

The following chart reflects statistics on share draft programs for the third quarter of 1977, as compared to statistics for the second quarter of 1977 and for the previous year's third quarter. The information is based upon data furnished by Federal credit unions (FCU's) operating share draft programs.

	Sept. 30, 1976	June 30, 1977	Sept. 30, 1977
1. Number of FCU's approved for share draft programs	391	582	582
2. Number of FCU's with programs in operation	[1] 231	[2] 484	514
3. Number of share draft accounts	90,181	241,140	323,207
4. Aggregate amount of share draft accounts	$88,557,178	$244,527,045	$316,409,127
5. Number of share drafts paid during the quarter	2,384,049	7,296,839	9,792,824
6. Amount of share drafts paid during the quarter	$141,076,997	$455,115,594	$608,479,706
7. Number of overdrafts paid during the quarter (from other share account or loan plan)	15,729	41,663	64,985
8. Amount of overdrafts paid during the quarter	$2,187,583	$5,371,797	$7,976,304
9. Number of stop payments	1,375	4,722	5,912
10. Number of drafts dishonored during the quarter	16,086	44,954	73,083
11. Amount of drafts dishonored	$931,874	$3,142,237	$4,866,829
12. Estimated cost to process each draft	$.156	$.179	$.199
13. Average number of drafts paid per account each month	8.87	10.09	10.09
14. Average amount of drafts paid	$59.17	$62.37	$62.13
15. Average amount paid out of each share account per month	$521.45	$629.11	$627.54
16. Average share balance per account	$997.72	$1,014.05	$978.96

[1] 7 FCU's included in this total did not report statistical information.
[2] 17 FCU's included in this total did not report statistical information.

Of the Federal credit unions which commenced operation of a share draft program, only 1 terminated its program, based on cost considerations.

Analysis of Comments

1. LEGALITY OF SHARE DRAFTS

The public was advised that the major issue involved in the promulgation of the proposed share draft regulation was whether Federal credit unions can legally permit their members to make withdrawals of funds from a share account by means of a negotiable or nonnegotiable draft (42 FR 11248 and 33341).

Certain commenters contended that legal impediments exist to the promulgation of the proposed rule. They vigorously argued that the Federal Credit Union Act contains no grant of power to Federal credit unions, expressly or by implication, to engage in the type of business envisioned by the proposed rule; that the share draft concept violates the purposes for which Federal credit unions are chartered, i.e., to promote thrift and create a source of credit; that, since there is no statutorily expressed power to authorize share drafts or a similar type third party payment concept, the incidental powers clause is inapplicable, i.e., share drafts are not "necessary or requisite" to enable Federal credit unions to carry out effectively the business for which they are incorporated; that to promulgate the proposed rule would (i) ignore the clear and expressed intent of Congress as set forth in the legislative history surrounding the enactment of the Federal Credit Union Act and the amendments thereto, and (ii) ignore other legislative endeavors and pronouncements by Congressional and credit union leaders concerning third party payment accounts; that the National Credit Union Administration cannot by means of a regulation create a power not heretofore granted by Congress; and that the National Credit Union Administration failed to comply with the Administrative Procedures Act when authorizing experimental share draft programs.

In making the above arguments, the commenters cited excerpts from the legislative history of the Federal Credit Union Act, examined and distinguished judicial precedents concerning third party payments, reviewed the express and incidental powers of Federal credit unions and compared them to similar powers of other financial institutions, and discussed in great detail Congressional mandates concerning third party payment powers. In all respects, the comments represent a thorough evaluation of the legal issues that had to be resolved before this Administration could proceed with the promulgation of the proposed rule.

At the time the proposed rule was published, this Administration had made the determination that share drafts were legal for Federal credit unions. Based on the comments received, however, that position was exhaustively reviewed. While many of the propositions espoused warrant careful deliberation, this Administration has determined that they are not persuasive. Accordingly, the following legal determinations have been made:

(1) The use of share drafts is not inconsistent with the purposes of Federal credit unions, including the express statutory purposes of promoting thrift and creating a source of credit;

(2) In the absence of an express prohibition, the common law authorizes any member of a credit union to draw a draft on his share account with the credit union;

(3) Neither the Federal Credit Union Act, the legislative history of the Federal Credit Union Act, nor the legislative history of Federal statutes governing other financial institutions demonstrate an intention on the part of Congress to prohibit the use by Federal credit unions of either share drafts or similar methods of withdrawal;

(4) The use of share drafts, as a method of withdrawal, is impliedly authorized under the Federal Credit Union Act as an exercise of the express powers to receive withdrawable shares and make contracts;

(5) The operation of a share draft program is a proper exercise of incidental powers under the Federal Credit Union Act;

(6) Balancing the relevant policy considerations and considering the Congressional mandate that the National Credit Union Administration be responsive to the needs of Federal credit unions, ambiguities, if any, must be resolved in favor of upholding a share draft program; and

(7) The National Credit Union Administration has complied with the requirements of the Administrative Procedures Act.

Providing impetus to the consideration of a withdrawal mechanism for credit unions was the advent of the Federal Government's direct deposit of recurring payments program. In 1972, Congress enacted Pub. L. 92–366 to permit the directing of Federal recurring payments to financial institutions, including credit unions, designated by individual payment recipients for credit to the individual's personal account. Upon enactment, the Department of the Treasury and the Social Security Administration commenced implementation of the direct deposit program. The purpose of the program is to improve service and provide greater security and convenience to government beneficiaries.

It was soon recognized that there was an inherent weakness in the credit union system: The lack of a convenient and practical mechanism for withdrawal of funds. In order to participate in the direct deposit program, i.e., to be designated by a payment beneficiary/credit union member, credit unions had to provide a method whereby the recipient could effectively, conveniently, and practically make use of the funds deposited. Withdrawal by means of personal appearance, telephone or mail would not meet the needs of a credit union member.

In addition to its responsibilities to credit unions and credit union members, the National Credit Union Administration, as a Federal agency, has a responsibility to assist in the implementation of a program which benefits not only the public, but also the efficacy of Government operations. Authorization of share draft programs is consistent with the responsibilities of this Administration and, as we have determined, consistent with the powers contained in the Federal Credit Union Act and available under common law.

In fulfilling its statutory role of regulating and supervising Federal credit unions, this Administration must recognize its duties and responsibilities to the Congress. Although certain commenters did submit discussions of Congressional intent based upon the legislative history of the Federal Credit Union Act, and amendments thereto, to show that share drafts were not envisioned by the legislators, we find the opinions expressed to be, at best, inconclusive. In fact, recent Congressional consideration of amendments to the Federal Credit Union Act and amendments which would affect other financial institutions, manifest an implicit recognition of share draft authority. Consumer Financial Services Act of 1977. S. Rep. No. 95–407, 95th Cong., 1st Sess. 18 (1977). Nowhere do we find persuasive legislative history arguments supportive of the position that the Administration exceeded its authority in permitting share draft programs. On the contrary, we find the intention of Congress, when creating this Administration, to clearly reflect recognition of the necessity for responsive regulation to meet the needs of credit union members in an evolving socio/economic environment. This Administration finds no indication of Congressional intent to restrict the ability of credit union members to manage and utilize their funds either through withdrawal or payment mechanisms.

The Federal Credit Union Act defines a Federal credit union as "a cooperative association organized * * * for the purpose of promoting thrift among its members and creating a source of credit for provident and productive purposes." 12 U.S.C. 1752(1). While the definition accurately sets forth the primary purpose of Federal credit unions, to view the purpose based solely on this definition is to oversimplify the rationale expressed by the Congress and to ignore the remaining provisions of the Federal Credit Union Act which established the overall plan under which Federal credit unions operate.

The legislative history of the original Federal Credit Union Act indicates that Congress was concerned with the ability of individuals to manage their own financial resources. It is not denied that Federal credit unions were intended to provide a system for accumulating savings and meeting credit needs, but their operation extends to the opportunity for people to self-manage their savings. This Administration does not find the use of share drafts to be inconsistent with that concept.

Share draft programs can be viewed as promoting thrift and creating a source of credit in at least four ways. First, it encourages members to maintain a minimum balance in order to earn dividends, or conversely it discourages spending. Second, by increasing the earnings of a Federal credit union, which can result in an increase in dividend rates or reduction in loan interest rates, it encourages increases in savings thereby providing more funds for provident loans. As an example, the general manager of a Federal credit union operating a share draft program testified that the program generated sufficient earnings to enable a loan interest refund of 26 percent in 1976. Third, as an additional service, it encourages more people to join and place funds in a Federal credit union again providing additional sources of credit. Fourth, it allows the truly poor, with little or no access to third party payment accounts, to save the cost of money orders.

Not all Federal credit unions will have the same experiences with a share draft program meets their immediate needs. vidual members of a Federal credit union will ultimately determine whether the program meets their immediate needs. However, whether or not members will avail themselves of an offered service is no indication that a particular program is or is not consistent with the overall purposes of Federal credit unions. The effect of a particular program on a given Federal credit union cannot be used as a basis for denying the power to operate such a program to all other Federal credit unions.

This Administration has also determined that the use of share drafts is consistent with common law. Share drafts are in the same form as drafts which have been used by both businesses and individuals for centuries. Drafts were in use before banks, as that term is generally understood today, came into existence. Based upon custom, usage and common law, anyone can draw a draft on anyone else and this would include a member drawing a draft on his or her Federal credit union. Due to the historical practice concerning the use of drafts, a specific prohibition would be necessary to preclude a member from drawing a draft on a Federal credit union. The Federal Credit Union Act contains no prohibition against the use of drafts for withdrawal purposes. Thus it is presumed Congress has not taken away that right.

An examination of the legislative history of the Federal Credit Union Act, including that cited by opponents of share drafts, fails to disclose an intent on the part of Congress to prohibit the use of share drafts. Viewed in terms most favorable to opponents, it is this Administration's view that the legislative history is, at best, ambiguous and inconclusive. With such an interpretation, and with the historical support of the common law, the National Credit Union Administration is constrained to determine the issue in favor of Federal credit unions.

In addition to this Administration's determination that share drafts are not inconsistent with the purposes of Federal credit unions, that their use is consistent with common law, and that legislative history does not indicate an inten-

tion on the part of Congress to prohibit their use, it has been determined that share drafts are impliedly authorized under the Federal Credit Union Act. The implied authority for the operation of share draft programs is essentially founded upon the express powers to contract (12 U.S.C. 1757(1)) and to receive payments on shares (12 U.S.C. 1757(6)).

The Federal Credit Union Act does not expressly define the breadth of the power to contract. However, the conclusion that share drafts are within the contractual powers of Federal credit unions is supported by judicial and administrative precedent. "Iowa Credit Union League v. Iowa Department of Banking," No. CE6–3152 (May 24, 1977); "Oklahoma State Credit Union League," Conclusions of Law 10 (Order, Credit Union Board of the State of Oklahoma, May 17, 1977). The Iowa court concluded that Iowa credit unions have the power to enter into share draft agreements with their members and that the relationship between a credit union and its members with respect to share and deposit accounts is contractual. Although the Iowa decision interprets a state law, it is a judicial interpretation of a similar statute governing institutions similar to Federal credit unions. While the National Credit Union Administration does not find itself bound by state judicial or administrative rulings, it does recognize such rulings merit due consideration.

In considering decisions relating to the power of banks to contract, the power is viewed in terms of the scope of the institution's activities and whether it involves the reasonable furtherance of the operations of the institution's business. A contractual arrangement whereby Federal credit union members gain access to their funds does involve the reasonable furtherance of the operations of a Federal credit union's business and is within the scope of a Federal credit union's activities.

As to the power to receive payments on shares, there appears to be no disagreement that the statutory power implies the ability to pay withdrawals. However, it is the extent and scope of the withdrawal power which is in dispute. Based on common law, any member may draw a draft on his or her Federal credit union. As previously stated, a specific prohibition would be necessary in order to preclude a member from taking such action. Likewise, a positive prohibition would be necessary to prevent a Federal credit union from honoring the draft if it wishes to pay it.

Aside from implied authority, the operation of a share draft program is a legitimate exercise of a Federal credit union's incidental powers. Although the standard to be applied to the incidental powers clause of the Federal Credit Union Act (12 U.S.C. 1757(15)) has not been the subject of judicial scrutiny, identical or similar powers governing state chartered credit unions have been tested. In "Oklahoma Bankers Association," supra, the Oklahoma State Credit Union Board cited the incidental powers clause as authority for the proposition that credit unions could adopt "modern methods of operation and technological progress such as data processing and electronic funds transfer" systems. Id. at 9. Support can also be found in the "Iowa" case. The court there concluded that share drafts are incidental to and promote the statutory functions of credit unions in addition to being a lawful exercise of express and implied powers. "Share drafts are necessary and requisite in order for credit unions to effectively continue to carry on their business." "Iowa Credit Union League," supra, 17. A comparison of the incidental powers clauses of the Oklahoma and Iowa state credit union acts (Okla. Stat. Ann. title 6 §2006(15), (West Supp., 1977); Iowa Code Ann. § 533.4(11), (West 1970)) to that contained in the Federal Credit Union Act reveals that the clauses are identical in all respects, insofar as the standard by which such powers are to be judged. The Iowa court also felt it was necessary "for credit unions to develop more innovative services in the area of funds withdrawal and third party payments if they are to remain competitively viable and continue to perform their statutory functions." Id. at 13.

The exercise of incidental powers is not unique to credit unions but is shared by all institutions in the financial community. It has been recognized that financial institutions may exercise their incidental powers when necessary to preserve their existence in order to continue to perform their statutory functions. See for example, "McCoy v. Adams," 29 F. Supp. 815 (E.D. Pa. 1939). The analysis of the incidental powers of financial institutions is contained in far more than one or two cases, many of which have been cited by opponents of the share draft program. This Administration does not intend to discuss herein either the cases cited by opponents or those which support a decision in favor of share drafts. It is sufficient for the purposes of this preamble to acknowledge the existence of such cases. The Administration is of the opinion that although the opponents' authorities are deserving of considerable attention, they have not been found to be of sufficient weight to warrant a finding which would have an adverse impact on credit unions.

In evaluating the operational aspects of share draft programs through the experimental stage and proceeding through the rulemaking process culminated by the publication of this final rule, the Administration has not been unmindful of the impact such programs may have on other financial institutions. Certainly, this issue has been emphasized through both written comments and oral testimony in addition to court action. It is recognized that Federal credit unions compete with other financial institutions to the extent that their members can also utilize the services of those other financial institutions. The existence of Federal laws governing the establishment and regulation of financial institutions with similar powers indicates Congressional approval of competition. Although services offered may differ, all depository institutions compete in attracting savings and such competition goes beyond the financial community; it extends to competition with, among others, insurance companies and investment companies. The offering of differing and various services and meeting the needs of individual consumers is the method by which institutions attract savings. To the extent that such methods violate law or involve deceptive practices the resulting competition may be found to be unfair and unlawful. However, when an institution utilizes means available under statutory and common law and which provide for a public benefit by offering consumer opportunities and fostering the development of innovative and healthy competition, such practices cannot be viewed in the same negative vein. This Administration finds share drafts to be within the latter category. While share drafts may have an adverse impact on certain individual financial institutions—it cannot be said that share drafts will jeopardize the existence of a whole segment of the financial community—that potential cannot support the denial of authority for the credit union industry to exercise a legitimate power.

As the Department of Justice noted in its comments on the proposed regulation, changes in the economy have brought about high money market rates and consumer awareness. This has forced new competition and the need for innovative developments and technological advances which will ultimately provide important consumer benefits. The Department also noted that, due to the nature of share drafts, such programs may well stimulate competition between credit unions and commercial banks and will allow the continuation of important competitive initiatives. (The Department of Justice did not address the question of the legality of share draft programs; The comments related solely to share drafts and EFT systems and competitive consequences.)

Through the promulgation of the share draft regulation, the Administation does not intend that all Federal credit union members close out their checking accounts with commercial banks or NOW accounts with other thrift institutions. The intent is, however, to provide credit union members with an alternative for the effective management of their funds consistent with the purposes of the Federal Credit Union Act and as recognized by common law; an alternative which provides the member, as a consumer, with an additional consumer benefit. The option will be that of the individual in light of his or her specific needs.

2. SEPARATE ACCOUNTS

The proposed rule would require that a member desiring to use share drafts must first establish a separate share draft account. At the time the proposed

rule was published, it was considered essential that share draft accounts be maintained separately in order to ensure accurate recordkeeping, to facilitate the maintenance of a liquidity reserve, and to permit evaluation by this Administration. As a matter of policy this requirement is modified.

Many commenters pointed out that there are advantages to both the credit union and the member if combining the share draft account with the regular share account were permitted. The commenters argued that eliminating separate share accounts reduces costs for the credit union. That, in turn, benefits the members.

There are, however, significant operational advantages in maintaining separate share draft accounts. Initially, it minimizes any interference with other accounts and reduces confusion during the developmental stage for the Federal credit union. A separate share draft account would also, for many Federal credit unions, facilitate the calculation of reserves and the collection of any data this Administration should determine is necessary to continue to monitor the share draft program. Additionally, the maintenance of a separate share draft account may avoid some of the difficulties inherent in maintaining a single share account. This is especially true where a member maintains one account and has pledged a portion of the shares in that account as security. These difficulties are, however, relatively minor and can be solved. Finally, it appears that many members desire a separate account for personal convenience and recordkeeping purposes.

It is the Administration's opinion that the prevailing argument in support of the legality of the share draft program is that share drafts are merely a method of remote access to a member's account. This method of access by draft has always been available at common law, but simply not implemented until recently. Arguably, absent a specific regulation concerning the method of share withdrawals, a member of a Federal credit union would have the power to withdraw money from his share account by drawing a draft on the Federal credit union and the Federal credit union would have the power to honor the draft. However, the unrestricted exercise of this power is neither economically nor operationally feasible for all Federal credit unions. Hence, there are sufficient justifications for regulating the use of share drafts.

It should be noted that Federal credit union members have always been able to establish more than one share account, and at the time of withdrawal, whether in person, by mail or by phone, determine which account would be drawn upon. Therefore, a member may wish to designate one regular share account as the account upon which share drafts are to be drawn without affecting the balances in any other regular share accounts maintained by that individual. Whether such an option is to be made available to a member is a matter properly within the discretionary powers of the board and is a matter of agreement between a member and his credit union.

Accordingly, "share draft account" will be redefined to mean "any regular share account from which the Federal credit union has agreed that shares may be withdrawn by means of a share draft or other order."

3. PAYABLE THROUGH BANK

The definition of payable through bank raised four major issues. First, should the definition be revised to follow more closely section 3–120 of the Uniform Commercial Code? Second, should the definition be revised to provide greater flexibility? Third, should this Administration require that the payable through bank be located in the same state as the drawee Federal credit union? Fourth, should credit union members be allowed to make deposits at the payable through bank?

As to the first issue, one commenter proposed a slight refinement in the definition to reflect the present language of section 3–120 of the Uniform Commercial Code, which reads: "An instrument which states that it is 'payable through' a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument." It was, therefore, suggested that the definition of payable through bank be redefined to mean "the bank that has been/designated to make presentment of a share draft to the Federal credit union for payment."

The difference is slight; however, a modification as suggested would be of some benefit in that case law interpreting the respective liabilities of the Federal credit union and the payable through bank would be more on point and less likely to be distinguished because of a slight variation in the way "payable through bank" is defined.

Several commenters suggested that the definition be more inclusive than payable through bank. One commenter suggested the phrase "payable through financial institution" would provide greater flexibility and better meet the requirements of Federal credit unions.

This Administration concurs that there does exist the need to follow the more exacting language in the Uniform Commercial Code, but does not agree that the definition be made more inclusive. At the present time, only banks are in a position to act as payable through institutions. Therefore, expanding the term to include other types of financial institutions would serve no useful purpose. Should the Federal Reserve regulations be modified to authorize other financial institutions to act as a "payable through institution," an amendment to this section will be considered.

As to the third issue, this Administration has no valid reason for requiring the payable through bank to be located in the same state as the drawee Federal credit union. It should be noted, however, that if the payable through bank is other than a National Bank and requires the Federal credit union to maintain a deposit, then section 107(8) of the Federal Credit Union act is applicable. In that case, the payable through bank must operate in accordance with the laws of the state in which the Federal credit union does business.

Finally, the question was raised whether a Federal credit union and a payable through bank may establish a correspondent relationship whereby its members could make deposits at the payable through bank and have them credited to their regular share accounts at the Federal credit union. This Administration has recently addressed this issue and delineated certain requirements that must be met to implement such a program. On this matter, Federal credit unions should contact the appropriate Regional Director for guidance.

In consideration of the above, paragraphs (a) (1) and (2) have been amended to read:

(1) "Share draft" means a negotiable or nonnegotiable draft used to withdraw shares from a share draft account.

(2) "Payable through bank" means a bank that has been designated to make presentment of a share draft to the Federal credit union for payment.

4. CHARGE FOR USE OF SHARE DRAFTS

Commenters raised several issues with respect to the charges authorized under § 701.34(c)(6)(xiii) of the proposed regulation. There were several requests for authorization to charge activity fees or alternatively to require a minimum balance. The argument most frequently made in favor of activity fees/minimum balances was that of economic viability based on particular credit union circumstances. While the evidence on this matter is not conclusive, it has been determined that the charging of activity fees, since they would be assessed against members utilizing the program, would be permissible. However, activity fees charged cannot be in excess of the direct and indirect costs attributable to the processing of share drafts. In terms of a minimum balance for regular share accounts, however, a Federal credit union must comply with Article III of its Bylaws.

Several commenters expressed concern that the proposed regulation would prohibit them from passing on the costs of printing and delivering the share drafts to the members who ordered them. Section (b) of the proposed regulation distinguished between providing share drafts to the members and charges on the subsequent use of the share drafts. It is within the board of director's discretion to decide if drafts are to be paid for by the member or if the Federal credit union will absorb that cost.

Three other questions arose that this Administration did not specifically address in either the preamble to the proposed regulation or the proposed regulation itself: First, in the event separate accounts are used, whether the board of

directors may impose a fee for transfers between separate accounts? Second, whether a fee can be required for guaranteeing a draft in accordance with § 701.34(g) of the proposed rule? Third, whether a fee may be imposed for interim statements requested by a member? It is believed that the charging of such fees is properly within the discretion of the board of directors and should not be prohibited. Accordingly, paragraph (b) and paragraph (c)(6) (xiii) of the proposed regulation have been revised to incorporate these changes, as well as to reflect that the charging of a fee is a policy decision properly left to the board of directors. The fees charged, however, cannot exceed the direct and indirect costs of providing that service to the member.

Paragraph (b) of the proposed rule is amended to read:

(b) A Federal credit union may provide its members with share drafts. The board of directors shall determine, prior to requesting approval to implement the share draft program, that the members' use of share drafts is economically and operationally feasible for the Federal credit union.

Paragraph (c)(6) (xiii) of the proposed rule (redesignated (c)(5)(xiii) in the final rule) is amended to read:

(xiii) the fees, if any, to be charged: *Provided*, Such fees shall not exceed the direct and indirect costs of providing the service.

5. REQUEST TO OPERATE A SHARE DRAFT PROGRAM

There were several general comments made with respect to the application procedure. Several commenters objected to the procedure whereby the Federal credit union must furnish all background documentation which supports the board of directors' decision that the members' use of share drafts is economically and operationally feasible for the Federal credit union. It was argued that in its present form the "provision might be construed as requiring each credit union to undertake a detailed feasibility study, which would be unduly burdensome for smaller credit unions."

This Administration views the implementation of a share draft program as a major management decision for each Federal credit union concerned. The considerations are substantial and will vary as to each Federal credit union. Under these circumstances it is essential that adequate documentation be furnished by a Federal credit union desiring to implement a share draft program in order that its economic and operational feasibility be determined. Such an approach will best protect the members and allow objective evaluation of the credit union and the qualifications of the management so that the risks of operating a share draft program are minimized. Accordingly, no modifications have been made to paragraph (c)(2).

One commenter requested that league counsel be permitted to give the statement that the forms and procedures to be used by all the Federal credit unions using a particular program conform to the requirements of this regulation and applicable laws governing contract rights. *Provided*, The forms and procedures used by each Federal credit union represented by the league counsel or any other legal counsel are identical, such a procedure is acceptable.

One commenter suggested that the Administration require those Federal credit unions that were approved to operate a share draft program under the experimental program be required to submit a new application. Some review is necessarily consistent with the changeover from an experimental to a permanent program. For example, the method of paying dividends or the procedures for establishing liquidity reserving requirements must be reviewed and approved. However, it has been determined that a new application is not necessary. Instead, all Federal credit unions previously approved must, to the extent their previously approved applications are inconsistent with or do not provide the information required by this regulation, submit written notification to the Administration (Regional Director) which identifies the modifications made to assure compliance with this regulation. Questionable practices should not be implemented, or should be discontinued until reviewed by the Regional Director. Those Federal credit unions that have submitted and have pending applications that do not meet the requirements of this Regulation must submit a new application or modify their applications as appropriate.

6. METHOD FOR MEMBER TO MAINTAIN A RECORD OF SHARE DRAFTS DRAWN

Several commenters expressed the concern that the proposed regulation could be interpreted to mean that this Administration intends to prohibit credit union members from using draft registers or stubs as a method of maintaining records of their share draft transactions. The proposed regulation at paragraph (c)(6) (vii) simply required that the method for member verification must be stated. Apparently, confusion arose as a result of the language in the preamble to the proposed rule which referred only to "carbonless duplicates." This form of member recordkeeping, as previously indicated is not required to the exclusion of all others. Its use, however, is recommended.

7. MODIFICATIONS

The proposed rule at subsection (e) required that any modification to an approved share draft program be approved in writing by the Regional Director. The standard objection raised by several commenters was that a literal reading of the proposed rule would require advance approval of even the slightest change to an operating share draft program. Potentially, such a requirement is burdensome for Federal credit unions requesting slight adjustments to operational programs.

The Administration is not concerned with minor modifications, such as, a change from a quarterly to monthly statement of account or a change in dividend rate being paid, but it is concerned with substantive or substantial procedural changes in the operation of the program. Accordingly, for clarification purposes those modifications requiring advance notification and approval are set forth in a revised subsection (e). Additionally, subsection (e) will clarify that any material modification not delineated in subsection (e) falls within the notification requirement and must be reviewed and approved by the Administration.

It is recognized that there will be questions as to what is meant by a "material modification." Federal credit unions, therefore, are cautioned to review the intended modification with the Regional Director whenever there exists some question as to its import and potential impact on the share draft program.

One additional amendment to subsection (e) was made to clarify the requirement that requests for modifications must be made in writing.

Section (e) is amended to read:

(e)(1) The Federal credit union shall notify the Administration in writing, at least 60 days in advance of its proposed implementation date, of any modification relating to:

(i) The payable through bank;
(ii) Truncation procedures;
(iii) The share draft agreement;
(iv) Procedures for establishing and maintaining a liquidity reserve; and
(v) Any material modification not previously reviewed and approved by the Administration.

(2) Implementation of the modification is contingent upon written approval of the Administration.

(3) The Federal credit union shall immediately notify the Administration as to any matter affecting the information provided pursuant to paragraphs (c)(1) through (c)(4).

8. DIVIDENDS

In the preamble to the proposed rule, a brief discussion was included to clarify that share draft accounts are share accounts; consequently, they are eligible to earn dividends. As in the case of all share accounts, however, dividends are not paid on those funds which are withdrawn during a dividend period.

The method and frequency of dividend payments raised considerable comment. Several commenters requested that Federal credit unions be permitted to pay dividends on share draft accounts at a rate and frequency which may differ from the treatment of regular share accounts. The arguments made in favor of these proposals were twofold. First, it was necessary to pay a dividend at a different rate or frequency in order to spread the costs of operating a share draft program among the members who utilize it rather than spreading the cost among all the members, some of whom will not have a share draft account. Second, several commenters implied that the use of different rates and frequencies

would make the program economically feasible for a greater number of credit unions.

To be considered, however, are the statements of several commenters who testified that share drafts are selfsupporting and are a source of income. They pointed out that share drafts benefit not just those who utilize the service, but the entire membership. One commenter attributed to a large degree an across-the-board interest refund to all members because the share draft program generated funds substantially in excess of all determinable costs. It should also be noted a few Federal credit unions have had difficulty justifying, on a cost basis, a share draft program. One Federal credit union terminated its program for that reason. Those Federal credit unions experiencing difficulty, however, are in a distinct minority.

Share drafts are a method of accessing a regular share account, and nothing more. Available data simply does not support separate treatment. The comments on Separate Accounts are also relevant to this issue. Accordingly, a "share draft account" means a regular share account established for a credit union member that may be accessed by share drafts. A share draft account, therefore, will earn the same dividend rate, which will be computed and paid in the same manner, as regular share accounts. The term "regular share account" is defined in § 701.35(a)(1)(i) of the rules and regulations (12 CFR 701.35(a)(1)(i)).

In the proposed rule, at subsection (c)(5), a limitation was placed on the frequency of dividend periods. As a share draft account must receive the same treatment accorded a regular share account, this restriction cannot be required. To continue a limitation on the frequency of payment would ignore the basic theory that regular share accounts and share draft accounts are identical excepting the method of access. This approach is also consistent with the conclusion that maintenance of separate share draft accounts will no longer be required. Consequently, as indicated above, if a Federal credit union pays daily dividends on its regular share accounts, it must also pay daily dividends on the share draft accounts. The same is true for any other period established for payment of dividends. Consistent with the above; the proposed subsection (c)(5) is deleted and the remaining subsections redesignated accordingly.

9. RESERVES

Comments on the proposed definition of "liquidity reserve" and the "liquidity reserve requirement" fell into three categories: (1) Those questioning the need for a liquidity reserve; (2) those addressing the basis for computing the liquidity reserve; and (3) those addressing the necesary components of a liquidity reserve.

As concerns the first issue, the major point made by the commenters was that a liquidity reserve has never been necessary for regular share accounts, which are, arguably, more susceptible to major withdrawals than are share draft accounts. The data developed during the experimental period, however, demonstrates a significant increase in withdrawals in those accounts subject to access by share drafts. The volume of the increased activity can be, in most instances, accurately projected, however, that does not eliminate the need to provide for a liquidity reserve to meet current operating as well as sudden and unexpected share withdrawals and to preserve member confidence. This Administration is, therefore, satisfied that maintaining a liquidity reserve is an essential element to a successful share draft program.

As to the second issue, one commenter suggested that the formula for computing the liquidity reserve be revised to equal "110 percent of the aggregate amount paid on share drafts during the preceding month divided by the number of days on which share drafts were paid during that month." It was contended that the suggested formula yielded a result, in terms of the total dollar amount required to be reserved, comparable to the amount required by section (c)(6)(xiv) of the proposed rule, i.e., 7 percent of the average daily balances for the preceding month. While the data developed during the experimental period does not support such a conclusion, this Administration views the suggested formula as a better method to compute liquidity reserves for share draft accounts for several reasons; first, for those credit unions that do not establish separate share draft accounts, it will facilitate the calculation of the amount that must be reserved; second, it does not include in the liquidity reserve formula shares which normally are not subject to withdrawal; third, it prevents a circumvention of the reserving requirement if procedures are developed to maintain disproportionately low balances in share draft accounts; and fourth, the suggested formula would require a liquidity reserve based on the actual amounts paid. Such an approach is equitable and more accurately reflects share draft activity and the Federal credit union's liquidity requirements.

In consideration of the above, the suggested formula is more in accord with the operations of Federal credit unions; however, the liquidity reserve such a formula would produce is inadequate. Accordingly, the percentage has been increased from 110 percent to 125 percent. It is recognized that the method of computation set forth in this regulation still does not compare, in terms of the total amount which must be reserved, to the 7 percent requirement in the proposed rule. This Administration is satisfied, however, that based on the data developed during the experimental period, a liquidity reserve computed on the basis of 125 percent of the aggregate amount of share drafts paid, divided by the number of days on which share drafts were paid, would be sufficient to meet normal as well as unexpected withdrawals.

Finally, in response to the third issue, the definition of "liquidity reserve" was modified. The major change to the definition is that any investments included as a portion of the liquidity reserve must be redeemable within 60 days and not have a maturity in excess of 90 days. This definition would permit the purchase of certificates of deposit that have, for example, maturities in excess of 90 days, but would limit investments, as authorized by Section 107 of the Federal Credit Union Act, by imposing the above requirements.

Since share draft accounts are not demand accounts and are subject to the right to impose a 60 day notice period, this Administration does not consider it necessary or appropriate to require sterile reserves. It is also noted that a grace period is provided during the first month of operation.

10. GUARANTEE

Subsection (g) of the proposed rule permitted Federal credit unions to guarantee share drafts on a very limited basis. This position is incorporated in the final regulation.

The commenters were virtually unanimous in requesting some type of blanket guarantee program. Several commenters contended that a less restrictive guarantee program is necessary to the continued viability of the share draft program. Notwithstanding the obvious advantages, i.e., marketability, and increased third party acceptance of a "guaranteed draft," it is this Administration's opinion that a guarantee beyond that set forth in the proposed rule would change the nature of the share draft account. That is, a blanket guarantee necessarily waives the right to require notice, an important distinction between the share draft account concept and a demand deposit account.

Accordingly, a Federal credit union may guarantee the payment of a share draft in a given instance only after the available balance of the share draft account has been verified and a proper notation is made on the account to prevent the withdrawal of funds necessary to pay the guaranteed share draft. Federal credit unions are not authorized to guarantee payment of all share drafts or to waive, in whole or in part, the right to require notice of intent to withdraw as set forth in the Federal credit union's bylaws. Subsection (g) has been modified to clarify this point.

11. IMPLEMENTATION OF A LIMITED SHARE DRAFT PROGRAM

Although the ultimate success of a share draft program is based on its acceptance, a limited initial participation may be authorized to allow credit union personnel to familiarize themselves with the system, and perfect an operationally efficient program. Several commenters who managed Federal credit unions that have operational share draft programs felt compelled to limit initial participation for the above reasons. Such a

limited participation period should not extend beyond one year.

It is also reasonable to assume that some Federal credit unions should not, even though they may be desirous of doing so, implement a share draft program except on a limited basis. Certainly it can be expected that situations will arise, for example, where it is difficult to determine the board of director's ability to manage a share draft program from the available data. Should that occur, it might prove more appropriate to approve the share draft request on a limited basis. Accordingly, subsections (d) and (f) have been amended to reflect the above.

Subsection (d) is amended, in part, to read:

(d) A Federal credit union may not commence operating a share draft program until it has received written approval from the Administration, which may limit member participation for a period not to exceed one year.

Subsection (f) is amended to read:

(f) If a share draft program or a request for modification is not approved, or the share draft program is approved for limited member participation, the Administration will provide the requester a written notice setting forth the basis for such action.

12. CORPORATE SHARE DRAFT ACCOUNTS

During the experimental period, participation was limited to natural persons. Several commenters, suggested that this exclusionary approach be modified to allow corporate central Federal credit unions to serve their members. (Corporate Central Federal credit union members are, for the most part, other Federal credit unions.) It is believed that a distinction between corporate and natural members is inconsistent with the position that members of a Federal credit union have the power to withdraw shares from their accounts by drafts and discriminates against corporate members. If a commercial entity is a member of a Federal credit union consistent with the common bond requirements delineated in section 109 of the Federal Credit Union Act (12 U.S.C. 1759), then there exists no legal basis for denying its the right to access its account by means of a draft. It should be noted that this Administration has no intention of interpreting the common bond in such a manner that would allow commercial entities, except under the very limited policy presently in effect, to qualify for membership in Federal credit unions.

The proposed rule did not make the corporate/natural distinction; consequently, no amendments to clarify this position are necessary.

13. INSURABILITY

One commenter questioned the insurability of share draft accounts both as a matter of policy and on legal grounds. The commenter relied in part on "the changing insurance risks which accompany demand deposit accounts" and on the provision in section 201(c)(3) of the Federal Credit Union Act (12 U.S.C. 1781(c)(3)), prior to amendment by Pub. L. 95–22, which expressly prohibited the Administration from insuring demand deposit accounts in state chartered credit unions. It should be emphasized that this Administration's position has not been that state chartered credit unions' share draft accounts were uninsurable because of section 201(c)(3). State share draft accounts were considered to be member accounts, if they so qualified pursuant to state law, and if the accounts were subject to the notice provisions applicable to share withdrawals. Hence they were and are insurable, as are the share draft accounts in Federal credit unions. In fact, this Administration was careful about maintaining this distinction and has, on at least one occasion, required a state chartered credit union to modify its third party payment account program in order for it to be insured. Of course, this action preceded the amendment to the Act which now authorizes this Administration to insure demand deposit accounts in state chartered credit unions if they qualify under state law as member accounts. Any such account, however, must be adequately reserved.

To again clarify this question, share draft accounts, if maintained separately, are insured by the National Credit Union Share Insurance Fund up to $40,000 in accordance with Part 745 of the rules and regulations (12 CFR Part 745). The amount of insurance coverage in a given instance will depend upon the number of accounts maintained by a member and the legal relationship of the member with respect to those accounts.

14. ADVERTISING

In the preamble to the proposed rule, comments were requested on advertising guidelines and requirements. Since the proposed rule did not contain a specific section on advertising, inclusion in the final rule of any specific requirements would require additional notice and the opportunity for the public to comment. Therefore, advertising guidelines have not been included in this regulation. Based on evaluation of industry activity in this area, however, this Administration may propose additional guidelines in addition to those contained in Part 740 (12 CFR Part 740) of the reules and regulations.

It is not the intent to so encumber Federal credit unions with requirements that it will reduce the marketability of the share draft program. Credit unions must, however, define and disclose, fairly and objectively, the purpose of share drafts and preserve the distinction between share draft accounts and demand accounts. Because share drafts are used for withdrawals from share accounts, they are subject to the same limitations and notice requirements as are withdrawals from share accounts by any other means.

A problem that surfaced consistently during the review was that advertising material rarely explained how dividends on share draft accounts are computed. One commenter indicated that the membership understood the basis for dividend calculation. A Federal credit union must, however, disclose the basis upon which dividends are calculated, as required by § 701.35(j)(1)(iii) (12 CFR 701.35(j)(1)(iii)).

Some advertisements reviewed misstated the insurance of share draft accounts. For example, "[a]ll share draft accounts are insured up to $40,000 by the National Credit Union Administration" is not an accurate statement. Reference is made to the section in this preamble which discusses insurance of share draft accounts.

Finally, an issue arose concerning what share drafts should be called. For example, could they be referenced as "share checks," or "Share Cheques" or "CHEK (name of Credit Union)," etc. Although several credit union managers commented that each Federal credit union should be able to market share drafts under their own trade names, it is this Administration's view that the use of the word "check" or a similar sounding word or phrase creates an inaccurate connotation. Share drafts should be marketed under the name of "share drafts." At a very minimum, the term "share drafts" should appear in the advertising.

15. RECORDKEEPING

With the exception of § 701.34(c)(6)(iv), the proposed share draft regulation does not address recordkeeping. However, in the preamble it was indicated that this Administration would consider comments on recordkeeping during the course of the rulemaking process.

The comments received concerning paragraph (c)(6)(iv) all raised the same issue—that the word "inadvertent" should be deleted. The proposed regulation required that the operational specifications provide for "recording of inadvertent share overdrafts and giving member notification of such overdrafts should they occur." However, as the comments emphasized, the credit union cannot ascertain whether the overdraft is inadvertent or not. An overdraft might be drawn inadvertently even by someone who has a line of credit agreement with the credit union. Accordingly, the word "inadvertent" is deleted in the final regulation and "(c)(6)(iv)" is redesignated "(c)(5)(iv)," due to the previously mentioned deletion of the proposed (c)(5) which limited the frequency of dividend periods. A Federal credit union must now record and notify members of all overdrafts.

16. CASHING SHARE DRAFTS

Several questions were raised with respect to cashing share drafts. Commenters inquired whether the drawer of a share draft would be able to cash it at the drawee Federal credit union. Reference is made to the preamble to the proposed rule wherein it was explained in the section How Is A Share Draft Paid that "a share draft may be presented directly to the Federal credit union by a member to withdraw cash from the member's share draft account."

A second question raised by a few commenters was whether members could make withdrawals from share draft accounts without using share drafts. The implication in the preamble to the proposed rule is that share draft accounts can only be accessed by share drafts. This is not correct. Other methods of withdrawal may be utilized if the procedures developed are consistent with the Federal Credit Union Act and its implementing regulations.

A third question was raised concerning a nonmember joint owner of a share draft account withdrawing shares by means of a draft. Section 109 of the Federal Credit Union Act (12 U.S.C. 1759) permits members of a Federal credit union to establish accounts in joint tenancy with right of survivorship with any person. Since a nonmember joint owner is entitled to the same withdrawal rights as the member joint owner, there is no legal justification for prohibiting such activity. A more difficult question arises, however, when the nonmember joint owner overdraws the share draft account. Can a nonmember overdraft be paid by the Federal credit union and can a nonmember overdraft activate an available line of credit to the member joint owner? It is this Administration's present view that in both instances Federal credit unions must not honor overdrafts drawn by a nonmember joint owner. This position may create some operational problems. Those problems have been considered, however, and satisfactory obtainable alternatives do exist.

A final question was raised concerning the consequences of overdrawing a share draft account if the drawer member has no other accounts in the Federal credit union. That is, must membership be terminated when the account balance reaches zero. This situation should be treated no differently than the situation where a member walks into the Federal credit union and reduces his account balance to zero. In the latter instance, membership is terminated. This problem may be solved by contract or other arrangements with the member.

17. TRUNCATION

Only one issue was raised concerning truncation. Several commenters suggested that Federal credit unions should have the option of truncating or of returning the paid share drafts to their members. The rationale advanced for returning drafts was that: It would aid member detection of unauthorized or forged drafts; it would aid members in keeping a record of the drafts drawn, as many members will not properly maintain share draft registers and the carrying of blank share drafts by members to cover unanticipated purchases can be expected; it would aid members preparing their income tax returns; it would simplify problems for a member who needs to have a copy of his draft promptly, for example, when a computer billing error occurs; and it was alleged that most members will want to get their drafts back.

Other commenters, however, favored procedures which would require truncation. The argument advanced was that truncation reduces multiple handling of paper drafts and significantly reduces transaction costs.

This Administration views truncation procedures as a significant development and a major factor contributing to the reduction in the overall costs required to process share drafts. To permit an optional approach would undermine the progress made during the experimental period in educating the members that the advantages of truncated procedures are far superior to the traditional philosophy that cancelled drafts must be returned to the drawer. Additionally, acceptance of truncated procedures by Federal credit union members will assist in the development of the Electronic Fund Transfer Systems. In view of the above, Federal credit unions must develop some type of procedure whereby share drafts are truncated.

18. MISCELLANEOUS AMENDMENTS

Subsections (c), (d), (e) and (f) have also been amended by replacing the term "Regional Director" with "Administration." This change is technical only and has no substantive effect on the regulation. Where it is required that Federal credit unions submit documentation, such as applications, modifications, or notification, submissions are still to be made to the appropriate Regional Director.

19. DELAYED EFFECTIVE DATE

On June 9, 1977, the American Bankers Association and Tioga State Bank filed a petition to delay the effective date of the share draft regulation pending judicial review. It was alleged that irreparable harm to the petitioner state bank and other commercial banks represented by the petitioner Association would result if additional Federal credit unions were approved to operate a share draft program. Conversely, it was alleged no harm would result to Federal credit unions by virtue of a delayed effective date.

This Administration recognizes that a delay of 60 days is appropriate. A 60 day delayed effective date will allow petitioners a reasonable amount of time to seek judicial review. Also, it will permit those Federal credit unions that have operational share draft programs to implement the changes required by this regulation. The experimental share draft program is, therefore, extended until the effective date of this regulation notwithstanding any previously set termination date with respect to individual programs.

Accordingly, 12 CFR Part 701 is amended by adding a new section as set forth below.

LAWRENCE CONNELL, Jr.,
Administrator.

NOVEMBER 30, 1977.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).)

§ 701.34 Share drafts.

(a) For purposes of this section:

(1) "Share draft" means a negotiable or nonnegotiable draft used to withdraw shares from a share draft account.

(2) "Payable through bank" means a bank that has been designated to make presentment of a share draft to the Federal credit union for payment.

(3) "Truncation" means the original share draft is not returned to the member.

(4) "Share draft account" means any regular share account from which the Federal credit union has agreed that shares may be withdrawn by means of a share draft or other order.

(5) "Liquidity reserve" means an allocation of current assets recorded on the credit union's records as cash or deposits and investments as authorized by Section 107 of the Federal Credit Union Act: *Provided*, That, any investments included as a portion of this reserve shall be redeemable within 60 days and have a maturity not in excess of 90 days.

(b) A Federal credit union may provide its members with share drafts. The board of directors shall determine, prior to requesting approval to implement the share draft program, that the members' use of share drafts is economically and operationally feasible for the Federal credit union.

(c) A Federal credit union must submit a written request to operate a share draft program to the Administration at least 60 days prior to the proposed date of implementation. The request shall include:

(1) An official copy of the minutes of the board of directors authorizing a request for approval to implement the share draft program.

(2) All background documentation which supports the board of directors' decision that the members' use of share drafts is economically and operationally feasible for the Federal credit union.

(3) A statement that the forms and procedures to be used have been reviewed by legal counsel.

(4) A statement that the board of directors has determined appropriate surety bond coverage is in force.

(5) A statement of operational specifications which expressly provide for:

(i) Identification of the payable through bank;

(ii) Truncation;

(iii) Establishing a share draft account agreement with each member which outlines the credit union's and member's responsibilities;

(iv) Recording of share overdrafts and giving members notification of such overdrafts should they occur;

(v) Encoding each share draft with the routing and transit number of the payable through bank, the share draft account number, and the serial number of the share draft in accordance with standards required for use in a clearing system utilizing Magnetic Ink Character Recognition devices;

(vi) Preprinting the name of the payable through bank and the name of the credit union on the share draft;

(vii) A method for each member using share drafts to maintain a record of share drafts drawn;

(viii) Submission of a periodic statement of account, no less frequently than quarterly, to each member who has a share draft account which shall include for each share draft processed the serial number, date of payment and the amount of payment;

(ix) Establishing responsibility for detection of unauthorized or forged drafts;

(x) Procedures for processing stop payment orders;

(xi) Procedures for providing members with copies of paid drafts should copies be requested;

(xii) Procedures for retaining paid drafts or copies of paid drafts on file for a period of five years or as required by state law, whichever is greater;

(xiii) The fees, if any, to be charged, provided such fees shall not exceed the direct and indirect costs of providing the service; and

(xiv) Procedures for establishing and maintaining an average daily liquidity reserve equal to 125 per cent of the aggregate amount paid on share drafts during the preceding month divided by the number of days on which share drafts were paid during that month.

(d) A Federal credit union may not commence operating a share draft program until it has received written approval from the Administration, which may limit member participation for a period not to exceed one year. Approval will not be given if:

(1) The requirements of paragraph (c) of this section have not been met;

(2) The supervisory committee has not fulfilled its statutory requirements as specified in the Federal Credit Union Act; or

(3) The management of the credit union has demonstrated through prior performance its inability to handle the additional activity the share draft program will generate.

(e) (1) The Federal credit union shall notify the Administration in writing, at least 60 days in advance of its proposed implementation date, of any modification relating to:

(i) The payable through bank;

(ii) Truncation procedures;

(iii) The share draft agreement;

(iv) Procedures for establishing and maintaining a liquidity reserve; and

(v) Any material modification not previously reviewed and approved by the Administration.

(2) Implementation of a modification is contingent upon written approval of the Administration.

(3) The Federal credit union shall immediately notify the Administration as to any matter affecting the information provided pursuant to paragraphs (c) (1) through (c) (4) of this section.

(f) If a share draft program or a request for modification is not approved, or the share draft program is approved for limited member participation, the Administration will provide to the requester a written notice setting forth the basis for such action.

(g) A Federal credit union shall not waive the right to require notice as set forth in the bylaws, but may guarantee payment of a share draft provided that:

(1) A specific guarantee authorization is obtained for the share draft from the Federal credit union; and

(2) The guarantee authorization is immediately noted on the share draft account to prevent the withdrawal of shares needed to pay the guaranteed share draft.

[FR Doc.77-34957 Filed 12-7-77;8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 826-4; PP 5E1587/R138]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Cross-Linked Polyurea-Type Encapsulating Polymer

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for cross-linked polyurea-type encapsulating polymer. The amendment to the regulations was proposed by Stauffer Chemical Co. This rule will allow the use of the subject material in pesticide formulations.

EFFECTIVE DATE: December 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 202-426-2632.

SUPPLEMENTARY INFORMATION: On September 21, 1977, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (42 FR 47565) in response to a pesticide petition (PP 5E1587) submitted to the Agency by Stauffer Chemical Co., 1200 S. 47th Street, Richmond, Calif. 94804. This petition proposed that 40 CFR 180 be amended by the establishment of an exemption from the requirement of a tolerance for residues of the cross-linked polyurea-type encapsulating polymer when used as an inert encapsulating material for pesticide formulations applied prior to planting. The inert will constitute no more than 10 percent by weight of any pesticide formulation and the registration of each new pesticide formulation incorporating it must be supported by residue data for the pesticide as well as quality control procedures for ensuring predictable release characteristics of the pesticide and relatively uniform toxicity of various production lots. No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

One comment was received recommending that a tolerance be established for the subject material rather than an exemption on the grounds that domestic honey bees are expected to ingest the material, either directly or indirectly, from weeds at the edges of treated fields.

The Agency has determined that the establishment of an exemption from the requirement of a tolerance is still appropriate since: (1) use of the material is limited to preplant soil-incorporated applications, (2) application is in the early spring before bees are active, and (3) the chances of bees obtaining the material from treated fields are highly unlikely because of (1).

It has been concluded, therefore, that the proposed amendment to 40 CFR 180 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before January 9, 1978, file written objections with the Hearing Clerk, EPA, Rm. 1019, East Tower, 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective December 8, 1977.

Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

Dated: November 30, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart D, is amended by adding the new § 180.1039 to read as follows:

§ 180.1039 Cross-linked polyurea-type encapsulating polymer; exemption from the requirement of a tolerance.

The cross-linked polyurea-type polymer formed by the reaction of a mixture of toluene diisocyanate and polymethylene polyphenylisocyanate is exempted from the requirement of a tolerance when used as an inert encapsulating material for pesticide formulations applied prior to planting. The inert will constitute no more than 10 percent by weight of any pesticide formulation. Registration of each new pesticide formulation incorporating the encapsulating material must be supported by residue data for the pesticide and quality control procedures for ensuring predictable release characteristics of the encapsulated pesticide and relatively uniform toxicity of various production lots.

[FR Doc.77-35040 Filed 12-7-77;8:45 am]

[3710–92]

Title 36—Parks, Forests, and Public Property

CHAPTER III—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1130–2–418]

PART 330—REGULATION OF LAW ENFORCEMENT SERVICES CONTRACTS AT CIVIL WORKS WATER RESOURCE PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

AGENCY: U.S. Army Corps of Engineers, DA.

ACTION: Final rule.

SUMMARY: This regulation provides policy and guidance for the establishment and management of the Corps of Engineers' contract law enforcement program including preparation of and management of contracts ensuing from this program. This regulation is applicable to all field operating agencies having responsibilities for Civil Works water resources. It contains the policy, criteria, and funding procedures to be utilized for the negotiation, execution and implementation of these contracts with state and local law enforcement jurisdictions.

EFFECTIVE DATE: December 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Ray Mitchell, Acting Chief, Recreation-Resource Management Branch, Construction-Operations Division, Office, Chief of Engineers, Washington, D.C. 20314, 202–693–7177.

SUPPLEMENTARY INFORMATION: Since this regulation only provides procedural and administrative guidance to Corps of Engineers field personnel, which must be implemented immediately to achieve the objectives of Section 120 of the Water Resources Development Act of 1976 (Pub. L. 94–587), proposed rulemaking and the procedures thereto are considered impractical and unnecessary.

For the Chief of Engineers.

JAMES N. ELLIS,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

The Law Enforcement Services Contracts at Civil Works Water Resource Projects Regulation (36 CFR Part 330) is hereby established as follows:

Sec.
330.1 Purpose.
330.2 Applicability.
330.3 References.
330.4 General.
330.5 Policy.
330.6 Criteria.
330.7 Funding.
330.8 Annual report.

AUTHORITY: Sec. 120 of the Water Resource Development Act of 1976, 90 Stat. 2917.

§ 330.1 Purpose.

This regulation provides policy and guidance for the establishment and management of the contract law enforcement program including preparation of and management of contracts ensuing from this program.

§ 330.2 Applicability.

This regulation is applicable to all field operating agencies having responsibilities for Civil Works water resource development projects.

§ 330.3 References.

(a) Section 4 of the Flood Control Act of 1944, as amended (16 USC 460d).

(b) Section 234 of the River and Harbor and Flood Control Act of 1970 (Pub. L. 91–611, 84 Stat. 1818).

(c) Section 120 of the Water Resource Development Act of 1976 (Pub. L. 94–587, 90 Stat. 2917).

(d) 36 CFR Chapter III.

(e) ER 190–2–3.

(f) ER 190–2–4.

§ 330.4 General.

(a) Section 120(a) of reference § 330.3(c) authorizes the Secretary of the Army, acting through the Chief of Engineers, to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resource development projects under the jurisdiction of the Secretary of the Army to meet needs during peak visitation periods.

(b) Further, Section 120(b) of the Act authorizes a maximum appropriation of up to $6,000,000 per fiscal year for the fiscal years ending 30 September 1978 and 30 September 1979, to carry out Section 120(a).

§ 330.5 Policy.

(a) It is the policy of the Corps of Engineers to provide, to the extent of its authorities, a safe and healthful environment for public use of lands and waters at Civil Works water resource development projects. To insure this safe and healthful environment, and to augment the citation authorities granted to the Corps of Engineers by reference § 330.3(b), District Engineers, subject to the authority of the Division Engineers, as set out below, are hereby delegated the authority to contract with States or their political subdivisions to obtain increased law enforcement services at Civil Works water resource development projects. Division Engineers are hereby delegated the authority to approve any minor deviations from this regulation except that any substantial deviations from the policies expressed within this regulation will require the prior approval of the Chief of Engineers or his authorized representative. Any required approval for deviation shall be made prior to the execution of the contract. When Fiscal Year 1978 and Fiscal Year 1979 work allowances are issued, instructions will be furnished on reporting requirements and the control of expenditures.

(b) Contracts for law enforcement services, as authorized in § 330.5(a), shall be subject to the terms and conditions as provided for within this regulation and in accordance with standard contracting and accounting procedures applicable to the Corps of Engineers.

(c) This regulation is not intended to diminish or otherwise limit the existing law enforcement responsibilities of the State or local law enforcement agencies.

(d) Contract law enforcement personnel shall not be given Federal citation authority for enforcement of regulations contained in Title 36 of the Code of Federal Regulations, Chapter III nor shall they be empowered to enforce such regulations. These regulations shall remain the responsibility of the Corps of Engineers.

(e) Contracts for increased law enforcement shall be for those projects or portions of projects that are operated and maintained by the Corps of Engineers. Law enforcement services will not be provided under this program to those outgrant areas operated and maintained by a non-Federal sponsor.

§ 330.6 Criteria.

(a) In order to provide reimbursement for law enforcement services supplied by a State or local law enforcement agency, a contract must be executed and approved in accordance with this regulation prior to the provisions of such services.

(b) The authorized contract law enforcement program extends only to 30 September 1979. Law enforcement services acquired by contract under this program shall be limited to those increased law enforcement services required to meet the needs of the public during peak visitation periods. Accordingly, the contract period shall not extend beyond the dates of 1 April through 30 September inclusive, and in no event shall the contract be written for more than 120 days within that time period. The contract may provide for an option to renew for a similar, additional period not to exceed 120-day period in Fiscal year 1979. Any exceptions to this criteria must be approved by the Chief of Engineers or his authorized representative.

(c) Contracts shall be consummated only with those public law enforcement agencies legally empowered to enforce State and local criminal and civil laws within their respective political jurisdictions. In light of this requirement and the authority cited in § 330.3(c), it is recognized that sole source negotiations may necessarily be utilized in the procurement of these services. In negotiating law enforcement contracts with these agencies the District Engineer must determine the reasonableness of the price for the law enforcement services offered under the contract. Such a determination shall be made prior to execution of the contract, in accordance with the applicable Contract Cost Prin- Chief of Engineers as provided for in ASPR, Section 15, Part 7, and as subject to the policies contained in this regulation. Such a determination shall be contained in the official contract file and must accompany any requests for deviations from the Division Engineer or Chief of Engineers as provided for in § 330.5(a) of this regulation. Contract law enforcement personnel must meet all the qualifications, including minimal

law enforcement training, required by State and local laws and regulations.

(d) The contractor shall provide all personnel, equipment and supplies which are required to provide the increased law enforcement services contracted for by the District Engineer. The Corps of Engineers shall not reimburse the contractor for the purchase of any equipment or supplies desired by the contractor for use under this program. However, the Corps of Engineers shall reimburse the contractor for the reasonable costs incurred by him in the rental or use of such equipment which is allocated to the work performed by him under the contract. Such use shall include: (1) A depreciation or use allowance for such equipment as determined by the service life evaluation system used by the contractor, and (2) the costs of necessary maintenance, repair, and upkeep of the property which neither adds to the permanent value of the property nor appreciably prolongs its intended life, but keeps it at an efficient operating condition.

(e) Reimbursement for law enforcement services shall be considered only for increased law enforcement services to meet needs during peak visitation periods. Each District Engineer shall evaluate and establish a normal law enforcement service standard for each contract situation and include such standard in the plan of operation to be developed in accordance with § 330.6(h). Each District Engineer shall evaluate the existing law enforcement services now being provided by State or local law enforcement agencies at those water resources projects or recreation areas where it is anticipated that law enforcement service contracts may be executed, and determine the scope including the type and amount, of law enforcement service which exceeds the normal law enforcement standard, and which will become eligible for reimbursement under the contract. Normally, requests by the District Engineer or his authorized representative for emergency or unanticipated law enforcement assistance will be considered nonreimbursable. Increased law enforcement services, eligible for reimbursement under the terms of the contract, shall be those regularly scheduled patrols or surveillance in excess of the normal law enforcement standard presently being provided by the contractor.

(f) An appropriate orientation program will be given by Corps personnel to all contract law enforcement personnel assigned to Corps projects. The purpose of this orientation will be to familiarize the contract law enforcement personnel with the policies and procedures of the Corps of Engineers, and to familiarize Corps personnel with the functions and duties of the State or local law enforcement agency. The Corps of Engineers shall reimburse the contractor for the cost per man hour as set out in § 330.6 (h)(4) for attending the orientation program.

(g) The contractor shall be required to keep a record of the services provided to the District under the terms and conditions of the contract in accordance with the criteria established in the plan of operation required in § 330.6(h).

(h) The District Engineer, in cooperation with the Contractor, shall prepare a Plan of Operation for the provision of law enforcement services as an attachment to the contract. The Plan of Operation shall contain, but not necessarily be limited to, the following information:

(1) Identify, by name and location, the project or projects and specific areas (recreation and others) that require law enforcement services.

(2) Describe the normal law enforcement services to be provided by the Contractor without reimbursement by the Government (see § 330.6(e)). Identify time of day, number of hours-per-day, number of days-per-week, and the number of patrols.

(3) Describe the increased law enforcement services to be provided by the Contractor under the contract. Identify the time-of-day, number of hours-per-day, number of days-per-week, number of patrols, manpower per patrol, and effective starting and ending dates.

(4) Identify the cost-per-man-hour for the provision of reimbursable law enforcement services, and identify the costs for utilization and operation, maintenance and repair of such equipment as allocated for use under the contract. (See § 330.6(d).)

(5) The District Engineer and the Contractor should designate specific individuals to issue or receive requests for reimbursable law enforcement services under the contract.

(6) Describe the billing procedures to be utilized for the increased law enforcement services. The Contractor shall provide, at a minimum, the total charges, the number of hours involved, and starting and ending dates of the billing period.

(7) The Contractor shall prepare a Daily Law Enforcement Log (see § 330.6 (g) for the law enforcement services rendered as specified in § 330.6(h)(3). These logs shall be compiled by the Contractor and submitted to the District Engineer or his designated representative on a regular basis throughout the life of the contract. It is intended by this reporting requirement to minimize the paperwork burden on behalf of the Contractor while, at the same time, providing assurance to the Government with an adequate information base on which to administer the law enforcement services being provided under the contract. Any requirement for additional information to be contained in these reports due to unique or special circumstances encountered in negotiating a Plan of Operation with a particular law enforcement jurisdiction must receive the prior approval of the Division Engineer.

§ 330.7 Funding.

(a) Section 330.3(c) sets forth the maximum authorized funds for law enforcement contracting in FY 1978 and FY 1979. The Division funding levels for FY 1978 are based on information as previously submitted.

(b) The FY 1979 funding request for law enforcement contracting will be submitted as part of the FY 1979 budget submittal.

§ 330.8 Annual report.

(RCS-DAEN-CWO-53) The Division Engineer will submit a consolidated annual report to reach HQDA (DAEN-CWO-R) WASH DC 20314 not later than 30 October. This requirement expires 30 October 1979. The report will contain the following:

(a) Districts reporting.

(b) Number assigned each contract.

(c) Name of projects covered under each contract.

(d) Number of man-hours of increased law enforcement services provided under each contract.

(e) Total contract cost.

(f) Cost per man-hour for each contract.

(g) Corps of Engineers administrative or overhead costs associated with each contract.

(h) Number of arrests and type of offense committed, i.e., assault, burglary, auto theft, etc.

(i) The Division Engineers assessment of the effects of the contract law enforcement program and recommendation.

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[3410-02]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES)[1] DEPARTMENT OF AGRICULTURE

PART 26—GRAIN STANDARDS

Fees for Certain Grain Inspection Service

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Final rule.

SUMMARY: This amendment makes the following general changes in the fees for grain inspection services performed by the FGIS in the United States:

1. Reduces the general level of fees for the original inspection of grain in trucks, trailers, railcars, and submitted samples.

2. Reduces the fees for protein inspections.

3. Increases the general level of fees for the inspection of grain in barges, ships, and bins, and changes the method of stating the fees.

4. Increases the minimum fee per inspection request for grain in barges, ships, and bins.

5. Terminates the separate lists of fees for contract, noncontract, regular and nonregular workday inspection services in the United States, and establishes one list of fees for original inspection services and one list of fees for reinspection and appeal inspection services in the United States.

[1] Includes matters within the responsibility of the Federal Grain Inspection Service.