PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 73.55, paragraph (e)(1) is revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(e) *Detection aids.* (1) All alarms required pursuant to this part must annunciate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station not necessarily onsite, so that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. The onsite central alarm station must be considered a vital area and its walls, doors, ceiling, floor, and any windows in the walls and in the doors must be bullet-resisting. The onsite central alarm station must be located within a building in such a manner that the interior of the central alarm station is not visible from the perimeter of the protected area. This station must not contain any operational activities that would interfere with the execution of the alarm response function. Onsite secondary power supply systems for alarm annunciator equipment and non-portable communications equipment as required in paragraph (f) of this section must be located within vital areas.

* * * * *

Dated at Bethesda, Maryland this 8th day of April, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-8607 Filed 4-15-87; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Organization and Operations of Federal Credit Unions; and Requirements for Insurance and Voluntary Termination of Insurance

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board has adopted final rules concerning business loans made by federally-insured credit unions and concerning preferential treatment and prohibited fees on business and other loans. These final rules are based on a proposed rule issued by the NCUA Board on June 19, 1986 (*see* 51 FR 23234, June 26, 1986), and a revised proposed rule issued by the NCUA Board on December 17, 1986 (*see* 51 FR 46869, December 29, 1986). These final rules incorporate many of the recommended changes and amendments submitted by commenters on the prior proposals. Major revisions involve the definition of member business loans (§ 701.21(h)(1)(i)), written business loan policies (§ 701.21(h)(2)), prohibited fees and preferential loan treatment (§ 701.21(c)(8) and (d)(5)), and minimum loan policy requirements for federally-insured credit unions (§ 741.3).

EFFECTIVE DATE: July 1, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Regional Director, Region V (Austin), 611 East 6th Street, Suite 407, Austin, TX 78701; or D. Michael Riley, Director, Office of Examination and Insurance, or Steven R. Bisker, Assistant General Counsel, 1776 G St., NW., Washington, DC 20456, or telephone: (512) 482-5131 (Mr. Skiles); (202) 357-1065 (Mr. Riley); or (202) 357-1030 (Mr. Bisker).

SUPPLEMENTARY INFORMATION:

Background and General Comments

Approximately 350 comment letters were submitted on the June 1986 proposal and approximately 85 letters were submitted on the December proposal. A majority of the commenters on the second proposal either expressed support for the rules, or expressed appreciation of NCUA's responsiveness and recommended additional changes. Some of the commenters, although recognizing the present need for a rule, urged the NCUA Board to commit to review the rule in one to two years. NCUA has already begun to collect data on business loans in conjunction with the Semiannual Report (Form 5300) and will review the data over a period of three years or less. This process will help the NCUA Board determine the effectiveness of and the continued need for this final rule.

While the process of public debate and comment on this rule has been relatively long, with numerous discussions, lectures, and articles addressing the subject, there continues to be some misunderstanding about the objectives of the provisions concerning member business loans. The Board wants to stress that it is *not* its intent to prohibit commercial lending. Rather, the objective of the rule is to help establish a framework to ensure that business loans are made in a way that will reduce the risk inherent in such loans and provide for adequate financial backup (reserves) in the event that losses are incurred. The Board's goal is to provide the basis for a system of business lending that is consistent with safe and sound practices and that will help to reduce losses to federally-insured credit unions and the National Credit Union Share Insurance Fund ("NCUSIF"). This is the principal reason for bringing *all* federally-insured credit unions within the scope of the rule.

Some commenters have questioned NCUA's authority to extend the rule to federally-insured state credit unions. They argue that the Board's general rulemaking authority in section 209(a)(11) of the FCU Act (12 U.S.C. 1789(a)(11)) does not empower NCUA to promulgate a rule such as this. The Board does not agree. The objective of these rules is to ensure that lending practices are conducted in a safe and sound manner. Unsafe business lending practices by federally-insured state credit unions directly affect the risk of loss to the NCUSIF and in fact have resulted in many millions of dollars of losses in the last several years. Similarly, instances of preferential and substandard lending to insiders have resulted in very severe losses. Thus the application of these rules to federally-insured state credit unions is not a matter of unconstitutional overreaching, but instead is simply a matter of meeting certain minimum standards as a condition of Federal insurance. In this connection, section 201(b)(9) of the Act (12 U.S.C. 1781(b)(9)) provides that insured credit unions agree "to comply with the requirements of [Title II of the FCU Act] and of the regulations prescribed by the Board pursuant thereto." The record reflects that NCUA has used this authority only when necessary to establish minimum safety and soundness standards as a condition of Federal insurance.

Further, the Board, in this instance, has provided exemptions for federally-insured state credit unions in states that adopt rules "substantially equivalent" to NCUA's rules. (*See* discussions under "Applicability of Rules to Federally-Insured State Credit Unions," below.)

The most frequently received comments and the changes that have been made in the final rule are detailed below.

Prohibited Fees (Section 701.21(c)(8))

This is one of two sections of the rules that apply to *all* loans to members by Federal and federally-insured state credit unions. This Section of the proposal would have prohibited all officials and employees, and their immediate family members, from receiving loan-related commission and fee income. "Immediate family member" was very broadly defined. Many commenters expressed concern about the breadth of this prohibition. In response to the comments, the final rule narrows the prohibition to directors, committee members, loan officers, and senior management employees (defined essentially to include the CEO and his or her top assistants), and narrows the definition of "immediate family member" to the spouse and other relatives living in the same household.

The conflicts of interest sought to be eliminated by this Section of the rule exist principally where the person involved is in a position of authority in the credit union so as to influence or make decisions that can affect their pecuniary interest. Non-senior employees, therefore, need not be included in the prohibition.

The definition of "immediate family member" was amended because many commenters expressed concern that relatives of directors, committee members, and employees, previously included in the definition, were unwarrantedly precluded from doing business (providing services in connection with underwriting, insuring, servicing, or collecting loans or lines of credit) with the credit union. The Board agrees that the prohibition may have been unnecessarily broad and, therefore, has limited the definition. It is expected, however, that any such dealings will be at arm's length and in the best interest of the credit union.

Nonpreferential Treatment (Section 701.21(d)(5))

This is the second provision of the lending rules that applies to both member business and nonbusiness loans. This section prohibits preferential loans to directors and committee members and to their immediate family members and business associates. As in the case of the provisions on prohibited fees, the definition of immediate family member is limited to the spouse and other family members living in the same household. This change has also been made in § 701.21(h)(1)(iv) (prohibiting certain business loans to senior management employees, discussed below), and it is noted that the Board will, in the near future, review other provisions in NCUA's Rules and Regulations where the term appears and will consider consistent revisions to those Sections as well (*see* e.g., § 701.27(c)(3) concerning "credit union service organizations," § 701.36(b)(6) concerning fixed-assets, § 703.2(l) concerning investment activities, and § 721.2(c) concerning insurance and group purchasing).

Definition of Member Business Loan (Section 701.21(h)(1)(i))

A recommendation contained in several comment letters was that the exception from the definition of member business loans in paragraph (A), for loans fully secured by a lien on a 1 to 4 family dwelling, *not* be limited to the member's primary or secondary residence. The proposed rule was limited because it was not the Board's intention to except out from the definition real estate investment loans fully secured by such property. The commenters believed that the proposed rule was overly restrictive. The Board has reconsidered its position and has amended the rule to expand the exception to include a loan or loans fully secured by (1) the member's primary residence, or (2) the member's secondary residence, or (3) one other 1 to 4 family dwelling owned by the member. The change will permit a member to have a total of three fully secured loans (primary residence, secondary residence and one other) that would not otherwise be subject to § 701.21(h). This change should accommodate those instances where a member purchases a new primary residence and does not sell his prior residence but, instead, rents it to a family member or other person. In many cases, the motivation to maintain the old residence is not investment oriented but rather to provide a home for a family member.

Some commenters asked whether loans fully secured by condominium or cooperative apartments or townhouses were included in the exception. The Board interprets 1 to 4 family dwelling as including these kinds of residential properties.

The Board also received several comments asking that paragraph (B), the exception for loans fully secured by shares in the credit union, be broadened to include deposits in other financial institutions such as banks, savings and loan associations, and other credit unions. The Board's initial reason for limiting the exclusion to shares in the credit union was its concern that credit unions would fail to take the steps necessary to properly obtain a fully secured interest in deposits held at other financial institutions. The Board has amended the rule to include deposits in other financial institutions but cautions credit unions that, for the exception to apply, they must have completed all necessary agreements, filings, notifications, etc., required under state law to fully secure (perfect) their interest in such deposits.

A number of commenters urged the Board to raise the $25,000 trigger amount specified in paragraph (C) (loans less than $25,000 are *not* subject to § 701.21(h)) to $50,000. The Board has not increased the trigger amount because it would remove many loans from coverage under § 701.21(h) that, for safety and soundness reasons, need to be underwritten, monitored, and serviced in conformance with this rule. It is apparent from some of the comments that there is still confusion as to the effect of the $25,000 trigger amount. Simply stated, paragraph (C) excludes all loans under $25,000 that, but for the amount of the loan, would otherwise be subject to the member business loan rule § 701.21(h)). It is *not* a ceiling on the dollar amount that can be extended for a business loan. Further, the fact that a loan is excluded from coverage under § 701.21(h) does not mean that the loan is not subject to other applicable provisions of § 701.21 or other applicable sections of the NCUA Rules and Regulations and the FCU Act.

The Board received a comment letter from the Small Business Administration ("SBA") concerning the exclusion in paragraph (D) for loans fully insured or guaranted by an agency of the Federal government. The SBA stressed that the requirements in § 701.21(h) are consistent with the types of requirements followed by lenders participating in SBA's business loan guaranty program. Any credit union that is not conforming to these standards will likely not be approved by SBA. Therefore, while paragraph (D) provides credit unions with an exclusion for mandatory coverage under the rule, the provisions in the rule would generally need to be followed to satisfy SBA requirements.

Lastly, the Board notes that in each instance in the rule where the term "fully secured" appears, it means interests obtained by a credit union in the specific collateral sufficient to give the credit union an unimpaired right, free from the right of subsequent creditors, lienholders, receivers, trustees in bankruptcy, etc., to foreclose (take) the collateral in the event of default by the borrower.

Written Loan Policies (Section 701.21(h)(2)(i))

Paragraph (H) in § 701.21(h)(2)(i) of the proposed rule generated many comments. This provision required that financial statements and other documentation, including tax returns be updated on an annual or more frequent basis. Several of the commenters stated that because of the size of certain loans and the types of small businesses involved, the cost to the borrower to provide the required updated reports and documentation would be prohibitive. The same concern was expressed by the commenters as to the requirements in paragraph (G) which call for, among other things, balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data. Commenters also argued that these analyses were unnecessary where the income flow relied upon to repay the loan is not from the business.

In response to these concerns, the Board has combined parts of paragraphs (G) and (H) to form a new paragraph (H). The new paragraph states that a credit union's written loan policy shall provide for the analysis and updating of documentation specified in the paragraph *unless* the credit union's board of directors finds that it is not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies. These reasons must be based on sound business lending practices and be clear as to the basis for excepting out a particular type of business loan. NCUA examiners will be instructed to carefully review the credit union's board of directors findings in this regard. Lastly, the new paragraph requires "periodic" updating instead of yearly or more frequent updating. The larger and the more complex the loan, the more documentation is required and the more frequently it must be updated.

Paragraph (L), which had required the periodic disclosure to members of the number and aggregate dollar amount of business loans made to officials, and employees, has been amended to require only the periodic disclosure of the number and aggregate dollar amount of member business loans. Commenters stressed that the privacy of credit union officials and employees could be infringed by such disclosures. The Board believes that there are sufficient safeguards in the final rule to protect against insider dealing and conflicts of interest. The Board has determined that these additional disclosures are not necessary and has amended the final rule.

Loans to One Borrower (Section 701.21(h)(2)(ii))

Several commenters ought to have the 20% (of reserves) loan-to-one-borrower limit increased and to have the rule specify the criteria to be evaluated by the Board in considering whether to approve a credit union's request to raise the limit. Additionally, some commenters sought an exception from inclusion in the 20% limit of that portion of a member business loan that is fully secured by a 1 to 4 family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member.

The Board continues to believe that the 20% limitation is necessary for safety and soundness reasons and is comparable to limits established by other Federal financial institution regulators. The 20% limit remains unchanged in the final rule. However, the exclusion for portions of loans fully secured by the member's 1 to 4 family dwelling has been added to the rule.

The final rule contains a list of what the Board will require, at a minimum, in evaluating a request to raise the limit. The rule states that credit unions seeking an exception must present the Board with: the higher limit sought; an explanation of the need to raise the limit; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. As an example, in explaining the need to raise the limit, an agricultural type credit union might note that almost all of the loans it normally makes would fall within the coverage of the rule and that they are usually quite large (e.g., for the purchase of tractors, combines, etc.). The credit union would need to support this with actual statistics and provide the Board with the other items noted n the rule.

Allowance for Loan Losses (Section 701.21(h)(2)(iii))

Some commenters continued to voice objection to the classifying of loans that are not delinquent, if the analysis and documentation of the loan is inadequate. Also, the commenters expressed their uncertainty as to who makes the initial determination on the classification of loans.

Although a loan may be current, there is no assurance that payments will continue, especially if the business falls upon hard times. Only through proper analysis and documentation can the loan be properly evaluated. Without that, the potential for loss increases. It is for this and other reasons that the Board has not amended this provision. The Board does want to stress that, although the criteria for classifying member business loans is somewhat different from that for other credit union loans, the procedure by which loans are classified was not intended to be changed by this rule. Credit unions will continue to make the initial determination and the examiner will review the classification.

Prohibition on Loans to Senior Management Employees (Section 701.21(h)(3))

This Section of the rule generated the most comments. Many of the commenters urged the Board to exclude loans to family members of salaried management from the prohibition. As previously discussed, the Board has amended the definition of "immediate family member" (*see* § 701.21(h)(1)(iv)). Therefore, the prohibition would now apply only to the individual's spouse or other family member living in the same household.

It should be recognized that the prohibition is *not* an absolute ban on loans to nonvolunteer senior management employees. These individuals are still eligible for consumer loans, including mortgage, automobile, credit cards, etc. Further, they may receive loans for business purposes that are less than $25,000.

A few FISCU commenters noted that, pursuant to state law, otherwise uncompensated directors are authorized to receive a small stipend for attending each board meeting, in addition to their reimbursement for expenses. These stipends, although small, would cause those directors to lose their status as volunteers for purposes of the prohibition. Therefore, if a director desires to obtain a business loan from his/her credit union he/she should forego the stipend.

Reporting of Nonconforming Member Business Loans (Section 701.21(h)(4)(ii))

The proposed rule required that credit unions report to the NCUA Regional Director, on or before the effective date of the rule, all business loans that do not satisfy any of the requirements of the rule. To alleviate unnecessary confusion and work, the final rule requires the reporting of only those loans that are in excess of the loan-to-one-borrower limit contained in § 701.21(h)(2)(ii).

Applicability of Rule to Federally-Insured State Credit Unions (Section 741.3)

Several commenters recommended that this Section be amended to provide some flexibility to allow a state regulatory authority that has, for

example, certain provisions in its state code which depart from those in the FCU Act, to adopt *substantially* equivalent regulations as determined by the NCUA Board. The Board agrees that such an amendment is warranted and has amended the final rule.

Depending on the circumstances, an exemption may be granted for one or more of the sections of NCUA's lending regulations that will now apply to federally-insured state credit unions (§ 701.21(c)(8) concerning prohibited fees, § 701.21(d)(5) concerning nonpreferential treatment, and § 701.21(h) concerning member business loans).

In determining whether a state's regulations are "substantially equivalent," and whether to exempt the state's credit unions from § 701.21(c)(8), (d)(5), or (h), the NCUA Board will review the regulations to determine whether they minimize risk and accomplish the overall objectives of the otherwise applicable NCUA Rules and Regulations. In the case of the member business loan rule, the Board will be particularly concerned with the provisions in the state's rules that address the scope of the rule, diversification (i.e., loan-to-one-borrower limits), written loans policies, and loans to senior management. Further, states that are exempted will need to provide for a system in which any required reviews and approvals, (e.g., approval to an individual credit union to exceed the 20% loan-to-one-borrower limit) although ultimately approved by the state, are decided only after consultation and coordination with NCUA. This would be the same type of procedure as contained in Section 741.3 for nonexempt states, where NCUA coordinates with the state supervisor.

Standard Bylaw Amendment—Loans to Nonnatural Persons (Article XII, Section 1)

In conjunction with the promulgation of these final rules, the NCUA Board has also approved a standard bylaw amendment for Federal credit unions concerning loans to nonnatural person members. Pursuant to Article XII, Section 1 of the FCU Bylaws, loans to a member other than a natural person cannot be in excess of its shareholdings in the credit union. The standard bylaw amendment, if adopted by an FCU, would permit the loan to exceed shares if the loan is made jointly to one or more natural person members and a business organization in which they have a majority ownership interest, or, if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

Regulatory Procedures

Regulatory Flexibility Act

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 (primarily those under 1 million dollars in assets). According to information available to the NCUA, business loans are not made by a significant number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board submitted the information collection requirements of the first proposed business lending rule and received conditional approval from the Office of Management and Budget (OMB). (*See* (51 FR 23234, June 26, 1986.) The information collection requirements of this final rule have been modified from the June proposed rule. The written loan policy requirement is now found at § 701.21(h)(2)(i). Certain collections that were required in all situations under the proposed rule are now only required when appropriate. One additional requirement has been addded. Section 701.21(h)(4)(ii) requires that a one-time notification to the appropriate NCUA Regional Director be made.

Since the collection requirements have been modified, they will be resubmitted to OMB for approval with publication of this final rule. OMB action on the requirements will be published in the **Federal Register** when it is received by NCUA.

Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB desk officer at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATT: Robert Neil.

List of Subjects in 12 CFR Parts 701 and 741

Credit unions, Member business loans.

By the National Credit Union Administration Board on April 9, 1987.

Becky Baker,

Acting Secretary of the Board.

PART 701—[AMENDED]

Accordingly, NCUA amends its regulations as follows:

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

Authority: 12 U.S.C. 1757, 1766(a) and 1789(a)(11).

2. Section 701.21(a) is revised to read:

§ 701.21 Loans to members and lines of credit to members.

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with Title VIII of Pub. L. 97–320, and certain provisions apply to loans made by federally-insured state-chartered credit unions as specified in § 741.3. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations (which are governed by section 107(5)(D) of the Act and § 701.27 of this Part).

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3. Section 701.21(c)(5) is revised to read:

* * * * *

(c) * * *

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired shares and surplus. In the case of member business loans as defined in § 701.21(h)(1)(i), additional limitations apply as set forth in § 701.21(h)(2)(ii).

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4. Section 701.21(c)(8) is revised to read:

* * * * *

(c) * * *

(8) *Prohibited fees.* A Federal

credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this Section. For purposes of this Section, "senior management employees" means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller), and "immediate family member" means a spouse or other family member living in the same household.

* * * * *

5. Section 701.21(d)(5) is revised to read:

* * * * *

(d) * * *

(5) *Nonpreferential treatment.* The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by—

(i) An official,

(ii) An immediate family member of an official, or

(iii) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family member" means a spouse or other family member living in the same household.

6. A new § 701.21(h) is added to read:

* * * * *

(h) *Member Business Loans*—(1) *Definitions.* (i) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is:

(*1*) The member's primary residence; or

(*2*) The member's secondary residence; or

(*3*) One other such dwelling owned by the member.

(B) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(C) A loan, the proceeds of which are used for a commercial, corporate, business, or agricultural purpose, made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which, when added to other such loans to the borrower or associated member, is less than $25,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency or the Federal government or of a state or any of its political subdivisions.

(ii) "Reserves" means all reserves, including the Allowance for Loan Losses account, and undivided earnings or surplus.

(iii) "Associated Member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.

(iv) "Immediate Family Member" means a spouse or other family member living in the same household.

(2) *Requirements.* A Federal credit union may make member business loans only in accordance with the applicable provisions of § 701.21 (a) through (g) and the following additional requirements:

(i) *Written loan policies.* The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made.

(B) The credit union's trade area for business loans.

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans.

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(ii).

(F) Qualifications and experience of personnel involved in making and administering business loans.

(G) Analysis of the ability of the borrower to repay the loan.

(H) The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns.

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.

(J) Appropriate interest rates and maturities of business loans.

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures.

(L) Provision of periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans.

(M) Identification, by position, of those senior management employees prohibited by paragraph (h)(3) of this section from receiving member business loans.

(ii) *Loans to one borrower.* Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is fully secured by a 1 to 4 family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member, or by shares in the credit union, or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20% limit. Credit unions seeking an exception from the 20% limit must present the Board with, at a minimum: the higher limit sought; an explanation of the need to raise the limit; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy.

(iii) *Allowance for loan losses.* (A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(B) Loans classified shall be reserved as follows:

(1) Loss loans at 100% of outstanding amount;

(2) Doubtful loans at 50% of outstanding amount; and

(3) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Prohibitions*—(i) *Senior management employees.* A Federal credit union may not make member business loans to the following non-volunteer, senior management employees, or to any associated member or immediate family member of such employees:

(A) Any member of the Board of Directors who is compensated as such.

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager).

(c) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager).

(D) The chief financial officer (Comptroller).

(ii) *"Equity kickers."* A Federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit to the business or commercial endeavor for which the loan is made.

(4) *Effective date.* (i) Section 701.21(h) is effective July 1, 1987. On and after that date, a Federal credit union may make member business loans only after adopting and implementing written loan policies as required by § 701.21(h)(2)(i). All member business loans made on or after that date must be in full compliance with § 701.21(h).

(ii) On or before July 1, 1987, a Federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date that do not satisfy the requirements of § 701.21(h)(2)(ii).

Appendix to § 701.21(h)—Classifications

Substandard. Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

Doubtful. A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

Loss. Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

PART 741—[AMENDED]

7. The authority citation for Part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790.

8. Sections 741.3 through 741.9 are redesignated as §§ 741.4 through 741.10 respectively.

9. A new § 741.3 is added to read:

§ 741.3 Minimum loan policy requirements.

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in § 701.21(h) concerning member business loans, § 701.21(c)(8) concerning prohibited fees, and § 701.21(d)(5) concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority.

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12 CFR Part 708

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Federal Credit Union Act empowers the NCUA Board to prescribe rules regarding mergers of federally-insured credit unions and changes in insured status, and requires written approval of the Board prior to the termination of Federal insurance or conversion of Federal insurance to non-Federal insurance. These revised rules address the treatment of the one percent NCUSIF deposit in mergers and shortening of the time permitted between the approval of a merger by NCUA and its presentation for a membership vote by the merging credit union. These rules also add new provisions regarding the termination or conversion of Federal insurance and set forth the forms to be used in obtaining membership approval of those actions. These rules do not affect the normal day-to-day operations of credit unions.

EFFECTIVE DATE: May 18, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 1986, (See 51 FR 43377, December 2, 1986) the NCUA Board issued proposed amendments to Part 708 of its Rules and Regulations. Part 708 currently deals only with mergers involving at least one federally-insured credit union. Due to the fact that mergers can also involve the termination or conversion of Federal insurance, the November proposal added new provisions addressing those areas. As issued, the proposed rule was organized into three distinct subparts: Subpart A contained merger procedures; Subpart B set forth the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to insurance provided by private or cooperative insurers; and Subpart C contained the forms to be used for terminating or converting Federal insurance, with or without a merger. This same format is followed in the final rule.

A total of nine public comment letters were received on the proposal. Comment letters were received from: one national credit union trade association; one credit union league; two Federal credit unions; 3 share (deposit) insurance corporations; one share insurance corporation trade association; and one state credit union supervisor trade association. The particular comments are addressed below.

Public Comment

In summary, one commenter supported the regulation as written, four commenters objected to the use of terms such as "federally-insured," "nonfederal insurance" and "Federal insurance"; two commenters felt the regulation discouraged termination or conversion of insurance; and two commenters had recommendations for minor changes. No commenters questioned the authority of the Board to regulate the matters addressed in the rule.

Regarding the objections to the use of terms such as "Federal insurance" and "federally-insured," similar objections were presented in a petition to amend Part 740 after the Board adopted a final amendment to that part in October, 1986. Two of the amendments at that time were inclusion of the term "federally" in the official sign and in the official advertising statement. The Board informed the petitioners in that matter that it did not find the use of "federally-insured" to be inaccurate or misleading and the Board continues to believe that the use of such terms are appropriate.

As stated in the legislative history of Title II of the Federal Credit Union Act (FCU Act):

> The primary purpose of the legislation [creating the National Credit Union Share Insurance Fund] is to provide a Federal system of share insurance for savings in credit unions and the regulatory authority necessary to operate such a share insurance system. Senate Rep. 91–1128, at 1, 91st Cong. 2d Sess., Aug. 19, 1970.

In discussing the need for the legislation, the Senate Report noted that "Federal credit unions are unique in that they are the only federally chartered thrift institutions that do not provide *Federal insurance protection* similar to that available to the depositors of most commercial banks and savings and loan associations." (Id., at 2, emphasis added.) The Report also specifically refers to "a program of Federal share insurance." (Id.) The fact of the matter is that NCUA is a Federal agency that administers a Federal share insurance program through the National Credit Union Share Insurance Fund. The references in the legislative history clearly indicate Congress knew it was creating Federal share insurance.

As to the comments that Congress could have used "Federal insurance" or "Federally-insured" in the FCU Act but chose not to, as an indication that "Federal insurance" was not intended, the Board believes the answer is clear from the statute itself. There was no need to use such terms. For insurance purposes, the FCU Act recognizes only two types of credit unions, those that are insured under the FCU Act—"insured credit union"—and those that are not—"noninsured credit union.' *See,* 12 U.S.C. 1752(7). A "noninsured credit union" is any credit union that is not insured by the NCUA Board through the NCUSIF. This would include credit unions that have no share insurance and those that are insured by an entity other than NCUA. Once a credit union converts from insurance under the FCU Act to another form of insurance, it becomes a "noninsured credit union" for purposes of the FCU Act. For purposes of Part 708 then, the Board could simply refer to any credit union not insured by it as a "noninsured credit union." Two of the commenters suggested that the Board do just that. The Board chose not to, however, and instead broke down "noninsured" credit union into "nonfederally-insured"—insured by a state-chartered insurance or guaranty corporation—and "uninsured"—having no share insurance at all. Use of "noninsured" when referring to nonfederally-insured credit unions, although accurate under the FCU Act, would, in the Board's view, be a disservice to those state-chartered insurers. None of the four commenters, however, which were state-chartered insurers themselves or represented those insurers, challenged the Board's authority to issue the rule or suggested alternatives to "nonfederally-insured" in their comments on the terminology used in the proposal. Rather, they recommended deleting terms such as "Federal," "federally," and "nonfederally." The Board is of the opinion that the terminology used in the proposal is appropriate and therefore has made no change in the final rule.

One commenter stated that it appears NCUA is trying to make it impossible to either change or drop NCUA insurance. The commenter requested relief from the 20 percent voter return requirement set forth in § 708.203(c) of the proposed rule. This 20 percent member participation rule is mandated by section 206(d)(2) of the FCU Act, 12 U.S.C. 1786(d)(2). That section of the FCU Act requires that at least 20 percent of the membership must participate in voting on the issue of converting insurance and a majority of those voting must approve. (Termination of insurance has a more stringent requirement: the affirmative vote of a majority of all members, 12 U.S.C. 1786(a)(1). *See* § 708.201(c) of this rule.) Since 20 percent participation is required by the statute, the Board is unable to make any change.

Another commenter felt that the forms in Subpart C would discourage termination or conversion of Federal insurance. The commenter requested that the forms be exemplary material and that credit unions be given greater flexibility in structuring notifications to their members. Although the forms are required, flexibility is provided in § 708.303. The proposed rule provided that modifications or additions would be permitted subject to approval of the appropriate Regional Director. The final rule has been changed by adding the state authority as a party to the approval of notice modifications in the case of state credit unions. In addition, any communications regarding insurance coverage mailed with the notices and ballot will require approval of the Regional Director and the state authority where appropriate.

The Board is of the opinion that part of its responsibilities in administering the Federal share insurance program is assuring that members have a clear understanding of any change to their credit union's share insurance coverage. In this regard, notification to members is extremely important. The Board does not find the use of specific forms to be burdensome and does not believe the forms in and of themselves will discourage termination or conversion of insured status. To the contrary, the use of the forms in Subpart C should simplify the process. The final rule, therefore, will require use of the language contained in the forms in Subpart C. As indicated, modifications can be made with the approval of the Regional Director and, where appropriate, the state authority.

Two commenters included specific suggestions for changes to the proposed rule, most of which relate to Subpart A—mergers. First, it was suggested that provisions that require submissions to the Agency be clarified as to whether the particular item should be submitted to the Regional Director or to the NCUA Board. For example, the current regulation requires submission of an insurance application to the Board (§ 708.3(c)) and submission of a merger plan to the Regional Director (§ 708.5(a)), while the proposal simply refers to NCUA (§§ 708.102(b) and 708.104(a)). NCUA was used in the proposal because these are areas subject to the Board's delegations of authority. The Board agrees with the commenter that clarification is appropriate and therefore the final rule has been revised to provide that all notices and submissions are to be sent to the appropriate Regional Director. If the Regional Director is not authorized to act on the submission, it will be forwarded to the NCUA Board. In most cases, the Board would seek Regional Director comments on an application or

plan and this would be accomplished by making the original submission to the Regional Office.

A second comment related to the refund of the NCUSIF deposit and/or insurance premium. *See* § 708.102(c) of the proposed rule. The commenter suggests that the FCU Act requires that any refund must not be returned prior to the expiration of the one-year period of continued insurance coverage and that this applies to a credit union that is nonfederally insured as well as those that are uninsured. Section 202(c)(1)(B)(i), 12 U.S.C. 1782(c)(1)(B)(i), requires a deposit refund in the event of insurance termination or conversion, and section 202(c)(1)(B)(ii), 12 U.S.C. 1782(c)(1)(B)(ii), provides that in no event shall the deposit be returned later than one year after the final date on which any shares are insured by the Board. Thus, the Board may withhold the refund for two years after termination of insurance, since limited insurance coverage extends for one year after termination; and for one year after conversion of insurance. Normally, the refund will be made as soon as possible after the NCUA's insurance liability expires, i.e., one year after termination and immediately after the date of conversion. The proposed regulation, § 708.102(c), merely states that in the case of a merger, if the continuing credit union is not insured by NCUA, i.e., it is uninsured or nonfederally insured, it will be entitled to a refund. If it is uninsured, the refund will not be made during the one-year limited coverage period. The Board does not believe that any change needs to be made to § 708.102. Section 202 of the FCU Act provides the basis for any extended withholding if that is determined to be necessary.

It was also suggested that the regulation stipulate that NCUA will examine credit unions during the one-year extended insurance coverage period after termination of insurance. The commenter believes that mandatory examination is necessary for the protection of the NCUSIF. The Board does not believe that its authority to examine such credit unions, which is found in section 206(d)(1) of the FCU Act, needs to be set forth in this regulation. The Board will exercise its discretion to conduct such examinations on a case-by-case basis.

Another suggestion was that a subsection (11) be added to § 708.103(a), preparation of a merger plan, to indicate the necessity of the adoption of Federal Bylaws where the continuing credit union is a Federal credit union. A new subsection is not necessary, however, since the continuing credit union's bylaws would remain in effect after a merger; no adoption of bylaws is necessary.

Both the current regulation, § 708.6(a), and the proposed, § 708.105(b), provide that if NCUA determines that a merging Federal credit union is in danger of insolvency and the merger would reduce the risk or avoid a loss to the NCUSIF, NCUA may permit the merger without membership approval. The proposal differs from the current regulation in that it requires the continuing credit union to be federally insured. The rationale for permitting the waiver of a membership vote in this situation is the benefit to the NCUSIF in the reduction of its risk or loss without the delay of obtaining membership approval. There is no change in NCUA's insurance liability to the members, they continue to have credit union service, and, if dissatisfied with the merger, they are free to withdraw their shares. The alternative would be liquidation of the merging Federal credit union. One commenter suggested that NCUA retain the right to waive the membership vote in the event of insolvency even if the actual risk to the NCUSIF is not reduced. In the Board's view, however, if there is no reduction of risk or avoidance of loss to the NCUSIF, there is no basis for speeding up the process and avoiding the delay that obtaining the membership vote would entail. In all likelihood, there would be no basis for permitting the merger at all since it would merely shift existing risk and loss to an otherwise stable institution. The Board, therefore, has made no change to § 708.105(b).

There were two comments submitted on § 708.201, termination of insurance. The first was in regard to subsection (b) which provides that a "Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union." The commenter felt that Federal insurance would also terminate if a Federal credit union merged with, or converted to, a nonfederally-insured state-chartered credit union. For purposes of this regulation, however, a merger with, or conversion to, a nonfederally-insured credit union would be treated as a conversion of insurance under § 708.203(b), not a termination of insurance. Termination, as that term is defined in § 708.1(g), means that the credit union will be uninsured, i.e., there is no share insurance of any kind. Therefore, no change is needed in § 708.201(b).

The second comment related to § 708.201(c). The commenter felt the provisions would only apply to federally-insured state credit unions and that provision was unclear. That is not the case though. Subsection (c) applies to termination by both state and Federal credit unions as provided in subsections (a) and (b) of § 708.201. In both situations, termination, whether as a single act or when coupled with a merger or change in charter— Federal credit unions can only terminate Federal insurance through a merger or change in charter—must be approved by a majority of all of the credit union's members under subsection (c). For this reason, no change has been made to § 708.201(c).

Change in Final Rule

Several changes have been made in the final rule. The first change is reflected by the addition of two provisions: § 708.201(d) and 708.203(d). These provisions set forth the statutory requirement contained in § 205(b) of the FCU Act that prior written approval of the Board is necessary in order to terminate Federal insurance (§ 708.201(d)) or convert to nonfederal insurance (§ 708.203(d)).

Section (§ 205(b)(1) of the FCU Act, 12 U.S.C 1785(b)(1), provides, in pertinent part, that:

> Except with the prior written approval of the Board, no insured credit union shall—(A) merge or consolidate with any *noninsured credit union* . . .; or
>
> * * * * *
>
> (D) Convert into a *noninsured credit union* . . . *(Emphasis added.)*

For purposes of the Federal Credit Union Act, the term "noninsured credit union" means any credit union that is not insured by the NCUA Board. 12 U.S.C. 1752(7). To avoid any uncertainty as to the Board's interpretation, §§ 708.201(d) and 708.203(d) have been added to the final rule, and the authority citation has been revised to include 12 U.S.C. 1785. The two new provisions also provide that the NCUA Board would approve or disapprove the termination or conversion within 90 days after being notified by the credit union.

Sections 708.202(c) and 708.204(c), regarding the sending of the final notice of termination or conversion to the members, have been revised to clarify that the action must first be approved "by the membership and the Board." The final rule also contains a revision in § 708.203(c). A sentence has been added to clarify that a credit union can give the Board notice of conversion of insurance either at the time it is soliciting membership approval or after

membership approval of the conversion is obtained. A similar change was not made to § 708.201(c) regarding termination because the FCU Act requires membership approval prior to notice to the Board.

Another change, previously noted, is contained in § 708.303, "Modification to Notice." In the final rule, the appropriate state authority, in addition to the NCUA Regional Director, must approve any changes to the notices or ballots set forth in Subpart C when a state-chartered credit union is terminating or converting Federal insurance. Communications regarding insurance coverage mailed with the notices and ballot are also subject to approval. This would not preclude a credit union from mailing a notice or ballot with the members' statement of the credit union's newsletter. If the statement or newsletter, however, addresses share insurance coverage or the termination or conversion thereof, approval would be necessary.

In addition to the clarifying amendment regarding submissions to the Agency, as previously discussed, a minor change has been made to the definition of "nonfederally-insured" in § 708.1(e). The phrase "private or cooperative" has been added to the description of insurance fund or guarantee. There have also been several modifications to the notices and ballots contained in Subpart C of the final rule. The notices of proposed action have been revised to conform with the requirements of Subpart B by adding a sentence wherein a credit union would set forth the date on which the membership vote is to be taken and a space for directions regarding a membership meeting or the use of mail ballots. The ballots have been changed to include a statement regarding the deadline for returning the ballot to the credit union—the date for the membership vote— and by adding a space for the member to insert the date the ballot is signed.

The remaining provisions of the final rule are the same as the proposed rule. It is organized in three distinct subparts. Subpart A prescribes the merger procedures to be used where at least one federally-insured credit union is involved. It is derived from the current Part 708.

Subpart B sets forth the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to insurance provided by a guarantee corporation or insurance fund organized under state law. Subpart C sets forth the forms to be used for terminating or converting Federal insurance, with or without a merger. Both Subparts B and C are new, but their provisions are derived from § 206 of the Act.

If there is a merger between federally-insured credit unions, Subpart A alone applies. However, if a merger will result in the termination or conversion of Federal insurance, then certain portions of both Subparts B and C, as cross-referenced in Subpart A, come into play depending upon the particular facts of the situation. Subpart B is also cross-referenced to the forms in Subpart C. If a particular situation involves termination or conversion of Federal insurance without a merger, Subparts B and C apply and Subpart A does not. This approach should make application of the rule easier for credit unions.

In the case of a termination of insurance, the board of directors first approves the action. A Notice of Proposal to Terminate Federal Insurance is sent to the membership. The ballot may be included with the notice or provided at a later date. The membership vote is taken, and if approved by a majority of members, notice is sent to the Regional Director within one year of the membership vote and at least 90 days prior to the intended termination date. The Board will either approve or disapprove the termination within 90 days setting forth the termination date, normally the intended date set by the credit union. The Board may agree with the credit union to advance the termination date after the notice has been given to the Board since the notice period is for the Board's benefit. If approved, the credit union then sends the Notice of Termination to its members. If a merger is involved, Subpart A comes into play and there is an additional step: a merger plan would have to be submitted to the Regional Director. If approved, the credit union would then follow the above steps, submitting the merger and termination proposal to the membership. The voting requirements for termination, rather than a merger, are then applicable.

In a conversion of insurance, the first step is also board of directors' approval. A Notice of Conversion is then sent to the membership and the ballot may be included at that time. Unlike a termination action, the credit union need not wait for membership approval but may, if it so desires, notify the Board at the same time it contacts its members or during the solicitation process. The Board would still act in 90 days. If the members are given the full 30 days' notice, the conversion could then be completed within 60 days of membership approval. As in the case of termination, the Board and the credit union can agree to advance the conversion date. If approved by the Board and the members, the credit union would then send the Notice of Conversion. Also as in the case of termination, if a merger is involved, a merger plan has to be submitted to the Regional Director, and the voting requirements for conversion are controlling.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, this final rule does not affect the daily operations of credit unions. Accordingly, the Board has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The final rule includes several new notification requirements. There are six case situations that call for notices. Each situation has three separate notice requirements: notice of proposed action; ballot for membership vote; and notice of final action. The six case situations are: (1) Termination of insurance; (2) merger and termination of insurance; (3) conversion of charter and termination of insurance; (4) conversion of insurance; (5) merger and conversion of insurance; and (6) conversion of charter and conversion of insurance. The particular facts of a given case will determine which situation applies to a credit union and the credit union will only have to utilize the appropriate three notices.

The notice requirements for mergers were previously approved by OMB (Control number 3133–0024). The information collection contained in Subpart B has been approved for use through 12/31/89 (OMB No. 3133–0107).

List of Subjects in 12 CFR Part 708

Credit unions, Mergers of Federally-insured credit unions, Voluntary termination or conversion of insured status.

By the National Credit Union Administration Board on April 9, 1987.

Becky Baker,

Acting Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

Part 708 is revised to read as follows:

PART 708—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Sec.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785, 12 U.S.C. 1786, 12 U.S.C. 1789.

§ 708.0 Scope.

(a) Subpart A of this Part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally insured.

(b) Subpart B of this Part prescribes the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

(c) Subpart C of this Part sets forth the forms to be used for terminating Federal insurance or converting from Federal insurance to nonfederal insurance.

(d) Nothing in this Part shall operate as a restriction or otherwise impair the authority of NCUA to approve a merger pursuant to section 205(h) of the Act.

(e) This Part does not address procedures or requirements that may be applicable under state law for a state credit union.

§ 708.1 Definitions.

(a) "Continuing credit union" means the credit union which will continue in operation after the merger.

(b) "Merging credit union" means the credit union which will cease to exist as an operating credit union at the time of the merger.

(c) "State credit union" means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, "state authority" means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

(d) "Federally-insured" means insured by the Board through the National Credit Union Share Insurance Fund (NCUSIF).

(e) "Nonfederally-insured" means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law.

(f) "Uninsured" means there is no share or deposit insurance available on the credit union accounts.

(g) The terms "terminate," "termination" and "terminating," when used in reference to insurance, refer to the act of canceling Federal insurance and mean that the credit union will become uninsured.

(h) The term "convert," "conversion" and "converting," when used in reference to insurance, refer to the act of canceling Federal insurance and simultaneously obtaining share or deposit insurance from another insurance carrier. They mean that after cancellation of Federal insurance the credit union will be nonfederally insured.

Subpart A—Mergers

§ 708.101 Mergers generally.

(a) In any case where a merger will result in the termination of Federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of Subpart B in addition to this Subpart A.

(b) No federally-insured credit union shall merge with any other credit union without the prior written approval of the Board.

(c) Where the continuing credit union is a Federal credit union, there must be compliance with the chartering policies of the Board.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

§ 708.102 Special provisions for Federal insurance.

(a) Where the continuing credit union is federally insured, an NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger of a nonfederally-insured or uninsured credit union with a federally-insured credit union.

(b) Where the continuing credit union is nonfederally insured or uninsured but desires to be federally insured as of the date of the merger, an application shall be submitted to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on any additional share accounts insured as a result of the merger.

(c) Where the continuing credit union is nonfederally insured or uninsured and does not make application for insurance, but the merging credit union is federally insured, the continuing credit union is entitled to a refund of the merging credit union's NCUSIF deposit and to a refund of the unused portion of the NCUSIF share insurance premium (if any). If the continuing credit union is uninsured, the refund will be made only after expiration of the one-year period of continued insurance coverage noted in paragraph (e) of this section.

(d) Where the continuing credit union in nonfederally insured, NCUSIF insurance of the member accounts of a merging federally-insured credit union ceases as of the effective date of the merger. (Refer to Subpart B, §§ 708.203 and 708.204 and Subpart C, § 708.302(b).)

(e) Where the continuing credit union is uninsured, NCUSIF insurance of the member accounts of the merging federally-insured credit union will continue for a period of one year, subject to the restrictions in section 206(d)(1) of the Act as noted in the Notice of Termination set forth in § 708.301(b)(3). (Refer to Subpart B, §§ 708.201 and 708.202, and Subpart C, § 708.301(b).)

§ 708.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(9) Provisions for determining that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

§ 708.104 Submission of merger proposal to NCUA.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to the Regional Director:

(1) The merger plan, as described in this Part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and

(7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally insured).

§ 708.105 Approval of merger proposal by NCUA.

(a) In any case where the continuing credit union is federally insured, and the merging credit union is nonfederally insured or uninsured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

(b) If NCUA finds that the merger proposal complies with the provisions of this Part and does not present an undue risk to the NCUSIF, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. In the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of § 708.106; *Provided* that the continuing credit union is federally insured.

(c) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

§ 708.106 Approval of the merger proposal by members.

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of Article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and the time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts (refer to Subpart B, §§ 708.202 and 708.204);

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The proposal to merge a Federal credit union into a federally-insured credit union must be approved by an affirmative vote of a majority of the members of the merging credit union who vote on the proposal. If the continuing credit union is uninsured, the voting requirements of § 708.201(c) apply; if it is nonfederally insured, the voting requirements of § 708.203(c) apply.

§ 708.107 Certificate of vote on merger proposal.

The board of directors of the merging Federal credit union shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

§ 708.108 Completion of merger.

(a) Upon approval of the merger proposal by NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, action may be taken to complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union shall certify the completion of the merger to the Regional Director within 30 days after the effective date of the merger.

(c) Upon NCUA's receipt of certification that the merger has been completed, then the charter of the merging Federal credit union (if applicable) and the insurance certificate of any merging federally-insured credit union will be canceled.

Subpart B—Voluntary Termination or Conversion of Insured Status.

§ 708.201 Termination of insurance.

(a) A state credit union may terminate Federal insurance, if permitted by state law, either on its own or by merging into an uninsured credit union.

(b) A Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union.

(c) Termination of insurance must be approved by the affirmative vote of a majority of the credit union's members. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to termination and the membership vote must have been obtained within one year prior to giving the Board notice.

(d) No federally-insured credit union shall terminate Federal insurance without the prior written approval of the Board. The Board will approve or disapprove the termination in writing within 90 days after being notified by the credit union.

§ 708.202 Notice to members of termination of insurance.

(a) When a federally-insured credit union proposes to terminate Federal insurance, including termination due to a merger or conversion of charter, it

shall provide its members with written notice of the proposal to terminate and of the date set for the membership vote. The Notice of Proposal shall be as set forth in either § 708.301 (a)(1) or (b)(1), or as provided in § 708.301(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date of the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used shall be as set forth in either § 708.301 (a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to members at the same time.

(c) If the proposition for termination of insurance is approved by the membership and the Board, prompt and reasonable notice of termination shall be given to all members in the form set forth in either § 708.301(a)(3) or (b)(3), as the circumstances warrant.

§ 708.203 Conversion of insurance.

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A Federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion of Federal to nonfederal insurance must be approved by an affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to conversion. Notice to the Board may be given when membership approval is solicited or after membership approval is obtained.

(d) No federally-insured credit union shall convert to nonfederal insurance without the prior written approval of the Board. The Board will approve or disapprove the conversion in writing within 90 days after being notified by the credit union.

§ 708.204 Notice to members of conversion of insurance.

(a) When a federally-insured credit union proposes to convert to nonfederal insurance, including conversion due to a merger or conversion of charter, it shall provide its members with written notice of the proposal to convert and of the date set for the membership vote. Notice of the proposal shall be as set forth in either § 708.302(a)(1) or (b)(1), or as provided in § 708.302(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date for the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used for the membership vote shall be as set forth in either § 708.302(a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the proposition for conversion of insurance is approved by the membership and the Board, prompt and reasonable notice shall be given to all members in the form set forth in either § 708.302(a)(3) or (b)(3), as the circumstances warrant.

Subpart C—Forms

§ 708.301 Termination of insurance.

(a) A federally-insured state credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Terminate Federal Insurance*

(Date)_____

The Board of Directors of _____ Credit Union has approved a proposition to terminate Federal share (deposit) insurance, ($100,000, provided by the National Credit Union Administration (NCUA), an agency of the Federal Government). Termination of Federal insurance may only take place upon approval by a majority of our members. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA.

Accounts in the Credit Union on the day of termination, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the day of termination, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The ballot for obtaining membership approval to terminate Federal insurance shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if termination of Federal insurance is approved, any new deposits or additions to existing accounts made by me will not be insured by the National Credit Union Administration, an agency of the Federal Government. I also understand that my accounts in the Credit Union on the date of termination of insurance, up to a maximum of $100,000, will continue to be insured for one (1) year after the date of termination, but that any withdrawals after the date of termination will reduce the insurance coverage by the amount of the withdrawal.

Signed _____

Member's Name

Date _____

(3) *Notice of Termination*

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Unions Act will terminate as of the close of business on the _____ day of _____.

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

3. Accounts in the Credit Union on the _____ day of _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the _____ day of _____; Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

_____

(b) A federally-insured credit union that is merging with an uninsured credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into the (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, (NCUA), an agency of the Federal Government) will be affected as follows:

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA. Accounts in the (merging) Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The language for the ballot set forth in (a)(2) above, modified by substituting "the merger and termination" in lieu of "termination" each time it appears on the ballot, shall be used for obtaining membership approval to merge and terminate Federal insurance.

(3) *Notice of Merger and Termination of Federal Insurance*

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. The status of the (merging) Credit Union as an insured credit union under the provisions of the Federal Credit Union Act will terminate as of the close of business on the ____ day of _____ (day preceding merger date).

3. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

4. Accounts in the Credit Union on the ____ day of _____, (day preceding merger date), up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after close of business on the _____ day of _____ (day preceding merger date); Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____ (day preceding merger date), will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)
(Address)

(c) A Federal credit union that is converting its charter to that of an insured state credit union shall use the language contained in paragraph (a) of this Section, but shall modify the language in (a)(1) to indicate that it is converting its charter and terminating Federal insurance.

§ 708.302 Conversion of Insurance.

(a) A federally-insured state credit union shall use the following language for purposes of converting from Federal insurance to nonfederal insurance:

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

The Board of Directors of _____ Credit Union has approved a proposition to convert from Federal share (deposit) insurance to nonfederal insurance. The conversion must be approved by a majority of the members who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the conversion, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the conversion. Shares (deposit) in the _____ Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval of the conversion shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that, if the conversion of insurance is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the conversion and my shares will be insured up to $_____ by _____, a corporation chartered by the State of _____.

Signed _____
Member's Name

Date _____

(3) Notice of Conversion

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act will cease as of the close of business on the _____day of _____, _____.

2. As of that date, your deposits will no longer be insured by the National Credit Union Share Insurance Fund.

3. Accounts in the credit union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

(b) A federally-insured credit union that is merging with a nonfederally-insured credit union shall use the following language for purposes of converting from Federal to nonfederal insurance:

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

"The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date) (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the merger. Shares (deposit) in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if the merger of the (merging) Credit Union into the (continuing) Credit Union is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the merger and my shares in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

Signed _____
Member's Name

Date _____

(3) Notice of Merger and Conversion of Insured Status

(Date)_____

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. As of that date, your shares (deposit) are no longer insured by the National Credit Union Administration.

3. Accounts in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

(c) A Federal credit union that is converting its charter to that of a nonfederally-insured credit union shall use the language contained in paragraph (a) of this section, but shall modify the language in (a)(1) to indicate that it is converting its charter and converting from Federal insurance.

§ 708.303 Modifications to notice.

(a) Any modifications or additions to the notices or ballot concerning insurance coverage, and any additional communications concerning insurance coverage included with the notices or ballot, may be made with the approval of the Regional Director and, in the case of a state credit union, the appropriate state authority.

(b) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

[FR Doc. 87-8530 Filed 4-15-87; 8:45 am]
BILLING CODE 7535-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

[NASA Grant and Cooperative Agreement Handbook Instruction 84-3]

Miscellaneous Changes to the NASA Grant and Cooperative Agreement Handbook

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Grant Cooperative Agreement Handbook to reflect miscellaneous changes which implement higher level directives or deal solely with NASA internal administrative matters.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-453-2119.

SUPPLEMENTARY INFORMATION:

Background

This document implements the recent addition to OMB Circular A-110 regarding interest bearing accounts and reiterates NASA's longstanding implementation of that Circular's financial reporting requirements by repeating them in this Handbook in addition to their continued inclusion in instructions provided by NASA's financial management offices. The chief additional internal NASA administrative provisions prohibit unauthorized use of contractual procedures on grants and using grants for consulting arrangements in violation of the NASA FAR Supplement.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of E.O. 12291. This instruction contains internal NASA implementation of higher regulatory directives. NASA's implementation is not expected to affect grantees in any significant way beyond that impact flowing from the higher level directives themselves. Consequently, Pub. L. 98-577 does not require publication of this Instruction for public comment. Because public comment is not required, the Regulatory Flexibility Act does not apply to this Instruction. Moreover, this Instruction does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 14 CFR Part 1260

Grants.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1260—[AMENDED]

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: Pub. L. 97-858, 31 U.S.C 6301 *et seq.*

Subpart 1—General

2. Section 1260.104 is amended by revising paragraph (b) to read as follows:

§ 1260.104 Amendments.

* * * * *

(b) *Procurement Information Circulars.* Non-regulatory changes to the Handbook which require immediate dissemination may be made by a Procurement Information Circular, issued by Headquarters, Procurement Policy Division, Code HP.

3. Section 1260.105 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1260.105 Dissemination and effective date of the part.

(a) The NASA Grant and Cooperative Agreement Handbook and Instructions will be distributed by Code HP directly to NASA Headquarters offices and to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Headquarters offices or through installations' distribution points.

(b) Heads of installations will ensure that copies of the NASA Grant and Cooperative Agreement Handbook are distributed to all interested activities and individuals within their installation.

* * * * *

4. Section 1260.109 is added to read as follows:

§ 1260.109 Prohibitions.

(a) The negotiation, award, administration and renewal of grants are purposefully intended to be as simple as possible. Therefore, this Handbook is silent in various areas where long-established pre- and post-award contractual procedures exist. As such, policies, procedures, representations, certifications, forms or requirements (regardless of modifications) applicable to contracts shall not be used for grants or cooperative agreements unless otherwise authorized by this Handbook or by a deviation thereto.

(b) Installation regulations, handbooks or similar guidance documents shall not unnecessarily repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this Handbook.

(c) Pursuant to NFS 18-37.204-70(c), grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements.

Subpart 4—Research Grant and Cooperative Agreement Provisions

5. In § 1260.406, paragraph (a) and the center heading preceding paragraph (a) are revised to read as follows:

§ 1260.406 Financial management.

Financial Management (April 1987)

(a) *Payment.* Advance payments by the Letter-of-Credit-Treasury Financial Communications System or Direct Treasury Check method will be made in accordance with procedural instructions furnished to the grantee by the Financial Management Office of the NASA installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported.

* * * * *

6. Section 1260.420 is revised by adding paragraph (c) to read as follows:

§ 1260.420 Special conditions.

* * * * *

(e) The following provision shall be appended to all grants and cooperative agreements as a special condition, pending its inclusion in NASA Form 1463A, NASA Provisions for Research Grants and Contracts:

Interest Bearing Accounts (April 1987)

Advances of Federal funds shall be maintained in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted to NASA promptly, but at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the recipient for administrative expense.

Subpart 5—Administration of Research Grants and Cooperative Agreements

§ 1260.514 [Amended]

7. The first sentence of § 1260.514(d) is amended by removing the words "for Grants" and adding, in their place, the words "during close-out".

Subpart 6—Reports

8. Subpart 6 is amended by revising § 1260.602 to read as follows:

§ 1260.602 Committee on Academic Science and Engineering (CASE) reports.

NASA Form 1356, "Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects" is either submitted with funded procurement requests or in the case of certain non-funded actions, initiated by the procuring office. All required NASA Forms 1356 will be completed, checked, and promptly forwarded to the Procurement Management Division, NASA Headquarters (Code HM), in accordance with the instructions on the form and NFS Subpart 18–4.676.

§ 1260.603 [Amended]

9. The first sentence of § 1260.603 is amended by removing the word "quarterly" and adding, in its place, the words "within 15 working days following the end of each Federal Fiscal quarter".

[FR Doc. 87–8513 Filed 4–15–87; 8:45 am]
BILLING CODE 7510-1-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3211]

McCoy Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Greensboro, NC-based retailer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

DATE: Complaint and Order issued April 2, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Charles Peterson, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St. NW., Room 1000, Atlanta, GA 30367. (404) 347–4836.

SUPPLEMENTARY INFORMATION: On Friday, January. 16, 1987, there was published in the **Federal Register**, 52 FR 1926, a proposed consent agreement with analysis In the Matter of McCoy Industries, Inc., and Reliance Treated Wood, Inc., corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; 13.170–40 Fire-extinguishing or fire-resistant; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevant facts; S 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1710 Qualities or properties; S 13.1730 Results; S 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: S 13.1885 Qualities or properties; S 13.1890 Safety.

List of Subjects in 16 CFR Part 13

Pressure-treated wood, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87–8520 Filed 4–15–87; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

16 CFR Part 13

[Docket. C-3210]

Reliance Wood Preserving, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Federalsburg, MD manufacturer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

DATE: Complaint and Order issued April 2, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Charles Peterson, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367. (404) 347–4836.

SUPPLEMENTARY INFORMATION: On Friday, January 16, 1987, there was published in the **Federal Register**, 52 FR 1926, a proposed consent agreement with analysis In the Matter of Reliance Wood Preserving, Inc., a corporation, and Daniel Roy Dorman, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; S 13.170–40 Fire-extinguishing or fire-resistant; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevant facts; S 13.210 Scientific tests. Subpart—Corrective Actions and/or

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.