FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias (202) 245–0383.

Corrections

1. On page 41717, column 2, the following is inserted at the end of the first response: We also added a definition of *"Coverage"* or *"covered services."*

2. On page 47120, column 1, the sentence beginning on line 23 is revised to read as follows: "In cases in which the Medicare provisions conflict with a health provision or contract, the Medicare law must prevail.".

3. On page 41720, column 1, in line 39, "Moreover, third" is inserted immediately before "party".

4. On page 41733, column 1, in the Redesignation Table, the second "405.319(a)" is changed to "405.319(b)", and "405.323(a) . . . 411.28" is removed as duplicative.

5. On page 41735, column 1, in the heading for § 411.30, the word "payment" is inserted immediately after "party".

§ 411.15 [Corrected]

6. On page 41737, column 2, in paragraph (l)(2), "in" is changed to "is".

§ 411.24 [Corrected]

7. On page 41738, column 2, paragraph (i)(1), the first sentence is revised to read:

(i) * * *

(1) In the case of liability insurance settlements and disputed claims under employer group health plans and no-fault insurance, the following rule applies:

§ 411.25 [Corrected]

8. On page 41738, column 3, in § 411.25(a), "ought to" is changed to "should", "HCFA" is removed, and "to the Medicare intermediary or carrier that paid the claim." Is inserted after "effect".

§ 411.25 [Corrected]

9. On page 41738, column 3, in § 411.25(b), the parenthetical statement is revised to read: "(including the particular type of insurance coverage as specified in § 411.20(a)".

§ 411.25 [Corrected]

10. On page 41738, column 3, § 411.25(c) is revised to read:

(c) If a plan is self-insured and self-administered, the employer must give the notice to HCFA. Otherwise, the insurer, underwriter, or third party administrator must give the notice.

§ 411.33 [Corrected]

11. On page 41740, column 2, the first three lines of (f)(3)(iv) are revised to read:

(f) * * *

(3) * * *

(iv) The provider's charge minus the Medicare deductible and coinsurance: $1,280 −$75−$194.60=1010.40. Medicare pays $24.

§ 411.50 [Corrected]

12. On page 41742, column 3, in paragraph (c)(2), the parenthetical statement is removed and the phrase "November 13, 1989" is inserted to replace it.

§ 411.72 [Corrected]

13. On page 41745, column 2, in § 411.72(a)(4)(ii), line 1, the numeral "3" is converted to a superscript to indicate a footnote, and the following footnote is added at the end of the column:

[3] A spouse may be entitled to Medicare Part A benefits on the basis of the employed individual's earnings record, or the spouse's own earnings record.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance, and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 12, 1990.

James E. Larson,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90–1273 Filed 1–18–90; 8:45 am]

BILLING CODE 4120–01–M

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42 CFR Part 433

[BQC–059–CN]

RIN 0938–AA63

Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This notice makes some technical corrections to part 433 regarding State fiscal administration, as amended by our final rule on October 13, 1989, 54 FR 41966.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Julie Brown (301) 966–4669.

SUPPLEMENTARY INFORMATION: On October 13, 1989, in FR Doc. 89–24305, we published amendments to 42 CFR part 433, State Fiscal Administration (54 FR 41966). In that final rule, we overlooked two changes necessary to conform the amended rule to other revisions and we cited one statutory section incorrectly.

§ 433.112 [Corrected]

1. In column 2, page 41973, § 433.112(b)(6), line 8 should read: "developed, installed or enhanced with 90 percent". Adding the works "or enhanced" conforms the rule to our stated policy of allowing 90 percent FFP for enhancements (see the title of § 433.112 and paragraph(a)).

§§ 433.119 and 433.121 [Corrected]

2. In column 1, page 41974;

a. Section 433.119(c)(3), line 5: Replace the word "Grant" with "Departmental" to conform to the new name of the Departmental Appeals Board.

b. Section 433.121(a), line 14: The statutory cite should read: section 1903(r)(4)(B).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: January 12, 1990.

James E. Larson,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90–1274 Filed 1–18–90; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 334

RIN 3067–AB35

Graduated Mobilization Response

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule adds a new part in title 44 Code of Federal Regulations, Graduated Mobilization Response Guidance, chapter I, Federal Emergency Management Agency (FEMA), subchapter E Preparedness. Part 334 responds to part 1 of Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy. Sections 1701(6) and 1701(11) of the Executive Order direct the Director, FEMA, to coordinate the implementation of policies and programs for efficient mobilization and to provide guidance to the Federal departments and agencies on the appropriate use of defense production authorities. This part defines the Graduated Mobilization Response (GMR) System as part of the National Security Emergency Preparedness

program of planning mobilization actions that will permit a timely reaction to early warning indicators. The GMR system is to be incorporated by Federal departments and agencies in their mobilization plans and programs.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Richard F. Marilley, Senior Planning Officer, Office of Mobilization Preparedness, Federal Emergency Management Agency, room 627, 500 C Street SW., Washington, DC 20472, Telephone (202) 646–3003..

SUPPLEMENTARY INFORMATION: On June 8, 1989, FEMA published a proposed regulation in the Federal Register (54 FR 24570) to:

(a) Provide policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1–103 of Executive Order (E.O.) 12148, as amended, which includes functions contained in E.O. 11051; section 104(f) of E.O. 12656; and part 2 of E.O. 10480;

(b) Establish a Graduated Mobilization Response (GMR) system for developing and implementing mobilization action that are responsive to a wide range of national security threats and ambiguous or specific warning indicators.

(c) Provide guidance to the Federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

Three responses to the invitation for comments were received. The first commentor had no recommendations for change. The second commentor noted that telecommunications response activities are not governed by Executive Order 12656, or by rules that implement Executive Order 12656 (e.g. GMR). FEMA agrees with this comment. The second sentence in § 334.1(b) has been rewritten for the purpose of clarification. The commentor was concerned that the relationship and relevance of GMR to "natural disaster" and "technological emergency" should not be given equal weight to that of military crisis and deterrence. It is FEMA's position that the GMR system is broad and flexible enough to cover all types of emergencies, even though the emphasis in planning is on defense mobilization. In further answer to the commentor, the GMR concept is designed as a holistic approach to emergency preparedness planning that is process oriented, focusing on an array of specific actions that can be taken to meet a specific situation. These actions constitute response options that have been identified in advance as part of the GMR implementation process. The actions are part of the deterrence response capability and designed to mitigate the impact of or reduce significantly, the lead time required to meet defense and essential civilian needs. Each department and agency will undertake GMR planning to fit their specific program needs. As such, the guidance is presented in a general way, understand that the GMR concept will be adapted to specific agency needs. The commentor correctly noted that § 334.3 "Definitions" is in error. The citation has been corrected to read § 334.4. FEMA disagrees with the comment that the definition of "mobilization" excludes actions taken in advance of an emergency. Mobilization is an activity that is not only an immediate response to an emergency but is also an activity that is an integral part of the preparatory actions for an emergency. As such, mobilization is fundamental to GMR.

With regard to the comment that GMR plans are not required under E.O. 12656, the definition of GMR Plans is supported by the President's National Security Strategy Posture Statement of January 1988 and by section 201(4) of E.O. 12656. Other comments regarding the structure of the guidance were given careful consideration, and it is FEMA's position that the guidance should not address specifics of how GMR planning is accomplished, but instead provide a conceptual framework within which the departments and agencies can adopt GMR to their planning and preparedness programs.

Concerning § 334.6, the third commentor: (a) Stressed that the differences between stage 3 and stage 2 should be more definitive; (b) stressed that the degree of coordination and control to be exercised by the National Security Council will increase as a crisis moves through stage 2 to stage 1; and (c) recommended that a description of stage 1 responsibilities be included under § 334.6 Department and agency responsibilities. FEMA has considered these recommendations and has made appropriate changes to § 334.6.

Regulatory Analysis

This Final Rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This Part applies to Federal government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this final rule will not have a significant economic impact on a substantive number of small entities.

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and Office of Management Budget implementing regulations 5 CFR Part 1320.

The regulation in this part provides guidance to Federal agencies which may or may not take an action which could be subject to environmental documentation requirements. The guidance has no environmental consequences and it is determined, under FEMA's regulation published in 44 CFR 10.8, that is not necessary to prepare either an environmental assessment or an environmental impact statement.

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirements that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments. The problem dealt with in this part is national in scope. In view of the joint Federal-State responsibility for civil defense, and FEMA's role under the Federal Civil Defense Act of 1950, as amended, the regulation in this Part is determined to conform FEMA assistance to Executive Order 12612.

List of Subjects in 44 CFR Part 334

National Defense, Graduated mobilization response.

Accordingly, subchapter E, chapter I, title 44, Code of Federal Regulations is amended by adding new part 334 as following.

PART 334—GRADUATED MOBILIZATION RESPONSE

Sec.

Sec.
334.4 Definitions.
334.5 GMR system description.
334.6 Department and agency responsibilities.
334.7 Reporting.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq;* E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949–53 Comp., p. 962; E.O. 12472 of April 3, 1984, 3 CFR 1948 Comp., p. 193; E.O. 12656 of November 18, 1988. 53 FR 47491;

§ 334.1 Purpose.

(a) Provides policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1–103 of Executive Order 12148, as amended, which includes functions continued from E.O. 11051; section 104(f) of Executive Order 12656; and part 2 of Executive Order 10480.

(b) Establishes a Graduated Mobilization Response (GMR) system for developing and implementing mobilization actions that are responsive to a wide range of national security threats and ambiguous or specific warning indicators. GMR provides for a coherent decision making process with which to proceed with specific responses to an identified crisis or emergency.

(c) Provides guidance to the federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

§ 334.2 Policy.

(a) As established in Executive Order 12656, the policy of the United States is to have sufficient emergency response capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. Accordingly, each federal department and agency shall prepare its national security emergency preparedness plans and programs to respond adequately and in a timely manner to all national security emergencies.

(b) As part of emergency response, the GMR system should be incorporated in each department's and agency's emergency preparedness plans and programs to provide appropriate and effective response options for consideration in reacting to ambiguous and specific warnings.

(c) Departments and agencies will be provided early warning information developed by the intelligence community and policy statements of the President.

(d) Emergency resource preparedness planning is essential to ensure that the nation is adequately prepared to respond to potential national emergencies. Such emergency resource preparedness planning requires an exchange of information and planning factors among the various departments and agencies responsible for different resource preparedness actitivies.

(e) To carry out their emergency planning activities, civilian departments and agencies require the Department of Defense's (DOD) assessment of potential military demands that would be made on the economy in a full range of possible national security emergencies. Similarly, DOD planning should be conducted using planning regimes consistent with the policies and plans of the civilian resource departments and agencies.

(f) Under section 104(c) of Executive Order 12656, FEMA is responsible for coordinating the implementation of national emergency preparedness policy with federal departments and agencies and with state and local governments and, therefore, is responsible for developing a system of planning procedures for integrating the emergency preparedness actions of federal, state and local governments.

(g) Federal departments and agencies shall design their preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(1) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies; and

(2) Identification of actions that could be taken at the federal and local levels of government in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the leadtime associated with full emergency action implementation.

§ 334.3 Background.

(a) The GMR system is designed to take into account the need to mobilize the Nation's resources in response to a wide range of crisis or emergency situations. GMR is a flexible decision making process of preparedness and response actions which are appropriate to warning indicators or an event. Thus, GMR allows the government, as a whole, to take small or large, often reversible, steps to increase its national security emergency preparedness posture.

(b) Crises, especially those resulting in major military activities, always have some political or economic context. As the risks of military action increase, nations undertake more extensive preparations over a longer perod of time to increase their military power. Such preparations by potential adversaries shape the nature and gravity of the threat as well as its likelihood and timing of occurrence. These measures permit the development of reliable indicators of threat at an early time in the evolution of a crisis. Depending on the nature of the situation or event and the nation involved, these early warning indicators may emanate from the political, socio-economic and/or industrial sectors.

(c) The GMR system enables the nation to approach mobilization planning and actions as part of the deterrent response capability and to use it to reduce the probability of conflict. Alternatively, if deterrence should fail, the GMR system would enable the nation to undertake a series of phased actions intended to increase its ability to meet defense and essential civilian requirements. The GMR system integrates the potential strength of the national economy into U.S. national security strategy.

§ 334.4 Definitions.

(a) *Graduated Mobilization Response* (GMR) is a system for integrating mobilization actions designed to respond to ambiguous and/or specific warnings. These actions are designed to mitigate the impact of an event or crisis and reduce significantly the lead time associated with a full national emergency action implementation.

(b) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(c) *Mobilization* is the process of marshalling resources, both civil and military, to respond to and manage a national security emergency.

(d) *GMR Plans* are those agency documents that describe, in general, the actions that an agency could take in the early stages of a national security emergency, or upon receipt of warning information about a possible national security emergency. These actions would be designed to mitigate the impact of, or reduce significantly, the lead times associated with full emergency action implementation. Such plans are required by section 201(4)(b) of Executive Order 12656.

(e) *A Costed Option Package* is a document that describes in detail a particular action that an agency could take in the early stages of a national security emergency. The general content of a GMR costed option package includes alternative response options; the resource implications of each option; shortfalls, costs, timeframes and political feasibility.

§ 334.5 GMR System description.

The GMR system contains three stages of mobilization activity (additional intermediate GMR stages may be developed). For example, a federal department or agency might divide "Crisis Management" into two, three, or more levels as suits its needs.

(a) *Stage 3, Planning and Preparation.* During the planning and preparation stage, federal departments and agencies develop their GMR plans and maintain capability to carry out their mobilization-related responsibilities in accordance with section 201 of Executive Order 12656. General types of problems likely to arise in a crisis situation are identified along with possible methods for dealing with them. Investment programs can be undertaken to overcome identified problems.

(b) *Stage 2, Crisis Management.* During the crisis management stage, GMR plans are reviewed and capabilities will be re-examined in light of an actual event or crisis perceived to be emerging.

(1) Federal departments and agencies may need to gather additional data on selected resources or increase their preparedness activities. Costed Option Packages may need to be updated or new ones prepared for the response option measures in each of the department's and agency's area of responsibility. For example, when it appears likely that increased national resources may be required, resource readiness could be improved through the procurement of essential long lead time items, especially those that can be used even if the situation does not escalate. In general, long lead time preparedness actions would be considered for implementation at this time.

(2) Many preparedness actions at this stage would be handled through reprogramming, but the Costed Option Packages may also require new funding.

(3) If the crisis worsens, and prior to the declaration of national emergency, it may be necessary to surge certain production and stockpile items for future use.

(c) *Stage 1, National Emergency/War.* During a national emergency or declaration of war, mobilization of all national resources escalates and GMR will be subsumed into the overall mobilization effort. As military requirements increase, the national resources would increasingly be focused on the national security emergency. This would involve diverting non-essential demand for scarce resources from peacetime to defense uses, and converting industry from commercial to military production. Both surge production and expansion of the nation's productive capacity may also be necessary. Supplemental appropriations may be required for most Federal departments and agencies having national security emergency responsibilities.

§ 334.6 Department and agency responsibilities.

(a) During Stage 3, each Federal department and agency with mobilization responsibilities will develop GMR plans as part of its emergency preparedness planning process in order to meet possible future crisis. Costed Option Packages will be developed for actions that may be necessary in the early warning period. Option packages will be reviewed, focused and refined during Stage 2 to meet the particular emergency.

(b) Each department and agency should identify response actions appropriate for the early stage of any crisis or emergency situation, which then will be reviewed, focused and refined in Stage 2 for execution, as appropriate. GMR plans should contain a menu of costed option packages that provide details of alternative measures that may be used in an emergency situation.

(c) FEMA will provide guidance pursuant to Executive Order 12656 and will coordinate GMR plans and option packages of DOD and the civilian departments and agencies to ensure consistency and to identify areas where additional planning or investment is needed.

(d) During State 2, FEMA will coordinate department and agency recommendations for action and forward them to the National Security Advisor to make certain that consistency with the overall national strategy planning is achieved.

(e) Departments and agencies will refine their GMR plans to focus on the specific crisis situation. Costed option packages should be refined to identify the resources necessary for the current crisis, action taken to obtain those resources, and GMR plans implemented consistent with the seriousness of the crisis.

(f) At Stage 1, declaration of national emergency or war, the crisis is under the control of NSC or other central authority, with GMR being integrated into partial, full or total mobilization. At this point the more traditional mechanisms of resource mobilization are pursued, focusing on resource allocation and adjudication with cognizance of the essential civilian demand.

(g) Programs and plans developed by the departments and agencies under this guidance should be shared, as appropriate, with States, local governments and the private sector to provide a baseline for their development of supporting programs and plans.

§ 334.7 Reporting.

The Director of FEMA shall provide the President with periodic assessments of the Federal departments and agencies capabilities to respond to national security emergencies and periodic reports to the National Security Council on the implementation of the national security emergency preparedness policy. Pursuant to section 201(15) of Executive Order 12656, departments and agencies, as appropriate, shall consult and coordinate with the Director of FEMA to ensure that their activities and plans are consistent with current National Security Council guidelines and policies. An evaluation of the Federal departments and agencies participation in the graduated mobilization response program may be included in these reports.

Dated: January 9, 1990.

Antonio Lopez,

Associate Director, National Preparedness Directorate, Federal Emergency Management Agency.

[FR Doc. 90-1139 Filed 1-18-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 89-25]

Security for the Protection of the Public

January 16, 1990.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new provision to subparts A and B of its rules requiring proof of financial responsibility for passenger vessels. The new language provides that the Commission may permit, for good cause, deviations from the standard language prescribed in Forms FMC-132A, FMC-133A, FMC-132B and FMC-133B, which

are the surety bond and guaranty forms for financial responsibility vis-a-vis nonperformance and casualty. The new regulations will afford greater flexibility for the Commission to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language.

DATE: Effective January 19, 1990.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796;

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing Public Law 89–777, 46 U.S.C. app. 817d and 817e, are contained in part 540 of 46 CFR. They prescribe requirements for certification of financial responsibility for passenger vessels against nonperformance or liability for death or injury (casualty). Codified in the rules are the following forms which are to be used by applicants for certificates:

FMC–132A—Passenger Vessel Surety Bond (46 CFR part 540) [Performance]
FMC–133A—Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act
FMC–132B—Passenger Vessel Surety Bond (46 CFR part 540) [Casualty]
FMC–133B—Guaranty in Respect of Liability for Death or Injury, Section 2 of the Act

Under the present rules, applicants must submit surety bonds and guaranties using the language and format of the forms.

On December 15, 1989, the Commission published for comment in the **Federal Register**, 54 FR 51423, a Proposed Rule which would add the following provision to the relevant sections of the regulations: "The requirements of Form _____, however, may be amended by the Commission in a particular case for good cause." This change was proposed to allow the Commission flexibility in considering evidence of financial responsibility when particular, unusual circumstances may justify a deviation from the forms. The proposal was not intended to effect a lower or relaxed standard of evidence of financial responsibility, but rather to accommodate variations in arrangements which may be necessary in particular situations, lest a rigid adherence to form result in undue hardship on applicants.

No comments on the Proposed Rule were submitted. The Commission has determined to adopt the Proposed Rule as written as a Final Rule.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The Final Rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Accordingly, OMB approval of the Final Rule is not required.

The Commission has determined that this rule is excepted from the 30-day effective date requirement of 5 U.S.C. 553 because it relieves a restriction from existing requirements.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, the Federal Maritime Commission amends part 540 of title 46 of the Code of Federal Regulations as follows:

PART 540—[AMENDED]

1. The authority citation for part 540 continues to rad as follows:

Authority: 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716.

2. Section 540.5 is amended to add a new sentence to paragraph (c) as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

* * * * *

(c) * * * The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

3. Section 540.6 is amended to add a new sentence to paragraph (a) as follows:

§ 540.6 Surety bonds.

(a) * * * The requirements of Form FMC–132A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

4. Section 540.24 is amended to add new sentences to paragraphs (b) and (d) as follows:

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

* * * * *

(b) * * * The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

(d) * * * The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1245 Filed 1–18–90; 8:45 am]

BILLING CODE 6730–01–M

Proposed Rules

Federal Register
Vol. 55, No. 13
Friday, January 19, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 30; Doc. No. 5407S]

General Crop Insurance Regulations; Fresh Market Sweet Corn Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new subpart, 7 CFR 401.138, to be known as the Fresh Market Sweet Corn Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on fresh market sweet corn in an endorsement to the general crop insurance policy.

DATE: *Comment date:* Written comments, data, and opinions on this proposed rule must be submitted not later than February 20, 1990 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as June 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new subpart to be known as 7 CFR 401.138, the Fresh Market Sweet Corn Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring fresh market sweet corn.

Upon publication of 7 CFR 401.138 as a final rule, the provisions for insuring sweet corn contained in 7 CFR 401.138 will supersede those provisions contained in 7 CFR part 449, the Fresh Market Sweet Corn Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 449 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will amend the title of 7 CFR part 449 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Fresh Market Sweet Corn Endorsement to 7 CFR part 401, FCIC proposes other changes in the provisions for insuring fresh market sweet corn as follows:

1. Section 4—Add language concerning crop growth stages and corresponding percentage guarantee (This information was previously contained in actuarial table).

2. Section 7—Unit Division provisions are included in this section. Language has also been added to require that the insured keep production separate by units. Units will be determined for each planting period. Additional language is added to clarify that a premium reduction will be effective if optional units are not selected.

3. Section 9—Remove the "minimum value amount" from the policy and add language referring to the actuarial table.

4. Sections 10 and 11 have been modified to accommodate a distinction for areas potentially having a "fall planting period" compared to areas which do not.

5. Section 12—The following terms are revised to clarify their meaning.

a. Tropical Depression

b. Marketable sweet corn

Recently, FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for sweet corn, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be

available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Fresh market sweet corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.138 Fresh Market Sweet Corn Endorsement, effective for the 1991 and succeeding crop years, to read as follows:

§ 401.138 Fresh Market Sweet Corn Endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Fresh Market Sweet Corn Endorsement

1. *Insured Crop.*

a. The crop insured will be sweet corn planted for harvest as fresh market sweet corn, grown on insurable acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. In addition to the sweet corn not insurable in section 2 of the general crop insurance policy, we do not insure any acreage of sweet corn:

(1) Grown by any entity if that entity had not previously:

(a) Grown sweet corn for commercial sales; or

(b) Participated in the management of a sweet corn farming operation.

(2) Grown for direct consumer marketing;

(3) Which is not irrigated; or

(4) Unless the acreage is planted in rows far enough apart to permit mechanical cultivation.

c. Paragraph 2.e.(2) of the general crop insurance policy is not applicable to this endorsement.

2. *Causes of Loss.*

a. The insurance provided is against unavoidable loss of production resulting from one or more of the following causes occurring within the insurance period:

(1) Frost;

(2) Freeze;

(3) Hail;

(4) Fire;

(5) Tornado;

(6) Wind or excess precipitation occurring in conjunction with a cyclone; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to causes of loss specified in section 1 of the general policy as not insured, we will not insure against any loss of production due to:

(1) Disease

(2) Insect infestation; or

(3) Failure to market the sweet corn unless such failure is due to actual physical damage from a cause specified in subsection 2.a. of this endorsement.

3. *Report of Acreage, Share, and Practice (Acreage Report).* In addition to the information required by section 3 of the general crop insurance policy, you must report by unit for each planting period all the acreage of fall, winter, and spring-planted sweet corn (as applicable) in the county in which you have a share.

4. *Amount of Insurance.*

a. Subsection 4.d. of the general crop insurance policy is not applicable to this endorsement.

b. The amount of insurance per acre as shown on your policy confirmation is progressive by plant growth stage. The stages and amounts of insurance are:

(1) First stage (from planting until the beginning of tasselling, (tassel visible above the whorl)) is 65 percent of the final stage amount of insurance; and

(2) Final stage (from tasselling until the acreage is harvested) is the final stage amount of insurance (100 percent) as contained in the applicable actuarial table.

c. Any acreage of fresh sweet corn damaged in the first stage to the extent that we determine it should not be further cared for, will be deemed to have been destroyed, even though you continue to care for it. The amount of insurance for such acreage will not exceed the first stage guarantee.

5. *Annual Premium.* The annual premium amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times your share at the time of planting, applying any applicable premium adjustment percentage for which you may qualify as shown by the actuarial table.

6. *Insurance Period.* In lieu of the provisions in section 7 of the general crop insurance policy, insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the insured crop on the unit;

b. Discontinuance of harvest of sweet corn on the unit;

c. The date harvest should have started on the unit on any acreage which has not been harvested;

d. Completion of harvest on a unit; or

e. Final adjustment of a loss on a unit.

f. The calander date for the end of the planting period contained in the actuarial table.

7. *Unit Division.* All insurable sweet corn acreage, by planting period, that would otherwise be one unit, as defined in subsection 17.q. of the general crop insurance policy, may be divided into more than one unit if, for each proposed unit you maintain, written verifiable records of planted acreage and harvested production for at least the previous crop year. Acreage planted to the insured sweet corn crop must be located in separate, legally identifiable sections or, in the absence of section descriptions, on acreage identified by separate ASCS Farm Serial Numbers, provided:

a. The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The sweet corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units will cause those units to be combined for insurance purposes. If your sweet corn acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

8. *Notice of Damage or Loss.* In lieu of the notices required in subsections 8.a. (3) and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within three (3) days of the date of damage and indicate the cause of damage and whether a claim for indemnity is probable. In the event damage occurs within three (3) days of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If a notice has been given, we must be notified of the expected time of harvest at the time of notice or not later than 72 hours before harvest begins, whichever is applicable.

9. *Claim for Indemnity.*

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre for the stage of plant growth as defined in subsection 4.c.;

(2) Subtracting therefrom the total dollar value of sweet corn production to be counted (see subsection 9.c.); and

(3) Multiplying this result by your share.

b. In lieu of subsection 9.d. of the general crop insurance policy, if the information reported by you under section 3 of this endorsement results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

c. The total value of production to be counted for a unit will include the value for all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 42 pound crates of

sweet corn harvested on the unit by the minimum value shown for the planting period in the actuarial table; or

(b) The dollar amount obtained by multiplying the number of 42 pound crates of sweet corn sold by the price per crate received minus the allowable cost established by the actuarial table (subtraction of the allowable cost from the price received may not result in an amount per crate less than zero).

(2) The value of any appraised production will not be less than the dollar amount obtained by multiplying the appraised number of 42 pound crates of sweet corn by the minimum value per crate shown on the actuarial table for the planting period and will include:

(a) The value of any potentially marketable production;

(b) The value of unharvested production on harvested acreage and the value of any potential production lost due to uninsured causes; and

(c) Not less than the final stage dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause, or for which notice of damage was not given as required by section 8 of this endorsement and of the general crop insurance policy.

(3) Unharvested sweet corn damaged or defective due to insurable causes and which is not marketable sweet corn will not be counted as production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

d. A replanting payment is available in accordance with subsection 9.h. of the general crop insurance policy. The acreage to be replanted must have sustained a loss in excess of 25 percent of the plant stand. In lieu of subsection 9.h.(1)(c) of the general crop insurance policy, no replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year. The replanting payment will not exceed the product obtained by multiplying $65.00 per acre by your share.

10. *Cancellation and Termination Dates.*

	Cancellation and Termination Dates
State and County: Florida; Atkinson, Baker, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties Georgia and all Georgia counties south thereof which have a "fall planting period.".	July 31.
Alabama; all other Georgia Counties and South Carolina.	February 15.
All other states	April 15.

11. *Contract Changes.* Contract changes will be available at your service office by April 30 preceding the cancellation date for Florida and Georgia Counties with a fall planting period and by November 30 preceding the cancellation date in all other states.

12. *Meaning of Terms.* For the purposes of fresh market sweet corn crop insurance:

a. *"Crop year"* means the period within which the sweet corn is normally grown beginning July 15 and continuing through the harvesting of the spring-planted sweet corn. It is designated by the calendar year in which spring-planted sweet corn is normally harvested.

b. *"Cyclone"* means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1-minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

c. *"Freeze"* means the condition that exists when air temperatures over a widespread area remains at or below 32 degrees Fahrenheit, and causes damage to plant tissue.

d. *"Frost"* means a deposit or covering of minute ice crystals formed from frozen water vapor which causes damage to plant tissue.

e. *"Harvest"* means the final picking of marketable sweet corn on the unit.

f. *"Marketable sweet corn"* means the sweet corn which meets the standards for grading U.S. #1 or better and will withstand normal handling and shipping.

g. *"Planting period"* means the period of time within the dates set by the actuarial table, and is designated as "fall-planting period," "winter-planting period" or "spring planting period."

h. *"Plant stand"* means the number of live plants per acre before the plants were damaged due to insurable causes.

i. *"Potential production"* means the number of 42# crates of sweet corn which would have been produced per acre by the end of the insurance period.

j. *"Sweet corn"* means a type of corn with kernels containing a high percentage of sugar and adapted for table use.

k. *"Sweet corn grown for direct consumer marketing"* means sweet corn grown for the purpose of selling from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

Done in Washington, DC, on January 10, 1990.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-1225 Filed 1-18-90; 8:45 am]

BILLING CODE 3410-08-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Participation; Purchase, Sale and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed rule.

SUMMARY: Pursuant to its regulatory review program, the NCUA Board is proposing to amend §§ 701.22 ("Loan Participation") and 701.23 ("Purchase, Sale, and Pledge of Eligible Obligations") of NCUA's Regulations. The proposed amendment implements many of the comments received in response to NCUA's request for comments on these regulations. The proposed amendment is intended to clarify the regulations. It also broadens the loan particpation authority. Comment is requested on the proposal as well as on any other issues concerning loan participation and purchase, sale, and pledge of eligible obligations.

DATE: Comments must be received on or before April 19, 1990.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Julie Tamuleviz, Staff Attorney, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed regulations contain the following paperwork requirements, all of which are also contained in the existing regulations:

Proposed Section 701.22

1. Section 701.22(b) requires that the board of directors establish a written participation loan policy.

2. Section 701.22(b)(2) requires an FCU to execute written loan participation agreements and retain the agreements at the FCU.

3. Section 701.22(c)(3) requires an FCU that is the loan originator to retain copies of the loan documents.

4. Section 701.22(d)(3) requires an FCU that is not an originating lender to retain a schedule of loans covered by the agreement.

Proposed Section 701.23

1. Section 701.23(b)(1) requires that the board of directors establish a written loan purchase policy.

2. Section 701.23(b)(2)(ii) requires a purchasing FCU to retain the purchase agreement and a schedule of loans covered by the purchase agreement.

3. Section 701.23(c)(1) requires the board of directors to establish a written loan sale policy.

4. Section 701.23(c)(1)(ii) requires a selling credit union to retain the loan sale agreement and a schedule of loans covered by the agreement.

5. Section 701.23(d)(1) requires the board of directors to establish a written pledge policy.

6. Section 701.23(d)(1)(ii) requires a pledging FCU to retain copies of the original loan documents.

7. Section 701.23(d)(1)(iii) requires a pledging FCU to retain the written pledge agreement.

The paperwork requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments on these 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 20530, ATTN: Jerry Waxman.

Background Information

As part of its regulatory review program, the NCUA Board issued a request for comments on its regulations regarding loan participation and purchase, sale, and pledge of eligible obligations §§ 701.22 and 701.23 of NCUA's Rules and Regulations (12 CFR 701.22 and 701.23)). (See 53 FR 41613, 10/24/88.) The Board was interested in comment on whether there is a need to amend these regulations to enhance credit unions' authority to provide loan services to their members.

Eighteen comment letters were received: 2 from credit union trade associations; 6 from state credit union leagues; and 10 from Federal credit unions (FCU's).

Statutory and Regulatory Background

FCU's authority to acquire, dispose of, or assign a portion of the risk on member loans primarily comes from three provisions in the Federal Credit Union (FCU) Act.

Section 107(5)(E) of the Act (12 U.S.C. 1757(5)(E)) states:

> (5) [An FCU shall have power] * * * to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:
> * * * * *
> (E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors. Provided, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan.

This section of the FCU Act is implemented by § 701.22 of NCUA's Regulations (Loan Participation).

Section 107(13) of the FCU Act (12 U.S.C. 1757(13)) authorizes an FCU:

> In accordance with rules and regulations prescribed by the [NCUA] Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the [NCUA] Board) of its members * * * but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balance of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union.

This section of the Act is implemented by § 701.23 of NCUA's Regulations (Purchase, Sale, and Pledge of Eligible Obligations).

Section 107(14) (12 U.S.C. 1757(14)) gives an FCU authority:

> * * * To sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the [NCUA] Board.

The NCUA Board has generally interpreted this provision to apply only where a credit union is suffering a liquidity crisis.

Request for Comments

In its request for comments, the NCUA Board posed seven specific questions. These questions and the comments responding to them are summarized below. The issues raised by the commenters are addressed in the Section-by-Section Analysis.

1. "Is the current working definition of 'participation loan' in § 701.22(a)(1) satisfactory?" The Board elaborated further on this question in the request for comments, asking whether the term, instead of simply reflecting when the agreement was entered into, should also recognize the risk assigned and undertaken. Many of the commenters stated that the requirement in the definition of "participation loan" that the participation arrangement to entered into before the loan funds are disbursed is too restrictive. The primary concern was that an FCU needing more liquidity could not enter into participation arrangements on loans previously granted and disbursed.

2. "Should the term 'credit union organization' in § 701.22(a)(4) be redefined as 'an organization satisfying the requirements of § 701.27'?"

All commenters responding to this question answered in the affirmative.

3. "Are the regulatory restrictions on loan participation and purchase, sale and pledge of eligible obligations: (a) Unclear, (b) too complex? If so, how should they be changed?"

Commenters raised the following questions and issues:

a. How do the statutory restrictions (the 10% limitation in Section 107(5)(E) of the FCU Act (12 U.S.C. 1757(5)(E)) and the 5% limitation in section 107(13) of the FCU Act (12 U.S.C. 1757(13)) apply to open-end loans?

b. If a loan is purchased under § 701.23 and is later refinanced, is it subject to the Section 107(13) 5% limitation?

c. Is it necessary to require board of director or investment committee approval of all § 701.23 purchases?

d. One commenter recommended expanding loan participants to include "all lenders with financial stability assurance within the loan market, including financial institutions, insurance companies, retirement funds, investment funds, finance companies, CUSOs and other credit union organizations."

e. Questions were raised concerning the applicability of § 701.22 to real estate loans.

f. Commenters asked for guidance concerning the proper accounting treatment for § 701.22 and § 701.23 transactions.

g. It was recommended that NCUA delete the requirement that eligible obligations of members purchased under § 701.23 be refinanced within 60 days, and permit this to be a business decision of the board of directors.

4. "Do the current differences in regulation between participation loans and purchase, sale, and pledge of loans continue to make sense in today's economic environment?"

Few commenters directly responded to this question. One commenter addressed the possibility of combining the regulations, but concluded that this should not be done because of the different statutory restrictions in section 107(5)(E) and section 107(13). Another commenter stated that the differences should be maintained as they allow two methods to structure assignment of debt obligations.

5. "Does NCUA's current regulatory structure on participation loans and purchase, sale, and pledge of eligible obligations: (a) Limit FCU's ability to

make good loans to members; (b) create unnecessary liquidity problems for some FCU's; (c) force too much of an FCU's assets into lower yielding investments?"

Many commenters responded in the negative to this question. Commenters raised specific issues about the regulations (as listed above), but did not have major problems with the current regulatory structure. Seven commenters stated that requiring the participation agreement to be entered into before disbursement of loan funds did result in the problems set forth in this question. Commenters stated that this requirement creates unnecessary liquidity problems since an FCU cannot enter into a participation arrangement on previously granted and disbursed loans. As a result, this also has the effect of hindering an FCU's ability to respond to the needs of its members. Commenters stated further that this requirement could force FCU's with excess liquidity into lower yielding investments.

One commenter requested that § 701.23(b)(1)(iv), which limits the purchase of real estate-secured loans of nonmembers to the purchase of loans for the purpose of facilitating the purchasing credit union's packaging of a pool of such loans for sale or pledge on the secondary market, be amended to permit the purchase of real estate loans made to a member of any credit union without the requirement that the loans be packaged. The commenter stated that this amendment could lead to the development of a secondary market among credit unions.

Section 107(15)(A) of the FCU Act authorizes FCU investment in mortgage notes offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)). This section of the Securities Act establishes certain limitations on the authority, including that the note be "secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure." This authority was added to the FCU Act by the Secondary Mortgage Market Enhancement Act of 1984.

Section 107(15)(A) does not place any limitation on who the borrower on the note is or the terms or conditions of the note. The statute is worded broadly enough to permit FCU's to purchase real estate loans made by other lenders, even though the loan was made to a nonmember of the FCU and on terms or conditions that are not authorized for loans made by FCU's. Because this authority is difficult to reconcile with basic provisions of the FCU Act and NCUA's Rules and Regulations regarding membership and lending limitations, the NCUA Board has interpreted the authority to be limited to the situation where an FCU makes real estate-secured loans on an ongoing basis, and the purchase is for the purpose of completing a pool of loans for sale or pledge on the secondary market. This interpretation is incorporated into § 701.23(B)(1)(iv).

The Board requests comment on whether FCU's should be allowed greater flexibility to purchase mortgage loans made by other credit unions, and if so, under what conditions and/or limitations. The Board also asks commenters to consider whether increased flexibility in this area may adversely impact upon FCU's financial condition by resulting in the purchase of loans not otherwise eligible for sale on the general secondary market.

6. "What safety and soundness limits should be placed on an FCU's purchase of or risk-sharing in loans made by other credit unions?"

Commenters stated that the regulations currently contain sufficient safety and soundness limitations.

7. "Should different standards apply to natural person FCU's and to corporate FCU's?"

Six commenters responded to this issue. Three commenters stated that the same standards should apply to natural person and corporate FCU's. Three commenters indicated that different standards should apply to corporate FCU's, but did not suggest what these standards should be.

Regulatory Interpretation of the Term "Participation Loan"

As stated in the request for comments, NCUA has interpreted the term "participation loan" to mean arrangements made prior to disbursement of the loan proceeds. The Board believes that this interpretation may be too restrictive. Eliminating this restriction may assist FCU's with liquidity problems and will also provide FCU's with a means of spreading the risk on loans on its books. The proposed rule deletes this requirement. The Board recognizes that this deletion will result in some overlap between §§ 701.22 and 701.23. This is a result of the interplay between sections 107(13) and 107(5)(E) of the FCU Act. Both of these sections authorize the purchase and sale of a partial interest in certain loans. A loan purchase or sale will be viewed as permissible provided it is authorized by either § 701.22 or § 701.23.

Application of Statutory Limitations to Open-End Loans

One commenter asked how the limitations in section 107(5)(E) and section 107(13) of the FCU Act apply to open-end loans. Section 107(5)(E) requires an FCU that is an originating lender to retain an interest of at least 10 per centum of the face amount of each loan ("the 10% limitation"). This limitation is also set forth in § 701.22(c) of NCUA's Regulations.

Section 107(13) of the FCU Act limits the aggregate of the unpaid balances of loans purchased to 5% of unimpaired capital and surplus ("the 5% limitation"). This limitation is set forth in § 701.23(b)(3) of NCUA's Regulations. The regulation excepts certain types of loans from the 5% limitation.

The 10% and 5% limitations are difficult to apply to open-end loans. The possibilities considered by the Board, including applying the 10% limitation to the outstanding balance on the line of credit, may cause significant accounting problems. The NCUA Board requests comment on how the limitations should be applied to open-end loans. Since the limitations are in the FCU Act, they cannot be waived by the Board.

Section-by-Section Analysis

This analysis sets forth all proposed changes to the current regulations.

Section 701.22

Two commenters were apparently under the impression that § 701.22 did not apply to real estate loans. The Board would like to clarify that this is not the case. An FCU can participate in a real estate loan under § 701.22.

Proposed Section 701.22(a)—Definitions

Subparagraph 1—The definition of participation loan does not contain the requirement that the written commitment to participate precede disbursement of the loan funds. Should this deletion be maintained in the final amendment to § 701.22, provisions of the NCUA Accounting Manual on loan participations will be reviewed and any necessary changes made.

Subparagraph 2—The reference to "credit union organization" has been changed to "credit union service organization."

One commenter requested that the term "eligible organizations" be redefined to include "all financial lenders with financial stability assurance within the loan market, including financial institutions, insurance companies, retirement funds, investment funds, finance companies, CUSO and other credit union organizations." The current regulation limits participants to "eligible organizations," which is defined to be a credit union, credit union organization,

or financial organization. Section 107(5)(E) of the FCU Act limits participants to these entities. Section 701.22(a)(5) defines the term financial organization as any federally-chartered or federally-insured financial institution. The Board will consider further input on the definition of financial organization. However, it does not believe that insurance companies, retirement and investment funds, or finance companies come within the definition.

Subparagraph 3—No changes.

Subparagraph 4—The reference to "credit union organization" has been changed to "credit union service organization." The term "credit union service organization" is defined as "an organization satisfying the requirements of § 701.27." This provides FCU's with the additional authority to engage in loan participations with organizations that principally provide services to credit union members and credit unions, as opposed to organizations that provide services only to credit unions.

Subparagraphs 5 and 6—No changes.

Proposed Section 701.22(b)

Subparagraph 1—No changes.

Subparagraph 2—The phrase "prior to final disbursement" has been eliminated.

Subparagraph 3—No changes.

Proposed Sections 701.22 (c) and (d)

No changes.

Section 701.23

Proposed Section 701.23(a)

No changes.

Proposed Section 701.23(b)

Subparagraph (1)—One commenter asked that the § 701.23(b)(1)(i) requirement that eligible obligations of members purchased by an FCU be refinanced within 60 days unless they are loans that the FCU is empowered to grant be deleted, and that the refinancing decision be left to the discretion of the board of directors. The Board has not deleted the 60-day requirement, but requests comment on whether the 60-day period is unduly burdensome and what period would be reasonable. The Board notes that if the requirement for refinancing is deleted entirely, FCU's will be authorized to purchase loans under section 107(13) of the FCU Act that they are not authorized to make under section 107(5) of the FCU Act. This requirement is also retained in the participation regulation (§ 701.22(d)(1)).

Subparagraph (2)—A new paragraph has been added providing that purchases under § 701.23(b)(1)(i) (eligible obligations of members) need not be approved by the board of directors or investment committee. (*See* proposed § 701.23(b)(2)(i).) The NCUA Board recognizes that many FCU's purchase loans of their members from a third party with which they have established an ongoing business relationship, such as an automobile dealer. Board of director or investment committee approval of each loan purchased appears unnecessary. Such purchases must, of course, be within the board of directors' written purchase policies.

Subparagraph (3)—One commenter asked whether loans purchased under § 701.23(b)(1)(i), but subsequently refinanced, are subject to the 5% limitation. The proposed amendment clarifies that they are not.

Proposed Sections 701.23(c), 701.23(d), 701.23(e), and 701.23(f)

No changes.

The NCUA Board welcomes comment on this proposal as well as on any additional issues not covered herein.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that this proposed amendment does not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal credit unions.

List of Subjects in 12 CFR Part 701

Loan participation, Participation, Loans, Purchase, sale, and pledge of eligible obligations.

By the National Credit Union Administration Board on January 11, 1990.

Becky Baker,

NCUA Board Secretary.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—[AMENDED]

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

Authority: 12 U.S.C. 1752(5) 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101-73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601-3610.

2. It is proposed that § 701.22 be revised to read as follows:

§ 701.22 Loan participation.

(a) For purposes of this section:

(1) *"Participation loan"* means a loan made in participation with one or more eligible organizations.

(2) *"Eligible organizations"* means a credit union, credit union service organization, or financial organization.

(3) *"Credit union"* means any Federal or state-chartered credit union.

(4) *"Credit union service organization"* means an organization satisfying the requirements of Section 701.27 of NCUA's Rules and Regulations.

(5) *"Financial organization"* means any federally-chartered or federally-insured financial institution.

(6) *"Originating lender"* means the participant with which the member contracts.

(b) Subject to the provisions of this section, any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, provided:

(1) No Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 20 per centum of the Federal credit union's unimpared capital and surplus;

(2) A written participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee, and retained in the Federal credit union's office. The agreement shall include provisions which identify the participation loan or loans.

(3) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) Originate loans only to its members;

(2) Retain an interest of at least 10 per centum of the face amount of each loan;

(3) Retain the original or copies of the loan documents; and

(4) Obtain approval of the loan from the credit committee or loan officer.

(d) A participant Federal credit union that is not an originating lender shall:

(1) Participate only in loans it is empowered to grant;

(2) Participate in participation loans only if made to its own members or members of another participating credit union;

(3) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

3. It is proposed that § 701.23 be revised to read as follows:

§ 701.23 Purchase, Sale, and Pledge of Eligible Obligations.

(a) For purposes of this section

(1) *"Eligible obligation"* means a loan or group of loans;

(2) *"Student loan"* means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, State govenment, or any agency of either.

(b) Purchase. (1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either (A) they are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to § 701.21 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market.

(2) A Federal credit union may make purchases in accordance with paragraph (b), provided:

(i) The board of directors or investment committee approves the purchases. Eligible obligations of members purchased in accordance with paragraph (b)(1)(i) are not subject to this requirement; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office.

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with paragraph (b)(1)(iii), real estate loans purchased in accordance with paragraph (b)(1)(iv), and eligible obligations purchased in accordance with paragraph (b)(1)(i) that are refinanced by the purchaser so that they are loans it is empowered to grant shall not be included in considering this 5 percent limitation.

(c) Sale. A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii), student loans purchased in accordance with paragraph (b)(1)(iii), and real estate loans purchased in accordance with paragraph (b)(1)(iv), within the limitations of the board of directors' written sale policies, provided:

(1) The board of directors or investment committee approves the sale, and

(2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) Pledge. (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii), student loans purchased in accordance with paragraph (b)(1)(iii), and real estate loans purchased in accordance with paragraph (b)(1)(iv), within the limitations of the board of directors' written pledge policies, provided:

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) Servicing. A Federal credit may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) 10 Percent Limitation. The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-263-AD]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Boeing Model 707/720 series airplanes, which would require incorporation of certain structural modifications. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATE: Comments must be received no later than April 9, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-263-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Shardul R. Panchal, Airframe Branch, ANM-120S; telephone (206) 431-1954. Mailing address: FAA, Northwest