

regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab/html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate, because this action, if adopted, should be in place by the beginning of the 2007–08 crop year, August 1. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 989.154, paragraph (b) is revised to read as follows:

##### **§ 989.154 Marketing policy computations.**

(a) \* \* \*

(b) *Estimated trade demand.* Pursuant to § 989.54(e)(4), estimated trade demand is a figure different than the trade demand computed according to the formula in § 989.54(a). The Committee shall use an estimated trade demand to compute preliminary and interim free and reserve percentages, or determine such final percentages for recommendation to the Secretary for 2007–08 crop Natural (sun-dried) Seedless (NS) raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand: *Provided*, That the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 2007–08 NS raisin crop estimate is less than 215,000 natural condition tons.

Dated: July 26, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–14825 Filed 7–31–07; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### **Grain Inspection, Packers and Stockyards Administration**

##### **9 CFR Part 201**

**RIN 0580–AA98**

##### **Poultry Contracts; Initiation, Performance, and Termination**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations issued under the Packers and Stockyards P&S Act, 1921 (7 U.S.C. 181, *et seq.*) (P&S Act) concerning Records to be Furnished Poultry Growers and Sellers. The regulations list the records live poultry dealers (poultry companies) must furnish poultry growers, including requirements for the timing and contents of poultry growout contracts.

The proposed amendments would require poultry companies to timely deliver a copy of an offered contract to growers; to include information about any Performance Improvement Plans (PIPs) in contracts; to include provisions for written termination notices in contracts; and notwithstanding a confidentiality provision, allow growers to discuss the terms of contracts with designated individuals.

**DATES:** We will consider comments we receive by October 30, 2007.

**ADDRESSES:** We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- **E-Mail:** Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).
- **Mail:** Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- **Fax:** Send comments by facsimile transmission to: (202) 690–2755.
- **Hand Delivery or Courier:** Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- **Federal e-Rulemaking Portal:** Go to <http://www.regulation.gov>. Follow the on-line instruction for submitting comments.

**Instructions:** All comments should make reference to the date and page number of this issue of the **Federal Register**.

**Background Documents:** Regulatory analyses and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604 during regular business hours.

**Read Comments:** All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, [s.brett.offutt@usda.gov](mailto:s.brett.offutt@usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

As the Grain Inspection, Packers and Stockyards Administration (GIPSA), one of our functions is the enforcement of the Packers and Stockyards (P&S) Act of 1921. Under authority granted us by the Secretary of Agriculture (Secretary), we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act. Section § 201.100 of the regulations (9 CFR 201.100) specifies what contract terms must be disclosed to growers by poultry companies.

We believe the failure to disclose certain terms in a poultry growing out arrangement (growout contract) constitutes an unfair, discriminatory, or deceptive practice in violation of section 202 (7 U.S.C 192) of the P&S Act.

Due to the vertical integration and high concentration of the poultry industry, growers are often presented contracts on a “take it or leave it” basis. Growers do not realistically have the option of negotiating contract terms with a large poultry company. Growers often do not have the option of contracting with another poultry company on more favorable terms because there may be no other poultry companies in the area. There is considerable information asymmetry as well as an imbalance in market power: Growers sometimes do not know the full content of their own contract and are constrained by confidentiality clauses from discussing the contract with business advisers, while at the same time poultry companies have detailed information about the market as a whole and about the current terms being offered to other growers. Growers often have much of their net worth invested

in poultry houses, which have limited value for purposes other than growing out poultry. Therefore, there is significant potential for poultry companies to engage in unfair and deceptive practices. Growers may decide they have little choice but to sign contracts in which disclosure of terms is incomplete and/or not provided in a timely fashion. In some cases, poultry companies are already providing the information proposed in this rule in a timely fashion; this rule will level the playing field by requiring all companies to adopt these fair and transparent practices in dealing with all growers.

Failure to deliver a written contract in a timely fashion is considered by GIPSA to be an unfair and deceptive practice because growers do not know what the contract terms will be. This practice could also be discriminatory if some growers receive written contracts in a timely fashion and others do not. Failure to include notice of written termination procedures in the contract and failure to provide notice of written termination is unfair, discriminatory and deceptive for the same reasons.

Failure to include information about Performance Improvement Plans is similarly potentially unfair and discriminatory if some growers receive this information and others do not, and deceptive if growers are unaware that such a program exists until they fail to meet a minimum performance threshold that was not specified in their contract.

Prohibiting growers from discussing contract terms with business advisers is unfair because growers are not typically attorneys or accountants, and it is unfair to deprive growers of professional advice before they commit to a contract, particularly when the poultry companies had access to such advice in drafting their growout contracts.

#### *Current Poultry Contracting Practices and Proposed Changes*

The market for growing out broiler chickens is vertically integrated and highly concentrated. USDA GIPSA reported that in 2005, the top four broiler slaughterers represented 53% of the total market share based on volume of production.<sup>1</sup> A large number (20,000+) of poultry growers essentially receive contracts on a "take it or leave it" basis from a small number of poultry companies. While this concentration of poultry companies represents certain economies of scale, it also represents a potential for asymmetrical information

and a lack of transparency that could lead to market inefficiencies.

The poultry companies accept much of the short term financial risk by providing growers with the chicks and feed, and typically pay the growers on a per pound basis when the poultry are ready for slaughter. Growers take the longer term risk by investing in the poultry houses. There is often a tournament or bonus system in which growers for the same poultry company compete with each other over a given period of time. Growers who consistently perform less well than other growers with regard to output (pounds of poultry) produced per unit of input (food and chicks) may be placed on a Performance Improvement Plan, may have their contract terminated, or may not receive a new contract offer or extension to their existing contract.

The current contracting process may involve verbal agreements that are made prior to delivery of a written contract. The process by which new growers are recruited can be informal word-of-mouth, although some poultry companies solicit new growers via their website. Prospective growers must have a line of credit sufficient to finance the construction of poultry houses in order to be a successful applicant. The poultry company will also typically inspect the property held by a prospective grower to verify that the grower has sufficient space and suitable soil conditions on which to place the houses, has right of way capable of supporting truck traffic, and has means to dispose of dead birds and bird waste. The discussion between the poultry company and prospective growers to verify these conditions may involve verbal commitments, and therefore growers may not understand all their rights and obligations. Existing growers may make similar verbal commitments for poultry house improvements. Currently, a grower may receive a specification for the poultry houses and use that specification to obtain a construction loan prior to receiving a written contract. New growers typically receive their contracts at about the same time as they receive the specifications for the poultry houses, but in some cases may not receive their written contracts until after construction of the poultry houses has already begun.

The existing § 201.100 already protects growers by requiring that the growout contract include the per unit charges for feed and other inputs furnished by each party, the duration of the contract and conditions for the termination of that contract, and the factors to be used when grouping or

ranking poultry growers, among other items. This rulemaking proposes amendments to § 201.100 to additionally require that:

(1) The growout contract be delivered to the grower in writing at the same time that the grower receives the specifications for the poultry houses;

(2) The growout contract also include the criteria that will be used to place the grower on a performance improvement plan;

(3) A grower shall be notified in writing 30 days before removal of the flock that a contract is to be terminated;

(4) The contract shall include a provision allowing growers to terminate a contract by written notice 30 days before removal of a flock, and

(5) Notwithstanding any confidentiality clauses, growers shall be permitted to discuss the offered contract with their financial and business advisors.

These new requirements should help both growers and poultry companies by providing poultry growers with more information at an earlier stage in the contracting process. In many cases, these requirements are already being met in existing contracts or are being met through verbal agreements; this proposed rule would "level the playing field" by requiring poultry companies to include these provisions in all poultry growout contracts. Growers would have more information upon which to make a decision as to whether to accept the terms of the contract, and would be able to discuss the terms of the contract with business and financial professionals before committing to building or upgrading poultry houses. Poultry growers would understand the criteria that will be used to place them on a Performance Improvement Plan. Poultry companies would benefit from having growers who better understand the obligations of their contract. Poultry companies would also benefit by having more specific contract language to resolve performance issues and contract termination.

#### **Timely Contract Delivery**

In some cases, growers do not currently receive a written copy of their contract from live poultry dealers or poultry companies until after they have obtained financing for the construction or improvement of poultry houses. Lenders that have other contracts on file for a particular poultry company may extend financing to a grower based on a verbal commitment from the poultry company. In a six-month period beginning September 2005, GIPSA received 16 written and/or emailed complaints from growers regarding slow

<sup>1</sup> "Assessment of the Livestock and Poultry Industries, FY 2006 Report" <http://archive.gipsa.usda.gov/pubs/06assessment.pdf>.

delivery of written contracts by poultry companies. Growers typically invest \$200,000 or more for the construction of each poultry house, and they often build at least four houses.

Requiring the poultry companies to provide growers with a written copy of their offered contracts on the same date the growers receive the specifications for their poultry houses will provide several benefits:

- It provides disclosure to growers of their rights and responsibilities before they sign a written contract to grow poultry for a particular poultry company. This would benefit both parties to the contract by ensuring that growers understand what their rights and obligations are before signing the contract.

- It allows growers time to ask questions clarifying their responsibilities so they can remain in compliance with the terms of their contracts.

- It benefits the poultry companies by increasing contract compliance rates among growers.

- It may make it easier for growers to obtain financing on favorable terms if they have a copy of the contract to show financing institutions.

We therefore propose to amend § 201.100 to require poultry companies to provide growers with a written copy of the offered contract on the same date that the growers receive the specifications for their poultry houses.

#### **Right to Discuss Terms of Offer With Business Advisers**

For the past decade, poultry grower stakeholder groups have been advocating regulation and/or legislation to limit confidentiality clauses in poultry contracts. Earlier this year, over 200 agricultural organizations sent a letter to the Senate Committee on Agriculture, Forestry and Nutrition, the House Committee on Agriculture, the Senate Committee on the Judiciary, and the House Committee on the Judiciary. The letter asked, among other things, for fairness standards for agricultural contracts that would include a prohibition of confidentiality clauses.<sup>2</sup> The Farm Security and Rural Investment Act of 2002 (FSRIA) validated this issue as one needing to be addressed. Section 10503 (7 U.S.C. 229b) of FSRIA requires that livestock and poultry companies allow producers/growers to discuss the terms of their contracts with certain individuals.

Permitting growers the freedom to discuss terms of their contracts with their accountant, lender, or other business advisors would help ensure that growers fully and correctly understand their rights and responsibilities as growers. This would heighten the degree to which growers remain in compliance with their contracts, providing benefits to the poultry companies as well. It would benefit poultry company-grower relationships by promoting communication and thereby decreasing misunderstandings and contract non-compliance issues.

We propose to amend § 201.100 to allow growers, notwithstanding a confidentiality clause in a contract, to discuss the terms of their contracts with their business advisors.

#### **Performance Improvement Plans**

All parties to a contract have a right to know all terms and conditions they will be subject to when signing the contract. In some cases, poultry growers are unaware that they are subject to being placed on a Performance Improvement Plan (PIP) if they do not meet minimum performance criteria. A grower may not be aware of the PIP program until the company sends the grower written or verbal instruction explaining the need to improve performance. In other cases, poultry growers were aware that their poultry company has a PIP program, but were unaware what the minimum performance level is until they fail to meet that level. The minimum performance level often represents an average performance over several growout cycles, which can be difficult to understand if the criteria are not explained in written detail. GIPSA has received complaints from growers that several large poultry companies have provided information on PIPs as additional riders (contract amendments) well after the initial contract was signed, or provided the information only after the grower had failed to meet criteria not previously documented. Not all poultry companies have PIPs, and of those that do, some but not all already provide information on their PIPs in their contracts. A review of the reference library of poultry contracts maintained by the Packers and Stockyards Program Eastern Regional Office found that roughly a quarter of the broiler contracts did have a PIP or "probation" clause. We propose to level the playing field by requiring the disclosure in the written contract of PIP terms by the poultry companies that have them.

If a poultry company has a PIP, growers need to know what performance criteria determine if they will be placed on a PIP. Growers need to know what, if any, additional support they can expect from their poultry company while on a PIP. Finally, growers need to know how they can regain their good standing classification and avoid having their contract terminated.

We propose to amend § 201.100 to add a requirement that those poultry companies with a PIP include information in their contracts concerning what triggers placement on the PIP and how growers may earn their way back to good standing.

#### **Written Termination Notification**

Existing contracts generally require that growers or the poultry company provide written notice of termination to the other party. Existing notice requirements vary from one contract to the next but typically require that notice of termination be provided anywhere from 3 to 30 days prior to the pick-up or delivery of the final flock. Poultry companies, however, are not consistently abiding by the termination requirements of their contracts. In one case, we found that only 10 percent of growers for one company received written termination notices when the company chose to terminate many contracts in a single region. This occurred despite the fact that the contracts stated that growers were to receive written termination notices. Written contract termination has been an issue for several years. The USDA National Commission on Small Farms recommended in 1998 that, "The Secretary should consider Federal production contract legislation to address issues such as contract termination, duration, and re-negotiation."<sup>3</sup> Without written termination notices documenting the date and reason for termination, it is difficult for GIPSA to investigate complaints alleging unfair or discriminatory termination.

Currently, Section § 201.100(a)(1) states that contract contents must clearly specify, "The duration of the contract and the conditions for the termination of the contract by each of the parties." (9 CFR 201.100(a)(1)) The regulation does not currently specify the means by which the notice is to be conveyed nor what additional guidance should be provided to the grower.

<sup>3</sup> "A time to Act: A Report of the USDA National Commission on Small Farms", 1998, Miscellaneous Publication 1545 (MP-1545), page 6 [http://www.csrees.usda.gov/nea/ag\\_systems/pdfs/time\\_to\\_act\\_1998.pdf](http://www.csrees.usda.gov/nea/ag_systems/pdfs/time_to_act_1998.pdf)

<sup>2</sup> <http://www.rafiusa.org/programs/CONTRACTAG/NCSA07FarmBillCompetition.pdf>.

We propose to amend § 201.100 to require that poultry companies notify growers in writing of the termination of contracts at least 30 days in advance of flock removal. We would require the notices to state when the termination is effective and what appeal rights, if any, the grower may have. The proposed amendment would require that contracts include a provision that either side may terminate the contract by providing written notification and 30 days advance notice.

#### Options Considered

We considered different alternatives to each of the proposed regulatory changes. These alternatives included issuing policy guidance to GIPSA employees, providing public notice that failure to provide growers with additional contract information was an unfair practice in violation of section 202 of the P&S Act, or recommending that growers seek redress of grievances through civil court action or arbitration. We did not believe that any of these alternatives would meet the needs of poultry growers. Therefore, we determined that § 201.100 needs revision as proposed.

#### Effects on Regulated Entities

If we implement these regulatory changes, some poultry companies may have to deliver their contracts to growers earlier than in the past. This would be the case only if the poultry company has historically delivered a written copy of its contracts to growers after delivering the house specifications.

These regulatory changes may require some revisions of contracts to include additional required information. Poultry companies, however, add or change contract terms in the normal course of business. There should therefore be little additional cost to the companies.

Information on PIPs would only result in changes to contracts if a poultry company already had a PIP. The additional contract wording should require little additional cost to the companies. Companies that do not already use PIPs but add PIPs later will need to revise contracts to reflect the PIP terms.

As noted above, most contracts already require that one party notify the other of a contract's termination. The regulatory change proposed here would make it a requirement that termination notices issued by either party be in writing, and require that poultry companies provide relevant termination information.

#### Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has designated this rule as not significant for the purposes of Executive Order 12866.

We have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will affect poultry companies (live poultry dealers) in contractual relationships with poultry growers. Most such entities are poultry slaughterers and processors of poultry with more than 500 employees and do not meet the definition for small entities in the Small Business Act (13 CFR 121.201). To the extent the proposed rule does affect small entities, it will not impose substantial new expenses or changes to routine operations on them. The proposed amendments will require changes to the content and timely delivery of contracts. It will require only minor contract modifications in most cases and thus should not impose substantial new expenses for poultry companies or growers, whether small entities or not.

In accordance with 5 U.S.C. 605 of the Regulatory Flexibility Act, because this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, we are not providing an initial regulatory flexibility analysis.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Paperwork Reduction Act

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

#### Government Paperwork Elimination Act Compliance

We are committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies provide the public with the option of submitting information or

transacting business electronically to the maximum extent possible.

#### List of Subjects in 9 CFR Part 201

Contracts, Poultry and poultry products, Trade practices.

For the reasons set forth in the preamble, we propose to amend 9 CFR part 201 to read as follows:

#### PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for Part 201 is revised to read as follows:

**Authority:** 7 U.S.C. 192, 204, 222, and 228; 7 CFR 2.22 and 2.81.

2. Amend § 201.100 to redesignate paragraphs (a), (b), (c), (d), and (e) as (c), (d), (e), (f) and (g); add new paragraphs (a), (b), (c)(3) and (h); and revise the introductory text of paragraph (c) to read as follows:

#### § 201.100 Records to be furnished poultry growers and sellers.

(a) *Poultry growing arrangement; timing of disclosure.* As a live poultry dealer who offers a contract to a poultry grower, you must provide the poultry grower with a true written copy of the offered contract on the date you provide the poultry grower with poultry house specifications.

(b) *Right to discuss the terms of poultry growing arrangement or contract offer.* As a live poultry dealer, notwithstanding any confidentiality provision, you must allow poultry growers to discuss the terms of a poultry growout contract offer or poultry growing arrangement offer with:

- (1) A Federal or State agency;
- (2) The grower's financial advisor or lender;
- (3) The grower's legal advisor;
- (4) An accounting services representative hired by the grower; or
- (5) A member of the grower's immediate family or a business associate.

\* \* \* \* \*

(c) *Contracts; contents.* Each live poultry dealer who enters into a growout contract with a poultry grower shall furnish the grower a true written copy of the contract, which shall clearly specify:

\* \* \* \* \*

(3) Any performance improvement plan guidelines, including:

- (i) The factors considered when placing a poultry grower on a performance improvement plan;
- (ii) The guidance and support provided to a poultry grower while on a performance improvement plan; and
- (iii) The factors considered to determine if and when a poultry grower

is removed from the performance improvement plan and placed back in good standing, or when the contract will be terminated.

\* \* \* \* \*

(h) *Written termination notice; furnishing, contents.* As a live poultry dealer, when you terminate a poultry growing contract, you must provide the poultry grower with a written termination notice [pen and paper] at least thirty (30) days prior to the removal of a flock. Your poultry contracts must also provide poultry growers with the opportunity to terminate their poultry growing arrangement in writing at least thirty (30) days prior to the removal of a flock. Written notice regarding termination shall contain the following:

- (1) The reason(s) for termination;
- (2) In the case of termination, when the termination is effective; and
- (3) Appeal rights, if any, the poultry grower may have with you.

**Pat Donohue-Galvin,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E7-14924 Filed 7-31-07; 8:45 am]

BILLING CODE 3410-KD-P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 703 and 704

RIN 3133-AD34

#### Permissible Foreign Currency Investments for Federal Credit Unions and Corporate Credit Unions

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NCUA is considering whether to amend its investment rules to permit natural person federal credit unions (FCUs) and corporate credit unions (corporates) to make certain investments denominated in foreign currency. NCUA seeks comment on whether FCUs and corporates should be permitted to make these investments and the safety and soundness considerations related to such authority.

**DATES:** Comments must be received on or before October 30, 2007.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA Web Site:* <http://www.ncua.gov/>

*RegulationsOpinionsLaws/proposed\_regs/proposed\_regs.html.* Follow the instructions for submitting comments.

- *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Advanced Notice of Proposed Rule for Parts 703 and 704” in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

#### FOR FURTHER INFORMATION CONTACT:

*Technical Information:* Kimberly A. Iverson, Senior Investment Officer, Office of Capital Markets and Planning, at the above address or telephone: (703) 518-6620; or *Legal Information:* Moissette I. Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Federal Credit Union Act (Act) permits federal credit unions (FCUs) to make investments denominated in foreign currency under the Act's authority permitting FCUs to invest or deposit their funds in shares or accounts of federally insured banks and corporates. 12 U.S.C. 1757(7), (8). In addition, the Board has authority under the Act to permit corporates to invest in foreign currency. 12 U.S.C. 1766. While the Act does not explicitly restrict FCUs and corporates to making investments only in U.S. dollars, NCUA has imposed this limitation by regulation.

NCUA regulations implement the authority in the Act and establish requirements and limitations under which FCUs and corporates, respectively under Parts 703 and 704, can make investments. 12 CFR parts 703, 704. The corporate regulation expressly states corporates may only make investments denominated in U.S. dollars. 12 CFR 704.5(b). For FCUs, the general investment rule does not expressly prohibit foreign currency denominated investments, but ties variable rate investments to a domestic interest rate and, consequently, limits FCU investment authority to U.S. dollars. 12 CFR 703.14(a).

Part of the impetus for this advance notice of proposed rulemaking (ANPR) is that, in 2006, the Board amended NCUA's share insurance rule to permit federally insured credit unions to accept member shares denominated in foreign

currency. 12 CFR 745.7; 71 FR 14631 (March 23, 2006) (interim final rule); 71 FR 56001 (September 26, 2006) (final rule). That rulemaking, however, did not address lending or investment in foreign denominated currencies. The Board recognizes that, for some credit unions, the ability to accept member shares denominated in foreign currency—without authority to make investments in foreign denominated currencies—may place them at a competitive disadvantage. Commenters should note that this ANPR's scope is limited to investment in foreign denominated currencies; the Board may consider issues associated with lending in foreign denominated currencies at another time but is not inclined to do so as part of this ANPR.

The Board is considering whether to permit FCUs and corporates to make limited investments denominated in foreign currency as a complementary authority to the change in the share insurance rule and allow FCUs and corporates to invest funds from the now-permissible foreign denominated share accounts. Comments from interested parties on the issues associated with investments denominated in foreign currency will assist the Board in determining whether to permit these kinds of investments and, if so, the kinds of appropriate limitations and requirements for the activity to address safety and soundness concerns.

##### B. Discussion

###### *U.S. Domiciled Issuers*

The Board is considering whether to permit FCUs and corporates to invest foreign currency in deposits and instruments issued by federally insured banks, corporates, and government-sponsored enterprises (GSEs) domiciled in the U.S. or its territories. The Board believes restricting foreign currency investments to shares and deposits in federally insured banks, corporates, and GSEs domiciled in the U.S. or its territories would substantially mitigate exposure to the potential instability of a foreign country. Changes in the political and economic environment of a particular country may adversely affect the exchange rate for that currency, as well as the ability of a foreign domiciled entity to repay an obligation. By limiting investments to shares and deposits in U.S. domiciled depositories or the debt obligations of GSEs, a credit union could avoid settlement risks arising from international payment systems.

While the Board recognizes other investments in foreign currency may be permissible under the Act, it believes safety and soundness concerns