Rules and Regulations

Federal Register
Vol. 58, No. 63
Monday, April 5, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 748

Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

SUMMARY: The Board is amending §748.1 in order to conform NCUA's regulations to the new procedures for completion and submission of the uniform criminal referral form. This action is intended to improve reporting of crimes relating to financial institutions and to establish a standardized form which can be entered into the new interagency computer data base.

EFFECTIVE DATE: May 5, 1993.

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

FOR FURTHER INFORMATION CONTACT: John Ianno or Jon Canerday, Office of General Counsel, at the above address, or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION: Currently, under § 748.1(c) of NCUA's Regulations, all federally insured credit unions must file a criminal referral whenever a crime or suspected crime occurs at their offices. The report must be filed within seven business days of discovery of the event. The regulation requires that the credit unions follow the filing and reporting instructions on the form.

An Interagency Bank Fraud Working Group ("Working Group") was formed in 1984 to address problems and to promote cooperation toward the goal of improving the federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve federal agencies, including NCUA, the other federal financial institution regulatory agencies, the Federal Bureau of Investigation, the Secret Service, the Department of Justice, and the Treasury Department.

A subcommittee of the Working Group studied the criminal referral process and developed a single, uniform criminal referral form. The new criminal referral form will standardize criminal referral data and facilitate its automation. It will replace the existing NCUA Form 2362, but, in substance, will require the same information.

NCUA and the other federal financial regulatory agencies have adopted uniform reporting and filing requirements for suspected criminal activity. The new uniform criminal referral form will be used for making these reports. It has been designed so that the information collected can be readily entered into the new criminal referral data base. This system will enhance the regulatory and law enforcement agencies' ability to investigate and track information pertaining to criminal referrals made to law enforcement agencies, as well as administrative actions taken by the federal financial regulatory agencies. Credit unions will be notified when the new form becomes available. Copies will be distributed to all federally insured credit unions. Until the new form becomes available, credit unions may comply with their filing requirements by using NCUA's current Criminal Referral Form. This form is designated NCUA Form #2362 and is available through NCUA's Regional Offices.

The final rule lengthens the time federally insured credit unions have to file a criminal referral from seven (7) business days, under the present regulation, to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed, unless the credit union is informed in writing by a representative of the National Credit Union Administration that the materials may be discarded sooner. It is anticipated that notification will occur only in the exceptional case where the Office of General Counsel receives notice from the Department of Justice that prosecution has been declined. The retention period is necessary because the statute of limitations for banking-related offenses has been increased to ten (10) years. In order to prosecute these offenses, criminal investigatory agencies must have the documents supporting the offenses available to them.

The regulation has been modified to expressly state that failure to comply with its requirements could result in an administrative action by the NCUA. This codifies the current state of the law.

Fifteen letters were received in response to the request for comments in the proposed amendment. Eleven were from credit unions, two from national credit union organizations, and two from state credit union leagues. All of the comments, except one, were generally in favor of the amendments.

One credit union expressed concern that the thirty-day period to report suspected criminal activity is insufficient. We believe that the increased filing time will permit thorough documentation and reporting by the credit union. Credit unions are encouraged to file as soon as possible after discovery of reportable activity. However, a credit union need only provide what evidence it has to support the suspected offense within the thirty-day period. If additional relevant evidence becomes available, the credit union should provide that information to the appropriate investigatory authority. If additional related losses are discovered, the credit union should file a supplemental or new criminal referral form. In the event of ongoing activity, they should contact appropriate law enforcement agencies by telephone and then file a timely referral form.

One credit union objected to the use of the language "suspected crime." The use of this language does not represent a change from the current regulation. The decision regarding whether certain activities constitute criminal activity which should be prosecuted is one which will be made by the U.S. Attorney after thorough investigation. The credit union is responsible for reporting situations which are believed, in good faith, to represent violations of applicable criminal laws. This is why the language "suspected crime" is used. Credit unions making such reports, in good faith, are shielded from liability. See 31 U.S.C. 5318(g).

One commenter asked that the agencies develop a computer format to

facilitate easy filing. This project is currently underway. It is expected to be available in the near future. One credit union asked whether there is a mechanism for removing a person's name from the system. The data base will permit the entry of subsequent information regarding the disposition of a referral.

It was suggested that credit unions be permitted to discard materials in advance of the ten-year period in the event a decision is made not to prosecute the individual involved. NCUA has decided to modify the language in § 748.1(c)(2) to permit this when appropriate and authorized by NCUA.

It was suggested that the credit unions be required to mail the form to NCUA for distribution. The distribution as set forth in the proposed amendment is considered to be the most efficient and will be retained for several reasons. It is important that the form go to criminal investigatory authorities as soon as possible. Forwarding to NCUA for remailing will slow this process. Similarly, if NCUA is required to open, copy, and then remail the original to FinCEN, this could degrade the quality of the original and affect the scanning process. The Board believes it is more cost efficient for all concerned if each institution handles its own distribution rather than having NCUA process and distribute the hundreds of forms which are filed each year.

One national organization asked about the use of the data base and one state league indicated that the proposal was unclear regarding the principal use of the information. The primary purpose of a criminal referral is to alert appropriate agencies to begin a criminal investigation of the circumstances described in the report. The information is also placed in a data base, accessible only to NCUA and appropriate agencies, for statistical and tracking purposes. It will be used by NCUA to assist in review of applications submitted by candidates for senior positions in "troubled" credit unions.

Regulatory Flexibility Act

The NCUA Board certifies that this final amendment will not have a significant financial impact on a substantial number of small credit unions or other small entities. The proposed regulation simply repeats, in slightly modified form, the preexisting requirement of federally insured credit unions to file criminal referrals pertaining to known and suspected crimes. It also extends the period of time for filing a referral. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the final amendment does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collection of information contained in a criminal referral form is approximately .6 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate 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.

Executive Order 12612

This final amendment applies to all federally insured credit unions. However, it makes no substantive changes and imposes no significant additional burdens on federally insured credit unions than those under the present rule. It lengthens the time federally insured credit unions have to file a criminal referral form from seven (7) business days, under the present regulation, to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government because federally insured credit unions are currently required to report crimes or suspected crimes which occur at their offices.

List of Subjects in 12 CFR Part 748

Security program, Filing of reports, Bank Secrecy Act compliance programs and procedure.

By the National Credit Union Administration Board on March 25, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its Regulations as follows:

PART 748—[AMENDED]

1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766 (a); 12 U.S.C. 1786 (q); 31 U.S.C. 5311.

2. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Criminal Referral Form.* (1) Each federally insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Interagency Criminal Referral Form, within thirty calendar days after discovery. Each federally insured credit union must follow the instructions and reporting requirements accompanying the Interagency Criminal Referral Form. Copies of the Interagency Criminal Referral Form may be obtained from the appropriate NCUA Regional Office.

(2) Each federally insured credit union shall maintain a copy of any Interagency Criminal Referral Form that it files and the original of all attachments to the form for a period of ten years from the date of the report, unless the credit union is informed in writing by a representative of the National Credit Union Administration that the materials may be discarded sooner.

(3) Failure to file Interagency Criminal Referral Forms in accordance with the instructions accompanying the Form may subject the federally insured credit union, its officers, directors, agents, or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Interagency Criminal Referral Forms will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained in Interagency Criminal Referral Forms will be entered into an interagency data base and will assist the federal government in taking appropriate action.

[FR Doc. 93–7773 Filed 4–2–93; 8:45 am]

BILLING CODE 7535–01–U

---

12 CFR Part 791

Rules of Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its Regulation implementing the Sunshine Act to modify the procedure for determining whether items heard at a closed Board meeting should continue to be withheld after the meeting.

The proposed amendments are intended to better achieve the goals of the Sunshine Act and to provide for a simpler, more effective, and more consistent method of decisionmaking.

EFFECTIVE DATE: May 5, 1993.

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

FOR FURTHER INFORMATION CONTACT: Margaret R. Suuberg, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 682–9630.

SUPPLEMENTARY INFORMATION: Section 791.18(c) of the NCUA Rules and Regulations implements Section 552b(f)(2) of the Government in the Sunshine Act ("Sunshine Act"), 5 U.S.C. 552b(f)(2). Section 552b(f)(2) provides, in part that the agency shall make promptly available to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c).

Section 552b(f)(2) requires an agency to determine whether matters heard at a closed meeting should be withheld after the meeting rather than made available to the public. However, it does not require the specific procedure currently in use by the NCUA Board.

The Sunshine Act does not require that any specific procedures be followed in making the determination under section 552b(f)(2). The Board is, therefore, free to prescribe its own procedures. The determination to withhold portions of the record from the public does not require a recorded vote of the Board members, and need not be made by the Board members at all. Most agencies have delegated the determination responsibility to either the general counsel, the secretary, or the director of public information. An agency's review and determination need not occur at the meeting, and, in most cases, are carried out after the meeting.

Under the current procedure pursuant to § 791.18(c), at the end of the meeting, the Board decides whether items discussed at the meeting should be withheld from public disclosure under § 791.12(a) of NCUA's Regulations (which contains the same exemptions as section 552b(c) of the Sunshine Act, 12 U.S.C. 552b(c)). Having the Board make such determinations at the end of the meeting has proven time consuming, and at times confusing, particularly in those cases where a determination could better be made after review of the record. Current § 791.18(c) provides that if the Board does not make the necessary determination with regard to any item or items, the Board Secretary must make the determination after consultation with the General Counsel and the Board members. This approach as well has proven time consuming and impracticable.

On September 9, 1992, the NCUA Board issued a proposed amendment to § 791.18(c) (see, 57 FR 42532, 9/15/92). The proposal and this final rule require the General Counsel, or his designee, to make the necessary determination after consultation with the Board Secretary. Since the determination whether to withhold is essentially a legal one, the General Counsel should have the primary responsibility for making that determination. The Board believes that the practice will better achieve the goals of the Sunshine Act than does the method now in use. The new procedure will be simpler and more effective, as well as provide for a consistent method of decisionmaking.

The rule also contains one technical amendment. The current version of the regulation incorrectly cites the Privacy Act as 5 U.S.C. 522a. The correct citation for the Privacy Act is 5 U.S.C. 552a. The rule corrects that error.

Four comment letters were received: One from a natural person federal credit union, one from a corporate credit union, one from a state credit union league, and one from a national credit union trade association. All of the commenters fully supported the proposed rule. They agreed that the determination whether a closed meeting item should be made public is a legal one and best made by the General Counsel. The commenters believed that the proposed amendment would make for a more effective decision-making process and would better accomplish the goals of the Sunshine Act.

This final amendment is identical to the proposed rule.

Paperwork Reduction Act

The amendment imposes no paperwork requirements on the public. It relates solely to internal Board procedure.

Regulatory Flexibility Act

The NCUA Board certifies that this amendment will not have a significant impact on a substantial number of small credit unions (those under $1 million in assets) because the amendment relates solely to internal Board procedures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The amendment relates solely to internal Board procedures, and will have no effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, NCUA Board, Promulgation of rules and regulations, Public observation of meetings, Sunshine Act.

By the National Credit Union Administration Board on March 25, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA hereby amends 12 CFR part 791 as follows:

PART 791—RULES OF BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766; 12 U.S.C. 1789; and 5 U.S.C. 552b.

2. Section 791.18(c) is revised as follows:

§ 791.18 Public availability of meeting records and other documents.

* * * * *

(c) Following each meeting or any portion of a meeting closed pursuant to § 791.12(a), the General Counsel or his designee, after consultation with the Secretary of the Board, shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. 552a (the Privacy Act) contain information which should be withheld pursuant to § 791.12(a). If, at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

* * * * *

[FR Doc. 93–7772 Filed 4–2–93; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 93–AWA–4]

Amendment to the Atlantic Low and Pacific Low Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; temporary amendment.

SUMMARY: The Offshore Airspace Reconfiguration final rule published in the Federal Register on March 2, 1993, amended the Federal Aviation Regulations (FAR), in part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate, and implemented, to the extent practicable, a uniform base altitude of 5,500 feet mean sea level (MSL) for offshore airspace areas. Further, the offshore airspace areas were divided into "high" and "low" areas. This action temporarily amends certain offshore airspace low areas from April 1, 1993 through July 22, 1993, because the FAA has discovered that by raising the base altitude, certain air traffic services to major coastal airports might be adversely affected.

EFFECTIVE DATES: This amendment is effective April 1, 1993 through July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, ATP–230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9251.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published March 2, 1993, amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate. Further, the offshore airspace areas were divided into high and low areas. In addition to combining and simplifying the offshore airspace areas, an effort was made to establish a uniform floor of 5,500 feet MSL, to the extent practicable. It was recently discovered that certain air traffic control operations require additional controlled airspace. Therefore, the FAA has decided to reduce the floor of the Atlantic Low and Pacific Low offshore airspace areas back to the floors previously specified for the Brunswick, North Atlantic, Barnegat, NJ, Newport, OR, San Francisco, CA, and Santa Barbara, CA additional control areas. This will enable the FAA to conduct a micro-review of the air traffic control operations conducted within these airspace areas to determine the amount of controlled airspace necessary to contain certain air traffic control operations. The Atlantic Low and Pacific Low additional control areas were published in FAA Order 7400.7A–Supplement dated February 24, 1993, and effective April 1, 1993, which is incorporated by reference in 14 CFR 71.1. The additional control areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the FAR temporarily changes the base altitudes of the Atlantic Low and Pacific Low additional control areas from 5,500 feet MSL to 2,000 feet and 5,000 feet respectively. It reinstates the base altitudes that previously existed in these offshore airspace areas. This action enables air traffic control to continue to provide services with the requisite flexibility, such as descending and off-airway radar vectors, as necessary to sequence arrivals into major coastal areas such as Boston and New York. Because the public needs to be made immediately aware of the reinstatement of these altitudes, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. In consideration of the safety need to lower the base of controlled airspace, the FAA finds that good cause exists, pursuant to 5 U.S.C. 553(d), for making the amendment effective in less than 30 days to promote the safe and efficient handling of air traffic in these offshore airspace areas.

List of Subjects in 14 CFR Part 71

Airspace, Airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, is temporarily amended effective April 1, 1993, through July 22, 1993, as follows:

Section 71.163 Designation of Additional Control Areas

* * * * *

Atlantic Low [temporarily revised April 1, 1993, through July 22, 1993]

That airspace extending upward from 2,000 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat 28°00'00" N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline.

* * * * *

Pacific Low [temporarily revised April 1, 1993, through July 22, 1993]

That airspace extending upward from 5,000 feet MSL bounded on the north by the Vancouver FIR boundary, on the east by a line 12 miles from and parallel to the U.S. shoreline, on the south by the northwest boundary of Warning Area W–291, and on the west by the Oakland Oceanic CTA/FIR boundary excluding that airspace with Federal Airways.

* * * * *

Issued in Washington, DC, on March 31, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–7844 Filed 3–31–93; 12:10 pm]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 92–ASW–29]

Establishment of Transition Area: Walnut Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area located at Walnut Springs, TX. The development of a new special instrument approach procedure (SIAP) to the Flat Top Ranch Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the very high frequency omnidirectional range/distance measuring equipment (VOR/DME) runway (RWY) 18 SIAP. Additionally, this action changes the