

# Proposed Rules

Federal Register

Vol. 66, No. 37

Friday, February 23, 2001

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.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 749

#### Records Preservation Program

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

**ACTION:** Proposed rule.

**SUMMARY:** NCUA proposes to revise its regulation establishing standards for vital record preservation. The proposal clarifies that a credit union may preserve records in electronic form, as authorized by the Electronic Signatures in Global and National Commerce Act. By eliminating the requirement that a credit union's financial officer be responsible for storing vital records, the revision permits a credit union's board of directors to determine which employee will be responsible for storing vital records under the record preservation program. It also incorporates an appendix to provide suggested guidelines to credit unions on retention periods for various types of records.

**DATES:** Comments must be received on or before April 24, 2001.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. E-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). *Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:** NCUA is proposing a revision of its regulation governing the preservation of vital

records. The revision simplifies the regulation by converting it to a question and answer format. It also updates and clarifies the provision of the regulation that currently permits a credit union to store records in any format that can be used to reconstruct the credit union's files. By implementing the record retention provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, the revision clarifies that credit unions may store records in any electronic format that is accurate, accessible and capable of being reproduced by printing, transmittal or other methods.

The current regulation designates that the credit union's financial officer is responsible for vital records preservation duties. The Board finds that the credit union's board of directors may reasonably assign the duties to another staff member. The revision permits a credit union's board of directors to determine which employee will be responsible for carrying out the vital record preservation duties.

Section 749.2 of the proposal restates the provision in the existing regulation that credit unions whose records are retained by off-site data processors are deemed to be in compliance for those records. The Board notes that credit unions should exercise care in the selection of an off-site data processor to ensure that it is capable of producing the records if requested.

There is a need for guidance in the area of record retention based on the frequency of requests for assistance from credit unions. Although similar guidance is available in the NCUA Accounting Manual for Credit Unions, it will be more accessible as an appendix to the regulation. For those reasons, the revision incorporates an appendix that offers guidance on recommended retention periods for various types of credit union records.

#### Regulatory Procedures

##### *Paperwork Reduction Act*

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and

regulations of the Office of Management and Budget.

##### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will apply only to all federally insured credit unions. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families.

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

#### List of Subjects in 12 CFR Part 749

Archives and records, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 15, 2001.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, it is proposed that 12 CFR Part 749 is revised to read as follows:

## PART 749—RECORDS PRESERVATION PROGRAM AND RECORD RETENTION APPENDIX

Sec.

- 749.0 What is covered in this part?  
749.1 What are vital records?  
749.2 What must a credit union do with vital records?  
749.3 What is a vital records center?  
749.4 What format may the credit union use for preserving records?  
749.5 What format may credit unions use for maintaining writings, records or information required by other NCUA regulations?

### Appendix A to Part 749—Record Retention Guidelines

**Authority:** 12 U.S.C. 1766, 1783 and 1789, 15 U.S.C. 7001(d).

#### § 749.0 What is covered in this part?

This part describes the obligations of all federally insured credit unions to maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed. It establishes flexibility in the format credit unions may use for maintaining writings, records or information required by other NCUA regulations. The appendix also provides guidance concerning the appropriate length of time credit unions should retain various types of operational records.

#### § 749.1 What are vital records?

Vital records include at least the following records, as of the most recent month-end:

- (a) A list of share, deposit, and loan balances for each member's account which:
  - (1) Shows each balance individually identified by a name or number;
  - (2) Lists multiple loans of one account separately; and
  - (3) Contains information sufficient to enable the credit union to locate each member, such as address and telephone number, unless the board of directors determines that the information is readily available from another source.
- (b) A financial report, which lists all of the credit union's asset and liability accounts and bank reconcilements.
- (c) A list of the credit union's financial institutions, insurance policies, and investments. This information may be marked "permanent" and stored separately, to be updated only when changes are made.

#### § 749.2 What must a credit union do with vital records?

The board of directors of a credit union is responsible for establishing a vital records preservation program

within 6 months after its insurance certificate is issued. The vital records preservation program must contain procedures for storing duplicate vital records at a vital records center and must designate the staff member responsible for carrying out the vital records duties. Records must be stored every 3 months, within 30 days after the end of the 3-month period. Previously stored records may be destroyed when the current records are stored. The credit union must also maintain a records preservation log showing what records were stored, where the records were stored, and who sent the records for storage. Credit unions, which have some or all of their records maintained by an off-site data processor, are considered to be in compliance for the storage of those records.

#### § 749.3 What is a vital records center?

A vital records center is defined as a storage facility at any location far enough from the credit union's offices to avoid the simultaneous loss of both sets of records in the event of disaster.

#### § 749.4 What format may the credit union use for preserving records?

Preserved records may be in any format that can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, micro-film or fiche, magnetic tape, or any electronic format that accurately reflects the information in the record, remains accessible to all persons who are entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing or otherwise.

#### § 749.5 What format may credit unions use for maintaining writings, records or information required by other NCUA regulations?

Various NCUA regulations require credit unions to maintain certain writings, records or information. Credit unions may use any format, electronic or other, for maintaining the writings, records or information that accurately reflects the information, remains accessible to all persons who are entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing or otherwise. The credit union must maintain the necessary equipment or software to permit an examiner access to the records during the examination process.

### Appendix A to Part 749—Record Retention Guidelines

Credit unions often look to NCUA for guidance on the appropriate length of time to

retain various types of operational records. NCUA does not regulate in this area, but as an aid to credit unions it is publishing this appendix of suggested guidelines for record retention. NCUA recognizes that credit unions must strike a balance between the competing demands of space, resource allocation and the desire to retain all the records that they may need to conduct their business successfully. Efficiency requires that all records that are no longer useful be discarded, just as both efficiency and safety require that useful records be preserved and kept readily available.

#### A. What Format Should the Credit Union Use for Retaining Records?

NCUA does not recommend a particular format for record retention. If the credit union stores records on microfilm, microfiche, or in an electronic format, the stored records must be accurate, reproducible and accessible to an NCUA examiner. If records are stored on the credit union premises, they should be immediately accessible upon the examiner's request; if records are stored by a third party or off-site, then they should be made available to the examiner within a reasonable time after the examiner's request. The credit union must maintain the necessary equipment or software to permit an examiner to review and reproduce stored records upon request. The credit union should also ensure that the reproduction is acceptable for submission as evidence in a legal proceeding.

#### B. Who is Responsible for Establishing a System for Record Disposal?

The credit union's board of directors may approve a schedule authorizing the disposal of certain records on a continuing basis upon expiration of specified retention periods. A schedule provides a system for disposal of records and eliminates the need for board approval each time the credit union wants to dispose of the same types of records created at different times.

#### C. What Procedures Should a Credit Union Follow When Destroying Records?

The credit union should prepare an index of any records destroyed and retain the index permanently. Destruction of records should ordinarily be carried out by at least two persons whose signatures, attesting to the fact that records were actually destroyed, should be affixed to the listing.

#### D. What Are the Recommended Minimum Retention Times?

Record destruction may impact the credit union's legal standing to collect on loans or defend itself in court. Since each state can impose its own rules, it is prudent for a credit union to consider consulting with local counsel when setting minimum retention periods. A record pertaining to a member's account that is not considered a vital record may be destroyed once it is verified by the supervisory committee. Individual Share and Loan Ledgers should be

retained permanently. Records, for a particular period, should not be destroyed until both a comprehensive annual audit by the supervisory committee and a supervisory examination by the NCUA have been made for that period.

*E. What Records Should be Retained Permanently?*

(1) Official records of the credit union that should be retained permanently are:

- (a) Charter, bylaws, and amendments.
- (b) Certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of U. S. savings bonds.
- (c) Current manuals, circular letters and other official instructions of a permanent character received from the NCUA and other governmental agencies.

(2) Key operational records that should be retained permanently are:

- (a) Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee.
- (b) One copy of each semiannual and annual (June 30 and December 31) financial report NCUA 5300 or their equivalents.
- (c) One copy of each supervisory committee comprehensive annual audit report and attachments.
- (d) Supervisory committee records of account verification.
- (e) Applications for membership and joint share account agreements.
- (f) Journal and cash record.
- (g) General ledger.
- (h) Copies of the periodic statements of members, or the individual share and loan ledger. (A complete record of the account should be kept permanently.)
- (i) Bank reconciliations.
- (j) Listing of records destroyed.

*F. What Records Should a Credit Union Designate for Periodic Destruction?*

Any record not described above is appropriate for periodic destruction unless it must be retained to comply with the requirements of consumer protection regulations. Periodic destruction should be scheduled so that the most recent of the following records are available for the annual supervisory committee audit and the NCUA examination. Records that may be periodically destroyed include:

- (a) Applications of paid off loans.
- (b) Paid notes.
- (c) Various consumer disclosure forms, unless retention is required by law.
- (d) Cash received vouchers.
- (e) Journal vouchers.
- (f) Canceled checks.
- (g) Bank statements.
- (h) Outdated manuals, canceled instructions, and nonpayment correspondence from the NCUA and other governmental agencies.

[FR Doc. 01-4398 Filed 2-22-01; 8:45 am]

BILLING CODE 7535-01-P

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Chapter II**

**Review of Existing Regulations**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Extension of comment period.

**SUMMARY:** The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a document reviewing our existing regulations, which was published in the **Federal Register** on December 26, 2000 (65 FR 81465). The document requests comments on regulations that could be more performance based, or on regulations that should be eliminated or revised. We also gave a status update on actions by MMS regarding comments previously received on our regulations. MMS will grant a 30-day extension until March 28, 2001.

**DATES:** Written comments must be received by March 28, 2001.

**ADDRESSES:** Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4230; 1849 C Street NW; Washington DC 20240; Attention: Elizabeth Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Montgomery, Policy and Management Improvement, telephone: (202) 208-3976; Fax: (202) 208-4891; and E-Mail: [Elizabeth.Montgomery@mms.gov](mailto:Elizabeth.Montgomery@mms.gov).

**SUPPLEMENTARY INFORMATION:** MMS was asked to extend the deadline for submitting comments on the document, "Review of Existing Regulations, Request for Comment." The requester indicated that more time was needed to comment due to the change of Administration. We believe the extension of time until March 28, 2001, will give the public sufficient time to comment on our existing regulations and on the actions we have taken in response to past comments and enacted legislation.

Dated: February 14, 2001.

**George Triebsch,**  
*Chief, Washington Division, Policy and Management Improvement.*

[FR Doc. 01-4436 Filed 2-22-01; 8:45 am]

BILLING CODE 4310-MR-P

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 164**

**46 CFR Parts 25 and 27**

**[USCG-2000-6931]**

**RIN 2115-AF53**

**Fire-Suppression Systems and Voyage Planning for Towing Vessels**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** In response to public requests, the Coast Guard is extending the comment period on its supplemental notice of proposed rulemaking (SNPRM) on Fire-Suppression Systems and Voyage Planning for Towing Vessels. Extending the comment period gives the public and the Towing Safety Advisory Committee (TSAC) more time to submit comments and recommendations on the issues raised in our SNPRM. These proposed rules would improve the safety of towing vessels by requiring the installation of fixed fire-extinguishing systems in their engine rooms, and by requiring their owners or operators, and their masters, to ensure that voyage plans are complete before they commence their trips with any barge in tow.

**DATES:** Comments on the SNPRM must reach the Coast Guard on or before May 8, 2001.

**ADDRESSES:** You may mail written comments to the Docket Management Facility [USCG-2000-6931], U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. You may also E-mail comments using the Marine Safety and Environmental Protection Regulations Web Page at <http://www.uscg.mil/hq/g-m/regs/reghome.html>.

The Docket Management Facility maintains the public docket for the rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket on the Internet at <http://dms.dot.gov>.