

paperwork-only bond, with no money involved, so in terms of a Customs bond being applied to temporary importations of Mexican cattle, the commenter is correct. Our interim rule should have stated that cattle imported for feeding and return to Mexico were no longer covered by a cash bond, and that it was the absence of any cash bond that led to our determination that the in-bond program should be terminated.

One commenter contended that the interim rule violated the terms of NAFTA by instituting a sanitary measure without providing a risk assessment, considering alternatives and economic impacts, or providing the required 60-day notice to Mexico.

The interim rule contained a discussion of the increased disease risks associated with the in-bond program and the measures that had been in place to mitigate those risks. As stated in the interim rule, the additional risks stemmed largely from the fact that in-bond cattle were exempted from meeting certain testing requirements for brucellosis and tuberculosis; those risks had been mitigated by the quarantine and movement restrictions of the in-bond program, and the cash bond had served to ensure that the quarantine and movement restrictions were observed. The termination of the in-bond program was based on our determination that the loss of the cash bond rendered our mitigating measures less effective than we believed was necessary.

The interim rule also discussed alternatives to ending the in-bond program, e.g., continuing with a paperwork-only bond and the possibility of APHIS implementing its own bond system. Further, an economic analysis was provided in the interim rule to satisfy the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

With regard to the 60-day notice, NAFTA allows a party to omit such notice when the party considers it necessary to take measures to address an urgent problem relating to sanitary and phytosanitary protection. In such cases, the party must: (1) Immediately provide a notification of the measures, including a brief description of the urgent problem; (2) provide a copy of such measures upon request; and (3) allow other parties and interested persons to make comments in writing and, upon request, discuss such comments and take such comments and the results of such discussions into account. All three of those requirements were satisfied by the interim rule in that it provided notification of our termination of the in-bond program 15 days prior to the effective date of that action; set forth a

description of the urgent problem that led us to publish the interim rule without prior opportunity for public comment; provided a full description of the measures we were taking; and provided a 60-day comment period during which interested persons could submit comments for APHIS' consideration.

One commenter stated that the interim rule is an unjustified nontariff trade barrier because the rule was based not on animal health concerns, but on an administrative problem, i.e., the inability of the Customs Service to collect the bond. We disagree with that argument because Customs' inability to collect the bond is a reality mandated by NAFTA, not an "administrative problem" that could be solved by a change in procedure or a reallocation of resources. As explained above and in the interim rule, we found that the bond was an important factor in the enforceability of the restrictions designed to mitigate the higher disease risk posed by cattle imported under the in-bond program. If those restrictions were disregarded, there is the very real possibility that cattle that had not been tested for tuberculosis or brucellosis could be commingled with domestic livestock and spread disease; we regard that as an animal health concern.

As noted above, the interim rule removed § 92.427(e), which contained the in-bond program's provisions, and five references to those provisions found elsewhere in parts 91 and 92. Following the publication of the interim rule, it was brought to our attention that we failed to remove a sixth reference to the in-bond program from the regulations in § 92.427(c)(2) (current § 93.427(c)(2)). We are, therefore, removing that reference in this final rule.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12372, and the Paperwork Reduction Act.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **List of Subjects**

##### *9 CFR Part 91*

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

##### *9 CFR Part 93*

Animal diseases, Imports, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR parts 91 and 92 (now 9 CFR parts 91 and 93) that was published at 60 FR 13896-13898 on March 15, 1995, is adopted as a final rule with the change set forth below.

#### **PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

1. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

##### **§ 93.427 [Amended]**

2. In § 93.427, in paragraph (c)(2), the second sentence is amended by removing the words "or in bond for temporary entry in accordance with § 93.427(e)".

Done in Washington, DC, this 1st day of December 1997.

**Craig A. Reed,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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#### **NATIONAL CREDIT UNION ADMINISTRATION**

##### **12 CFR Part 791**

#### **Rules of NCUA 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 amends its rules to revise and clarify Board procedures relating to procedural rulings, notation voting, Board meetings, and the agenda. This amendment more clearly defines the procedures that are to be followed when a Board member appeals a procedural

ruling and when matters are submitted to the Board for notation vote. Further, this amendment sets forth the authority of Board members to call a special meeting and place items on a regular meeting agenda.

**DATES:** Effective on December 5, 1997.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Fenner, General Counsel, Office of the General Counsel, at the above address or telephone (703) 518-6540. E-mail questions may be sent to [ogcmail@ncua.gov](mailto:ogcmail@ncua.gov).

**SUPPLEMENTARY INFORMATION:** Part 791 of NCUA Rules and Regulations (12 CFR part 791) governs the manner in which the Board conducts NCUA business; appeal of a procedural ruling, the use of notation votes, the recording of Board actions, and the scheduling and subject matter of Board meetings. At this time, § 791.4 is amended to provide that any Board member may appeal a procedural ruling, and that the Board member's appeal must be considered immediately by the Board.

In addition, § 791.4 is amended to provide that, for every matter submitted for a notation vote, a written memorandum and voting sheet is to be circulated to the office of each Board member simultaneously. Thus, the office of each Board member receives notice of matters for notation voting at the same time. Further, the rule is amended to specify that, if a Board member vetoes the use of notation voting for a particular matter, the matter must be placed on the agenda of the next regularly scheduled Board meeting that is to be held at least 10 days after the date of the veto.

Section 791.5 is amended to specify that a special meeting shall be called by the Chairman on the Chairman's own initiative or within fourteen days of a request from two Board members. The request must be made by submitting an NCUA B-1 form and Board Action Memorandum stating the specific action being recommended to the Board.

Section 791.6 is amended to establish that, although the Chairman determines the order of and the items to be placed on the agenda, any Board member may have an item placed on the agenda of the next regularly scheduled Board meeting. The request must be submitted at least ten days in advance of the next regularly scheduled meeting and accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

**Immediate Effective Date**

Because these amendments concern the rules of NCUA Board procedure, prior notice and comment are not required by 5 U.S.C. 553. These amendments are effective upon publication in the **Federal Register**.

**Regulatory Procedures**

*Regulatory Flexibility Act*

NCUA certifies that part 791 will not have a significant impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required. The rule affects internal NCUA Board operations only. Thus, it will not result in any additional burden for regulated institutions. The purpose of the rule is to enhance the operations of the NCUA Board.

*Paperwork Reduction Act*

The amendments to the rule do not contain any collection of information requirements pursuant to the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*Executive Order 12612*

Part 791 only applies to NCUA and the NCUA Board. Accordingly, NCUA has determined that the rule will not have a substantial impact on the states or state interests. Further, the rule will not preempt provisions of state law or regulations.

**List of Subjects in 12 CFR Part 791**

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on November 24, 1997.

**Becky Baker,**

*Secretary to the Board.*

Accordingly, NCUA amends 12 CFR part 791 as follows:

**PART 791—RULES OF NCUA 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, 1789 and 5 U.S.C. 552b.

2. Section 791.4 is amended by revising paragraphs (a)(2), (b) introductory text and (b)(3) to read as follows:

**§ 791.4 Methods of acting.**

(a) \* \* \*

(2) *Presiding officer.* The Chairman is the presiding officer, and in the

Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings. Any Board member may appeal a ruling made by the presiding officer. The appeal of a procedural ruling by the presiding officer shall be immediately considered by the Board, and a majority decision by the Board shall decide the procedural ruling.

(b) *Notation voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member simultaneously and the tabulation of responses.

\* \* \* \* \*

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of the next regularly scheduled Board meeting that is held at least ten days after the date of the veto.

\* \* \* \* \*

3. Section 791.5 is amended by revising paragraph (a)(2) to read as follows:

**§ 791.5 Scheduling of board meetings.**

(a) \* \* \*

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or within fourteen days of a request from two Board members that is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

\* \* \* \* \*

4. Section 791.6 is amended by revising paragraph (a) to read as follows:

**§ 791.6 Subject matter of a meeting.**

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

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