

applicable), and e-mail address (if applicable), and the total number of packages shipped by container or container equivalents for each grower.

\* \* \* \* \*

Dated: May 25, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-12137 Filed 5-27-04; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 2 and 3

[Docket No. 97-001-5]

RIN 0579-AB39

#### Animal Welfare; Policy on Training and Handling of Potentially Dangerous Animals

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Draft policy statement; withdrawal.

**SUMMARY:** On February 18, 2000, we published a draft policy statement regarding the training and handling of potentially dangerous animals in the *Federal Register* in order to seek public comment on the policy statement prior to its implementation. The draft policy statement was developed to provide guidance to exhibitors and other regulated entities on how to comply with the regulations regarding training and handling of potentially dangerous animals (e.g., lions, tigers, bears, and elephants). This is to notify the public that we will not be publishing or implementing a final policy statement on these issues.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate regulations and standards governing the humane handling, care, treatment, and transportation of animals, as defined in the AWA, by dealers, exhibitors, and other regulated persons. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and

Plant Health Inspection Service (APHIS). Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3.

The regulations governing the handling of all animals are found in 9 CFR part 2, § 2.131. Section 2.131, paragraph (a) requires that handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm or unnecessary discomfort, and prohibits the use of physical abuse or deprivation of food or water to train, work or otherwise handle animals except that short-term withholding of food or water by exhibitors is allowed as long as each of the animals affected receives its full dietary and nutrition requirements each day.

Section 2.131, paragraph (b)(1) requires that during public exhibition, any animal must be handled so there is minimal risk of harm to the animal and the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of the animals and the public. Paragraph (b)(2) requires that performing animals receive a rest period between performances. Paragraph (b)(3) prohibits exposing young or immature animals to rough or excessive public handling, or exhibiting them for periods of time that would be detrimental to their health or well-being. Paragraph (b)(4) prohibits the use of drugs to facilitate, allow, or provide for public handling of animals.

Section 2.131, paragraph (c) requires that: (1) Animals be exhibited only for periods of time and under conditions consistent with their good health and well-being, (2) a responsible, knowledgeable and readily identifiable employee or attendant be present at all times during public contact, (3) during public exhibition, dangerous animals be under the direct control and supervision of a knowledgeable and experienced animal handler, and (4) if public feeding of animals is allowed, the food be provided by the animal facility and appropriate for the animal and its needs and diet.

Section 2.131, paragraph (d) prohibits subjecting animals to any combination of temperature, humidity and time that is detrimental to their health or well-being.

Regulations governing handling and personnel qualifications for research facilities are found at 9 CFR part 2, §§ 2.38(f), 2.32. Handling and employee standards for specific animals are found at 9 CFR part 3, §§ 3.19, 3.12 (dogs and cats), §§ 3.41, 3.32 (hamsters and guinea

pigs), §§ 3.66, 3.57 (rabbits), §§ 3.92, 3.85 (nonhuman primates), §§ 3.118, 3.108 (marine mammals), and §§ 3.142, 3.132 (animals other than dogs, cats, hamsters, guinea pigs, rabbits, nonhuman primates, and marine mammals).

On February 18, 2000, we published a draft policy statement in the *Federal Register* (65 FR 8318-8321, Docket No. 97-001-4) in order to seek public comment on the policy statement prior to its implementation. The draft policy statement was developed to provide guidance to exhibitors and other regulated persons on how to comply with the regulations regarding training and handling of potentially dangerous animals.

We solicited comments concerning our draft policy statement for 60 days ending on April 18, 2000. We received 204 comments by that date. They were from licensees, professional organizations, animal welfare organizations, zoos, academicians, consultants, and private citizens.

We have determined that any clarification of the regulations should be accomplished through rulemaking and we are now providing notice that we will not be publishing or implementing a final policy statement on these issues. Should we propose to amend the regulations and standards, we will initiate rulemaking and provide notice and opportunity for public comment.

Done in Washington, DC, this 25th day of May, 2004.

**Jessica Mahalingappa,**

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

[FR Doc. 04-12135 Filed 5-27-04; 8:45 am]

**BILLING CODE 3410-34-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 717 and 748

#### Fair Credit Reporting—Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003

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

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The NCUA Board is requesting comment on a proposal to implement section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) by amending the fair credit reporting and security program regulations and NCUA's Guidelines for Safeguarding Member Information. The proposal would require Federal credit

unions (FCUs) to develop, implement, and maintain appropriate measures to properly dispose of consumer information derived from consumer reports. FCUs are expected to implement these measures consistent with the provisions in NCUA's Guidelines for Safeguarding Member Information.

**DATES:** Comments must be received by July 12, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- 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](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- E-mail: [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "FACT Act Disposal Rule" in the subject line of the message.

- Fax: Becky Baker, Secretary of the Board, (703) 518-6319, use the subject line described above for e-mail.

- Mail: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

- Hand Delivery/Courier: Guard station in lobby of 1775 Duke Street, Alexandria, Virginia, on business days between 8 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name for this rulemaking. Commenters are encouraged to use the title "FACT Act Disposal Rule" to facilitate the organization of comments. Whatever method you choose, please send comments by one method only.

**FOR FURTHER INFORMATION CONTACT:**

Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Section 216 of the FACT Act adds a new section 628 to the Fair Credit Reporting Act (FCRA) that, in general, is designed to protect a consumer against the risks associated with unauthorized access to information about the consumer contained in a consumer report, such as fraud and identity theft. 15 U.S.C. 1681w. Section 216 of the FACT Act requires NCUA to adopt a rule requiring any FCU "that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from

consumer reports for a business purpose to properly dispose of any such information or compilation." Public Law 108-159, 117 Stat. 1985-86. The FACT Act mandates that the rule be consistent with the requirements issued pursuant to the Gramm-Leach-Bliley Act (GLBA) (Pub. L. 106-102), as well as other provisions of Federal law.

NCUA proposes amendments to the fair credit reporting and security program rules and its Guidelines for Safeguarding Member Information, to require FCUs to implement controls designed to ensure the proper disposal of consumer information within the meaning of section 216. 12 CFR parts 717 and 748. In accordance with section 216, NCUA has consulted with the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), Federal Trade Commission (FTC), and Securities and Exchange Commission (collectively, the Agencies) to ensure that, to the extent possible, the rules proposed by the respective agencies to implement section 216 are consistent and comparable. NCUA's proposed regulation and the preamble are substantively similar to a joint notice of proposed rulemaking that NCUA anticipates will be issued by the federal banking agencies (FRB, OCC, FDIC and OTS) shortly.

**II. Background**

In 2001, NCUA amended the security program rule to establish standards for federally insured credit unions (FICUs) relating to administrative, technical, and physical safeguards to protect the security and confidentiality of member records and information, pursuant to section 501 of GLBA. 15 U.S.C. 6805(b). NCUA worked with the Agencies and State insurance authorities to develop appropriate standards. 66 FR 8152 (Jan. 30, 2001). The Federal banking agencies issued their standards as guidelines under section 39 of the Federal Deposit Insurance Act. 12 U.S.C. 1831p.<sup>1</sup> NCUA determined it could best meet the congressional directive to prescribe standards by amending the rule governing security programs and by providing guidance in an appendix to the rule. 12 CFR part 748, Appendix A; 66 FR 8152 (Jan. 30, 2001).

Section 748.0 requires an FCU to develop a security program that implements safeguards designed to: (1) Ensure the security and confidentiality

of member records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to a member. 12 CFR 748.0(b)(2).

Appendix A to part 748 sets forth NCUA's Guidelines for Safeguarding Member Information (Guidelines), which are substantially identical to the guidelines issued by the Agencies. 66 FR 8152 (Jan. 30, 2001). The Guidelines "are intended to outline industry best practices and assist credit unions to develop meaningful and effective security programs to ensure their compliance with the safeguards contained in the regulation." *Id.*

The Guidelines direct FICUs to assess the risks to their member information and member information systems and, in turn, implement appropriate security measures to control those risks. 12 CFR part 748, Appendix A. For example, under the risk-assessment framework, FICUs should evaluate whether the controls the FCU has developed sufficiently protect its member information from unauthorized access, misuse, or alteration when the FCU disposes of the information. "[A] credit union's responsibility to safeguard member information continues through the disposal process." 66 FR 8152, 8155.

**III. Proper Disposal of Consumer Information and Member Information**

Section 216 of the FACT Act requires NCUA to issue final regulations for entities under its enforcement authority under section 621 of the FCRA. Unlike the current provisions in the security program rule, which apply to all FICUs, the requirements in the proposed rule would apply solely to FCUs. *See* 15 U.S.C. 1681s(b)(3). Federally insured State-chartered credit unions are subject to the enforcement jurisdiction of the FTC for purposes of the FCRA. *See* 15 U.S.C. 1681s(a). State charters, therefore, should refer to the proposed rule issued by the FTC regarding the proper disposal of consumer information under section 216. 69 FR 21388 (Apr. 20, 2004).

The NCUA Board proposes to implement section 216 by adding § 717.83 to NCUA's fair credit reporting rule<sup>2</sup> that will require FCUs to develop and maintain, as part of their information security programs, appropriate controls designed to ensure that they properly dispose of consumer

<sup>1</sup> 12 CFR parts 30, app. B; 208, app. D-2 and 225, app. F; 364, app. B; 570, app. B. *See* 66 FR 8616 Feb. 1, 2001.

<sup>2</sup> On April 8, 2004, NCUA proposed a new part 717, implementing section 411 of the FACT Act. *See* 69 FR 23380 (Apr. 28, 2004).

information. The Board proposes to place a cross-reference in the security program rule, § 748.0, that directs FCUs to § 717.83 to ensure that controls for the disposal of consumer information are included in FCU information security programs. Lastly, the Board proposes to amend the Guidelines to address the disposal of consumer information. FCUs are expected to dispose of consumer information in a manner consistent with the disposal of member information in the Guidelines.

#### *Section 717.83—Disposal of Consumer Information*

NCUA proposes to incorporate the new disposal requirement in § 717.83 by defining “consumer information” and requiring FCUs to properly dispose of consumer information in a manner consistent with the Guidelines. Proposed § 717.83 also incorporates a rule of construction that closely tracks the terms of section 628(b) of the FCRA, as added by section 216 of the FACT Act. It states that the section does not impose any requirements to maintain or destroy consumer records beyond those imposed by any other law. The proposed rule also would not affect any requirement to maintain or destroy consumer records imposed under any other provision of law.

#### **Consumer Information**

Section 717.83(d)(1) would define “consumer information” to mean “any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose.” “Consumer information” would also be defined to mean “a compilation of such records.”

The scope of information covered by the terms “consumer information,” and “member information” as defined under the Guidelines, will sometimes overlap, but will not always coincide. NCUA notes that the proposed definition of “consumer information” is drawn from the term “consumer” in section 603(c) of the FCRA, which defines a “consumer” as an individual. 15 U.S.C. 1681a(c). By contrast, “member information” under the Guidelines, only covers nonpublic personal information about a “member,” as defined in § 716.3(n), namely, an individual who obtains a financial product or service to be used primarily for personal, family, or household purposes and who has a continuing relationship with the FCU.

The relationship between consumer information and member information can be illustrated through the following

examples. Payment history information from a consumer report about an individual, who is an FCU’s member, will be both consumer information because it comes from a consumer report and member information because it is nonpublic personal information about a member. In some circumstances, member information will be broader than consumer information. For instance, information that an FCU maintains about its member’s transactions with the FCU would be only member information because it does not come from a consumer report. In other circumstances, consumer information will be broader than member information. Consumer information would include information from a consumer report that an FCU obtains about an individual who guarantees a loan for a business entity or who has applied for employment with the FCU. In these instances, the consumer reports would not be member information because the information would not be about a “member” within the meaning of the Guidelines but would be consumer information.

NCUA proposes to define “consumer information” as “any record about an individual \* \* \* that is a consumer report or is derived from a consumer report.” Under this definition, information that may be “derived from consumer reports” but does not identify a particular consumer would not be covered under the proposed rule. For example, an FCU must implement measures to properly dispose of consumer information that identifies a consumer, such as the consumer’s name and the credit score derived from a consumer report. This requirement, however, would not apply to the mean credit score that is derived from a group of consumer reports. NCUA believes that limiting “consumer information” to information that identifies a consumer is consistent with the current law relating to the scope of the term “consumer report” under the FCRA and the purposes of section 216 of the FACT Act.

NCUA requests suggestions for clarifying the scope of the individuals and information covered under the term “consumer information.” Among other issues, NCUA believes that the phrase “derived from consumer reports” covers all of the information about a consumer taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information. Consequently, an FCU that

possesses any of this information must properly dispose of the information.

For example, any record about a consumer derived from a consumer report, such as the consumer’s name and credit score, that is shared with an affiliate credit union service organization must be disposed of properly by each affiliate that possesses that information. Similarly, a consumer report that is shared among affiliates after the consumer has been given a notice and has elected not to opt out of that sharing, and therefore is no longer a “consumer report” under the FCRA,<sup>3</sup> would still be “consumer information” under this proposal. Accordingly, an FCU that receives consumer information under these circumstances must properly dispose of the information. NCUA seeks comment on whether the definition of “consumer information” should be revised to further clarify this interpretation of the statutory phrase “derived from consumer reports,” such as by example or otherwise.

NCUA notes that the proposed definition of “consumer information” includes the qualification “for a business purpose” in section 216 of the FACT Act. NCUA believes that the phrase “for a business purpose” encompasses any commercial purpose for which an FCU might maintain or possess consumer information and requests comment on that interpretation.

#### **Compliance**

NCUA proposes to require each FCU to implement the appropriate measures to properly dispose of consumer information within three months after the final rule is published in the **Federal Register**. NCUA believes that any changes to an FCU’s existing information security program to properly dispose of consumer information likely will be minimal. Accordingly, NCUA considers a three-month period sufficient to enable FCUs to adjust their systems and controls.

#### *Section 748.0—Security Program*

NCUA proposes to add paragraph (c) to § 748.0 to include a cross-reference to the section 216 requirement in § 717.83, for ease of reference when FCUs adopt or modify their security programs.

#### *Guidelines for Safeguarding Member Information*

The Board proposes to amend the Guidelines to specifically address the disposal of consumer information by: (1) Defining “consumer information” as defined in § 717.83; (2) adding an

<sup>3</sup> 15 U.S.C. 1681a(d)(2)(A)(iii).

objective regarding the proper disposal of consumer information; and (3) providing that an FCU should implement appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of member information.

#### **New Objective for an Information Security Program**

NCUA proposes to add a new objective regarding the proper disposal of consumer information in paragraph II.B. of the Guidelines. The new objective provides that an FCU should design its information security program to “[e]nsure the proper disposal of consumer information in a manner consistent with the disposal of member information.”

By including this additional objective in paragraph II.B., NCUA expects FCUs to review the measures taken by their service providers to properly dispose of consumer information. FCUs should require service providers to develop appropriate measures for the proper disposal of consumer information and, where warranted, monitor service providers to confirm that they have satisfied their contractual obligations. Paragraph III.D.2. of the Guidelines currently provide that a credit union should require “[i]ts service providers by contract to implement appropriate measures designed to meet the objectives of these guidelines.”

NCUA also proposes to amend paragraph III.G.2. to allow an FCU a reasonable period of time, after the final regulations are issued, to amend its contracts with its service providers to incorporate the necessary requirements in connection with the proper disposal of consumer information. NCUA proposes that FCUs modify the contracts that will be affected by the newly-implemented requirements within one year after publication of the final regulations. NCUA seeks comment on whether a one-year period for modification of agreements with service providers is appropriate.

#### **New Provision To Implement Measures To Properly Dispose of Consumer Information**

NCUA proposes to amend paragraph III.C. of the Guidelines by adding a new provision stating that an FCU, as part of its information security program, should develop, implement, and maintain appropriate measures to properly dispose of consumer information. This new provision also provides that FCUs should implement these measures “in a manner consistent with the disposal of member information” and “in

accordance with the provisions in paragraph III” of the Guidelines.

Paragraph III of the Guidelines presently states that an FCU should undertake measures to design, implement, and maintain its information security program to protect member information and member information systems, including the methods it uses to dispose of member information. Under the proposal, an FCU is expected to adopt a comparable set of procedures and controls to properly dispose of consumer information. For example, an FCU should broaden the scope of its risk assessment to include an assessment of the reasonably foreseeable internal and external threats associated with the methods it uses to dispose of consumer information, and adjust its risk assessment in light of the relevant changes relating to such threats. By expressly adding this new provision in § 748.0(c) and to the Guidelines, NCUA expects FCUs to integrate into their information security programs the risk-based measures in paragraph III of the Guidelines for the disposal of consumer information.

NCUA believes that it is not necessary to propose a prescriptive rule describing proper methods of disposal. Nonetheless, consistent with interagency guidance previously issued through the Federal Financial Institutions Examination Council (FFIEC),<sup>4</sup> NCUA expects FCUs to have appropriate disposal procedures for records maintained in paper-based or electronic form. NCUA notes that an FCU’s information security program should ensure that paper records containing either member or consumer information should be rendered unreadable as indicated by the FCU’s risk assessment, such as by shredding or any other means. FCUs also should recognize that computer-based records present unique disposal problems. Residual data frequently remains on media after erasure. Since that data can be recovered, FCUs should apply additional disposal techniques to sensitive electronic data.<sup>5</sup>

NCUA seeks comment on whether the proposed amendment to paragraph III.C. of the Guidelines sufficiently explains the nature and scope of the obligations on FCUs to modify their information security programs, including measures that should be implemented and adjusted, as appropriate, to properly dispose of consumer information.

<sup>4</sup> See FFIEC Information Security Booklet, page 63 at: [http://www.ffiec.gov/ffiecinfobase.html\\_pages/it\\_01.html#infosec](http://www.ffiec.gov/ffiecinfobase.html_pages/it_01.html#infosec).

<sup>5</sup> See footnote 4, *supra*.

NCUA also requests comment on whether the use in the proposal of the statutory phrase “proper disposal” is sufficiently clear. Would a more specific standard provide better guidance to FCUs or better protect consumers, or both?

The proposed changes to the Guidelines are intended to provide guidance to FCUs for compliance with proposed § 717.83. As noted above, the requirements of this proposed disposal rule only apply to FCUs, while federally insured State-chartered credit unions are subject to the jurisdiction of the FTC on this matter. The Board believes, however, that federally insured state charters may find this guidance helpful in adopting meaningful and effective security programs that deal with the disposal of consumer information.

NCUA invites comment on all aspects of the proposal.

#### *Comment Period*

Generally, NCUA Board’s policy is to give the public at least 60 days to comment on a proposed regulation. NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2 (as amended by IRPS 03–2). The Board is issuing this Notice of Proposed Rulemaking with a comment period of 45 days so that the receipt of comments and issuance of a final rule is as closely timed with the rules issued by the Agencies as possible. The shortened comment period will allow NCUA to issue a final rule by December 4, 2004, as required by section 216.15 U.S.C. 1681w(a)(1).

#### **IV. Regulatory Procedures**

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

The proposed rule would require an FCU to implement appropriate controls designed to ensure the proper disposal of consumer information. An FCU would be required to develop and maintain these controls as part of implementing its existing information security program as required by § 748.0.

Any modifications to an FCU’s information security program needed to address the proper disposal of consumer information could be incorporated



and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).”;

b. Add the following sentence as the end of paragraph I.A.: “These Guidelines also apply to the proper disposal of consumer information by such entities.”;

c. Redesignate paragraphs I.B.2.a. through d. as I.B.2.c. through f.;

d. Add new paragraphs I.B.2.a. and b. to read:

a. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose. Consumer information also means a compilation of such records.

b. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

e. Amend paragraph II.B. by removing the word “and” after the word “information;” and adding the following phrase after the word “member” at the end of the sentence: “; and ensure the proper disposal of consumer information in a manner consistent with the disposal of member information”;

f. Add a new paragraph III.C.4. to read as follows:

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of member information, in accordance with the provisions in paragraph III.

g. Add paragraphs III.G.3. and III.G.4. to read as follows:

3. *Effective date for measures relating to the disposal of consumer information.* Each Federal credit union must properly dispose of consumer information in a manner consistent with these Guidelines by [This date will be 90 days after the date of publication in the **Federal Register** of a final rule].

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a Federal credit union’s existing contracts with its service providers with regard to any service involving the disposal of consumer information should implement the objectives of these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule].

[FR Doc. 04–11902 Filed 5–27–04; 8:45 am]

BILLING CODE 7535–01–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 73

[Docket No. FAA–2004–17180; Airspace Docket No. 03–AWP–03]

RIN 2120–AA66

#### Proposed Amendment of Restricted Area 2306C, Yuma West; AZ

**AGENCY:** Federal Aviation Administration, DoT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the designated altitudes and times of use for Restricted Area 2306C (R–2306C), Yuma, AZ. This proposal would raise the upper altitude of R–2306C from 17,000 feet mean sea level (MSL) to 40,000 feet MSL. It would also reduce the times of use from continuous, to 0600 to 2200 hours daily local time, other times by NOTAM. The U.S. Army requested the modification to better accommodate existing and future testing requirements at the Yuma Proving Ground, AZ. This proposed modification would not change the current lateral boundaries or activities conducted in R–2306C.

**DATES:** Comments must be received on or before July 12, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2004–17180, and Airspace Docket No. 03–AWP–03, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic,

environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–17180, and Airspace Docket No. 03–AWP–03) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://dms.dot.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2004–17180, and Airspace Docket No. 03–AWP–03.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM’s

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at <http://www.faa.gov>, or the **Federal Register’s** Web page at <http://www.gpoaccess.gov/fr/index.html>.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, AWP–520, 15000 Aviation Boulevard, Lawndale, CA 90261.

Persons interested in being placed on a mailing list for future NPRM’s should contact the FAA’s Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

##### History

The current designated altitudes and times of use for R–2306C are based on