

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 119**

[Docket No. FAA-2002-13378; Notice No. 02-14]

RIN 2120-AH55

Reports by Carriers on Incidents Involving Animals During Air Transport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action implements Section 710 the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) by requiring air carriers that provide scheduled passenger air transportation to submit monthly to the Secretary of Transportation, through the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), a report on any incidents involving the loss, injury or death of an animal during air transport provided by the air carrier.

DATES: Send your comments on or before October 28, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-13378 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: James W. Whitlow, Office of the Chief Counsel, AGC-2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3222; facsimile (202) 267-3227.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with DOT personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received, on or before the closing date, will be considered by FAA before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-2002-13378." The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

- (1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).
- (2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."
- (3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

Background

Section 710 of AIR-21 (Public Law 106-181) added section 41721 to chapter 417 of Title 49 U.S.C. Section 41721(b) mandates that air carriers report to the Secretary of Transportation on a monthly basis about any incidents

involving the loss, injury or death of an animal during air transportation. Section 41721(c) directs the Secretary of Transportation and the Secretary of Agriculture to enter into a memorandum of understanding to ensure the sharing of the information contained in these reports. Section 41721(d) directs the Secretary of Transportation to publish data on incidents and complaints involving the loss, injury, or death of an animal during air transport in a manner comparable to other consumer complaint and incident data.

General Discussion of the Proposals

This action will amend 14 CFR part 119 to establish the requirement that air carriers submit monthly reports on the loss, injury or death of an animal during air transport to the Secretary of Transportation, through APHIS; and specify the type and manner of information that air carriers must submit to APHIS in order to comply with Section 41721(a). APHIS will process the reports and forward the relevant information to the Office of Aviation Enforcement and Proceedings (OAEP) for publication on a monthly basis in the Air Travel Consumer Report.

Section-by-Section Discussion of the Proposals

Section 119.72(a) establishes that all air carriers that provide scheduled passenger air transportation must submit reports to APHIS within 15 days of the end of the month to which the information applies in order to comply with the animal incident reporting requirement of AIR-21.

Section 119.72(b) specifies the minimal information that air carriers must report, and vests APHIS with the authority to establish the form and manner for filing the reports.

Section 119.72(c) clarifies the meaning of the term "air transport" by incorporating the statutory definition contained in AIR-21, and defines "animal" to mean any warm or cold-blooded pet.

Paperwork Reduction Act

This proposal contains a new information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Reports by Carriers on Incidents Involving Animals During Air Transport.

Summary: This proposal implements the requirement that air carriers report on incidents involving the loss, injury or death of an animal during air transport, as mandated by Section 710 of Public Law 106–181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21).

Use of: This proposal will support the information needs of the Office of Aviation Enforce and Proceedings (OAEF), Department of Transportation, and the Animal & Plant Health Inspection Service (APHIS), Department of Agriculture. The information will be published by OAEF on a monthly basis in the Air Travel Consumer Report after it has been processed by the Animal & Plant Health Inspection Service, United States Department of Agriculture.

Respondents (including number of): The likely respondents to this proposed information requirement are air carriers who provided scheduled passenger air transportation; approximately 40.

Frequency: The reports will be submitted on a monthly basis.

Annual Burden Estimate: This proposal would result in no significant annual recordkeeping or reporting burden because the air carriers covered by the reporting requirements are currently required to submit similar reports to the Bureau of Transportation Statistics, Department of Transportation. In addition, only carriers that are actually involved in an animal incident will have to file a report.

The agency is soliciting comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper implementation of Section 710 of AIR–21;

(2) evaluate the accuracy of the Agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by October 28, 2002, and should direct them to the address listed in the **ADDRESSES** section of the document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for the Federal Aviation Administration, DOT.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget approves it.

Executive Order 12866, Regulatory Planning and Review, directs FAA to assess both the costs and benefits of a regulatory change. FAA is not allowed to propose or adopt a regulation unless it makes a reasoned determination that the benefits of the intended regulation justify the costs. FAA's assessment of this rulemaking indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, FAA has not prepared a "regulatory evaluation" which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory Policies and Procedures. The latter analysis is unnecessary where the economic impact of a rule is minimal.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analysis, FAA has determined this rule (1) has benefits

which do justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not affect barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 602–612, directs Federal agencies to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdiction subject to the regulation. Federal agencies are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as defined in the Act. If an agency finds that the action will have a significant impact, it must do a "regulatory flexibility analysis."

This proposed rule imposes an insignificant reporting requirement on air carrier; therefore, FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services to into the U.S.

In accordance with the above statute and policy, FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This notice does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It determined that this action would not have a substantial direct effect 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. Therefore, FAA has concluded that this notice of proposed rulemaking does not have federalism implications.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended (42 U.S.C. 6362). FAA has been

determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Animal incidents, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701-44717, 44772, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.72 is added to subpart C to read as follows:

§ 119.72 Reports by air carriers on incidents involving animals during air transport.

(a) Any air carrier that provides scheduled passenger air transportation shall, within 15 days of the end of the month to which the information applies, submit to the Animal and Plant Health Inspection Service, United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.

(b) The report shall be made in the form and manner set forth in reporting

directives issued by the Animal and Plant Health Inspection Service, and shall contain the following information:

- (1) Carrier and flight number;
- (2) Date and time of the incident;
- (3) Description of the animal, including name, if applicable;
- (4) Identification of the owner(s) and/or guardian of the animal;
- (5) Narrative description of the incident;
- (6) Narrative description of the cause of the incident;
- (7) Narrative description of any corrective action taken in response to the incident; and
- (8) Name, title, address, and telephone number of the individual filing the report on behalf of the air carrier.

(c) For purposes of this section:

(1) The air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal; and

(2) Animal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States, or is being transported for the purpose of being sold as a pet in a family household in the United States.

Issued in Washington, DC, on September 17, 2002.

James W. Whitlow,
Deputy Chief Counsel.

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