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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

[Docket No. FAA-2002-13378; Amendment No. 119-9]

RIN 2120-AH69

Reports by Carriers on Incidents Involving Animals During Air Transport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements Section 710 of 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.

The Office of Management and Budget has not approved the information collection contained in these requirements.

DATES: These requirements do not become effective until after the FAA publishes a notice of the Office of Management and Budget's approval for this information collection.

Jma 8/6/03

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

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at ttp://www.faa.gov/avr/arm/sbrefa.htm, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

Background

Section 710 of AIR-21 (Public Law 106-181) added section 41721 to chapter 417 of Title 29 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.

FAA published a notice of proposed rulemaking (NPRM) on September 27, 2002 (67 FR 61238) that proposed to comply with section 710 of AIR-21. On October 18, 2002, in response to requests that interested persons submitted to the docket, we extended the comment period to December 27, 2002 (67 FR 64330).

What the Final Rule Does

This final rule implements the rule proposed in the NPRM by amending 14 CFR part 119 to require air carriers that provide scheduled passenger air transportation to submit monthly reports on the loss, injury or death of an animal during air transport to the Secretary of Transportation, through APHIS. The rule specifies the type and manner of information that air carriers must submit to APHIS to comply with Section 41721(a). APHIS will process the reports and forward the relevant information to the Office of Aviation Enforcement and Proceedings (APE) for monthly publication in the Air Travel Consumer Report. The term "animal" is limited

to an animal that is being kept as a pet in a family household in the United States.

Discussion of Comments

The FAA received approximately 3,760 comments in response to the NPRM. Most of the comments were similar. Of the comments supporting the action proposed in the NPRM, most of the comments urged the FAA to expand the reporting requirement to cover all animals that are transported by air, not just household pets of U.S. families. Those who opposed the proposed rule were typically concerned that the rule would increase shipping costs for animals or reduce the shipping options available, and that the definition of "animal" should be limited to animals being kept as a pet in a family household in the United States, but not include animals being transported for the purpose of being sold as a pet in a family household in the United States.

FAA Response:

Definition of "animal"

After reviewing the comments, the text of Section 710 and its legislative history, the FAA has concluded that the intent of the legislation was to require reporting of incidents involving pets presented by passengers to scheduled passenger air carriers for transport on commercial flights. This

conclusion is consistent with the limitation of Section 41721(a) to "[a]n air carrier that provides scheduled passenger air transportation" and the fact that Section 41721(d) directs the Secretary of Transportation to publish data on the incidents "in a manner comparable to other consumer complaint and incident data." (Emphasis added). The Conference Report for P. L. 106-181 indicates that Section 710 was adopted instead of the Senate amendment so that airlines could continue to carry animals while information is collected that Congress can use to determine whether there is a problem that warrants stronger legislative remedies. See House Report 106-513, page 197. In the meantime, Congress directed DOT:

> to work with airlines to improve the training of employees so that (1) they will be better able to ensure the safety of animals being flown and (2) they will be better able to explain to passengers the conditions under which their pets are being carried. People should know that their pets might be in a cargo hold that may not be air-conditioned or may differ from the passenger cabin in other respects. (Emphasis added)

Id., page 198.

In consideration of the above, Section 119.72(c)(2) shall read:

> "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."

Cost of shipping animals by air and availability of shipping options.

The reporting requirement was established by Congress in Section 710, not by FAA through implementation of this rule; therefore, the cost of compliance with the reporting requirement is the result of the statute, not this rule. More importantly, though, because the rule will only require reports to be filed when an incident occurs, and only with respect to the transportation of pets, the economic impact of this rule should be minimal, and will neither raise the cost of shipping animals by air nor affect the availability of shipping options.

Paperwork Reduction Act

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.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with

International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation without making a reasoned determination that the benefits of the intended regulation justify its costs. FAA's assessment of this rulemaking indicates that its economic impact is minimal. The reporting requirement was established by statute, not this rule; however, the cost of compliance will be minimal because the rule will require reports to be filed only after an incident occurs, and only with respect to the transportation of pets. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, FAA has not prepared a "regulatory impact analysis." Similarly, FAA has not prepared a full "regulatory evaluation," which is not required when the economic impact of a rule is minimal.

Economic Assessment, 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 each Federal agency to propose or adopt a regulation only upon a reasoned 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. §§ 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. 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 the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule (1) has benefits that 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 economic impact on a substantial number of small entities; (3) will not create 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 Determination

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 entireties" 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 final action imposes an insignificant reporting requirement on air carriers; 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 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 final rule 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 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. FAA has determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 119

Air Carrier, Animal Incidents, Reporting Requirements.

The Amendment

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

PART 119--AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

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, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

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

Sec. 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 & 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 & 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.

Issued in Washington, DC, on AUG 0 4 2003

Marion C. Blakey
Administrator

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