THE HUMANE SOCIETY OF THE UNITED STATES

October 30, 2002

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Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Comments on Notice of Proposed Rulemaking – Docket #: **FAA-2002-13378**

To the Honorable Secretary Mineta:

On behalf of The Humane Society of the United States (HSUS) and its more than seven million supporters nationwide, we thank the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) for proposing this rule to implement a key requirement mandated by Congress in March 2000 under Section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). We are pleased that you are moving forward on this modest reform and we urge you to finalize the rule as quickly as possible, so that air carriers will begin specifically reporting incidents involving the loss, injury or death of animals entrusted to their care.

Until this rule is made final, such incidents will continue to remain unaccounted for, with neither the government nor the traveling public able to assess the relative safety records of different carriers with respect to animal transport. Animals who are lost, injured or die on flights are not distinguished under the present system from ordinary baggage.

The legislation that created this reporting requirement – originally introduced as the Safe Air Travel for Animals Act (S. 1197/H.R. 2776) – had broad bipartisan support in both the Senate and House, reflecting strong public concern about tragic incidents affecting animals in air travel. Congress was moved to action by constituent outrage over the suffering of animals exposed to life-threatening conditions including excessive heat and cold, lack of oxygen and adequate ventilation, careless handling, and falling luggage. The legislation was unanimously approved in the Senate as an amendment to AIR-21 and subsequently adopted by the House and Senate conferees in the final version of that bill.

Implementing this legislation in a timely and effective way is a high priority for our organization's members, who have expressed their concern to us about the urgency of safeguarding the many thousands of animals transported by air carriers each year. Their concern extends beyond family pets to the full range of animals in air transport, such as those destined for laboratories and zoos. All animals traveling on our nation's airlines deserve basic protection and humane treatment, which we hope will be encouraged by the heightened accountability required under AIR-21.

Having worked closely with the sponsors of the legislation and committee staff throughout the congressional debate, we can attest to the dual goals of the reporting requirement: to provide information to the public that will better inform consumer decisions and to promote improved care and attention by air carriers to minimize potential harm to transported animals. This Notice of Proposed Rulemaking (NPRM)

clearly outlines the reporting requirement and the details of the report as envisioned by Congress. While we have a few concerns, discussed below, overall the NPRM follows the congressional intent on the reporting requirement contained in AIR-21 and clarifies the responsibilities of both the federal government and the air carriers in that regard.

Suggested Changes to the Proposed Rule

Definition of "Animal"

Just as pets can be lost, injured or killed during air transport, many other animals including those used in research laboratories, farms, zoos, circuses, and other destinations face equally life-threatening risks on air carriers. We urge you to exercise the discretion granted by Congress to adopt a broader definition of "animal" in the final rule, so that harmful incidents affecting any animal in air transport must be reported. In addition to the warm and cold-blooded pets already covered in the proposed rule, the definition should be expanded to cover any domesticated or wild animal, including any mammal, bird, reptile, or amphibian. This definition would encompass the range of animals envisioned by Congress during consideration of AIR-21. It would also comport with the strong public desire for safe transport of all kinds of animals, as noted by hundreds of individuals who have already taken the time to submit comments to the docket.

Limitation of Coverage to U.S. Households

The types of losses and injuries that form the basis of the reporting requirement in AIR-21 are those losses and injuries that affect animals in general, regardless of their "nationality." The coverage of the rule is facially incomplete if it is limited to only those animals who are either domiciled in or being transported for sale to U.S. households. The coverage should be international in scope. Excluding the pets of individuals who live outside the United States yet are transporting animals on U.S. air carriers might be considered discriminatory and violative of international agreements with foreign nations, as the U.S. government is not providing the same type of protection to those of foreign citizenship or residency as it provides its own citizens. We suggest, therefore, that all references to U.S. households in the proposed rule be removed prior to the promulgation of the final rule. This change would not require a reevaluation of impact under the Trade Agreement Act of 1979 since, if anything, it removes a potential free trade objection. Further, the rule – applied to animals "based" in other countries as well as in the U.S. – retains its legitimate objective of enhancing safety, not considered an unnecessary obstacle to free trade.

Reporting Logistics

AIR-21 requires air carriers to submit animal incident reports monthly to the Secretary of Transportation and directs that these reports be in "such form and contain such information as the Secretary determines appropriate." The statute also directs the Secretary to enter into a memorandum of understanding with the Department of Agriculture (USDA) to "ensure the sharing of information that the Secretary receives under subsection (a)."

Under the proposed rule, the Animal and Plant Health Inspection Service (APHIS) of USDA would determine the form and manner of the monthly reports on animal incidents, and air carriers would submit those reports to APHIS, which in turn would share the information with the Office of Aviation Enforcement and Proceedings, for publication in the DOT's monthly Air Travel Consumer Report.

Given the statutory language and the DOT/FAA's extensive experience in receiving monthly reports from air carriers covering other areas, such as lost baggage and delayed flights, it might be appropriate to have DOT/FAA finalize the form and manner of animal incident reports and to have air carriers submit these reports to DOT/FAA instead of APHIS. It is important for APHIS to receive this information on a timely basis, but its receipt could be secondary to that of DOT/FAA.

We do not have a strong preference for either approach. It is really just a question of who finalizes the form and manner of the report and which address air carriers will use to submit the report. Section 119.72(b) of the proposed rule already specifies the types of information that shall be contained in these monthly animal incident reports, providing sufficient notice to all carriers of what will be required. Therefore, whether you decide to leave the report design and receipt with APHIS or amend that section of the proposed rule to place the burden for the form generation and receipt on DOT/FAA, there is no need under the Administrative Procedures Act to supplement this NPRM and delay the effectiveness of the final rule. If you opt to retain the NPRM's approach (in which APHIS will receive the monthly reports initially and will finalize the form and manner of the report through its reporting directives), the non-regulatory reporting directive of APHIS that outlines the form of the monthly report should be incorporated by reference (IBR) into the final rule.

Reporting Burdens

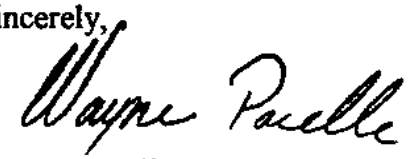
The HSUS agrees with the assessments delineated within the NPRM. This rule will have minimal economic impact and clearly is not a "significant regulatory action." The time needed to submit these reports will be minimal, consistent with existing reports that air carriers already must submit to the DOT. Notably, though, the animal incident reports need only be submitted on those occasions when loss, injury or death of an animal occurs (which, we hope, will be less often than other problems air carriers must report each month, such as delayed departures or lost baggage). The rule will not have a significant economic impact on a substantial number of small entities, nor will it have any adverse effect on trade-sensitive activity. It does not impose an unfunded federal mandate requiring expenditures of more than $100 million by State, local, or tribal governments or the private sector, and it does not have federalism or energy implications. Moreover, this is not a major Federal action that would necessitate an environmental review of the requirements. While the carriers may be less than enthusiastic about the rule, it is hard to imagine them making a compelling case that this simple reporting requirement is too burdensome. To the contrary, we believe the airlines owe at least this much to the consumer public and to the animals entrusted to their care.

Training of Air Carrier Employees

Another important element of Section 710 of AIR-21 requires the Secretary to "work with air carriers to improve the training of employees with respect to the air transport of animals and the notification of passengers of the conditions under which the air transport of animals is conducted." Better employee training on proper care and handling procedures, and on how most effectively to communicate with passengers regarding transport conditions, will help minimize tragic animal incidents. We, therefore, look forward to your implementing this additional requirement of AIR-21 in the near future, and we stand ready to assist the Department in any way to carry out this training objective.

Once again, on behalf of more than seven million HSUS supporters, we commend you and the staff of the DOT and FAA for your work, and we urge you to finalize this rule and make it effective as soon as possible. It is a vital first step toward alleviating animal suffering and the grief of those whose animals may be lost, injured or killed during air transport. We appreciate the opportunity to comment on this important proposed rule.

Sincerely,



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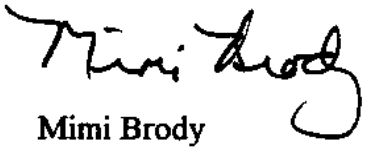

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