

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.

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

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:**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, SW., 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 <http://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 (AEP) 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