

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

In the matter of: :
:
Reports by Air Carriers on Incidents :
Involving Animals During Air Transport : **Docket No. DOT–OST–2010–0211**
:

**AIRLINES FOR AMERICA AND AIR CARRIER ASSOCIATION OF AMERICA, INC.
COMMENTS**

Airlines for America (A4A) and Air Carrier Association of America, Inc. (ACAA) submit these comments in response to the Department of Transportation’s (Department or DOT) notice of proposed rulemaking (NPRM) to expand animal incident reporting requirements.¹ We respectfully request the Department withdraw this proposal because it conflicts with congressional intent, current animal incident reporting requirements already provide detailed information to passengers, and this proposal does not provide benefits beyond current reporting requirements and therefore does not meet Executive Orders 12866 and 13563 directives to adopt regulations where benefits outweigh costs.

Background

Current DOT animal incident reporting requirements were adopted to implement Section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Act or Wendell Ford Aviation Act).² The Department implemented the statute by issuing a final rule on August

¹ 77 Fed. Reg. 38747

² Section 710 is currently codified in 49 USC §41721 and reads:

§41721. Reports by carriers on incidents involving animals during air transport

(a) In General.—An air carrier that provides scheduled passenger air transportation shall submit monthly to the Secretary a report on any incidents involving the loss, injury, or death of an animal (as defined by the Secretary of Transportation) during air transport provided by the air carrier. The report shall be in such form and contain such information as the Secretary determines appropriate.

(b) Training of Air Carrier Employees.—The Secretary shall 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.

(c) Sharing of Information.—The Secretary and the Secretary of Agriculture shall enter into a memorandum of understanding to ensure the sharing of information that the Secretary receives under subsection (a).

(d) Publication of Data.—The Secretary shall 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.

11, 2003.³ The Department received thousands of comments during that rulemaking process and the definition of “animal” was specifically addressed in the final rule. The Department concluded that Section 710 and its legislative history made clear “...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.”⁴ This conclusion was based in part on House Report 106–513 on Section 710, which the Department quoted in the final rule:

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)⁵

On August 10, 2010, Senators Richard Durbin, Robert Menedez, and Joseph Lieberman requested that the Department change the definition of “animal” to include reporting all cat and dog incidents, not just the reporting of pet incidents. On August 19, 2010 the Animal League Defense Fund (ALDF) petitioned the Department to require air carriers to report incidents involving any warm or cold blooded animal and to identify any shipper/consignor and consignee involved.

Proposed Expanded Animal Incident Reporting

In reaction to the Senators letters and the ALDF petition, the Department proposes to expand the scope of monthly animal incident reporting from pet incidents to pet and commercially shipped dogs and cat incidents.⁶ The Department also proposes to expand the applicability of the regulation from U.S. carriers that account for 1% of domestic scheduled passenger revenue to include any U.S. carrier that operates domestic or international service with at least one aircraft with more than 60 seats.⁷ The Department also asks a series of questions on whether it should further expand animal incident reporting requirements to include all commercial animal shipments, require reporting the total number of animals shipped per month or year, or require “negative” reports, affirmative carrier statements that no incidents took place during a reporting period.

(e) Air Transport.—For purposes of this section, 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. Public Law 106-181, adopted April 5, 2000.

³ 68 Fed. Reg. 47798.

⁴ Id.

⁵ House Report 106–513 pages 197, 198 as cited in the Animal Incident Reporting Final Rule 68 Fed. Reg. 47798, 47799.

⁶ 77 Fed. Reg. 38750-51.

⁷ 77 Fed. Reg. 38751.

The Proposal Conflicts with Congressional Intent

As discussed above, DOT Animal Incident Reporting regulations were adopted to implement Section 710 of the Wendell Ford Aviation Act of 2000. The original regulations published in 2003 specifically analyzed Congress's intent when it used the term "animal." The Department's research into the statute's legislative history found that when Congress used the term animal in the legislation it meant pets. The Department's implementing regulations have stood for nine years and the term animal has not been changed. Congress had the opportunity to redefine animal in several legislative vehicles over the past nine years, including the most recent FAA Modernization and Reform Act of 2012 but it did not do so. The legislative history of the statute is clear; the DOT should not ex post facto attempt to change the definition of animal when there has been no change to the statute.

The Department Should Not Add to an Already Overwhelming Regulatory Burden

The Department should not adopt this proposal because regulatory activity since 2009 has overwhelmed carriers. Since 2009, the Department has adopted two passenger protection final rules containing 34 new consumer protection regulations and a significant drug and alcohol testing regulation, totaling 35 new regulations in 4 years. Carriers have spent thousands of hours and millions of dollars implementing these regulations, causing new technology project delays that would benefit all passengers. There are currently four pending final rules including (1) airport accessibility, (2) kiosks and websites accessibility, (3) electronic cigarettes on aircraft, and (4) expanded reporting of ancillary revenues, all of which carriers will need to expend resources to implement. There are also three pending proposals containing at least 12 new regulations, including (1) stowage of wheelchairs in aircraft, (2) passenger protections III, and (3) passenger medical oxygen and accessible in-flight entertainment. Carrier resources are committed to continued implementation of already adopted regulations, internal carrier enhancements for passengers, and planning for soon-to-be issued final rules. The above description does not include carrier resources also engaged for other Federal Agency regulatory activity, such as implementing the Federal Aviation Administration Flight and Duty Time Final Rule. Given all of the Department's regulatory activity, this proposal should not be a priority and should not be adopted.

The Proposal Provides No Benefits Beyond Current Requirements

As stated in the Preliminary Regulatory Impact Analysis (PRA), the proposal provides no estimated monetary benefit.⁸ The nonmonetary benefits include a statement that consumers will have a fuller picture of airline pet transport safety record by expanding the definition of animal and extending the regulation to require more carriers to report. The Department also states that

⁸ PRA page 7.

“negative” reporting will provide greater incentive to comply with regulations and additional reporting requirements will assist with enforcing the Animal Welfare Act. The proposal also speculates that “if” the benefit of this proposal were one cent per animal shipped, the benefits of the rule would exceed the costs.

Current animal incident reporting practices already provide passengers with very detailed information providing transparency on pet incidents, which was the intent of the Act and is what passengers care about most. There is no evidence in the docket that passengers want or are interested in expanding the definition of animal.⁹ In fact, current carrier information reported to the Department indicates there is no need for a change. First, as the Department notes in the proposal, the number of reported animal incidents is very low averaging 46 per year since 2006. Second, and more importantly, passengers are satisfied with the current reporting program; complaints about animal policies regularly ranks last in the 12 categories of complaints that DOT lists every month in its consumer report. In fact, there have not been more than 3 complaints concerning animals in any DOT consumer report since 2006. This indicates that passengers are satisfied with the balance the current regulation strikes, full disclosure of pet incidents without including information on commercial animal shipments that passengers do not care about.

Third, the monthly consumer report provides very detailed information *on every animal incident* to passengers, including:

- Carrier
- Flight number
- Date of incident
- Time of incident
- Description of animal
- Narrative description of incident
- Narrative description of the cause of the incident
- Narrative description of any corrective action taken in response to the incident

Passengers already receive very detailed incident information to assist with determining what carrier to use when shipping a pet.

A requirement to file a “negative” report when there are no animal incidents to report will provide no benefit to the public and will incur unnecessary cost to carriers. Current regulations already require that a carrier report incidents if there are any within 15 days of the month in which the incident occurred.¹⁰ If a carrier has an animal incident and allegedly fails to report it, the Department can and should investigate and if warranted take appropriate action to enforce the

⁹ We note there are many standard form comments in the docket, the result of several advocacy organization letter drives, which repeat the same comments. The Department should consider all of these standard form comments as one organizational view and comment and not attribute the comments to the general public.

¹⁰ See 14 CFR 234.13.

regulation. A second “negative” reporting regulation is not necessary to enforce the existing reporting requirement.

The Department should not assume or speculate “if” benefits materialize from this proposal without analysis and justification. This proposal has no monetary or non-monetary benefits beyond the very detailed information passengers already receive, as described above, so the anticipated one “cent per animal shipped” benefit will not materialize and cannot be used to justify this proposal.

Finally, even the PRA recognizes that the annual number of animal incidents in air transportation are “...somewhat infrequent and random.”¹¹ Moreover, the 5-year incident average is 0.058 incidents for every billion passenger revenue passenger mile.¹²

Without any benefit, this proposal cannot meet Executive Orders 12866 and 13563, which direct federal agencies to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

Cost Comments

The Department vastly underestimated the cost of this proposal and should correct the flawed cost estimates before deciding whether the proposal or final rule meets Executive Order 12866 or 13563 directives that an agency “...propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.”¹³

The PRA fails to account for a key cost, the redesigning of current carrier internal tracking systems to collect information on every animal (or dog and cat) shipment, transmit that information to a centralized database, and convert that information to a format that can be shared with the Department. The estimated cost to comply with a final rule will depend on what the Department adopts and how the Department interprets the regulations. For instance, the Department’s passenger protection II NPRM proposed minimum baggage fee disclosure regulations that carriers did not oppose. However, the passenger protection II final rule adopted extremely burdensome baggage fee notice requirements; had carriers known what the final rule included and how DOT would interpret the baggage fee notice requirements, carriers would have opposed the proposal and would have provided extensive cost information.

Therefore, the cost estimates below are based on the least burdensome interpretation of the NPRM. One large carrier estimated that it would cost \$40,000 just to plan the proposed changes to comply with this proposed rule. Based on information provided by large carriers, the cost to build and implement a solution is estimated to be an additional \$85,000 per carrier. The minimum annual cost to maintain a new reporting system based on the least burdensome

¹¹ PRA page 3.

¹² Id.

¹³ 58 Fed. Reg. 51736, October 4, 1993.

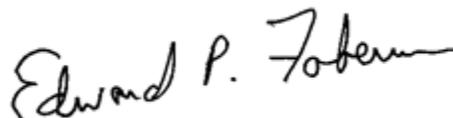
interpretation of the NPRM is \$9,500 per carrier, per year. These estimates also assume that carriers would have at least one year to plan, build, and implement these changes; shorter time frames will significantly increase the estimates.

After correcting the estimated costs as described above, this proposal cannot meet either Executive Order because there are no benefits beyond current reporting requirements and therefore benefits do not outweigh the costs; this proposal should be withdrawn.¹⁴

Sincerely,



Douglas Mullen
Assistant General Counsel
Airlines for America
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 626-4000
dmullen@airlines.org



Edward P. Faberman
Executive Director
Air Carrier Association of America
1776 K Street, NW.
Washington, D.C. 20006
(202) 719-7420
epfaberman@aca1.com

September 27, 2012

¹⁴ We also note the preamble states the NPRM proposes to require yearly reporting of all animals transported, however, this is in conflict with other portions of the preamble and the proposed regulatory text. Specifically, the preamble states: "We further propose in this NPRM to require each covered carrier to provide in its December report a summary of the total number of animal losses, injuries, and deaths and the total number of animals transported for the calendar year." (emphasis added) 77 Fed. Reg. 38748-49. The preamble asks whether the number of animal transported in a year should be an added requirement and the proposed regulatory text in section 235.3 does not include a requirement to report the total number of animals transported for the calendar year.