

Consumption of Furnaces and Boilers.” It was clearly not DOE’s intention to change or eliminate reference materials for other products as part of the furnace fans rulemaking. At no place in the January 2014 final rule did DOE discuss such modifications. This final rule would simply incorporate once again into the CFR the intended and proper reference materials that were erroneously deleted without making substantive changes to any previously established provisions. Accordingly, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate document to solicit public comment would be impractical, unnecessary, and contrary to the public interest.

### III. Procedural Requirements

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the January 3, 2014 test procedure final rule for residential furnace fans remain unchanged for this final rule technical correction. These determinations are set forth in the January 3, 2014 final rule. 79 FR 500, 517–520.

#### List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on June 27, 2014.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE amends part 430 of Chapter II, subchapter D of title 10, Code of Federal Regulations as set forth below:

#### PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.3 is amended by:

■ a. Redesignating paragraphs (f)(10) through (f)(11) as (f)(11) through (f)(12); and

■ b. Adding new paragraph (f)(10).  
The addition reads as follows:

#### § 430.3 Materials incorporated by reference.

\* \* \* \* \*

(f) \* \* \*

(10) ASHRAE Standard 103–1993, (“ASHRAE 103–1993”), Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, (with Errata of October 24, 1996) except for sections 3.0, 7.2.2.5, 8.6.1.1, 9.1.2.2, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, 9.7.1, 10.0, 11.2.12, 11.3.12, 11.4.12, 11.5.12 and appendices B and C, approved October 4, 1993, IBR approved for § 430.23 and appendix N to subpart B.

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### DEPARTMENT OF TRANSPORTATION

#### Office of the Secretary

#### 14 CFR Parts 234 and 235

[Docket No. DOT–OST–2010–0211]

RIN 2105–AE07

#### Reports by Air Carriers on Incidents Involving Animals During Air Transport

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).  
**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT or Department) is issuing a final rule to amend the requirement for air carriers to report incidents involving the loss, injury, or death of an animal during air transport. The final rule will: Expand the reporting requirement to U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats; expand the definition of “animal” to include all cats and dogs transported by covered carriers, regardless of whether the cat or dog is transported as a pet by its owner or as part of a commercial shipment (e.g., shipped by a breeder); require covered carriers to file a calendar-year report in December, even if the carrier did not have any reportable incidents during the calendar year; require covered carriers to provide in their December reports the total number of animals that were lost, injured, or died during air transport in the calendar year; and require covered carriers to provide in their December reports the total number of animals transported in the calendar year.

**DATES:** This rule is effective January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Blane Workie, Tim Kelly, or Vinh Q.

Nguyen, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *blane.workie@dot.gov*, *tim.kelly@dot.gov*, or *vinh.nguyen@dot.gov*.

#### SUPPLEMENTARY INFORMATION:

#### Executive Summary

##### 1. Purpose of the Regulatory Action

The Department is issuing a final rule to amend the requirement for air carriers to report incidents involving the loss, injury, or death of an animal during air transport. The Department is taking action to provide consumers with a fuller picture of the safety record of airlines in the transportation of animals and to clarify which entities are subject to the reporting requirement (i.e., any U.S. air carriers that provide scheduled passenger air transportation or only reporting carriers), as well as which flights are covered (i.e., only domestic scheduled passenger flights or all scheduled passenger flights, including international flights). The legal authority for the Department’s regulatory action is 49 U.S.C. 41721.

##### 2. Summary of Regulatory Provisions

The final rule: (1) Expands the reporting requirement to U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats (“covered carriers”); (2) expands the definition of “animal” to 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 and any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight, including shipments by trainers and breeders; (3) requires covered carriers to file a calendar-year report for December, even if the carrier did not have any reportable incidents during the calendar year; (4) requires covered carriers to provide in their December reports the total number of animals that were lost, injured, or died during air transport in the calendar year; (5) requires covered carriers to provide in their December reports the total number of animals transported in the calendar year; and (6) requires covered carriers to provide in their December reports a certification signed by an authorized carrier representative affirming that the report is true, correct, and complete.

##### 3. Summary of Regulatory Analysis

The quantifiable costs of this rulemaking exceed the quantifiable

benefits. The present value of monetized net benefits for a 20-year analysis period is estimated to be  $-\$729,166$  at a 7% discount rate. However, when unquantified costs and benefits are taken into account, we anticipate that the benefits of this final rule will justify the costs. Unquantifiable benefits of the final rule include providing consumers with a fuller picture of the safety record of airlines in the transportation of animals and producing opportunities for more comprehensive enforcement of the Animal Welfare Act (AWA), 7 U.S.C. 54, since the Department shares the reports involving animal incidents with the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), the government entity that enforces the AWA.

### Background

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century or "AIR-21" (Pub. L. 106-181), which was signed into law on April 5, 2000, includes section 710, "Reports by Carriers on Incidents Involving Animals During Air Transport." This provision was codified as 49 U.S.C. 41721. Section 41721 states that 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 and that the Secretary of transportation 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.

On August 11, 2003, DOT, through its Federal Aviation Administration (FAA), issued a final rule implementing section 710 of AIR-21. See 68 FR 47798. The rule required air carriers that provide scheduled passenger air transportation to submit a report to APHIS on any incident involving the loss, injury, or death of an animal during air transportation provided by the air carrier. Under the rule, the reports would then be shared with DOT, which would publish the data, as required by AIR-21, in a format similar to the manner in which it publishes data on consumer complaints and other incidents. However, issues arose regarding whether APHIS had the capability to accept such information directly from the carriers and pass it on to DOT. In order to resolve such issues, on February 14, 2005, DOT made a technical change in the rule to require reporting airlines to submit the required

information directly to DOT's Aviation Consumer Protection Division (ACPD) rather than APHIS and to make the rule part of DOT's economic regulations. See 70 FR 7392. The rule was codified at 14 CFR 234.13.

Section 234.13 required air carriers that provide scheduled passenger air transportation to submit a report to the ACPD on any incidents involving the loss, injury, or death of an animal during air transportation within 15 days after the end of the month during which the incident occurred. It defined "animal" as 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. The air transport of an animal covered the entire period during which an animal is in the custody of an air carrier, from check-in or delivery of the animal to the carrier prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal.<sup>1</sup> Section 234.13 also listed the information that is to be included in each report (e.g., carrier and flight number, date and time of the incident). However, because § 234.13 is contained in part 234 of Title 14 and that part applies only to the domestic scheduled passenger flights of carriers that account for at least 1 percent of domestic scheduled passenger revenue ("reporting carriers"), there was confusion regarding which entities are required to submit a report to the ACPD on incidents involving loss, injury, or death of an animal during air transportation as well as which flights are covered (i.e., only domestic scheduled passenger flights or all scheduled passenger flights, including international flights).

In August 2010, the Department received a petition for rulemaking on this matter from the Animal Legal

<sup>1</sup> There are three categories for animals transported in scheduled passenger air transportation: "unassigned in the cabin;" "accompanied baggage;" and "live cargo shipments." Animals categorized as "unassigned in the cabin" are usually small pets that remain with the owner in the cabin for the duration of the flight. Air carriers may allow a limited number of passengers per flight to transport their animals as "unassigned in the cabin." Pursuant to 14 CFR part 382, service animals accompanying individuals with a disability are not included in this category. Animals categorized as "accompanied baggage" are pets traveling with passengers on the flight that are checked as baggage, remain in the custody of the air carrier for the duration of the flight, and are transported in the cargo compartment. Animals categorized as "live cargo shipments" are animals that are not associated with passengers on the flight and are transported in the cargo compartment. While "accompanied baggage" and "live cargo shipments" may or may not be in different areas of the cargo hold of an aircraft, the primary differences between these two categories are shipping procedures and price points.

Defense Fund (ALDF), an advocacy group which works to protect the lives and advance the interest of animals through the legal system. In its petition, ALDF requests that the Department's regulation requiring the reporting of loss, injury, or death of animals in air transport be revised to require airlines to report any such incident involving any animal they carry. It contends that the data that are currently collected by the Department capture only incidents affecting pets, even though pets make up only part of the total number of animals transported by airlines. The ALDF proposed that the rules should apply to all species of animals, not just cats and dogs. At about the same time, Senators Richard Durbin, Robert Menendez, and Joseph Lieberman wrote to the Secretary of Transportation urging the Department to amend the rule so that airlines would be required to report all incidents involving the loss, injury, or death of cats and dogs that occur while they are traveling in an airline's care, custody, or control, regardless of whether the cat or dog is being kept as a pet in a family household in the United States or is part of a commercial shipment.

On June 29, 2012, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) entitled "Reports by Air Carriers on Incidents Involving Animals During Air Transport." See 77 FR 38747. The Department announced in the NPRM that it was proposing to amend the rule regarding the reporting of incidents involving animals during air transport. The Department sought comment on whether it should: (1) Expand the reporting requirement to U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats; (2) expand the definition of "animal" to include all cats and dogs transported by the carrier, regardless of whether the cat or dog is transported as a pet by its owner or as part of a commercial shipment (e.g., shipped by a breeder); (3) require covered carriers to provide in their December reports the total number of animals that were lost, injured, or died during air transport that year; and (4) require covered carriers to report the total number of animals transported in the calendar year in the December reports. We also solicited comments on whether covered carriers should be required to file negative reports if the carrier did not have any incidents involving the loss, injury, or death of an animal during a particular month or year—i.e., reporting "0" for any

reporting category where there were no such incidents.

The Department received 5,414 comments in response to the NPRM. Of these, two comments were from airlines, representing the views of Delta Air Lines (Delta) and Spirit Airlines (Spirit). Two airline associations, Airlines for America (A4A) and the Air Carrier Association of America (ACAA), submitted a joint comment. Six animal rights organizations each submitted a comment: the ALDF, the American Anti-Vivisection Society (AAVS), the Animal Welfare Institute (AWI), the American Society for the Prevention of Cruelty to Animals (ASPCA), People for the Ethical Treatment of Animals (PETA), and Where is Jack? Inc. We also received comments from two scientific research organizations: The Association of Zoos and Aquariums (AZA) and the National Association for Biomedical Research (NABR). Finally, 5,403 individual consumers submitted comments. The Department has carefully reviewed and considered the comments received. The commenters' positions that are germane to the specific issues raised in the NPRM are set forth below, as are the Department's responses.

### Summary of Final Regulatory Analysis

The regulatory analysis summarized in the table below shows that the estimated monetized costs of the reporting requirement exceed the estimated monetized benefits at a 7% discount rate. The present value of monetized net benefits for a 20-year analysis period is estimated to be -\$729,166 at a 7% discount rate. Additional benefits were also identified for which quantitative estimates could not be developed. The Department believes that the non-quantifiable benefits of the reporting requirement justify the costs and cause the total benefits of the rule to exceed its total costs. Non-quantifiable benefits include providing consumers with a fuller picture of the safety record of airlines in the transportation of animals and producing opportunities for more comprehensive enforcement of the AWA, 7 U.S.C. 54, since the Department shares the reports involving animal incidents with APHIS, the government entity that enforces the AWA. A more detailed discussion of the monetized benefits and costs of the final rule is provided in the Regulatory Analysis and Notices section below.

### VALUE OF QUANTITATIVE NET BENEFITS FOR RULE REQUIREMENTS

	Discounting period/rate	Present value
Monetized Benefits.	20 years, 7% discounting.	\$0
Monetized Costs*.	20 years, 7% discounting.	\$729,769
Monetized Net Benefits.	20 years, 7% discounting.	(\$729,769)

\* This rule will only impose monetary costs on covered air carriers.

### Comments and Responses

#### 1. Entities Covered

*Question posed in the NPRM:* The NPRM proposed to require all U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats to submit a report to the ACPD on any incidents involving the loss, injury, or death of an animal during air transport within 15 days after the end of the month during which the incident occurred. The then-existing reporting requirement only applied to the domestic scheduled passenger flights of carriers that account for at least 1 percent of domestic scheduled passenger revenue. We also invited comments on whether there is any benefit to expanding the applicability of the rule any further to encompass more U.S. carriers and whether the reporting requirements should apply to indirect cargo air carriers operating under the provisions of 14 CFR part 296.

*Comments:* Most of the comments the Department received do not address whether the rule should be applicable to all U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats.

A number of animal rights advocacy groups, such as ASPCA, AWI, and AAVS, expressed support for expanding the applicability of the rule further to encompass more carriers. AWI states that there has been confusion over the airlines and flights covered under the law, and this change would clarify the coverage and provide the public with more information. AAVS states the change would be an important step to ensure an accurate picture of how animals are protected while in air transport. AAVS is also in favor of covering indirect cargo air carriers that cater only to pets.

A4A generally objects to the proposals in the NPRM and states that there would be no benefit to expanding the applicability of the rule to encompass more U.S. carriers. A4A also states that indirect cargo air carriers operating under the provisions of 14 CFR part 296

should not be covered. Spirit, the only carrier to comment on this issue, does not object to expanding the reporting requirement to include passenger carriers operating at least one aircraft with more than 60 seats.

*DOT response:* We carefully considered all of the comments filed on the various issues in this rulemaking. On the issue of which entities should be covered we have decided to require all U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats to submit a report to the ACPD on any incidents involving the loss, injury, or death of an animal during air transportation within 15 days after the end of the month during which the incident occurred.

As discussed above, the 49 U.S.C. 41721 states, "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." 49 U.S.C. 40102 defines "air carrier" as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation." Section 41721 does not contain any language that would limit the applicability of the reporting obligation to only large carriers or "reporting carriers" (i.e., U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenue). For these reasons, we believe that expanding the applicability of the reporting requirement to all U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats is more consistent with the language of section 41721.

Contrary to A4A's assertions, we believe that expanding the applicability of the requirement from just the "reporting carriers" (i.e., U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenue) to all carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats will provide consumers and other interested parties a more complete picture of the treatment of animals on scheduled passenger flights. However, we agree with A4A in regards to excluding indirect cargo air carriers from the reporting requirement. Pursuant to 14 CFR part 296, an indirect cargo air carrier is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of air carrier or a foreign air carrier that has received

DOT authorization. We have concluded that requiring indirect cargo air carriers to report incidents involving animals would exceed the scope of 49 U.S.C. 41721, which, as discussed above, states: "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." Therefore, we will not require such entities to submit a report on any incidents involving the loss, injury, or death of an animal during air transportation.

## 2. Expand the Definition of "Animal"

*Question posed in the NPRM:* The NPRM proposed to continue to define "animal" as 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 (i.e., the definition in effect up to this time), but also expand the definition to include any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight. We also invited comments on whether the definition of "animal" should be expanded further to include not only dogs and cats in commercial shipments but all species of animals in commercial air transportation.

*Comments:* This proposal is the most contentious topic of the NPRM. All the animal rights advocacy groups believe that "animal" should include all species of animals in commercial air transportation, not just cats and dogs. The animal rights advocacy groups state that cats, dogs, and household pets make up only a portion of all the animals that are transported by carriers. They assert that carriers transport a wide variety of animal species, such as primates, rabbits, ferrets, mice, and rats, for research facilities, zoos, and pet retailers. These groups argue that carriers should be required to report incidents involving all types of animal, not just cats, dogs, and household pets, in order to provide complete and reliable data that will allow consumers, carriers, and legislators to make informed decisions regarding the safety of the transport of all animals.

Most individual comments also urge the Department to include all species of animals in commercial air transportation, not just cats and dogs, in the definition of "animal." (The vast majority of these individual comments appear to be form letters from members of the animal rights advocacy groups.)

Senators Richard Durbin, Robert Menendez, and Joseph Lieberman filed a comment in response to the NPRM reiterating the support expressed in their 2010 letter for expanding the definition of "animal" to include all cats and dogs that are in an airline's care, custody, or control, regardless of whether the cat or dog is being transported as a pet by its owner or as part of a commercial shipment.

The scientific research organizations adamantly oppose expanding the definition of "animal." AZA argues that it strongly believes the Congressional intent of the underlying authorizing legislation is to focus on the loss, injury, or death of family pets through air transportation. AZA states that if the definition of "animal" is expanded to include all species, the resource and logistical burden placed upon the airlines could effectively force airlines to completely discontinue the transport of all animals, creating catastrophic consequences for the AZA zoo and aquarium community and the sustainability of the animal collections in their care.

NABR urges that any changes to the existing definition of "animal" recognize that the term should not apply to dogs and cats bred for use in research. NABR states that the Department assumes that dogs and cats that are transported as part of a commercial shipment are likely being transported for the purpose of being sold as a pet in a family household and that this assumption is flawed as dogs and cats being transported to research facilities in the United States are not intended to be sold as pets. NABR states that commercial dealers that breed dogs, cats, and other species needed for research purposes must be licensed by the USDA and are subject to the standards and regulations mandated by the AWA. NABR states that these commercial dealers are inspected by APHIS and reports of the inspections are already available to the public on the USDA Web site. NABR also states that it opposes expanding the definition of "animal" to include all species of animals because such an expansion would conflict with the legislative history of AIR-21, which does not show an intent to require this type of reporting.

A4A also opposes expanding the definition of "animal" on the basis that doing so would conflict with Congressional intent. A4A argues that the original regulations published in 2003 specifically analyzed Congress' intent when it used the term "animal," and that the Department's research into the statute's legislative history found

that when Congress used the term animal, it meant pets. A4A asserts further that passengers care most about pet incidents and do not want nor are interested in expanding the definition of "animal." A4A states that passengers are satisfied with the current reporting program and that complaints about animal policies regularly ranks last in the 12 categories of complaints that the Department lists every month in its consumer report. A4A argues that this indicates that passengers are satisfied with the balance the current regulation strikes (i.e., full disclosure of pet incidents without including information on commercial animal shipments that A4A says passengers do not care about).

*DOT response:* We have decided to define "animal" as 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 and any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight. We are not expanding the definition of "animal" to cover all species of animals. We believe it would be unduly burdensome to require covered carriers to report the death, loss, or injury of all species of animals because there potentially could be thousands of individual animals such as fish, rodents, and insects that are transported by air carriers in a single commercial shipment.

As explained below, we do not agree with A4A's arguments. We believe that expanding the definition of "animal" to include any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment will provide consumers with a fuller picture of the safety record of airlines in the transportation of animals. Many dogs and cats that are being shipped on scheduled passenger flights other than as pets by their owners are likely being transported for the purpose of being sold as a pet in a family household in the United States. Moreover, even though the old definition of "animal" only included any warm- or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household, virtually all of the reports of deaths, injuries, and loss involved cats and dogs. Specifically, cats and dogs accounted for 95% of deaths, 100% of the injuries, and 98% of the losses. Based on these considerations, we believe that expanding the definition of "animal" to include all cats and dogs will provide consumers with more complete data that will allow them to make more informed decision.

*3. Require Covered Carriers To Provide in Their December Reports the Total Number of Animals That Were Lost, Injured, or Died During Air Transport*

*Question posed in the NPRM:* The NPRM proposed to require each covered carrier to provide in its December report a summary of the total number of animal losses, injuries, and deaths for the calendar year. The then-existing requirement did not require covered carriers to provide any summary of the total number of animal losses, injuries, and deaths for the calendar year.

*Comments:* Most of the comments the Department received did not address whether carriers should be required to provide in their December report a summary of the total number of animal losses, injuries, and deaths.

Only one of the animal rights advocacy groups specifically addresses this proposal. AWI states that the public will benefit from having the airlines' December reports include the total number of animals lost, injured, or killed.

NABR, the only scientific research organization to address this issue, opposes any additional monthly or annual incident reports. NABR asserts that additional monthly or annual incident reports are unnecessary for laboratory animal breeders to evaluate carriers, comply with current AWA requirements, and carry out their responsibilities to animals and customers.

A4A also opposes requiring carriers to provide in its December report a summary of the total number of animal losses, injuries, and deaths. A4A states that this proposal provides no benefit beyond the current requirements. A4A asserts that 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.

*DOT response:* We have decided to require covered carriers to provide in their December report a summary of the total number of animal losses, injuries, and deaths for the year. We do not believe it to be burdensome for the covered carriers to submit this data. To comply with this requirement, a covered carrier must simply add up the number of animal incidents in each category that it reported in the previous months. This complements the requirement to report the total number of animals transported (see below). We have included in the final rule a standardized table that covered carriers must use in the December reports when reporting the

total number of animal losses, injuries, and deaths in the calendar year.

*4. Require Covered Carriers To Include in the December Report the Total Number of Animals Transported in the Calendar Year*

*Question posed in the NPRM:* We invited comments on whether carriers should be required to report the total number of animals transported during that year. The then-existing rule did not require covered carriers to report the total number of animals transported during that year. We also asked whether covered carriers should be required to report only once per year (in the December reports) on the total number of animals transported during that year, or whether the total number of animals transported should be reported each month.

*Comments:* A number of animal rights advocacy groups and U.S. carriers support requiring covered carriers to report the total number of animals transported during that year. These commenters agree that providing the total number of animal transported will allow consumers to calculate rates of animal loss, injury, and death per unit of animals transported for each airline (e.g., 1.04 deaths per 10,000 animals transported) and that would help consumers and other interested parties to compare the rate of animal incidents from one carrier to another or one year to another. AWI states that the public will benefit from having the airlines' December reports include the total number of animals transported during the year. AAVS asserts that this information would give consumers information that can be used to correctly compare air carriers and their records. AAVS also states that information should be provided monthly as well as in December to provide an accurate and up to date understanding of air carriers' record with regards to animal transport.

ALDF states that requiring carriers to report on the total number of animals transported will provide the context necessary to understand the incident reports. ALDF argues that, among other benefits, determining the number of incidents per unit of animals transported will allow covered carriers to determine whether their practices are reducing the rate of incidents, help consumers make more informed decisions on which carrier to entrust their animals to, and provide legislators critical information with which to determine if there is a problem that warrants stronger legislative remedies. ALDF adds that the carriers should provide this data monthly.

Spirit states that it does not object to the proposal to require airlines to report the total number of animals transported annually. Spirit believes that this information would allow consumers to compare the total number of animals transported against the number of incidents involving animals in air transport, further highlighting the infrequency of these incidents. Spirit adds that the Department should not require monthly reporting of the total number of animals transported. Spirit argues that incidents involving animals in air transport are random and extremely infrequent, and the number of incidents per unit of animals transported in any given month has little if any value because the rate of incidents is so low.

Delta states that it supports requiring carriers to report the total number of animals transported during the year, but with two qualifications: (1) The existing definition of "animal" should remain unchanged (i.e., 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); and (2) the rate calculated by the Department should not be the number of animal incidents "per unit of animals transported," but rather, the number of incidents per passenger enplanement. Delta's argument regarding the definition of "animal" is discussed above. With respect to the rate calculated, Delta argues that the process proposed by the Department would lead to the gathering of data that can be easily skewed by small sample sizes. Delta asserts that calculating the number of incidents per unit of passenger enplanements takes all relevant data into account and conveys an incident rate in the full context of each carrier's operation. Delta believes that this approach would be consistent with other data reported by carriers to the Department, e.g., oversales, mishandled baggage, consumer complaints, all of which are calculated per passenger enplanement. Delta states that since carriers already report these other issues per enplanement, the data are readily available and would not require any new data-gathering processes.

A4A, on the other hand, opposes requiring covered carriers to include in the December report the total number of animals transported in the calendar year. A4A argues that the monthly consumer report provides very detailed information on every animal incident to consumers and that providing general statistics that include commercial animal shipments is not relevant to what passengers care about most—transporting pets in the baggage

compartment on a flight. A4A asserts that carriers would need to reconfigure their systems because current procedures for tracking animal incidents are inadequate for tracking the total number of animals transported. A4A argues further that the Department vastly underestimates the cost of this proposal.

*DOT response:* We have decided to require covered carriers to include in the December reports the total number of animals transported in the calendar year. We believe the requirement to report the total number of animals transported is important for providing consumers a complete picture of a covered carrier's animal transport record, as the number of animals transported by each airline may vary widely. Consumers can use this data to calculate rates of animal loss, injury, and death per unit of animals transported for each airline (e.g., 1.04 deaths per 10,000 animals transported). While we recognize changes may be needed, we do not agree with A4A's assertion that current procedures for tracking animal incidents are inadequate for tracking the total number of animals transported. One of the two air carriers that submitted comments in response to the NPRM, Spirit, does not believe it is burdensome to report the total number of animals transported in the calendar year. Additionally, for many years the former Continental Airlines voluntarily included this information in the animal incident reports that it filed with the Department.

##### 5. Require Covered Carriers To File Negative Reports

*Question posed in the NPRM:* We solicited comments on whether carriers should be required to file negative reports if the carrier did not have any incidents involving the loss, injury, or death of an animal during a particular month or year—i.e., reporting “0” for any reporting category where there were no such incidents. The then-existing rule did not require covered carriers to file negative reports.

*Comments:* Most of the comments the Department received did not address whether carriers should be required to provide negative reports if the carrier did not have any incidents involving the loss, injury, or death of an animal during a particular month or year.

A couple of animal rights advocacy groups expressed support for negative reporting by carriers. Specifically, AWI states that it endorses the proposal to have airlines file reports in December even if they have had no animal-related incidents at any time during the year. AWI agrees with the Department's

reasoning that “[r]equiring negative reporting in the recap in the December report over a signature and certification of an official of the airline provides an additional incentive for complete and accurate reporting by carriers.” ALDF asserts that negative reporting would improve reporting accuracy and reinforce the importance of these requirements. ALDF argues that the negative reports should be provided monthly because it would further the goals of accuracy and clarity in the reporting process and help to keep the safety of animals as an important issue for carriers every month, rather than simply at the end of the year during a busy reporting and travel season.

A4A and Spirit oppose the negative reporting requirement. A4A argues that 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. Spirit asserts that completing, filing, and processing negative reports will create an unnecessary burden on the carrier and the Department because the reports will not provide the Department with any information that it did not already know. Spirit further states that monthly negative reporting would impose an undue burden on all air carriers covered by the rule.

*DOT response:* We have decided to require covered carriers to file negative reports in their December reports if the carrier did not have any incidents involving the loss, injury, or death of an animal during the calendar year. Thus, each covered carrier would be required to file a report for the previous calendar year by January 15 even if the carrier did not experience any incidents involving animals and/or carried no animals during that year. We do not believe it to be unduly burdensome for covered carriers that did not have any incidents involving the loss, injury, or death of an animal to enter “0” into the appropriate categories and submit their December report. In addition, we believe that requiring covered carriers to affirmatively certify that there were no reportable animal incidents during the calendar year provides an additional incentive to ensure that the reports are complete and accurate. Covered carriers will not be required to file negative reports in any other monthly report (i.e., January through November).

## Regulatory Analysis and Notices

*A. Executive Order 12866 (Regulatory Planning and Review), DOT Regulatory Policies and Procedures, and Executive Order 13563 (Improving Regulation and Regulatory Review)*

This action has been determined not to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. As a result, it has not been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and is consistent with the requirements in both orders. Executive Order 13563 refers to non-quantifiable values, including equity and fairness. A summary of the costs and benefits of this final rule follows. For more details, please refer to a copy of the final regulatory evaluation, which has been placed in the docket.

### 1. Cost of Monthly Reports Other Than December Report

The cost of filing monthly reports is minimal. Aside from the December report, a carrier is required to report only during the months where the carrier experiences a reportable animal incident. Currently, 15 of the 27 carriers that are affected are already required to collect information on incidents involving the loss, injury, or death of an animal. For these 15 carriers, which account for approximately 90 percent of the domestic market, there are no additional costs. For the 12 other carriers that do not currently have to report, the cost varies depending on whether or not there is a reportable incident during any given month. For example, if a carrier experiences no reportable incidents all year, then the recurrent cost of filing monthly reports for January to November is \$0. However, if the carrier experiences a reportable incident every month of the year, the cost would be \$466.32 per year. This is based on our estimate that it would take a paralegal working in scheduled air transportation making \$38.86 per hour (the average wage rate including benefits) one hour to prepare and submit one monthly report. So, if all 12 carriers that do not currently have to report were to each experience a reportable incident every month of the year, the total cost would be \$5,595.84. Therefore, the cost of monthly reports will be between \$0 and \$5,595.84 per year depending on the number of reportable incidents. Even the high estimate would still be a minimal cost.

## 2. Cost of the December Report

Covered carriers are required to submit a December report. In addition to including information on any incidents involving the loss, injury, or death of an animal during air transport that occurred in the month of December, the December report must include the total number of animals that were lost, injured, or died during air transport in the calendar year and the total number of animals that were transported in the calendar year.

The burden on covered carriers to submit in their December report the total number of animals that were lost, injured, or died during air transport in the calendar year is minimal. The cost varies depending on whether or not a carrier experienced any reportable incidents during the calendar year. For example, if a carrier experiences no reportable incidents all year, then the cost is \$38.86, the estimated cost of a paralegal working in scheduled air transportation to prepare and submit one report. If a carrier had one or more animal incidents in a year, it will be required add up all the values in any report that it filed throughout the year. We estimate that it will take a paralegal working in scheduled air transportation 0.5 hour to find the sum of all the values the carrier filed throughout the year. If all 27 covered carriers each experienced a reportable incident in the calendar year, the total cost will be \$1,573.83 (\$524.61 for the carriers to add together all the reportable incidents in the calendar year and \$1,049.22 for the carriers to prepare and submit one report). Therefore, the cost of the December reports will be between \$38.86 and \$1,573.83 per year depending on the number of reportable incidents.

The burden on covered carriers to submit in their December reports the total number of animals that were transported in the calendar year is more substantial because it will require covered carriers that transport covered animals in the baggage/cargo compartment to create and maintain systems that will record and keep track of the number of animals transported throughout the year. At the same time, some carriers, such as Spirit Airlines, do not transport animals. Additionally, some covered carriers may already have a system in place. These carriers will incur no costs. Therefore, we estimate that first year start-up costs for the computer hardware and software would be approximately \$270,000 for the entire industry.<sup>2</sup>

<sup>2</sup> This estimate is based on the 2007 Supporting Statement for the obligation of U.S. and foreign

We estimate that the subsequent yearly costs to maintain the systems will be minimal. If a carrier does not transport animals in the calendar year, such as Spirit Airlines, then there will be no cost. If we assumed that annual maintenance costs averaged \$40,000 for the entire industry, the total cost of maintenance over 20 years discounted at 7% would be about \$424,000. Factoring in the initial \$270,000 start-up cost brings the total cost of the requirement to report in the December reports the total number of animals transported in the calendar year to be about \$694,000.

## 3. Cost of Expanded Definition of an Animal

The cost of the proposed expanded definition of an animal would impact airlines, but the cost would still be minimal. Since 2008, the average number of reported incidents per year is 47. If we were to assume that it takes a paralegal one hour to prepare and submit a report per incident, then we have estimated that the cost to the industry is \$1,826.42 per year. This is based on our estimate of a paralegal's salary discussed above. Various trade sources indicate that dogs and cats transported as part of a commercial shipment may account for as much as half of all dogs, cats, and other household pets that are transported by covered carriers. If we were to assume that expanding the definition to include dogs and cats transported as part of a commercial shipment would result in an additional 47 reported incidents per year (i.e., a total of 94 incidents), the additional cost of \$1,826.42 is still minimal.

The benefits of the rule, while difficult to quantify, exceed the costs. Comprehensive data are not immediately available as to the total number of animals that air carriers currently transport. Neither trade associations for animal transportation providers nor most airlines collect data on the number of animals transported annually by air. Trade association (e.g., pet transportation firms) and industry (airlines) sources estimate the actual number of pets that carriers transport annually at up to 800,000. This rule will provide consumers with a fuller picture of the safety record of airlines in the transportation of animals. If the benefit

carriers to file with the Department an annual report detailing disability-related complaints the carriers received from passengers in the calendar year, as required by 14 CFR part 382, the Department's rule implementing the Air Carrier Access Act (ACAA) in the Department's Nondiscrimination on the Basis of Disability in Air Travel 14 CFR part 382.

of expanding reporting requirements to dogs and cats transported as a commercial shipment were as little as a \$0.34 per animal shipped, the benefits of the rule would exceed the costs.

## B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not include any provision that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act. See 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

## C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I certify that this final rule does not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). See 14 CFR 399.73. This rule does not impose new duties or obligations on small entities. The rule applies only to U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats. Therefore, this requirement does not affect small entities.

## D. Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

### E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, the Department has submitted the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve those proposed collections of information that are part of this final rule and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The Department intends to renew the OMB control number for the information collection requirements resulting from this rulemaking action. The OMB control number, when renewed, will be announced by separate notice in the **Federal Register**.

The ICR was previously published in the **Federal Register** as part of the NPRM. See 77 FR 38750. The Department invited interested persons to submit comments on any aspect of each of these three information collections, including the following: (1) The necessity and utility of the information collection; (2) the accuracy of the estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection without reducing the quality of the collected information.

The final rule renews and modifies the information collection titled "Reports by Carriers on Incidents Involving Animals During Air

Transport" (OMB No. 2105–0552). The collection of information contained in the final rule is a requirement that U.S. carriers that operate scheduled passenger service with at least one aircraft having a designed seating capacity of more than 60 passenger seats report to the Department's ACPD any incidents involving the loss, injury, or death during air transport of cats and dogs that were part of a commercial shipment. (Cats and dogs that were being kept as a household pet at the time of such a loss, injury, or death are already required to be reported by these airlines.) As discussed above, this requirement expands the reporting requirement from 15 carriers to 27 carriers, an increase of 12 carriers. The collection of information also requires covered carriers to state in their report for the month of December the total number of animals that were lost, injured, or died during air transport in the calendar year and the total number of animals that were transported in the calendar year.

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

*OMB Control Number:* 2105–0552.

*Type of Request:* Modification of expired Information Collection Request.

*Respondents:* U.S. carriers that operate scheduled passenger service with at least one aircraft having a designed seating capacity of more than 60 seats (27).

*Frequency:* For each respondent, one information set for the month of December, plus one information set during some other months (1 to 12).

*Estimated Annual Burden on Respondents:* 27 to 324 hours (Respondents [27] × Frequency [1 to 12 per year]).

### F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would

warrant the preparation of an EA or EIS. *Id.* Paragraph 4.c.6.i of DOT Order 5610.1C provides that "actions relating to consumer protection, including regulations" are categorically excluded. The purpose of this rulemaking is to amend the requirement for air carriers to report incidents involving the loss, injury, or death of an animal during air transport. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

### G. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued in Washington, DC, on the 24th day of June, 2014, under the authority delegated at 49 CFR 1.27(n).

**Kathryn B. Thomson,**  
*General Counsel.*

### List of Subjects

#### 14 CFR Part 234

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

#### 14 CFR Part 235

Air carriers, Animal incidents, Consumer protection, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR Chapter II as follows:

### PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

- 1. The authority citation for part 234 continues to read as follows:

**Authority:** 49 U.S.C. 329 and Sections 41708 and 41709.

#### § 234.13 [Removed]

- 2. Section 234.13 is removed.
- 3. Part 235 is added to read as follows:

### PART 235—REPORTS BY AIR CARRIERS ON INCIDENTS INVOLVING ANIMALS DURING AIR TRANSPORT

Sec.

235.1 Definitions.

235.2 Applicability.

235.3 Reports by air carriers on incidents involving animals during air transport.

**Authority:** 49 U.S.C. 41721.

#### § 235.1 Definitions.

For the purposes of this part: *Air transport* includes the entire period during which an animal is in the custody of an air carrier, from the time

that the animal is tendered to the air carrier prior to departure until the air carrier tenders the animal to the owner, guardian or representative of the shipper of the animal at the animal's final destination. It does not include animals that accompany a passenger at his or her seat in the cabin and of which the air carrier does not take custody.

*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 and any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight, including shipments by trainers and breeders.

### § 235.2 Applicability.

This part applies to the scheduled domestic and international passenger service of any U.S. air carrier that operates such service with at least one aircraft having a designed seating capacity of more than 60 passenger seats. The reporting requirements of this part apply to all scheduled-service passenger flights of such carriers, including flights that are operated with aircraft having 60 or fewer seats.

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

(a) Each covered carrier shall, within 15 days after the end of the month to which the information applies, submit to the United States Department of Transportation's Aviation Consumer Protection Division a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier, including incidents on flights by that carrier that are operated with aircraft having 60 or fewer seats. The report shall be made in the form and manner set forth in reporting directives issued by the Deputy General Counsel for the U.S. Department of Transportation 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 known;
- (4) Name and contact information of the owner(s), guardian, and/or shipper 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.

(b) Within 15 days after the end of December of each year, each covered carrier shall submit the following information (this information may be included in any report that the carrier may file for the loss, injury, or death of animals during the month of December):

(1) The total number of incidents involving an animal during air transport provided by the air carrier for the entire calendar year, including incidents on flights by that carrier that are operated with aircraft having 60 or fewer seats. The report shall include subtotals for loss, injury, and death of animals. Report "0" for any category for which there were no such incidents. If the carrier had no reportable incidents for that calendar year, it shall report "0" in each category. Covered carriers shall use the following data table when reporting the total number of animal incidents during air transport provided by the air carrier for the entire calendar year:

	Total number in the calendar year
Deaths	
Injuries	
Loss	

(2) The total number of animals transported in the calendar year. If the carrier did not transport any animals for that calendar year, it shall report "0."

(3) The December report must contain the following certification signed by the carrier's authorized representative: "I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR part 235. I affirm that, to the best of my knowledge and belief, this is a true, correct and complete report."

[FR Doc. 2014-15503 Filed 7-2-14; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 882

[Docket No. FDA-2014-M-0799]

### Medical Devices; Neurological Devices; Classification of the Transcutaneous Electrical Nerve Stimulator to Treat Headache

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the transcutaneous electrical nerve

stimulator to treat headache into class II (special controls). The special controls that will apply to the device are identified in this order, and will be part of the codified language for the transcutaneous electrical nerve stimulator to treat headache classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective August 4, 2014. The classification was applicable on March 11, 2014.

**FOR FURTHER INFORMATION CONTACT:**

Michael Hoffmann, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1434, Silver Spring, MD 20993-0002, 301-796-6476, [michael.hoffmann@fda.hhs.gov](mailto:michael.hoffmann@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the