

Title 14—Aeronautics and Space
CHAPTER 1—FEDERAL AVIATION
ADMINISTRATION

[Docket No. 13569; Amdt. No. 121-124]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Stowage of Containers for Transport of Animals Aboard Aircraft

• The purpose of this amendment to Part 121 of the Federal Aviation Regulations is to rescind § 121.288, "Carriage of live animals in containers in cargo compartments." •

On August 9, 1974, the FAA issued Amendment 121-111, effective October 18, 1974, to Part 121 of the Federal Aviation Regulations (published in the FEDERAL REGISTER on August 19, 1974; 39 FR 29917) to require that cargo containers housing live animals for carriage by air in the cargo compartments of aircraft be secured in the cargo compartment in such a fashion as to prevent shifting and be protected from the hazards of shifting of other cargo, and to assure that ventilation areas of the container are not obstructed. That amendment was based on a notice of proposed rule making (Notice 74-10) published in the FEDERAL REGISTER on March 11, 1974 (39 FR 9456).

In response to petitions received from the Air Transport Association of America and Southern Airways, Inc., and members of the medical profession engaged in research using live animals, the FAA issued Amendment No. 121-112 (39 FR 36576; October 11, 1974), and extended the date for compliance with § 121.288 to February 18, 1975, to allow certificate holders additional time for obtaining and installing necessary equipment.

Shortly before the new compliance date, the FAA received hundreds of letters and mailgrams from pet and animal dealers, medical schools, research laboratories, and others, stating that they feared Part 121 certificate holders would embargo the shipment of live animals if the rule was not rescinded or the compliance date extended. They asserted that the threatened embargo would cause them serious financial injury, if not put them out of business. In addition, there were numerous expressions of concern that the rule would limit available capacity for shipping live animals by air, thus creating a severe hardship on the pet industries. Based on these petitions, the FAA issued Amendment No. 121-116 (40 FR 7436; February 20, 1975), extending the effective date to October 18, 1975.

On February 3, 1975, Pet Industries Joint Advisory Council and others petitioned the FAA to either rescind § 121.288 or initiate new rulemaking proceedings on the transportation of animals by air (FAA Regulatory Docket No. 14304). On May 1, 1975, the Air Transport Association of America petitioned the FAA to make certain revisions in § 121.288 (FAA Regulatory Docket No. 14622).

A large volume of correspondence received by the FAA has contained numerous expressions of concern that, following the October 18, 1975, effective date of § 121.288, available space for the shipment of live animals will be severely curtailed. Some Part 121 certificate holders have made it known to the pet industry, medical schools, laboratories, and others that they expect to have less space available for the shipment of live animals following modification of their aircraft cargo compartments. Others have indicated they will be required to initiate proceedings to embargo the shipment of animals on their aircraft because they are unable to provide the appropriate tie-down equipment in some aircraft types. Many who wrote the FAA expressed their concern for the humane treatment of animals, but stressed that any curtailment in the shipment of live animals would either force them into a drastic cutback in personnel or force them out of business completely.

Certificate holders have indicated that to achieve compliance with the rule they would have to designate specific areas in each cargo compartment for the carriage of live animals and that each container would have to be individually secured to the cargo compartment. This would prevent the certificate holders from transporting the volume of live animals presently being carried. It would also reduce the total available cargo space. In addition, because of the small cargo areas of certain airplanes, some certificate holders would not be able to transport any live animals in those airplanes.

Certificate holders and the pet industry, in voicing their disapproval of § 121.288, have taken a position that the present rule will not improve what they consider to be an already excellent record of safety in the transportation of live animals and because of the adverse effect on the air carrier's capacity to carry live animals will result in a disservice to the traveling public, shippers of live animals, and medical research professions. They contend that the language of the rule is vague and ambiguous and is subject to various interpretations. They assert that compliance with the existing rule will result in higher costs to private pet owners, commercial shippers, medical schools and laboratories, and others, and that this is due in part to the reduction in available space for shipping live animals

Advance copy pending issuance
revised pages, Part 121.

which will result in more trips to the airport to pick up parts of a shipment of animals that formerly could be shipped as one unit. They also indicate that it is probable that each certificate holder will have to inaugurate a live animal reservation system to assure adequate space available on originating and connecting flights. These higher shipping costs would be transferred to the owner or shipper.

On September 9, 1975, the FAA on behalf of the Department of Transportation presented prepared testimony before the Subcommittee on Livestock and Grains of the House Committee on Agriculture. The FAA stated that it was reviewing § 121.288, guided by the Administration's intention to seek to accomplish regulatory reform, particularly with respect to extra burdens imposed by regulations. It was also stated that the FAA carefully considered the information submitted to the agency before the effective date of the rule was extended, and that the effect of the aircraft modifications needed has generated more complex issues than those the FAA anticipated, particularly with respect to stowage and cargo compartment environment.

Moreover, the FAA stated:

The FAA lacks the expertise to develop standards for the temperature levels and air supply needed for different kinds of animals which may be carried aboard an aircraft. We also are not experts concerning the containers in which they are transported. We are concerned with the economic impact of these rules on the pet industry, the pet owner and the airlines. We are not in a position to make zoological or veterinary judgments. We are in the business of safety of flight and should continue to concentrate our resources in that direction. . . . In many event, we believe that regardless of any present division of authority it would not be appropriate for the FAA to undertake any comprehensive program for implementing or enforcing standards for the humane treatment of animals in air transportation.

The FAA is concerned that industries whose livelihood depends on the fast, reliable air shipment of live animals would be adversely affected. Apparently, the rule also would hamper medical research efforts and increase the animal owners' and shippers' costs substantially. In addition, it should be noted that certificate holders would face increased costs due to the installation and maintenance of special tie-down equipment and the need for an animal reservation system. Loss of revenue could also result because of reduced capacity (both in animal and general cargo shipments). Finally, there would be a higher risk of inhumane treatment of animals in transit due to a reduction in available space that would cause delays in shipment at the originating station and at enroute stops.

Since compliance with § 121.288, as adopted, will create practical problems resulting in a serious curtailment in the

(As published in the Federal Register /40 F.R. 49095/ on October 21, 1975)

FS-76-61-R

shipment of animals and the imposition of an undue economic burden on Part 121 certificate holders and shippers of animals, the FAA has determined that allowing § 121.288 to become effective would not be appropriate or in the public interest. The FAA must consider further whether amendments to the Federal Aviation Regulations, if any, should be adopted with respect to the carriage of live animals. Rather than extend the effective date of § 121.288 again while this matter is under consideration, it appears that the most appropriate course of action is to rescind § 121.288. Previous extensions have only served to confuse the issues and create additional concern. Immediate rescission of the rule will also eliminate any further uncertainty as to whether the projected needs of the pet industry, medical research and others can be met by § 121.288.

Under these circumstances, I find that notice and public procedure on this rescission would be impracticable and contrary to the public interest and that good cause exists for making this amendment

effective in less than 30 days. However, the FAA is soliciting further public comment. Interested persons are invited to submit comments in duplicate by November 18, 1975, addressed to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, 800 Independence Avenue, SW., Washington, D.C. 20591.

§ 121.288 [Revoked]

In consideration of the foregoing, effective October 17, 1975, § 121.288 of the Federal Aviation Regulations adopted by Amendment 121-111 published in the *FEDERAL REGISTER* on August 19, 1974 (39 FR 29917) is hereby rescinded.

(Sec. 313(a), 601(a), and 604 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421(a), and 1424. Sec. 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c).)

Issued in Washington, D.C., on October 17, 1975.

JAMES E. DOW,
Acting Administrator.