

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 2

[Docket No. APHIS-2006-0012]

#### Animal Welfare; Animal Identification Standards

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Advance notice of proposed rulemaking and request for comments, notice of meeting.

**SUMMARY:** The Conference Committee Report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109-97), directed the Animal and Plant Health Inspection Service (APHIS) to develop appropriate regulations that allow for an open radio frequency identification technology microchip system that would enable a scanner to read all microchips used for the identification of pets. In addition, APHIS has received a petition from the Coalition for Reuniting Pets and Families requesting that we consider establishing a national identification standard for pets and publish a notice soliciting comments on the need for the adoption of ISO 11784 and 11785 as the national radio frequency technology standard for pets. We are currently considering the direction given in the congressional report and the petitioners' request. This notice solicits public comment on potential changes to our regulations that would address the use of microchips for identifying animals covered under the Animal Welfare Act and advises the public that APHIS is hosting a series of informational meetings on that subject and the issues raised in the conference committee report and the petition.

**DATES:** We will consider all comments that we receive on or before September 6, 2006. The informational meetings

will be held in Riverdale, MD, on March 21, 2006; in Boston, MA, on March 29, 2006; in Baton Rouge, LA, on April 4, 2006; in Springfield, MO, on April 18, 2006; in Centennial, CO, on April 25, 2006; and in San Diego, CA, on May 10, 2006.

**ADDRESSES:** The informational meetings will be held in the following locations:

- USDA Center at Riverside, 4700 River Road, Riverdale, MD;
- The Harvard Club, 370 Commonwealth Avenue, Boston, MA;
- Department of Agriculture, 5825 Florida Boulevard, Baton Rouge, LA;
- University Plaza Hotel and Conference Center, 333 S. John Q. Hammons Parkway, Springfield, MO;
- South Denver Chamber of Commerce, 6840 South University Boulevard, Centennial, CO; and
- Homewood Suites Hilton, 11025 Vista Sorrento Parkway, San Diego, CA.

You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2006-0012 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0012, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0012.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its

programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

In the Conference Committee Report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109-97), Congress provided the following direction to the Animal and Plant Health Inspection Service (APHIS):

The conferees support the microchipping of pets for identification under a system of open microchip technology in which all scanners can read all chips. The conferees direct APHIS to develop the appropriate regulations that allow for universal reading ability and best serve the interests of pet owners. The conferees also direct APHIS to take into consideration the effect such regulation may have on the current practice of microchipping pets in this country, and to report to the Committees on Appropriations within 90 days of the date of enactment of this Act on progress toward that end.

In addition, on October 10, 2005, APHIS received a petition from the Coalition for Reuniting Pets and Families to "take the first important step towards a National ID Standard and publish a notice in the **Federal Register** soliciting comments on the need for the adoption of the ISO standard as the National ID Standard." The petition in its entirety states:

October 10, 2005.  
Chester A. Gipson, DVM  
APHIS  
Station 3C71  
4700 River Road, Unit 118  
Riverdale, MD 20737-1238

Re: Petition for Publication of a **Federal Register** Notice Soliciting Comments on the Need for the Adoption of the ISO standard as the National Standard for the Microchipping of Companion Animals for Identification

Dear Dr. Gipson: Pursuant to the Administrative Procedures Act, 5 U.S.C. 553(e) and 7 CFR 1.28, the Coalition for Reuniting Pets and Families (the "Coalition") hereby petitions the Animal and Plant Health Inspection Service ("APHIS") of the United States Department of Agriculture ("USDA") to publish a notice in the **Federal Register** soliciting comments ("Request for Comments") on the need for APHIS to promulgate regulations adopting the ISO

standard as the National Standard for the microchipping of companion animals for identification ("National ID Standard").

#### Background

The Coalition, which is comprised of leading U.S. humane societies and veterinary organizations, is urging the U.S. to adopt a system that would allow all scanners to read all microchips. This is not a radical proposal: The U.S. has already adopted the ISO standard for the microchipping of wildlife and livestock. Language directing APHIS to develop such a regulation appears in House Report 109-102 (the "House Report") for the Fiscal Year 2006 Agriculture, Rural Development and Related Agencies Appropriations Bill (the "Appropriations Bill").

As you are aware, under the Animal Welfare Act ("AWA") (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers and intermediate handlers. The definition of animal in the AWA is, in part: Any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet. In exercising its responsibilities under AWA, APHIS has recognized the importance of identification of animals in the care or custody of individuals, groups or organizations under its jurisdiction.

The Coalition believes that the adoption of the ISO standard as the National ID Standard is important because the current U.S. system for microchipping of pets has not been shown to be an effective means of reuniting pets with their families. The failures of the current system and the need for a national standard have been underscored by the Hurricane Katrina disaster where thousands of companion animals have been separated from their families. Because many of these animals have not been microchipped, or have been chipped with inconsistent technologies, a large number of animals could be euthanized instead of being returned to their families. It is appropriate that APHIS address the issue of an effective and practical microchipping standard as it assesses the needs in the wake of Hurricane Katrina. It is possible to implement a system that will work successfully both in ordinary conditions and under the pressures of a regional disaster.

In an average year, eight to 10 million pets stray from home in the United States but less than 25% of lost pets are reunited with their family. Pet microchips could be a lifesaving solution and increase the number of pets reunited, but unfortunately, fewer than 5% of U.S. pets are microchipped. And, even for those pets that are microchipped, the system is ineffective because of problems with the scanning equipment, the lack of a centralized registry or database and the fact that pets are being fitted with chips of multiple frequencies. As a result, lost pets are euthanized because their owners cannot be

located even when they have a microchip. Without a National ID Standard, a workable system may never exist and the number of pets in the United States currently implanted with a microchip for identification will not be expected to climb beyond its current, stagnant rate of less than 5 percent.

Microchipping of pets for identification has not been developed in the U.S. as successfully as it has in other countries because the U.S. has not implemented the worldwide-recognized open standard. Endorsed by the International Standards Organization ("ISO") and the American National Standards Institute ("ANSI") after a rigorous process examining all forms of microchipping technologies and practices, and used by nations around the world, ISO microchips feature "open" microchip technology where all scanners can read all chips and the chips have a better reading distance.

The implementation of the ISO standard for pets by most of the world—with the U.S. as the notable exception—has led to a global growth in animal identification. Countries that use the ISO standard, like Canada and members of the European Union, have significantly higher reunification rates—achieved at a much lower cost. For example, 47 percent of lost dogs find their way home in the United Kingdom, where ISO microchips are used—some from the same companies that currently refuse to sell the ISO technology in the United States. Instead, these companies sell an older technology at a higher price to U.S. consumers and veterinarians.

Microchipping technologies have the potential to reunite millions of these lost pets with their families. But the technology must be universally applicable for it to see widespread adoption. In the United States today, a microchip made by one company can not be read by a scanner designed to read the microchip of another. A veterinary clinic may not have the right scanner to detect an identification microchip implanted in a pet by an animal shelter just down the street. Moreover, even when a chip is detected, a veterinarian's office or animal shelter may not have a registry of chipped animals to which it can quickly refer.

In a properly functioning, ISO based system, as the one used in much of the rest of the world, when a lost pet enters a shelter or veterinary hospital without collar tag identification, the microchip is a failsafe method of reuniting the pet with its family. The shelter or veterinarian waves one "global" microchip scanner, capable of reading all microchips, over the pet and detects the chip. The scanner then displays a microchip number and phone number of the database to where that microchip is registered. At that point, the shelter or veterinarian can call to find the pet owner's contact information.

It is important to note, the proposed change to ISO will not favor or harm any manufacturer because all manufacturers currently selling non-ISO technology in the United States manufacture and market ISO technology outside the United States. Also, the language calls for scanners that will read all microchips, no matter the frequency. As

things stand right now, pets that already have an unencrypted 125 kHz microchip can be read by an ISO scanner. Those pets already implanted with an encrypted 125 kHz microchip will be identified, when scanned by an ISO scanner, as having a microchip present (though the number may not be readable due to encryption). Action by APHIS will not require pet owners to replace 125 kHz microchips. Pets need not die or be euthanized as a result of the adoption of the National ID Standard.

Furthermore, the Coalition firmly believes that the development of truly "global" scanners that can read all chips is a key component of the implementation of a National ID Standard. The language in the House Report clearly calls for the development of scanners that will read all microchips, no matter the frequency. The only potential problem with the adoption of the National ID Standard will be caused by certain manufacturers who have in the past sold encrypted "non-ISO" microchips and who could impede the development and distribution of a truly "global" scanner by refusing to either: (1) License the encryption technology or (2) sell "global" scanners utilizing the technology to the U.S. market. If this continues to happen, the development of a National ID Standard will still be both a necessary and important development for the welfare of companion animals, but the immediate benefit of the transition will not be as evident. In the short term, the animal welfare community will be forced to utilize at least two scanners (an ISO compatible scanner that can read both 125 and ISO chips and a non-ISO scanner that reads encrypted 125 kHz chips). The use of multiple scanners will increase the risk of error and decrease the number of pets ultimately reunited with their families.

However, it is important to note, even if these manufacturers continue to refuse to aid in the development of a truly "global" scanner, the benefits of developing an ISO based National ID Standard that is compatible with the system used in the rest of the world and with large animals in the U.S. are still very real. In fact, the Coalition strongly believes that the proposed solution is a win for all: Pet owners would enjoy greater peace of mind at a lower cost, and shelters, animal control officers and veterinarians would have a more efficient system to help pets be reunited with their families. In addition, for veterinarians who treat both pets and livestock, having one scanner would dramatically reduce the chance of errors.

The Coalition for Reuniting Pets and Families is, at its core, about the confidence pet owners deserve to have when they microchip their pets—confidence that a well-functioning system is in place, and that the needs of pets and their families rather than commercial interests take precedence. We are not advocates for one particular company or one specific technology, but rather advocates for a microchipping and pet recovery system that assures lost pets will be reunited with their families. For the sake of pets and families across the country, we urge the USDA to take the first important step towards a National ID Standard and publish a notice

in the **Federal Register** soliciting comments on the need for the adoption of the ISO standard as the National ID Standard.

Sincerely,

The Coalition for Reuniting Pets and Families

American Humane Association

Ripley Forbes—703.294.6690

American Animal Hospital Association

Daniel S Aja, DVM—231.922.0500

American Society for the Prevention of

Cruelty to Animals

Steve Zawistowski, PhD—212.876.7700

American Society of Veterinary Medical

Association Executives

Ralph Johnson—303.318.0447

American Veterinary Medical Association

Rosemary LoGiudice, DVM—847.925.8070

Humane Society of the United States

John Snyder—202.452.1100

We have carefully considered the congressional report and the petition set out above. However, we must note that APHIS does not have the authority to regulate private pet ownership or the retail sale of pets and consequently cannot mandate a single national standard for the microchip identification of pets.

Under the Animal Welfare Act (AWA or the Act) (7 U.S.C. 2131 *et seq.*), APHIS has the authority to regulate most warmblooded animals being used for exhibition, research, and the wholesale pet trade, as well as the transportation of these animals in commerce. The AWA authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the Act to the Administrator of APHIS. Regulations established under the Act are contained in 9 CFR Chapter I, Subchapter A, parts 1, 2, and 3, and provide for the humane handling, care, treatment, and transportation of animals covered by the AWA.

Under §§ 2.38 and 2.50 of the regulations, APHIS currently requires individual identification for dogs and cats used for research or wholesale trade. Paragraph (g) of § 2.38 requires research facilities to identify all live dogs and cats by an official tag, as described in § 2.38, or by a tattoo, tag, or collar that individually identifies the dog or cat by number. Paragraphs (a) and (b) of § 2.50 require Class A and B dealers, respectively, to identify all live dogs and cats with an official tag, as described in § 2.51, or a tattoo. (Sections 2.38 and 2.51 require, in short, that an official tag include the letters "USDA"; numbers identifying the State and dealer, exhibitor, or research facility;

and numbers identifying the animal.) Paragraph (c) of § 2.50 requires Class C exhibitors to identify all live dogs and cats with an official tag or tattoo, or using another option provided in paragraph (c) of § 2.50 that includes placing a tag on the door of the animal's cage or run and maintaining a record book with the tag number and other information on each animal.

Sections 2.38 and 2.50 also provide additional methods of identification for puppies and kittens. Under the regulations, Class A and B dealers and Class C exhibitors may identify puppies and kittens under 16 weeks of age in the same manner described above under paragraphs (a), (b), and (c), respectively, or with a plastic collar acceptable to the Administrator that includes the information on the official tag. Paragraph (g) of § 2.38 and paragraph (d) of § 2.50 further provide that research facilities, Class A and B dealers, and Class C exhibitors need not individually identify unweaned puppies or kittens while they are maintained as a litter with their dam in the same primary enclosure and the dam has been individually identified.

Even before our receipt of the report language and the petition, we had begun developing a proposed rule to amend the regulations to specifically provide for the use of radio frequency microchips as an additional option for the identification of dogs and cats. We had considered allowing research facilities, dealers, and exhibitors to use microchips as a means of identification for their dogs and cats, provided that the following conditions were met:

- The microchip is placed in a standard anatomical location on each animal.
- Regulated entities provide the information currently required by §§ 2.35(b) and 2.75(a)(1), as well as the microchip number, the name of the microchip manufacturer, and the location of the microchip on each animal.
- A compatible microchip scanner device is readily available to APHIS officials and/or facility employees accompanying APHIS officials during inspections.
- If a dog or cat is already identified by a microchip, the animal is identified by a tag or tattoo if a compatible scanner is not available to the research facility, dealer, or exhibitor purchasing or otherwise acquiring the dog or cat.

In light of the conference committee report and petition set out above, APHIS is now considering amending §§ 2.38 and 2.50 to add ISO 11784 and 11785 compliant radio frequency microchips as an official means of identifying dogs

and cats by research facilities, dealers, and exhibitors. ISO 11784 (which relates to the code for identification) and 11785 (which relates to the technical operations between the code and reader) are international standards that specify the structure of the radio-frequency (RF) identification method for animals. RF identification of animals requires that the bits transmitted by a transponder are interpretable by a transceiver. Any producers of identification devices that wish to manufacture compliant microchips would have to acquire the standard from ISO; APHIS cannot itself provide the standards to manufacturers.

In this document, we are seeking input from the public and stakeholders regarding the use of microchips for identifying dogs and cats covered under the AWA and any impacts there may be if we were to require ISO 11784 and 11785 compliant microchips when microchipping dogs and cats for identification under the AWA. We encourage the inclusion of all technical and scientific data and studies available to support your comments and position. We also welcome any information regarding the benefits and costs of such a requirement.

#### Informational Meetings

To provide a forum for the submission of information and views on the potential changes to our regulations and on the issues raised by the report and petition, APHIS will hold several informational meetings at dates and locations listed in the **DATES** and **ADDRESSES** sections of this notice. As specific agenda information becomes available, we will post it on the Animal Care homepage at <http://www.aphis.usda.gov/ac/>.

Please note that a fee of \$2.25 is required to enter the parking lot at the USDA Center at Riverside. The machine accepts \$1 bills or quarters. Picture identification is required to be admitted to the building. Upon entering the building, visitors should inform security personnel that they are attending the Animal Care microchip identification meeting. Also note that a fee of \$8 per hour is required to park at the Harvard Club in Boston, MA.

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 8th day of March 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 06-2380 Filed 3-9-06; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-23579; Directorate Identifier 2006-CE-02-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Pacific Aerospace Corporation Ltd. 750XL Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2005-26-53; Amendment 39-14451, which applies to all Pacific Aerospace Corporation Ltd. (PAC) 750XL airplanes. AD 2005-26-53 currently requires you to insert text into the Limitations Section of the Airplane Flight Manual (AFM) that reduces the maximum takeoff weight from 7,500 pounds to 7,125 pounds. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand and the FAA's decision that the actions correct an unsafe condition. Consequently, this proposed AD would require you to remove rivets that have not been fully age hardened and replace them with bolts, washers, and nuts in specific locations where reduction in rivet strength affects overall structural capability. This proposed AD retains the actions of the previous AD until the rivets are replaced with the bolts, washers, and nuts. We are issuing this proposed AD so that wing ultimate load requirements are met. If wing ultimate load requirements are not met, wing failure could result with subsequent loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by April 12, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the

instructions for sending your comments electronically.

- Government-wide rulemaking web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: 1-202-493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Pacific Aerospace Corporation Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand for the service information identified in this proposed AD.

You may examine the comments on this proposed AD in the AD docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; facsimile: (816) 329-4090.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

*How do I comment on this proposed AD?* We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2006-23579; Directorate Identifier 2006-CE-02-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the DOT docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

#### **Examining the Dockets**

*Where can I go to view the docket information?* You may examine the docket that contains the proposal, any comments received and any final disposition on the Internet at <http://dms.dot.gov>, or in person at the DOT Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

#### **Discussion**

*Has FAA taken any action to this point?* Some critical rivets that were not fully age-hardened were used in specific locations where the reduction in rivet strength affects the overall structural capability. The unsafe condition caused us to issue AD 2005-26-53, Amendment 39-14451 (71 FR 2453, January 17, 2006). AD 2005-26-53 currently requires you to insert text into the Limitations Section of the Airplane Flight Manual (AFM) that reduces the maximum takeoff weight from 7,500 pounds to 7,125 pounds.

*What has happened since AD 2005-26-53 to initiate this proposed AD action?* The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, recently notified FAA of the need to change AD 2005-26-53. The CAA reports that the manufacturer has now specified bolts, washers, and nuts to replace the rivets located in critical locations where reduction in rivet strength is critical. After replacing the rivets that have not been fully age hardened with the bolts, washers, and nuts, the wings of these airplanes will meet the ultimate load requirements for a maximum takeoff weight of 7,500 pounds.

*What is the potential impact if FAA took no action?* This condition, if not corrected, could result in the wing not meeting ultimate load requirements. Wing failure could result with subsequent loss of control of the airplane.

#### **Relevant Service Information**

*Is there service information that applies to this subject?* We have reviewed Pacific Aerospace Corporation, Ltd. Service Bulletin No. PACSB/XL/018 Issue 3, issued December 23, 2005, and amended January 16, 2006.

*What are the provisions of this service information?* The service information describes procedures for: