

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA-2009-0245]

Voluntary Disclosure Reporting Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Order Designating Information as Protected from Disclosure.

SUMMARY: The FAA is proposing that information provided to the Agency to populate its Wildlife Hazard Database be designated by an FAA order as protected from public disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123, the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws, following the issuance of such order. The designation is intended to encourage continued voluntary reporting of wildlife hazard data.

DATES: Comments must be received on or before April 20, 2009.

ADDRESSES: You may send comments identified by docket number FAA-2009-0245 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Weller, Airport Safety and Operations Division, AAS-300, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267-3778.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments. We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal**

Register published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of This Proposed Designation

You can get an electronic copy using the Internet by:

1. Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
2. Visiting the FAA's Regulations and Policies Web page at <http://www.faa.gov/regulations-policies/>; or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order to make certain findings before the information is protected from disclosure. The FAA's rules implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under 49 U.S.C. 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in 49 U.S.C. 40123 and 14 CFR part 193. This proposed order is issued under 14 CFR 193.111, which sets out the notice procedure for designating information as protected.

The FAA designates information as protected under this part when the FAA finds that:

1. The information is provided voluntarily;
2. The information is safety or security related;

3. The disclosure of the information would inhibit the voluntary provision of that type of information;

4. The receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities; and

5. Withholding such information from disclosure, under the circumstances provided in this part, will be consistent with the FAA's safety and security responsibilities.

Description of the Proposed Information Sharing Program

In an effort to monitor and analyze the hazards presented by wildlife to aircraft operations, the FAA actively solicits voluntary wildlife strike reports from a variety of sources such as pilots, air traffic controllers, air carrier personnel, and airport operations personnel. With this data, the FAA is able to analyze trends in order to develop better wildlife management strategies for individual airports and all civil/military aviation communities. These trends include seasonal strike fluctuations, diurnal/nocturnal strike comparisons, species identification, frequency, geographical distribution, effect on flight and damage incurred. Monitoring strikes also provides useful data regarding their frequency of occurrence during a specific phase of flight, altitude, and distance from airport. The information may also be used by the FAA to develop aircraft certification standards that take into account the unique hazard posed by wildlife threats.

The FAA has been collecting voluntarily submitted data from the public since 1990. During this time, the number of strikes annually reported more than quadrupled from 1,759 in 1990 to a record 7,666 in 2007. The increase in reports from 1990 to 2007 was likely the result of several factors:

1. An increased awareness of the wildlife strike issue, an increase in aircraft operations;
2. An increase in populations of hazardous wildlife species; and
3. An increase in the number of strikes.

Overall, there are over 100,000 wildlife strikes that have been submitted from civil and military aircraft strikes. As a result of these collection efforts, the FAA has a wildlife strike database that is unparalleled.

When the FAA began collecting this data, it assured the entities submitting the data that the submissions would not be made available to the public. At that time, the FAA did not have the authority to provide part 193 protection. However, the FAA has relied upon other voluntary disclosure programs to obtain needed safety data prior to the

enactment of 49 U.S.C. 40123 and these other programs are presently covered by part 193. The FAA believes that it is appropriate to extend this formal protection to the bird strike database as well. The Agency is concerned that there is a serious potential that information related to bird strikes will not be submitted because of fear that the disclosure of raw data could unfairly cast unfounded aspersions on the submitter.

The collection of this safety information has been successful not only in part due to an increase in awareness and improved strike-reporting technology but due to the fact that the reporting of strikes is nonpunitive to airports and airlines. There are almost 100 separate data fields in the strike database that allows the FAA to understand wildlife strike hazards to aviation better. Cooperative analyses between the FAA, the United States Department of Agriculture (USDA) and USDA's Animal and Plant Health Inspection Service Branch summarized this data into an annual report made available to the public. Such analyses are critical to determining:

1. The economic cost of wildlife strikes;
2. The magnitude of safety issues; and most important; and
3. The nature of the problems (e.g., wildlife species involved, types of damage, height and phase of flight during which strikes occur, and seasonal patterns).

The information obtained from these analyses provides the foundation for refinements in the development, implementation, and justification of integrated research and management efforts to reduce wildlife strikes. The FAA redacts certain information from the data that is available to the public based on relevance or its sensitivity.

For example, while the FAA collects wildlife strike data for specific airports, which it uses in its regulatory and oversight activities for that individual airport, the FAA does not release data regarding the submitter of the report. Here again, the FAA seeks to encourage the open provision of data for use in its regulatory activities. Drawing comparisons between airports is difficult because of the unevenness of reporting. Other factors that must be considered between airports and strike reporting are their different geographies, operations, structures, onsite/offsite habitats, and personnel to name a few. The complexity of the information warrants care with its interpretation; releasing this information without benefit of proper analysis would not

only produce an inaccurate perception of the individual airports and airlines but also inaccurate and inappropriate comparisons between airports/airlines. Requests for data within the FAA National Wildlife Strike Database have typically been for specific data fields, individual airports or detailed portions of the database. Responses from the FAA have addressed each request individually and adequately. Airports voluntarily report bird strike data to understand their wildlife hazards better and to streamline allocating wildlife mitigation funding. Inaccurate portrayals of airports and airlines could have a negative impact on their participation in reporting bird strikes. It is the willingness of airports to participate, to better understand, and to better address their unique set of wildlife hazards that highlights why voluntary reporting works.

In short, the FAA sees a direct correlation between the protection and provision of voluntary safety data. There is no question that the data collected over the last 19 years has improved safety throughout the world. It is imperative we do nothing to stifle this flow of information. Protecting this data under 49 U.S.C. 40123 and 14 CFR part 193 will ensure this continued input.

Proposed Designation

Accordingly, the FAA proposes to designate the data in its Wildlife Strike Database to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on March 12, 2009.

Catherine M. Lang,

Acting Associate Administrator for Airports.

[FR Doc. E9-5868 Filed 3-18-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-158747-06]

RIN 1545-BG45

Withholding Under Internal Revenue Code Section 3402(t); Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking relating to withholding under section 3402(t) of the Internal Revenue Code. The proposed