

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Part 234**

[Docket No. OST 2007–28522]

RIN 2139–AA13

Revision of Airline Service Quality Performance Reports and Disclosure Requirements**AGENCY:** Office of the Secretary, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Transportation (DOT) is proposing to collect additional data elements when flights are cancelled, diverted, or experience gate returns. The additional proposed data elements would fill in data gaps giving the Department, the industry, and the public a more accurate portrayal of on-ground delays after flights depart the gate but prior to the time they take off and after flights land but before they reach the gate.

DATES: Written comments should be submitted on or before January 22, 2008.

ADDRESSES: You may submit comments identified by DOT Docket ID Number OST 2007–28522 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Identify docket number, OST 2007–28522, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at <http://www.regulations.gov>. All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted 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://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Research and Innovative Technology Administration, Bureau of Transportation Statistics, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail bernard.stankus@dot.gov.

SUPPLEMENTARY INFORMATION: DOT invites air carriers and other interested persons to participate in this rulemaking by submitting written comments or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Background

The Department's rule requiring airlines that account for at least one percent of the domestic scheduled passenger revenues to submit service quality performance reports, 14 CFR part 234, was first issued on September 9, 1987 (52 FR 34071). At that time, close to 40 percent of all flights were either late or cancelled. On-time performance reporting created a market-based incentive for carriers to improve their service and scheduling practices. The immediate result of this action was an improvement in carriers' on-time performance. For the remainder of 1987, the industry had an on-time arrival rate of over 74 percent.

In 1995, the Department added additional data elements to the reporting system to enable the Federal Aviation Administration (FAA) to identify choke points within the air traffic control system (60 FR 66722, December 26, 1995). Aircraft tail number, wheels-off time and wheels-on time gave the FAA information concerning aircraft routings through the air traffic control system and detailed data on tarmac and airborne delays. In addition, the department required air carriers to report delays related to mechanical problems.

In 1999 and 2000, airline delays increased dramatically with the increase in airline operations. Consumer complaints concerning flight delays increased by 18% from 1999 to 2000. Section 227 of the Aviation Investment and Reform Act for the 21st Century (Air-21; See Pub. L. 106–181, 114 Stat.

61) called upon the Secretary of Transportation to disclose to the public the causes of delayed and cancelled flights. On July 25, 2000, the Department's Office of Inspector General (IG) issued a report *Air Carrier Flight Delays and Cancellations* (Report Number CR 2000–112). In its report, the IG recommended that DOT provide consumers, on a monthly basis, information about the major causes of flight delays and cancellations. During this period, the Air Transport Association of America also petitioned the Department to report the causes of delays and cancellations. In August 2000, an Air Carrier On-time Reporting Advisory Committee was established to make recommendations on causal reporting. The committee recommended four delay causes—Air Carrier, Extreme Weather, National Aviation System, and Late Arriving Aircraft. After notice and comment on the matter, in November 2002, the Department adopted a final rule that required carriers to report the causes of delays in these four categories, along with a fifth category, Security. (67 FR 70535, November 25, 2002.)

The occurrence in late 2006 and early 2007 of significantly long on-ground delays, particularly those involving flights that departed the gate but were delayed taking off and those that had landed but were delayed in reaching a gate, commonly referred to as “tarmac delays,” once again focused public attention on the Department's collection of Airline Service Quality Performance Reports under part 234. In reviewing the currently available data, we find that the Department can determine the extent of tarmac delays for most flights. However, these data cannot be used to capture tarmac delays in all instances since the reporting requirements were never intended for such a purpose. In this regard, when first adopted, the intent of part 234's reporting requirements was to obtain and provide to the public data involving on-time departures and arrivals, while later revisions to the rule were concerned with taxi times and the causes of flight delays. Currently, the Department cannot calculate tarmac delays for canceled or diverted flights.

For example, on February 14, 2007, during snowstorms in the Northeast, many flights departed the boarding gates only to spend many hours on the tarmac being de-iced and waiting for the weather to clear. When the weather failed to clear sufficiently, flights were cancelled. Under current reporting rules, if a flight is canceled, only that fact is required to be reported. Air carriers are not required to report the time of departure from a gate for canceled flights. Thus, under current

reporting rules, air carriers do not provide information that enables the Department to determine whether a flight, that is ultimately canceled, experienced a tarmac delay and the extent of that delay. Similar data gaps exist for flights that are diverted to alternate airports, as was demonstrated by massive flight diversions that occurred in the Southwestern United States in late 2006 as a result of bad weather. Under the current reporting regulations, on-time reporting ceases when a flight is diverted from its scheduled routing. The carrier reports the scheduled departure and arrival times and the actual gate departure and wheels-off times. However, no information is reported on the arrival at the airport to which a flight is diverted or the departure from that alternate airport, and no information is reported on whether or not that flight ultimately arrived at its scheduled destination airport and, if it did, its time of arrival at that airport.

Moreover, in our review of the available data, we discovered that carriers were not uniformly reporting gate-departure times (i.e. when a flight that had departed a gate returned to the gate and subsequently departed the gate again for take-off). Some carriers reported the initial gate-departure time while others reported the "second" gate-departure time. There are advantages and disadvantages with both reporting methods.

By receiving data on only the first gate-departure time, the Department knows the time interval from when the aircraft initially departed the gate and when the aircraft ultimately departed the airport (wheels-off time). However, there are times when a carrier is credited with an on-time departure, when in reality the aircraft returned to the gate only to depart well after its originally-scheduled departure time. In such instances, the taxi-out time (and tarmac delay time) for the aircraft is also miscalculated, because the time the aircraft was parked at the gate awaiting its second gate departure, a time when passengers are often deplaned, would be counted in the taxi-out/tarmac delay time.

On the other hand, while reporting data on only the second gate-departure time might be seen as a more accurate assessment of delay in departure, this information would fail to capture the duration of any tarmac delay that occurred after the first gate departure, thereby disguising the true inconvenience to passengers on that flight.

Public Meeting

On June 20, 2007, the Bureau of Transportation Statistics (BTS)/Research and Innovative Technology Administration hosted a public meeting to discuss data gaps and inconsistencies in the reporting of on-time data. A summary of the public meeting is available in Docket No. OST 2007-28522. The airlines present at the meeting and the Air Transport Association (ATA), which represents 11 airlines that submit on-time data, fully supported the objectives of filling data gaps and improving the utility of on-time data. American Airlines recommended that any change to the reporting regulations ensure that: (1) The information is reported consistently by all carriers; (2) the potential for misinterpretation of the data is limited; and (3) the reporting burden on the air carriers is limited. ATA proposed that carriers report the last gate-departure time in the normal data field for gate-departure time and create a new field where the carriers would report the initial gate-departure time when there is a return-to-gate situation. ATA also proposed that BTS create another field for total time on tarmac for multiple gate departures.

Various consumer groups expressed the opinion that the current system was providing misleading information by understating tarmac delays. The Aviation Consumer Action Project (ACAP) stated that the delay statistics are so incomplete or inaccurate as to be misleading or deceptive to the public. ACAP objects to the way carriers report cancellations and diversions: specifically, it objects to the fact that no delay minutes are assigned to cancelled and diverted flights. Also, ACAP is of the view that, rather than requiring airlines to track the delay minutes of aircraft, the public would better be served by knowing the delay suffered by each passenger. For instance, a flight could arrive 50 minutes late causing some passengers to miss connecting flights. The overall delay experienced by these passengers likely would be much greater than the 50 minutes of aircraft delay reported to BTS.

On June 20, 2007, Congresswomen Jean Schmidt sent a letter to Secretary Mary Peters commending the Department's action to review on-time reporting, and recommending that the Department collect complete information on gate returns, and cancelled and diverted flights.

As a follow up to the public meeting, BTS asked the reporting air carriers to provide answers to the following questions:

1. For Gate Returns, do you collect or have access to:

The number of times a plane returns to the gate?

The time the plane leaves and returns to the gate for each gate departure/return?

The number of minutes a plane stays on the tarmac for all gate returns until the final departure or cancellation?

In the case where a plane takes off and returns to the gate, the number of minutes the plane stays in the air (i.e., is there a wheels-on and wheels-off time)?

The cause for the gate return(s)?

2. For Cancelled Flights:

No additional questions.

3. For Diverted Flights, do you collect or have access to:

If the plane lands at an alternative airport, the airport's three letter code?

The number of minutes the plane stays on the tarmac at the alternative airport?

The wheels-on time at the alternative airport?

The cause of the diversion?

If the passengers are not deplaned, the wheels-off time when the flight resumes?

If the passengers are deplaned, the time the plane arrives at the gate?

Whether the flight continues on to the original destination airport?

If yes, what is the plane's departure date, gate departure time, and wheels-off time?

For all continuation flights, what are the wheels-on and gate arrival time at the original destination airport?

The answers of those carriers that responded to the questions lead us tentatively to conclude that the requested data can be collected with a couple of exceptions. Some carriers apparently do not currently retain information on how long an aircraft sits on the tarmac before the flight is ultimately cancelled. Other carriers apparently do not currently record the cause of gate returns or flight diversions. Nevertheless, the general opinion expressed by those carriers responding is that with some reprogramming to the individual carriers' internal systems, all the data could be collected and retrieved. ATA responded by proposing the addition of five data elements:

(1) Gate Departure Time—first time out at origin airport.

(2) Total ground time away from gate for all gate/air returns at origin airport, including cancelled flights—actual minutes.

(3) Average ground time away from gate for all gate/air returns at origin airport, including cancelled flights—actual minutes.

(4) Total ground time away from gate at divert and destination airport(s)—actual minutes.

(5) Average ground time away from gate at divert and destination airport(s)—actual minutes.

ATA requested that any changes to the reporting requirements be made at

the same time and that the implementation of the changes become effective no sooner than 6 months after the Department issues a new Accounting and Reporting Directive on the new reporting system. ATA also offered to participate in an industry working group comprised of DOT and interested carrier officials, much like the group that successfully collaborated on the reporting of the causes of delay.

Need for Improved Reporting and Disclosure

The Department believes that the Airline Service Quality Performance reporting system needs to be revised in order to provide consumers with a complete picture of tarmac delays. The current system also does not provide information on whether diverted flights ultimately reach their intended destination. The Department proposes to make the following revisions to its reports required pursuant to Part 234:

Current Data Fields

- For gate/air returns and cancellations—carriers would report the last gate departure as the Gate Departure Time (Actual).
- For diverted flights that ultimately reach their destination, carrier would report:
 - Gate Arrival Time (Actual) at destination airport.
 - Difference in Minutes Between Official Airline Guide (OAG) and Scheduled Arrival Time.
 - Actual Gate to Gate Time in Minutes.
 - Arrival Delay Difference in Minutes Between Actual Arrival Time and Computer Reservation System (CRS) Scheduled Arrival Time.
 - Wheels-On Time (actual) at destination airport.
 - The Minutes Late for the proper Delay Code(s).

New Data Elements

Cancellations and Gate/Air Returns

- For gate/air returns, first gate-departure time at origin airport.
- Total ground time away from gate for all gate/air returns at origin airport, including cancelled flights—actual minutes.
- Average ground time away from gate for all gate/air returns at origin airport, including cancelled flights—actual minutes.

New Data Elements

Diverted Flights

- Three letter code of airport for diverted airport(s).
- Wheels-on Time at diverted airport.

- Gate Arrival Time at diverted airport.
- Gate Departure Time at diverted airport.
- Wheels-off Time at diverted airport.

Technical Directive

BTS plans to issue a technical reporting directive in combination with a final rule. In the development of the directive, BTS would like to work with the air carriers to form a pilot group for submitting the new data elements. With proper testing, we hope to ensure that we would be collecting the required data in the most efficient manner possible for both BTS and the air carriers.

Tracking Individual Passenger Delay

We agree with ACAP that the airline quality service reports currently required to be filed do not capture the delays experienced by individual passengers when a missed connection, cancellation or diversion occurs. With the very high passenger loads on aircraft, it is becoming increasingly more difficult for passengers to rebook a flight. The current reporting system required under Part 234 was designed, however, to track aircraft and airline operations. When delays occur there are two types of delayed passengers: non-disrupted and disrupted. The non-disrupted passenger completes the flight itinerary without suffering a missed connection, diversion or cancellation. The delay minutes of a non-disrupted passenger are relatively easy to calculate.

The disrupted passenger either misses a connecting flight, or experiences a cancelled or diverted flight. The Department does not have the data available to accurately assign flight delay minutes to disrupted passengers as information is lacking on how the passenger completed the journey or even if the passenger completed their journey. Time-sensitive passengers may abandon their trip plans and return home while others may remain at the airport awaiting the next available flight. Tracking the movement of individual passengers and assigning delay minutes to individuals is difficult, if not impossible, and could be seen by some as an invasion of privacy. We believe the cost of tracking individual passenger movements would outweigh the benefit of assigning a delay time to a disrupted passenger.

Rulemaking Notices and Analyses

Economic Summary

Executive Order 12866

Under Executive Order No. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is a “significant regulatory action” [or non-significant if OMB agrees] under Executive Order No. 12866. The proposal has high Executive, Congressional and public interest.

This Executive Order also requires each agency to write regulations that are simple and easy to understand. To the extent possible, this proposed rule meets these criteria.

Cost/Benefits

Congress has proposed that BTS expand the reporting system to capture all operational data on gate returns, cancelled and diverted flights (see H.R. 2881, the FAA Reauthorization Act of 2007). Carriers have commented that the cost for programming to provide additional data on gate returns, cancelled and diverted flights could range from \$10,000 to \$60,000 per carrier. Using the high estimate, compliance to this rule could cost the industry \$1.2 million. It is difficult to assign a dollar value to the intangible benefits derived from the rule. Consumers will have more accurate data for making their transportation selections. The FAA will have complete data on all long tarmac delays.

Regulatory Flexibility Act

This Act requires agencies to analyze the economic impact of regulatory changes on small entities. The carriers that are required to report ASQP data

are all large air carriers with annual operating revenues exceeding \$600 million. Thus, this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Trade Agreements Act

This Act prohibits agencies from setting standards that create unnecessary obstacles to foreign commerce of the United States. ASQP data are for domestic operations only and have no impact on the foreign commerce of U.S. carriers.

Unfunded Mandates Reform Act of 1995

This Act requires agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that include a Federal mandate likely to result in the expenditure by State, local, or tribal government. This proposed rule imposes no expenditures on State, local or tribal governments.

Executive Order 13132, Federalism

The Department has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this proposed action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Paperwork Reduction Act

The Department has submitted a copy of the new information requirements in this proposed rule to the Office of Management and Budget for review. Based on carrier comments, we are estimating a first year increase in reporting burden of 900 hours per carrier or an industry increase of 18,000 hours. After the carriers have revised their systems, reporting burden should be reduced slightly in the future. We request that carriers provide estimates of what they perceive as increased costs and burdens from this proposed action.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda each April and October. The RIN Number 2139-AA13 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Air carriers, Reporting and recordkeeping requirements.

Accordingly, the U.S. Department of Transportation proposes to amend 14 CFR Chapter II as follows:

PART 234—[AMENDED]

1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 329 Secs. 41708 and 41709.

2. Section 234.4 is amended by adding paragraphs (a)(22) through (a)(29) and revising paragraph (b) to read as follows:

§ 234.4 Reporting of on-time performance.

- (a) * * *
- (22) For gate/air returns, first gate-departure time at origin airport.
- (23) Total ground time away from gate for all gate/air returns at origin airport, including cancelled flights—actual minutes.
- (24) Total number of gate returns.
- (25) Three letter code of airport where diverted flight landed.
- (26) Wheels-on Time at diverted airport.
- (27) Gate Arrival Time at diverted airport.
- (28) Gate Departure Time at diverted airport.
- (29) Wheels-off Time at diverted airport.
- (b) When reporting the information specified in paragraph (a) of this section for diverted flights, a reporting carrier shall use the original scheduled flight number and the origin and destination airport codes except for items cited in paragraph (a)(25) of this section.

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Issued in Washington, DC, on November 15, 2007.

M. Clay Moritz, Jr.,

Acting Assistant Director, Office of Airline Information, Bureau of Transportation Statistics.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234, 253, 259, and 399

[Docket No. DOT-OST-2007-0022]

RIN No. 2105-AD72

Enhancing Airline Passenger Protections

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Department of Transportation (DOT or Department) is seeking comment on whether it should adopt a rule to enhance airline passenger protections in the following seven ways: require carriers to adopt contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage, require carriers to respond to consumer problems, deem operating a chronically delayed flight to be unfair and deceptive, require carriers to publish delay data, require carriers to publish complaint data, require on-time performance reporting for international flights, and require carriers to audit their compliance with their customer service plans. We are proposing that most of these measures cover certificated or commuter air carriers that operate domestic scheduled passenger service using any aircraft with more than 30 passenger seats. We are proposing that one measure cover the largest U.S. and foreign carriers and that two other measures cover the largest U.S. carriers.

DATES: Comments should be filed by January 22, 2008. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2007-0022 by any of the following methods:

- *Federal eRulemaking Portal:* go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2007-0022 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,