

Sunshine Act Meetings

Federal Register

Vol. 52, No. 174

Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCEMENT TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, September 8, 1987. [52 FR 32642 August 28, 1987]

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: September 3, 1987.

Cynthia C. Matthews,
Executive Officer.

This Notice Issued September 3, 1987.

[FR Doc. 87-20721 Filed 9-4-87; 11:33 am]

BILLING CODE 5570-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 2, 1987.

TIME AND DATE: 10:00 a.m., Thursday, September 10, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *White County Coal Corporation*, Docket No. LAKE 86-58-R, etc. (Issues include consideration of requirements for taking enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)
2. *Greenwich Collieries*, Docket No. PENN 85-188-R, etc. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 87-20733 Filed 9-4-87; 12:47 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Issues regarding the qualifications of Federal Reserve Bank and Branch directors.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-20809 Filed 9-4-87; 4:00 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register

Vol. 52, No. 174

Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0441]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 87-18267 beginning on page 29841 in the issue of Wednesday, August 12, 1987, make the following correction:

§ 178.1010 [Corrected]

On page 29842, in the second column, in § 178.1010(c)(29), in the 14th line, "(HFF-310)," should read "(HFF-330)."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 341, and 369

[Docket No. 76N-052T]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antitussive Drug Products

Correction

In rule document 87-18144 beginning on page 30042 in the issue of Wednesday, August 12, 1987, make the following correction:

On page 30043, in the first column, in the first complete paragraph, in the eighth line, "antacid" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78N-2830 et al.]

Medical Devices; Withdrawal of 67 Proposed Rules Classifying Dental Devices

Correction

In proposed rule document 87-18266 beginning on page 30107 in the issue of Wednesday, August 12, 1987, make the following correction:

On page 30107, in the table, in the first column, in the 38th entry, "highlight" should read "headlight".

BILLING CODE 1505-01-D

30 CFR Part 842

Wednesday
September 9, 1987

Part II

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Parts 842 and 843
Surface Coal Mining and Reclamation
Operations; Evaluation of State
Responses to Ten-Day Notices; Proposed
Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843

Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its regulations in response to a petition for rulemaking. The proposed rule would establish a uniform standard for OSMRE's evaluation of responses by State regulatory authorities to notifications of possible violations (ten-day notices or TDN's). Under the proposed rule, OSMRE would accept a State regulatory authority's response to a TDN as constituting appropriate action to cause a possible violation to be corrected or showing good cause for failure to act, in accordance with the Surface Mining Control and Reclamation Act of 1977 (the Act), unless OSMRE makes a written determination that such response was arbitrary, capricious, or an abuse of discretion under the State program. The proposed rule would also establish a process by which a State regulatory authority could request informal review of a written determination to inspect by OSMRE's authorized representative.

DATES: *Written comments:* OSMRE will accept written comments on the rule until 5 p.m. Eastern time on November 9, 1987.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC at 9:30 a.m. on October 14, 1987.

Individuals wishing to attend, but not testify at the hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that it will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC.

Request for public hearing: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Chief, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-4295 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures*Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold a public hearing on the proposed rule on request only. The time, date and address scheduled for the hearing are previously specified in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating in the hearing should inform Mr. Stone (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 5 p.m. Eastern time October 9, 1987. If no one has contacted Mr. Stone to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

On May 30, 1986, the Mining and Reclamation Council of America (now part of the National Coal Association), and the Regulatory Assistance Program, comprised of ten State coal associations, presented a petition for rulemaking to OSMRE. The petitioners requested OSMRE to repeal its existing regulations authorizing the issuance of Federal notices of violation (NOV's) in States with regulatory programs approved by the Secretary (primacy States). The Director denied that part of the petition. 52 FR 21598, (June 8, 1987). The petitioners also requested OSMRE to adopt a uniform Federal standard for the evaluation of a State regulatory authority's response to a TDN, and specifically asked for an "arbitrary, capricious, and abuse of discretion" standard in 30 CFR Part 842. The Director granted that part of the petition. *Id.* Under Federal regulations, approval of part of the petition requires OSMRE to commence a rulemaking proceeding.

Several sections of the Act relate to the evaluation and enforcement of State regulatory programs. In section 101(f) Congress found that " * * * the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States; * * * " Section 201(c) authorizes the Secretary, acting through OSMRE, to make those investigations and inspections necessary to ensure compliance with the Act, and to publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act. Section 517(a) specifies that the Secretary shall make such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of State programs.

Section 521(a)(1) provides that if the Secretary has reason to believe that any person is in violation of the Act, or any permit condition required by the Act, he must notify the State regulatory authority. It further provides that the Secretary shall immediately order a Federal inspection if the State fails, within ten days after notification, to take appropriate action to cause the violation to be corrected or to show good cause for such failure. This statutory provision is implemented in the Federal regulations at 30 CFR 842.11(b). If the violation continues to exist at the time of inspection or, in situations involving a TDN issued following the initial inspection, at the time of reinspection, OSMRE issues an

NOV unless a cessation order is required pursuant to section 521(a)(2). 30 CFR 843.12(a)(2). Section 521(a)(2) requires the Secretary to issue cessation orders whenever any condition or practices exist which create an imminent danger to the health or safety of the public or a significant imminent environmental harm to land, air, or water resources. When a State regulatory authority has taken appropriate action to cause a violation to be corrected or has shown good cause for failure to take such action, section 521(a)(1) does not require OSMRE to inspect an operation or to issue an NOV.

The petitioners argued that the lack of a uniform standard for the evaluation of responses to TDN's has led to considerable disparity in the treatment of coal operators and State regulatory authorities. The petitioners also argued that the absence of a standard for the evaluation of a TDN response also causes a lack of deference to a State's discretionary authority in the interpretation and enforcement of its regulatory program and results in the substitution of OSMRE's judgment for that of the State if there is a disagreement over the interpretation of the approved State program. This, they asserted, is contrary to the intent and purposes of the Act and undermines the principle of State primacy.

After consideration of the petitioners' concerns, the public comments on the petition, including those of five States, and other analyses performed by OSMRE and included in the Administrative Record, OSMRE believes that a uniform standard for TDN evaluation is necessary in order to assure consistent and even-handed treatment of all operators and all State regulatory authorities.

III. Discussion of Proposed Rule

A. TDN Standard of Review

The terms "appropriate action to cause a violation to be corrected" and "good cause for such failure" appear in the Act as the criteria for evaluating a State regulatory authority's response to a TDN. 30 U.S.C. 1271(a)(1). However, neither the Act nor the regulations define those terms. In the past, OSMRE evaluated State responses on a case-by-case basis in determining whether State actions constituted "appropriate action" or "good cause." With regard to appropriate action, OSMRE stated in 1982 that the "crucial response of a State is to take whatever enforcement action is necessary to secure abatement of the violation." 47 FR 35627-8 (August 16, 1982). The 1982 preamble did not discuss

when good cause would exist for failure to take appropriate action.

OSMRE has tentatively concluded that the 1982 approach was unreasonably rigid in suggesting that only enforcement action would be considered appropriate. Other kinds of State actions, such as requiring permit revisions, could secure correction of the violation. Under a true primacy concept, a State should be given discretion to decide which actions are appropriate in a given situation.

The proposed rule would recognize the discretion given to States under primacy and require OSMRE to determine in writing that the State regulatory authority's response to a TDN was arbitrary, capricious, or an abuse of discretion under the State program before OSMRE would order an inspection or reinspection.

The proposed rule would create a uniform standard for evaluating a response by a State regulatory authority to a TDN, both under 30 CFR 840.11(b)(1)(ii)(B) and 843.12(a)(2). It would be consistent with the en banc decision of the United States Court of Appeals, which noted, "[O]nce a state program has been approved, the state agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision and the Secretary will not intervene unless its discretion is abused." *In Re: Permanent Surface Mining Regulation Litigation*, 653 F. 2d 514, 523 (D.C. Cir. 1981) (en banc), cert. denied, 454 U.S. 822 (1981). The proposed rule would require OSMRE to determine in writing that a State has abused its discretion before ordering an inspection that could lead to Federal enforcement.

This proposal would not affect a decision to inspect based upon § 840.11(b)(1)(ii)(C) when adequate proof is supplied that an imminent danger to the public health and safety or a significant imminent environmental harm exists. In addition, this rule is not intended to interfere with OSMRE issuance of NOV's as required by orders in *Save Our Cumberland Mountains v. Clark*, No. 81-2134 (D.D.C. 1985) and *Save Our Cumberland Mountains v. Clark*, No. 81-2238 (D.D.C. 1985).

An arbitrary or capricious response, or one that is an abuse of discretion under the State program, would be one in which the State regulatory authority has acted irrationally, or without adherence to correct procedures, or inconsistently with applicable law, or without proper evaluation of relevant criteria. To add perspective to this proposed TDN evaluation standard,

OSMRE would also provide guidance in the rule as to specific kinds of situations which would constitute appropriate action or good cause under the State program.

B. Appropriate Action

The proposed rule would identify "appropriate action" as enforcement or other action authorized under the State program to cause the violation to be corrected. Enforcement would include, but would not be limited to, the issuance of an NOV to the operator. "Other action" authorized under the State program to cause the violation to be corrected could include the initiation of the process to require a revision or modification to the operator's permit, 30 CFR 774.11(b), or the commencement of a formal proceeding to forfeit the performance bond if adequate to correct the violation and achieve reclamation. 30 CFR 800.50. The above examples are not meant to be an exhaustive list of acceptable responses.

By this rule, OSMRE would reject the concept that appropriate action to cause a violation to be corrected would only include responses showing that at the time of the State response either the condition constituting the possible violation of the Act no longer exists or the State has issued an NOV or cessation order. This proposal would recognize that sometimes situations would be complex and that, although the State must respond to OSMRE within ten days, State actions to resolve the situation and eliminate conditions constituting violations of the Act could take more than ten days. Direct OSMRE enforcement against an operation would not be utilized when no imminent danger to the public health or safety, or significant imminent environmental harm exists and when the State is acting reasonably to correct a possible violation. Under the proposed rule, appropriate action would mean that certain conditions may continue in the short term, but ultimately the violation of the State program will be resolved. OSMRE invites public comments on other responses by a State regulatory authority which may constitute "other action."

C. Good Cause

The proposed rule includes six categories of good cause. Unlike the concept of appropriate action, when good cause exists for failure to take appropriate action to cause a violation to be corrected, conditions which constitute a site-specific violation could continue in certain circumstances, when the State regulatory authority is acting

properly in implementing and enforcing its State program. A discussion of each category follows.

(1) Under the State program, the possible violation did not or does not exist. This would include situations where at the time of the State regulatory authority's inspection, the violation did not exist. If the State regulatory authority, based on its inspection of the site or its interpretation of the approved State program, determines that a violation did not or does not exist, it is the responsibility of OSMRE to demonstrate that the State's decision was arbitrary, capricious, or an abuse of discretion under the State program.

If OSMRE were to conclude that the State had not abused its discretion in concluding that conditions which OSMRE believes constitute a violation of the Act or Federal rules are not covered by the State program, then OSMRE would notify the State regulatory authority of a program deficiency under 30 CFR 732.17.

Thus OSMRE would respect primacy in that the State would be the front-line enforcement authority. At the same time, OSMRE would continue to fulfill its oversight role of assuring that State regulatory authorities effectively implement, maintain and enforce all provisions of their State programs and that such programs are consistent with the Act and Federal regulations.

(2) The proposed rule would accept a response by the State regulatory authority identifying a need for a reasonable and specified additional time to investigate whether a violation of the State program did or does exist. The determination of whether a violation exists occasionally is not readily apparent, particularly when the operation is in compliance with a permit, but the permit may be inadequate to assure compliance with the performance standards. This provision is not intended to allow prolonged delays in enforcement actions, but recognizes that it may take more than ten days to develop a rationale needed to require a permit modification or to sustain an enforcement action. OSMRE believes that it would be unreasonable to expect a State regulatory authority to act prematurely against a possible violation until it can sustain its decision.

(3) The State regulatory authority lacks jurisdiction under the State program over the violation or operation. Under the proposed rule, a State regulatory authority would not be required to take action against a violation or operation not covered by its program. In these situations, like those discussed above, OSMRE will confer

with the State regulatory authority concerning any deficiencies in its approved program and take any actions necessary under § 732.17, such as program amendments, to assure that the State program is in accordance with the Act and consistent with the Federal regulations.

(4) The proposed rule would provide that when a State regulatory authority is restrained by an injunction or other order from acting on the possible violation, good cause would exist. Courts may, at times, enjoin enforcement or other actions in order to maintain the status quo, thereby preserving their jurisdiction to hear the case and consider the necessary relief. Such orders may arise when an administrative or judicial tribunal has placed an operation on a schedule to correct the violation or to reclaim the site. In the past, certain orders restraining enforcement may not have been consistent with the Act. If a State is seeking to overturn the injunction, good cause would exist. If a State regulatory authority were not seeking to overturn the restraint, OSMRE would examine the State action and determine whether it was arbitrary, capricious or an abuse of discretion under the State program.

(5) If a State regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the State program, it would also be considered to have shown good cause. For example, the State regulatory authority might find that the operator has failed to correct other violations, and that it is now pursuing or has completed a permit revocation or suspension or a performance bond forfeiture proceeding.

(6) The State regulatory authority demonstrates that extraordinary circumstances preclude enforcement or render it futile. Enforcement action would not likely cause the correction of a violation in such circumstances, or serve any other useful purpose.

D. Informal Review of Written Determinations

To further assure that OSMRE exercises a consistent national policy that protects a State regulatory authority and an operator against unnecessary Federal interference in a primary State, the proposed rule would establish a process by which a State regulatory authority could request informal review of the written determination of OSMRE's authorized representative who made the initial decision that the State's response to a TDN was arbitrary, capricious, or an abuse of discretion under the State program. The proposed

rule would require OSMRE's authorized representative to immediately notify the State regulatory authority in writing of his determination that the State regulatory authority had failed to take appropriate action to cause the possible violation to be corrected or had not shown good cause for such failure. Typically the initial decision would be made at the field level by a Field Office Director. The notification could be by any method which produces a written document showing receipt by the State regulatory authority. The State regulatory authority would then have five days from receipt of the written determination to file a request for informal review of that determination by the Deputy Director of OSMRE.

An initial decision concluding that the State regulatory authority failed to take appropriate action or show good cause would not be considered to be the decision of the Secretary triggering the immediate Federal inspection requirement in section 521(a)(1) of the Act, unless the State decided not to request informal review. When informal review is sought, the OSMRE Deputy Director would make the determination contemplated by section 521(a)(1).

During the time when a State regulatory authority could exercise its review rights under the proposed rule, and after such exercise until the Deputy Director has completed such review, the authorized representative would not conduct an inspection or issue an NOV on the TDN. This proposed provision would not affect OSMRE's ability or responsibility to issue cessation orders in situations involving imminent danger to the public health or safety, or involving imminent significant environmental harm. After reviewing the written determination of the OSMRE authorized representative, and the material included in the request for informal review submitted by the State regulatory authority, the Deputy Director of OSMRE would render a decision within 15 days. The Deputy Director's decision would affirm, reverse, or modify the authorized representative's written determination.

If the Deputy Director concluded that the State regulatory authority had failed to take appropriate action or to show good cause for such failure, he would immediately order a Federal inspection. A written explanation of the Deputy Director's decision would be provided to the State regulatory authority.

If the decision resulted from a request for a Federal inspection under 30 CFR 842.12, the requestor would be notified of the Deputy Director's decision. A decision of the Deputy Director

reversing the authorized representative's initial determination would be subject to the informal review procedures of 30 CFR 842.15.

Finally, OSMRE would amend 30 CFR 843.12(a)(2) to include a reference to the proposed rule's informal review process at 30 CFR 842.11(b)(1)(iii), clarifying that the informal review process applies in such instances, and that OSMRE would not reinspect or issue an NOV during the pendency of that process. Although OSMRE is proposing to amend a portion of § 843.12(a)(2), OSMRE is not reopening the issue of its authority to issue NOV's in primacy States. For OSMRE's position in that regard, see 52 FR 21598-603 (June 8, 1987).

OSMRE specifically welcomes public comments concerning the concept and method of a process by which a State regulatory authority may request informal review of an OSMRE authorized representative's written determination on its response to a TDN.

Procedural Matters

Federal Paperwork Reduction Act

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions proposed by the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record at the address

specified previously (see "ADDRESSES"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal authors of this rule are Daniel Stocker, Division of Regulation and Inspection, Office of Surface Mining Reclamation and Enforcement; and Hugo Fleischman, Regulatory Development and Issues Management Staff; 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5385 (Commercial or FTS).

List of Subjects

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly it is proposed to amend 30 CFR Parts 842 and 843 as follows:

Dated: August 5, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation of Part 842 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 120 *et seq.*; and Pub. L. 100-34.

2. In § 842.11, paragraph (b)(1)(ii)(B) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 842.11 Federal inspections and monitoring.

(b)(1) * * *

(ii) * * *

(B)(i) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification and the State regulatory authority has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response. After receiving a response from the State regulatory authority, before inspecting, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met.

(2) For purposes of this Part, an action or response by a State regulatory

authority that is not arbitrary, capricious, or an abuse of discretion under the State program shall be considered "appropriate action" to cause a violation to be corrected or "good cause" for failure to do so.

(3) Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be corrected.

(4) Good cause includes: (i) Under the State program, the possible violation did not or does not exist; (ii) the State regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program did or does exist; (iii) the State regulatory authority lacks jurisdiction under the State program over the possible violation or operation; (iv) the State regulatory authority is precluded by an administrative or judicial order from acting on the possible violation; (v) the State regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the State program, or (vi) extraordinary circumstances preclude or render futile enforcement against the possible violation.

(iii)(A) The authorized representative shall immediately notify the State regulatory authority in writing when in response to a ten day notice the State regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, within 5 days from receipt of such written determination for informal review of that written determination by the Deputy Directory.

(B) Unless a cessation order is required under § 843.11, no Federal inspection action shall be taken or notice of violation issued regarding the ten day notice until the time to request informal review as provided in § 842.11(b)(1)(iii)(A) has lapsed, or if informal review has been requested, until the Deputy Director has completed such review.

(C) After reviewing the written determination of the authorized representative and the request for informal review submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Directory decide that the State

regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority a written explanation of his decision, and if the ten day notice resulted from a request for a Federal inspection under § 842.12 of this Part, he shall send written notification of his decision to the person requesting such inspection after completing informal review.

PART 843—FEDERAL ENFORCEMENT

4. The authority citation for Part 843 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100-34.

5. Section 843.12(a)(2) is revised to read as follows:

§ 843.12 Notices of violation.

(a) * * *

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate enforcement action can be

taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, subject to the procedures of § 842.11(b)(1)(iii) of this chapter, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation, if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

* * *

[FR Doc. 87-20596 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-05-M

Best First Federal Register

Wednesday
September 9, 1987

Part III

Department of Transportation

Office of the Secretary

14 CFR Parts 234 and 255

**Airline Service Quality Performance; Final
Rule and Amendment**

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 255

[Docket No. 44827 Amdt. Nos. 234-1 and 255-4]

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Certain air carriers will be required to submit certain flight data to the Department of Transportation (DOT or Department) for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. Upon request, these same carriers also must supply the information directly to consumers on a flight-by-flight basis. In addition, these air carriers will be required to submit information on mishandled baggage to the Department. In the notice of proposed rulemaking published in the *Federal Register* on June 10, 1987, (52 FR 22046), the Department proposed a series of regulatory and non-regulatory options to address airline delays and other service quality performance problems. The disclosure requirement and the CRS requirement, made final by this rule, are but two of the proposals that were discussed. No final decision on most other regulatory proposals has been made yet. Additional information on these and other issues may be requested shortly. Non-regulatory options, while still under consideration by the Department, are no longer being considered in the context of this rulemaking.

EFFECTIVE DATE: The final rule is effective September 9, 1987. The disclosure portions of the regulation require the submission of information beginning with September, 1987, to the Department by October 15, 1987. On or before December 15, 1987, air carriers will be required to submit certain data for CRS vendors to display in accordance with the provisions of this rule.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Gwyneth Radloff, at 400 7th St. SW., Washington, DC 20590 or by phone at (202) 366-9307; Barry Molar, at the above address or by phone at (202) 366-9285; Shelton Jackson, at the above address or by phone at (202) 366-5397; or Robin Caldwell, at the above address or by phone at (202) 366-9059.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 1987, the Department published a notice of proposed rulemaking (NPRM) (52 FR 22046) which proposed regulatory and non-regulatory approaches to alleviate airline delays and consumer dissatisfaction with services provided by airlines. The basis for this rulemaking, discussed more fully in the NPRM, includes information gathered in the Department's ongoing investigation into air carrier scheduling practices (Orders 87-2-4 and 87-4-17/18/19/20), consumer complaints, and documents filed by several air carriers and a public interest organization.

The proposal presented a series of alternatives and posed 70 questions for commenters to address. A thirty-day comment period was provided and more than 200 responses were filed.

The scheduling reliability regulatory proposals included:

- A *disclosure rule*, which would provide information on the reliability of carriers' service, in terms of delays and cancellations. Five alternative rules were proposed:

1. Air carriers would report flight performance and cancellation data monthly to DOT in specified markets;

2. Air carriers would report the percentage of flights by hub and system-wide that depart from the gate more than 15 minutes late and report system-wide cancellation data based on available seat miles;

3. Air carriers would report flight arrival, departure and cancellation data for specified markets to DOT monthly, in a computerized format, and CRS vendors would either be encouraged or required to put the information in their CRS displays;

4. Air carriers would be required to adjust flight times of delayed flights in schedules held out to the public; and,

5. The Department, based on data provided by air carriers, would issue an "Airline Rating".

- A *performance standard*, which would establish parameters for determining when failure to meet published schedules would be considered an unfair or deceptive practice under section 411 of the Federal Aviation Act, as amended ("Act") (49 U.S.C. 1381).

- A *computerized reservation system ("CRS") rule*, which would impose requirements on CRS vendors. This operation included four alternatives:

1. Require vendors to identify consistently late flights in the primary display screen;

2. Require vendors to display flight schedule reliability information in secondary displays;

3. Require vendors to assign a penalty factor to frequently late flights for display ranking purposes; and,

4. Require CRS vendors to modify flight ranking algorithms.

The NPRM also proposed other service quality performance regulations governing matters such as telephone reservation response time, lost baggage, denied boardings, misconnections, cabin amenities and discount fare marketing practices.

Finally, the NPRM posed non-regulatory options on the problems of airline scheduling delays and the other consumer issues. These alternatives focused on legislative authority to require or oversee peak hour pricing at airports, provision for the Federal Trade Commission to have authority over aviation consumer matters, and non-legislative option to encourage peak-hour pricing by airports.

II. The Problem

As is evident from the data cited in the NPRM and comments in the docket, flight delays are a major concern to consumers and to those providing services to the consumers, from air carriers to travel agents. The vast majority of comments filed by individual consumers, totaling nearly 200, express problems with flight delays and cancellations, and assert that some form of additional regulation is necessary. Consumer complaints filed with the Department, as detailed in the NPRM, also have risen. Petitions for rulemaking filed by American, Continental, and Aviation Consumer Action Project (ACAP), and responses by United, Delta, and Trans World too recognize that delays are a serious problem and that disclosure of additional information to consumers would be valuable.

Our own investigation into airline scheduling practices at Atlanta, Boston, Chicago's O'Hare, and Dallas/Ft. Worth airports (Orders 87-2-4 and 87-4-17/18/19/20) indicates that delays are a widespread problem. Preliminary data show that arrival delays of 15 minutes or more occurred on 25 to 60 percent of all flight operations, depending upon the particular air carrier and airport involved. These delay data include mechanical-related delays, which under the rule, discussed below, are not required to be reported. Even discounting such delays from the preliminary data, delay rates remain significant.

The information above indicates that delays do exist and that consumers are dissatisfied with the product being offered to them by carriers. As

explained more fully in the NPRM, delays are a function of a number of interrelated elements, including carrier scheduling practices, inclement weather and air traffic control. Mechanical problems also can result in flight delays or cancellations.

Each party to the air traffic control system, including the government and the users, is striving to reduce delays in the safest and most effective manner. On the government's part, billions of dollars are being expended annually for safety improvements, capacity expansion, construction and related projects at the nation's airports. Operational and technological changes are also being made, such as the recently implemented Expanded East Coast Plan, which, among other improvements, increased the number of arrival and departure paths from the New York airports. In addition, the National Airspace System Plan is a multi-billion dollar on-going effort directed at improving the efficiency and capacity of the air traffic control system. Air traffic flow control procedures also are being upgraded to improve the system in the safest manner possible.

Carriers, for their part, have cooperated in scheduling discussions in 1984 and again in 1987 directed at spreading out operations at a number of airports to ease congestion. As detailed more fully in comments submitted by Northwest, carriers are aware that delays can cause a loss of business and they also are making efforts to address the problem on an individual basis.

In addition, CRS vendors recently agreed individually to eliminate elapsed flight times from among the factors used to rank flights in CRS displays for non-stop markets. This should help remove one incentive that air carriers now have to publish unrealistic schedules.

However, many of the delays are predictable or recurrent. Based on historical operations, carriers know or should know that certain times of the day, days of the week, and seasons of the year are more congested than others. Yet, carrier schedules too often fail to take account of likely or predictable delay factors.

This problem of unrealistic scheduling, which most commenters agree is also a significant cause of airline delays, is clearly within the carriers' control; however, delays may be a problem that no carrier individually can totally solve.

Despite the recent movement by CRS vendors to eliminate the elapsed time factor from their display algorithms for some types of flights, carriers still may have CRS-based incentives to publish unrealistic schedules. For example, the

vendors' action does not cover connecting flights or direct flights with stops and does not change the use of displacement from requested departure time in the algorithm. Thus, some CRS-based incentives may still remain. In addition, the Civil Aeronautics Board's (CAB) experience with scheduling practices attests that carriers have always had non-CRS incentives to shave schedule time. Further, because of a lack of information, existing marketplace forces provide little or no incentives against such practices. Carriers that schedule unrealistically may face little risk that the practice will result in a loss of business because consumers do not have the information they would need to choose flights on the basis of on-time performance. Correspondingly, carriers who perform well in this respect are unable to capitalize on their good performance because there are no reliable data available that would allow them to compare their performance to that of their competitors.

Without solid on-time performance information, consumers can be left with a misimpression that a particular flight will arrive at a given time when the carrier knows, or should reasonably know, that this is less than likely to occur. This can result in great inconvenience, disruptions in travelling plans and frustration for the consumer. In many cases, consumers doubtless would have made other travel arrangements had they been apprised of the flight's past reliability. As commenters to this rulemaking indicate, consumers are aware that weather and air traffic control problems can cause a delay. This rule, though, addresses that aspect of scheduling practices that falls under the control or is within the knowledge of the carrier—giving consumers a reasonable estimate of when they can expect a flight to depart or arrive given factors within the carriers' knowledge. This is something the consumer expects and deserves.

No commenter questions our authority to take the actions proposed. Under section 411 of the Act, the Department has broad authority to address unfair or deceptive practices or unfair methods of competition in air transportation. The distribution of misleading information, such as unrealistic schedules, constitutes a violation. The Department, in an effort to curb possible abuses in the distribution of scheduling information through a variety of sources, including through CRSs, has authority to take appropriate regulatory and enforcement action under sections 204, 407 and 411 of the Act. Our regulations, 14 CFR 399.81, already provide that unrealistic scheduling of flights by air

carriers is an unfair or deceptive practice or unfair method of competition and enforcement action based on that section and section 411 of the Act will be pursued by the Department's Enforcement Office where the facts so warrant.

While the need to address the problem is well recognized, the matter of how has been a subject of debate. Through the rulemaking process the Department has sought to focus the debate to develop a practical and effective solution.

III. Summary of Final Rule

A. Disclosure

The final rule requires that certain air carriers, limited at this time to those with 1 percent or more of the total domestic scheduled-service passenger revenues for the 12 month period ended March 31, 1987 as reported in the Form 41 report, provide monthly flight operations data for domestic non-stop flights that serve certain airports, currently limited to those in the contiguous 48 states that had 1 percent or more of the industry's annual domestic scheduled service passenger enplanements, via computer tape to the Department. Flights delayed or cancelled for mechanical reasons would not be reported. The Secretary retains discretion under the rule to modify the list of air carriers subject to the rule, the list of airports for which they must report data and the data to be reported. This discretion would be exercised, for example, if a particular air carrier or airport not covered by the rule experienced a significant delay problem. Carriers (through their reservation agents) are also required to provide information on their flights' on-time performance to consumers upon request.

B. CRS

The second aspect of the rule requires that carriers provide monthly on-time performance information by flight to the CRS vendors and that CRS vendors display this information on their primary display screens. The information provided to vendors would be a single digit on-time performance code calculated from the data reported to the Department. We are no longer considering as part of this rulemaking the NPRM proposals to regulate algorithms used by CRS vendors to rank flights. However, we intend to monitor both delay rates and the impact of the algorithms closely, and will propose further action on this issue if necessary in the future.

C. Mishandled-Baggage Reports

In addition, the rule requires that the air carriers subject to the schedule performance reporting requirement also provide monthly data on their total number of enplaned domestic scheduled passengers and the number of mishandled-baggage reports filed by such passengers. These data are to be reported with the carrier's cover letter transmitting its schedule performance data tapes to the Department.

D. Other Issues

Other issues addressed in the NPRM, including misconnections, telephone response time, denied boardings, cabin amenities and discount fare seat availability, may be addressed at a later date. Except where otherwise noted, the other regulatory alternatives for addressing the delay and baggage issues, including establishing a performance standard, are still under consideration within the Department. On certain issues, a supplemental notice of proposed rulemaking may be issued. Non-regulatory options raised in the NPRM also remain under consideration, but will no longer be considered in the context of this rulemaking.

IV. Disclosure Rule

Under the rule, certain air carriers will be required to submit flight information to the Department for all their domestic nonstop flights serving airports with 1 percent or more of the total enplanements in the U.S. as reported in the Form 41 report. At present this includes 27 airports. The data required to be filed are discussed more fully below and detailed in a reporting directive contained in Appendix I.

The information collected will be useful to the Department for two purposes: first, to check the accuracy of information supplied to CRS vendors; and second, to make it available to the public. A delay will be defined as a flight that arrives 15 minutes or more past the scheduled arrival time.

The NPRM, in addition to proposing five disclosure alternatives, posed five general and 18 specific questions on these alternatives. Most commenters did not address the questions specifically, but instead reacted to the concept of a disclosure rule and what elements should be incorporated into it.

A. Alternative Approach/ATA

In addition to comments on the NPRM, the Air Transport Association (ATA) submitted an alternative voluntary inter-carrier agreement, with a request for prior approval of the agreement and a grant of antitrust

immunity under sections 412 and 414 of the Act, to address disclosure and performance issues. The ATA comments were filed on behalf of 11 air carriers: Continental Airlines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Northwest Airlines, Inc.; Pacific Southwest Airlines; Pan American World Airways, Inc.; Piedmont Airlines; TranStar Airlines, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; and USAir, Inc.

The ATA agreement, signed by the carriers listed above and Jet America and Alaska Airlines, Inc., would be open to certificated air carriers, and any U.S. citizen that has an exemption under section 416 of the Act and that operates regularly scheduled passenger service, on a voluntary basis. (This would include commuter air carriers.) Parties to the agreement would report to DOT by domestic airport pair the total number of scheduled flights, and the number of those flights which departed on-time and late, arrived on-time and late, and were cancelled. Parties to the agreement could submit explanatory information to DOT for any late arrival, late departure, or cancellation. Information would be submitted within 30 days after the end of the month, and, at the party's discretion, be filed on computer tape, disc or in print. CRS vendors that sign the agreement would be prohibited from using the reported information to bias the CRS display of flights or fare information. However, such vendors could display the flight performance information in an unbiased fashion in the CRSs. The agreement would be effective for two years, and continue on a year-to-year basis; carriers could withdraw in the third year with 45 days' notice.

ATA argues that the inter-carrier agreement is preferable to rulemaking since the carriers are better able to determine pertinent consumer information. This also would avoid government regulation in this area. ATA further notes that informed consumers are better able to make judgments on airline service than the government. Finally, ATA argues that the voluntary arrangement would avoid the "intractable" question of flight performance standards, adherence to which often is beyond the control of the carrier. The ATA comments also addressed other issues, which are discussed below.

Because of the decision announced in this final rule, the ATA's application is essentially rendered moot. No further review of this request, therefore, will be taken and we will dismiss the application.

B. General Comments on Disclosure

Generally, most commenters support a disclosure rule, although differences exist as to the details on what, how, when and to whom disclosure should be made. Three of the five disclosure options are basically the same, with the real distinction being what type of information should be disclosed and to whom and how disclosure should be made. The discussion that follows, therefore, does not address specifically each of the first three alternatives, but rather addresses the questions raised in the NPRM and responses concerning the details of how the regulation should be structured. The fourth and fifth alternatives take slightly different approaches and are addressed separately.

With the exception of TranStar and Jet America, each of the signatories to the ATA agreement filed separate comments, which generally support ATA's approach. Eastern, Northwest, and America West Airlines, Inc. assert that the Department did not stress enough the importance of upgrading the air traffic control (ATC) system, and the effect weather and ATC have on delays. Eastern notes that the problem is not merely a function of "unrealistic scheduling practices" and cautions that the Department should not promote its proposal as the answer to delays. Eastern states, though, that carriers can and should take into account weather and ATC in developing schedules.

Northwest and America West claim that some delays also are the result of recent consolidations within the industry, which have caused transitory operational problems that are now being worked out. Northwest notes that after its merger with Republic, it experienced a deterioration in service as a result of combining the operations of the two carriers. It spent millions of dollars correcting these problems to respond to the marketplace.

Northwest specifically cautions that any data collection should not have an anticompetitive effect and argues that the NPRM did not demonstrate a need for any of the options to protect the public because the marketplace does function. Nonetheless it does not oppose the disclosure of information.

Continental favors uniform and mandatory disclosure of information by all carriers because it will enhance service competition. Continental claims that individual carrier disclosure on a voluntary basis would not be useful to consumers since they would have no meaningful basis to compare one

carrier's claims with those of another carrier.

Southwest, also a signatory to the ATA agreement, supports ATA's basic position, but argues that DOT should accomplish the same result through regulation, rather than granting blanket antitrust immunity. It also asserts that the requirement should sunset automatically after two years unless affirmatively extended.

Midway Airlines argues that sweeping regulations would increase cost without justification since the delay problem is a function of mergers, air traffic control problems and inclement weather, and because no pattern of industry-wide abuse exists. Carriers are now required to publish realistic schedules and the proposal would not reduce incentives to shave schedules. It favors increased enforcement action. In addition, a rule could place it in an untenable position—being targeted for responsibility for delays when, as a small carrier, it often is dependent upon others, over whom it has little control, to provide airport handling services.

American Airlines supports an on-time reporting requirement because such a requirement would provide benefits to consumers. It points to a competitor's published flight times to suggest that unrealistic scheduling does occur. American argues against both a regulatory standard and a rating system.

A number of other groups also generally support a disclosure rule, including the Massachusetts Port Authority (Massport), the Port Authority of New York and New Jersey (Port Authority), the Aviation Consumer Action Project (ACAP) (which initially filed a rulemaking petition in this proceeding), the New York City Department of Consumer Affairs (NYCDA), the Michigan Department of Transportation, and the City and County of Denver.

Nearly 200 consumer comments were filed. These comments express personal complaints and experiences with certain airlines. More than 70% of these comments support some form of re-regulation of the airlines by the government. The majority believe there has been a decrease in airline service quality since deregulation and, therefore, assert the quickest solution would be re-regulation. Some typical service problems cited include lost luggage, overbookings, flight delays, and misleading advertisements on discount fares.

Although most consumer commenters suggest that direct regulation of airlines would be the best solution, a few provide some alternatives, such as adding incentives to carriers to improve

performance. One commenter suggests supplying loans to those airlines that provide exemplary service. Others suggest fining those airlines that are consistently late. Other suggestions range from making airlines post their delays on the computer screens to docking the pay of airline crew members.

Response: The Department recognizes, as indicated in the NPRM and discussed above, that airline delays are a complex phenomenon with many causes that at times are not capable of being identified precisely. Certainly, as Northwest and others assert, mergers can exacerbate delays in the short term while carriers consolidate operations. Weather and ATC clearly play a role in airline delays as well.

The rule seeks to address one aspect of the problem—that portion that is under the control of the air carrier. This, as Eastern suggests, includes the ability of a sophisticated and computerized business to account for historical seasonal variations and ATC delays in determining schedules. The existence of chronically late flights, as documented in the airline delay investigation, suggests that unrealistic scheduling practices deserve a significant part of the blame for the current high level of delays.

We disagree with Midway's claim that airline delays are not an industry-wide problem. Evidence from the delay investigation shows that delays are widespread. More than 30 percent of all flights during a number of good weather sample weeks in 1986-87 in and out of Atlanta operated by two carriers arrived 15 minutes or more late. An analysis of data on flights to and from Atlanta, Boston, Chicago O'Hare and Dallas/Ft. Worth this year also indicates the depth of the delay problems: nearly 25 to 60 percent of all operations, depending upon the carrier and airport, were delayed by 15 minutes or more based on a comparison of the scheduled gate arrival time versus actual gate arrival time as reported by the pilot or gate dispatcher.

While we believe the problem to be serious and wide-spread enough to warrant intervention at this time, we see no reason to consider wholesale re-regulation of airline services. The action we take here should help bring marketplace pressures and incentives to bear on the problem by improving the availability and accuracy of consumer information. We are also continuing to study other regulatory and non-regulatory approaches to this and other current consumer service problems, and will not hesitate to implement appropriate solutions if the problems

persist. However, we have every expectation that these matters can be addressed effectively by measures far less drastic than re-regulation.

Finally, Southwest's proposal for an automatic sunset provision has merit, and the final rule consequently provides for termination on December 31, 1990. The termination date could be extended, if necessary, through rulemaking. This termination date is consistent with the termination date for all of the CRS rules (14 CFR 255.10(b)), and, rather than have different sections of CRS regulation terminate at different periods, one date will be used. The disclosure portion of the rule will follow the same termination date.

C. Specific Questions

1. What must be disclosed?

The rule requires that certain air carriers submit flight data to the Department. The format, specified in Appendix I, is essentially identical to that used in the Department's investigation into airline delays at Atlanta, Boston, Chicago O'Hare and Dallas/Ft. Worth, Orders 87-2-4 and 87-4-17/18/19/20. One-half of the carriers that will be subject to the rule's requirements are already familiar with it. This format should assure that the costs to carriers of submitting information are relatively small and provide the Department with the data necessary to provide information to the traveling public. The data for each scheduled operation of a scheduled domestic non-stop passenger flight generally include:

- The name of the carrier;
- The flight number;
- The airport codes;
- The date and day of the scheduled flight operation;
- Scheduled arrival and departure times;
- The actual arrival and departure time (if a scheduled operation was cancelled, that fact is to be noted as well);
- Scheduled and actual elapsed times; and,
- The differences between actual and scheduled departure, arrival and elapsed times.

A scheduled flight operation that has been delayed or cancelled for mechanical reasons will not be reported as a flight. Arrival and departure time will be measured by the time of arrival at or departure from the gate.

Comments: ATA, as detailed above, favors disclosure of information on the number of scheduled domestic flights and the number that depart on-time and

late, arrive on-time and late and are cancelled, on an airport-pair basis.

Florida Express, a large regional air carrier, argues that the data should include only the percentage of flights that depart and arrive within 15 minutes of the scheduled departure and arrival times and the percentage of scheduled available seat miles completed. It argues that the figures should be provided for each non-stop market and for the carrier's entire system. Anything less than all non-stop markets would not be useful to the consumer in selecting a flight.

American initially proposed disclosure of data on the top 250 markets. It now favors disclosure for all flights and suggests this would not be burdensome. This information then could be used in CRS displays. It specifically believes that the percentage and number of times each flight was cancelled or failed to operate and information on arrivals and departures should be disclosed. If a choice is made between arrivals and departures, it favors arrivals because the disclosure of departure information would not discourage elapsed time competition. In addition, it suggests that data aggregated by hub also be reported to encourage realistic scheduling. Concerning a percentage definition of a frequently late flight, American favors a 90 percent on-time threshold, but it argues that the best solution would be to require reports on flights and let the consumers decide.

Eastern claims that information should be provided on a system-wide basis, and that reporting for any subset would be too much of a burden on some carriers. Pan Am specifically supports the ATA's information proposal. The Association of Retail Travel Agents (ARTA) also favors disclosure of flight information for all city-pairs, although if the Department decides to narrow the scope of the data, information on the top 300 city-pairs could be required. The Michigan Department of Transportation suggests that reporting be limited to an on-time arrival percentage and the average delay in arrival, and time should be measured "gate-to-gate." It would not provide a 15 minute grace period for defining a late flight.

Delta favors information on a market-by-market basis for all markets and for all air carriers. Delta also argues that DOT should not adopt the old Civil Aeronautics Board on-time arrival formula, if ATA's alternative is rejected. Instead, it asks that disclosure be based on the average time in minutes a carrier's flights are delayed, based on the schedules for flights in particular markets. It claims that the 15 minute delay standard would not be useful

since it could indicate that all of a carrier's flights were late, even when each delay was 16 minutes. Another carrier could have 75 percent of its flights listed as on-time, when the 25 percent of flights that were late were delayed more than 30 minutes. Thus, the information for the consumer may not be helpful and an average would be more useful. It suggests information be submitted quarterly.

Northwest indicates that it has no objection to measuring the percentage of flights within 15 minutes of schedule, or the use of an average figure for domestic flights. The information could be provided by flight, city-pair market, or system-wide. Northwest suggests that we could consolidate any arrival and departure flight data at a later point.

Response: The Department does not believe that the scope of the information requirement ATA proposes would provide enough useful information to the consumer. Under the ATA proposal, consumers' ability to assess the reliability of advertised schedule times and to make informed choices among available flights would be limited because they could not determine whether a particular flight had a poor performance record. Consumers would only be able to determine in a given market how the carrier's flights generally performed. Both on-time performance and carriers' incentives to hold out unreasonably short flight times can vary greatly within a given market depending on the time of day. Thus, we have decided to require information on a flight-by-flight basis instead.

The Delta average-time idea has some advantages in that it gives consumers more specific data than a 15-minute late standard. However, it would not give consumers data on a specific flight, which we believe is extremely valuable.

Initially, we will limit the airport pairs for which the information must be reported to domestic segments involving the 27 airports listed in Appendix I. These airports represent the largest airports in the contiguous 48 states, each having enplanements of 1 percent or more of the total U.S. domestic scheduled passenger enplanements. Together, these airports account for approximately 66% of all domestic scheduled enplanements at U.S. airports, and enplanements of passengers travelling to these airports from smaller points likely constitute a large percentage of total enplanements as well. While information on all markets could be of some use to consumers, we believe that our focus on the segments involving the designated airports will provide substantial benefits and will help limit the costs of reporting

and dissemination. Even with the limitation, the reports will cover approximately 1500 airport pairs. Unlike proposed limitations that focus on market size (e.g., the 200 or 500 largest markets), this limitation will not screen out all information on smaller, thinner markets. This, in turn, should help minimize carrier incentives to shift delays to the less dense routes out of the 27 airports.

In addition, directing our attention to these specific airports should aid all consumers, and not just those flying to, from and through the designated 27 airports. If unrealistic scheduling practices are curtailed for flights serving the largest (and most congested) airports, all consumers including passengers flying between cities not covered by this rule will benefit because of the interrelationships within the air transportation system created by carriers' massive hubbing operations (most of which are located at the largest airports). For example, if an aircraft is used for a segment between Denver and Kansas City, which is not among the 27 airports, and then for a segment between Kansas City and West Palm Beach, which is not among the 27 airports, the second segment should also receive a better on-time performance as a result of improvements in the on-time performance for the first segment. In a sense, a "domino" effect should result for flights throughout the country. Moreover, delays and misconnections associated with the large hub complexes appear to be a significant cause of the current consumer dissatisfaction. Giving consumers better information on the flights into and out of these complexes should help them anticipate and avoid such problems. At the same time, limiting the number of markets for which data are reported should help reduce the costs of reporting and disseminating the data.

The decision to limit the airports for which information is reported to those within the contiguous 48 states has the effect of excluding Honolulu. We have no indication that Honolulu has encountered significant delay problems. Moreover, we will receive delay information on almost all mainland-Hawaii airport pairs in any event, since most flights to Hawaiian destinations depart from the 27 largest mainland airports.

If evidence suggests that additional airports should be covered by this rule, the Department reserves the right to alter the list of airports in Appendix I.

Some carriers argue that submission of data on a subset of all flights would be more difficult than reporting on all of

their flights. The final rule provides carriers with the option to submit the required data on all of their flights. Voluntary information will be accepted by the Department if it is provided in the form specified by the rule and it is accompanied by a written statement describing in detail the data that are being volunteered. Once a carrier begins to file voluntary information, it must continue to do so for at least a 12-month period.

Response on other issues: We do not include a reporting requirement on misconnections, as Massport requests. This option is not foreclosed by this final rule and will continue to be reviewed. An industry average similar to the one Massport seeks may be provided by the Department in its published summaries. Carriers, of course, will be free to use the information to compare their service to the industry average in their advertising, subject to the existing on-time performance advertising requirements in 14 CFR 399.81.

Eastern and Continental suggest that the term "cancellation" should be defined to exclude those flights cancelled 48 hours prior to scheduled departure where passenger notification has been completed. Northwest notes that flight cancellation and completion data are now reported to the Department on a quarterly basis by city of origin, but it does not object to providing the information monthly. The Department will not adopt the Continental standard at this time. Instead, the data for cancelled flights will include all flights cancelled, except those cancelled for mechanical reasons, as discussed below, in order to provide the consumers with a broader picture of a carrier's performance.

2. Who will have to disclose the information?

A specific list of carriers that must file data is listed in Appendix I. The Secretary, or the Secretary's delegate, can revise the list if evidence suggests that other carriers are experiencing delay problems. Air carriers not required to file data may do so voluntarily if their submissions comply with the same format, content and timeliness requirements as apply to the larger carriers. If such carriers elect to file data, they must cover either all flights serving the airports covered by the rule or all of the carrier's flights. In addition, if such carriers begin filing such data, they must continue to do so for at least a 12-month period.

Collectively, the reporting carriers account for about 90 percent of domestic operating revenues. A review of the June

1987, *Official Airline Guide* reveals that their flights to and from the 27 largest airports account for approximately 63% of all domestic scheduled flights. These airports enplane about 66% of the total domestic passenger enplanements. At this point, it does not appear to be necessary to have all carriers report information, particularly since the carriers directed to report this information account for a large percentage of the domestic scheduled service. By limiting the number of carriers that are required to report data, the burdens on smaller carriers of reporting information are eliminated and the costs of processing and disseminating the information by the Department also are reduced. In addition, we note that the carriers that must report information and the airports specified represent a large percentage of delays nationwide.

a. Size Exemption. Comments: The Regional Airline Association argues that the disclosure rule should not be applied to carriers who provide service with aircraft having 60 or fewer seats, generally serve short-haul markets, and experience competition from other modes of transportation. The last factor forces RAA members to be particularly sensitive to on-time performance since, if their flights consistently experience delays, potential passengers can choose other means of travel. In addition, RAA points out that the old CAB reporting requirements did not apply to small carriers, and that most do not maintain delay data and not in the format required. The costs of doing so, it argues, would be burdensome. Excluding these carriers from the rule it claims, therefore, is appropriate.

Eastern argues that code-sharing carriers should report data as separate entities. It also notes that a late flight affects passengers without regard to the size of the carrier or the length of the flight. American shares this opinion. Pan Am claims that placing additional burdens on smaller carriers and on commuter operators is not necessary. ARTA argues that all scheduled air carriers should submit information, and small carriers should be exempt when their service is not competitive with another carrier. Eastern and American assert that size is no reason for exempting carriers from a reporting requirement. Michigan DOT also argues that all carriers including commuter airlines should report information.

Response: Eastern and American are generally correct in arguing that delays affect passengers on small planes as well as passengers on large planes. However, as an initial matter, we will limit the application of this rule to large

air carriers. First, large carriers are much more likely than small carriers to maintain their flight performance data in a computerized form that makes it relatively easy for them to supply us with the required information. Thus, compliance with the rule is likely to be much more costly for small carriers than for the large carriers. Second, there may be some validity to RAA's argument that the availability of surface transportation alternatives for many of the small carriers' flights provides a significant discipline on the scheduling practices of these carriers. Given the likely cost disparity, we will refrain from requiring reports from these carriers at this time. However, we will continue to review the coverage issue, and will extend the reporting requirements to the smaller carriers if it becomes necessary.

b. Intra-Alaskan Service. Comments: MarkAir, an intra-Alaskan carrier, argues against applying the disclosure requirement to operations within Alaska. It cites past actions where Alaskan service has been treated differently and suggests that, because of climatic differences, a disclosure rule could adversely affect the safety of operations within the State.

Response: No airport in Alaska is among the 28 largest U.S. airports, or among the largest 27 airports in the contiguous 48 states. Thus, our reporting requirements will not mandate the submission of any data on any intra-Alaska airport pairs.

c. Applicability to International Operations. Comments: American and ACAP argue that international operations, including those conducted by foreign air carriers, should be disclosed. However, most commenters agree that on-time performance for international operations should not be reported. The International Air Transport Association argues that only "air carriers," which is specifically defined in the Act to exclude foreign air carriers, should disclose the information. ATA concurs that international operations should not be included in the disclosure rule. TWA filed a response to American's comments and asserts that the rules should not be applied to international markets. It argues that operating rules differ from country to country and these rules may have an adverse affect on on-time performance. Other factors also could affect on-time performance for international operations, such as foreign labor disputes and sub-par check-in facilities. TWA claims U.S.-flag carriers "have unfairly been denied sufficient or adequate check-in and reservation facilities" at foreign airports, which

adversely affects a U.S.-flag carrier's on-time performance vis-a-vis the performance of that country's national carrier. It also cautions that if information is required from foreign air carriers, foreign carriers would object, leading to international friction.

Responses: We will not require foreign air carriers or U.S. air carriers to file data on their international flights. Under the NPRM, the proposed regulatory language suggested that "air carriers" would be subject to the rule. Thus, the NPRM did not envision this aspect of the rule applying to foreign carriers. In addition, disclosure by U.S. carriers on international flights could place them at a competitive disadvantage vis-a-vis their non-reporting foreign carrier competitors.

3. To whom must information be disclosed?

The information required to be disclosed must be submitted to the Department and, as discussed below, to CRS vendors although in a different format. In addition, upon request, carriers required to submit data to the Department and to CRS must provide on-time performance information to consumers.

Comments: Most commenters agree that information should be disclosed to DOT. The ATA alternative proposal also relies on information being provided to the Department. Massport asks that the information be summarized, distributed by the Department, and made available to airport operators.

Response: The Department will act as a collection point for the data, and will make the information available to the public as discussed below. Carriers also are free to use the information in advertising (subject to the procedures of 14 CFR 399.81(b)). As Northwest argues, this may be an effective method to distribute general information carrier performance to consumers. In addition, and as discussed below, we are requiring direct disclosure to consumers upon request during the course of reservation transaction and inquiries and disclosures to CRS vendors in order to put specific flight performance information into the hands of consumers through travel agents. Finally, the published data will be available to airport operators.

4. How should disclosure be made?

Data must be provided to the Department on computer tape. The methods by which data will be provided to CRS vendors are discussed below.

Comments: Most commenters agree that the information should be made

available on computer tape to the Department. Florida Express suggests that we also permit it to be submitted in hard copy. The proposed ATA agreement also gives signatories the option of providing us a hard copy.

Response: In today's computerized airline industry, and in particular with respect to those carriers that must report information under this rule, the need for (and usefulness of) voluminous data in hard copy is less than clear. These volumes would not be easy to "skim" through for a consumer, or anyone else interested in such information. Thus, we will require that the information be submitted on computer tape. Information in this format will enable the Department to make it available to the public in a timely manner. Air carriers can utilize the waiver procedures if this format, as opposed to supplying the data by disc, is burdensome. Carriers are free to make hard copies available in addition to the computer tape, but we will not require it.

5. When and how frequently must disclosure be made?

Carriers will be required to submit the data to the Department fifteen days after the last day of each month.

Comments: The dispute in this area centers on whether to use a 10, 15 or 30 day time frame. All carriers agree that 30 days is feasible, and some note that 15 days is sufficient for carriers to compile and submit the data to the Department. ARTA argues that 10 days is sufficient.

Response: Based on our experience in the delay investigation, and because of the type of information requested, the Department believes that a 15-day reporting period is more than workable for the affected carriers. If particular problems are encountered with this requirement, they can be worked out on a case-by-case basis.

d. Specific Disclosure Options (Alternatives four and five).

Alternative Four: Under this alternative, carriers would be required to adjust flight times of delayed flights in schedules held out to the public.

At this point, the Department will reserve action on this proposal.

Alternative Five: Under this option, the Department would compile specific data, assign it a weighted factor and issue an airline rating.

At this point, the Department will reserve action on this proposal.

e. Specific Questions Raised in the NPRM on Disclosure. The NPRM also specifically asked eighteen questions on disclosure. A number of these questions have been subsumed in the earlier discussions and we do not repeat the

discussion here. The Department's response with respect to each remaining issue is set out below.

1. Safety: Would the regulation adversely affect safety?

The data requirements will not adversely affect airline safety. The air carriers owe the highest duty to their passengers to provide safe air transportation. The regulation in no way seeks to interfere with that obligation. However, to avoid any possibility of penalizing carriers for their conscientiousness and concern for the safety of their passengers, we are providing that delays and cancellations caused by mechanical problems be excluded from the reported data. The intent of the rule is to provide consumers with useful information, and not to create negative incentives or to compromise safety in any way.

Comments: Eastern argues that if our rule covers each carrier's system, it would not affect safety. Pan Am claims the disclosure proposals will not affect safety.

Northwest notes that the importance of safety considerations is correctly stated in the NPRM. It indicates that what is disclosed, how the information is disclosed, and to what purpose the information is used, will affect the safety implications for any rule. Northwest states that the CAB was particularly concerned that a pilot who began a flight late not be under undue pressure to make up time to meet a specific arrival time requirement. The CAB concluded in promulgating 14 CFR Part 234 that safety considerations required special formulation of a performance standard for enforcement purposes, but that this was not necessary for disclosure purposes. Thus, CAB's disclosure rule did not allow carriers to excuse delays caused by normal seasonal variabilities, weather or ATC. The CAB's performance (or enforcement) standard, however, recognized that sometimes carriers could anticipate weather and ATC delays, but at times they could not. Northwest also claims that too much focus on elapsed or arrival time in any type of disclosure rule may create safety risks. From a safety standpoint it prefers a disclosure rule based on arrivals and departures, or departures only, which eliminates pressure to operate an aircraft to improve an arrival time rating. It also argues that disclosures in CRSs will affect safety.

American asserts that on-time disclosure would not affect safety. ARTA, which supports an updated CAB-type disclosure rule, asserts that there are no incentives for carriers to ignore

safety. Continental claims that if we exclude certain information from disclosure, particularly mechanical delays, our rules would avoid even the slightest possibility that carriers would compromise safety.

ACAP states that the airlines would not take unsafe actions, and the Department has sufficient authority to investigate if a safety concern does arise, particularly in cases where a carrier's performance shifts substantially.

Response: The disclosure rule will not adversely affect safety. First, the rule requires only disclosure of information, which no commenter argues is a safety concern. While the CRS disclosure aspect could be viewed as a measure of performance, it does not set a "make-or-break" performance standard for carriers. Instead, it provides straightforward factual information on carrier on-time performance. Further reducing any incentives to compromise safety is the increased ability of carriers to establish their own achievable realistic schedules that should result from this rule and the recent action by CRS vendors to eliminate the elapsed time factor from their display algorithm.

While requiring disclosure, the Department is not adopting a performance standard. This option remains open, as noted below, and the concerns raised by Northwest will be addressed if such a standard is adopted. Concerning disclosure in CRS's, we do not see how the dissemination of information through the CRS will affect safety any more than the disclosure of the same information by DOT, which Northwest admits will have no impact on safety. Northwest's arguments on the safety implications of CRS disclosure are discussed more fully below.

We believe that, as a general matter, the rule is structured so that perverse safety incentives are minimized; however, the rule also makes special provisions for mechanical-related delays and cancellations to eliminate any possibility that the rule might adversely affect safety. Last-minute mechanical difficulties are frequently unanticipated and obviously can have serious safety implications. Thus, as Continental suggests, the rule excludes the reporting of data relating to flight operations that are delayed or cancelled because of mechanical problems reported to FAA under 14 CFR 121.703 and 121.705. Under the rule, mechanical-based delays will include delays on both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, where the delay was attributable to the initial

mechanical problem. We recognize that the exclusion of this data will affect carrier on-time performance percentages, but in balancing the need for information versus safety, safety concerns are paramount. In addition, the exclusion on this information will not penalize carriers for being conscientious with respect to the safety of their passengers.

2. Explanatory detail: Should carriers also be required to provide a breakdown of reasons for a delayed or cancelled flight?

The Department will not require that explanatory information on delayed or cancelled flights be provided.

Comments: Most carriers agree that such information would be cumbersome and unnecessary. Pan Am claims that it maintains such information for departures but not arrivals, and notes that it does not determine the precise cause of a specific delay, which may actually have been due to an earlier delay experienced by that aircraft. Northwest states it maintains the information internally, but not in the DOT format. The Department, it claims, would have to standardize the explanatory information to make it useful. American asserts it is too hard to assign a cause to a particular delay for internal purposes let alone to report such causes. Florida Express argues that delay information should be given without any excuses for the cause of the delays. Massport too asks that this information not be collected. Under the ATA agreement, carriers would not be required to file this information but could do so on a voluntary basis.

ARTA agrees that the information should not be submitted. Instead, carriers should be required to maintain records and provide the information to consumers, if requested. This would apply to cancellation information too. The Department would then spot check carrier records.

Response: The Department agrees that the required reporting of explanatory details on why a flight was late or cancelled would be extremely cumbersome and might not prove useful, except perhaps in an enforcement case. We see no reason to collect the data for such use at this time; it could be provided by the affected carrier, if needed. Therefore, we will not require the submission of this information at this time. In the future, if such information does prove necessary, we can require its submission.

3. Dissemination of data to the public: How will the data be distributed?

The Department intends to expand the current monthly report on consumer complaints to include summaries of the

data required to be reported pursuant to this rule. The summaries for each carrier will include overall on-time, cancellation and baggage performance data and may include summary data for specific flights. We expect that the summaries will take about two weeks to compile. Thus, for example, the September data would be filed with the Department by October 15, and the summaries should be available by approximately October 30. In addition to the monthly summaries, the Department will make more detailed data available for public review, and flight-by-flight performance data also must be provided through CRS's, on approximately the same schedule. Of course, carriers must also provide the latest available information to consumers when they request it during reservation transactions.

Comments: Most commenters favored dissemination on a monthly basis by the Department. Northwest argues that no further dissemination is necessary since, in those instances where one carrier outperforms another, the better performing carrier will advertise its service. This avoids the necessity of requiring that information be displayed in CRS's. Florida Express agrees that there is no need to disseminate the information further since carriers will use it in advertising. American wants the information made available to carriers and CRS vendors.

Response: In addition to the Department's report and as explained in the discussion on CRS, to put this information to its fullest use, it must be displayed in CRS's. We agree that our dissemination of the reports will aid consumers and that carriers will use the information to advertise better service. However, additional disclosure is necessary to assure that passengers have access to flight-specific information at the time they make travel decisions. Disclosure in CRS's and through airline reservation clerks will meet that need. Concerning Northwest's and Florida Express' arguments on dissemination through advertising, we would hope that carriers do use the information in advertisements.

We note that the data and monthly reports on on-time performance will not be comparable to similar data maintained by the FAA, since the FAA's data measures departures from the gate and arrival at the runway, while the data reported under this rule will measure arrival and departure at the gate.

4. Consumer benefits: What benefits will flight information provide to consumers?

The Department strongly believes that for the marketplace to function properly, information must be available to the consumer. As the NPRM noted, though, consumers obtain information in a number of ways and in fact, as Northwest also argues, consumers now may be making choices on their general perceptions.

Comments: Eastern, Pan Am, American, ARTA and ACAP agree that consumers will benefit from having available additional information upon which to base travel decisions. The information also will give carriers an incentive to improve the service performance factors under their control, which too will aid consumers.

Response: As indicated earlier, carriers now have incentives to provide unrealistic schedules. Consumers often are confronted with such misinformation in making travel arrangements and unrealistic scheduling will influence their decisions, often in an unfair and deceptive manner. Through disclosure, carrier incentives to post unrealistic schedules should diminish and the incentives should shift to providing realistic schedules. In time, the development of more realistic schedules should reduce the delay rates, which should in turn reduce consumer frustration with airline delays. These benefits, while not computable, are real, and the rule is directed at obtaining those benefits for consumers.

5. *Costs: How costly would it be for carriers to disclose the information?*

Comments: Pan Am suggests that compliance with the Department's regulations, as opposed to ATA's voluntary agreement, would be more costly, although no specific data are provided. American notes that costs should not be a factor in this decision, and similar information had been submitted to the CAB for 20 years. United, Northwest, Continental and Eastern argue against requiring disclosure by ticket agents, contending that such requirement would be very costly and would produce minimal benefits. The primary cost element these carriers point to is the increased agent time that would be needed to search for and convey the on-time information to customers. United estimates its own increased personnel costs at \$30 million the first year and \$17 million per year thereafter. Northwest, Eastern and Continental estimate that their annual personnel costs would increase by \$30 million, \$40 million, and \$16 million, respectively. These estimates are based on the assumption that the rule would require "flagging" of late flights in primary displays, and detailed flight performance information in secondary

displays. American comments that ticket agents are already having to take time to respond to customer inquiries about flight performance, and that an effective rule could, in the long run, actually decrease this element of costs.

Response: As noted in the regulatory evaluation, the costs of our disclosure rule will not be significant. Most direct costs are related to compiling and processing a large volume of data. Computers are, of course, well-suited to performing such tasks economically. RAA's arguments concerning the costs to its members need not be addressed at this point since commuter carriers are not required to report under the rule and therefore no costs will be borne by those carriers or other small carriers.

As is discussed in greater detail in the regulatory evaluation, the reservations personnel cost estimates of United, Northwest, Eastern and Continental are overstated. They are based on the assumption that the disclosure mechanism will be much more complex and burdensome than that adopted here, and also assume that every reservations transaction would be lengthened substantially by the disclosure requirement. They also fail to recognize the fact, noted by American, that ticket agents are already spending time dealing with the on-time performance issue. The cost of that time should be excluded from any estimate. Our estimate of \$7 million in added personnel costs for the industry as a result of this rule appears to be a reasonable approximation. It also appears to be an acceptable cost given the rule's likely benefits.

6. *Impact on competition: What kind of impact, if any, will our rule have on competition?*

As noted above, competition can only be enhanced if the consumer has information on carriers' schedule reliability. The precise effects are difficult if not impossible to quantify, and no commenter does so. However, as ARTA notes, the information will allow consumers to weigh costs and the quality of service in making purchasing decisions.

Comments: Eastern suggests that disclosure should enhance competition. Pan Am notes that at this point it cannot determine the effects on competition. American claims it would increase service quality competition and would not affect fare competition.

Response: As noted under the discussion on consumer benefits, the disclosure of information should permit consumers to make more informed choices. By doing so, the rule will permit more effective competition on the basis of service quality as well as price.

V. Air Carrier Disclosure

The Department will require that all air carriers subject to this rule also have available the same information on their on-time performance that they are required to provide to CRS vendors, as discussed below. This information must be passed on to customers during the course of reservations and ticketing transactions upon reasonable request. Through the NPRM, we sought to determine the best methods to provide consumers with on-time performance information. The rule takes a number of avenues to achieve that solution. As discussed above, disclosure of information must be made to the Department, and as discussed below, must also be made available to CRS vendors. With the latter requirement, consumers will be able to make inquiries about, and travel agents will have available, air carrier on-time performance data. The requirement that air carrier agents too have available this same information is an obvious corollary.

We note that American suggests such disclosure is needed, and we agree. The costs of such a requirement are addressed above. We are not specifying the manner in which carriers must make the information available to their reservations agents; they may choose the method that is the most economical and effective for their circumstances. We are also not requiring that carriers' agents volunteer the information to every customer. This approach should help minimize the costs of this requirement while insuring that the consumers to whom reliable performance is most important have access to the information they need at the point of sale.

Finally, we are not imposing any explicit requirement that travel agents provide the on-time information upon request because we consider it unnecessary. Travel agents hold themselves out as impartial representatives of all airlines, and they have little incentive to refuse a request for information if it is easily available.

VI. Regulation of CRS Displays

The NPRM proposed four possible rules for modification of CRS displays to address the problem of unrealistic scheduling. Two proposals would have required display of on-time performance data in CRS's. Under one proposal, we would have required vendors to "tag" frequently late flights in primary schedule and availability displays (flights that were more than 15 minutes late would be considered late). The

proposed rule did not specify how the flights were to be "tagged," but most commenters assumed that an asterisk or similar character would be used. Under the second proposal, we would have required vendors to develop secondary screens providing more detailed information about on-time performance and cancellations.

The other proposed CRS rules would have required vendors to modify CRS algorithms to reduce CRS-generated incentives for unrealistic scheduling. Under one proposal, we would have required vendors to add 60 minutes to the elapsed time of frequently late flights for purposes of constructing schedule and availability displays. Under the other algorithm proposal, we would have required vendors to modify their flight display algorithms so that (a) differences in elapsed time of less than 30 minutes between two flights would not affect the relative ranking of those flights against each other, and (b) no penalties would be assigned to flights with departure times that were less than 30 minutes before and 30 minutes after a passenger's requested departure time.

A. The Final Rule

The Department has decided to adopt a version of the first alternative, presentation of on-time performance data in primary displays. The final rule contains two elements. The first is a requirement that carriers provide appropriate on-time performance data to vendors for inclusion in primary schedule and availability displays. The second requires CRS vendors to include this information in primary schedule and availability displays.

Two sections have been included in the new Part 234 requiring carriers to disclose certain data to vendors, as follows: For each flight segment for which carriers are required to submit on-time performance data to DOT, carriers will also calculate the percentage of operations that arrived within 15 minutes of scheduled arrival time. The calculation will be based on the performance data as reported to DOT. Delays and cancellations caused by mechanical problems will be treated as they are for reporting purposes; that is, flights affected by such problems will not be included in the calculations. Flights that are cancelled for non-mechanical reasons are to be counted as having not arrived on time. Carriers will then assign a single digit on-time performance code based on the percentile ranking of on-time performance indicated by the calculations. For example, flights with on-time performance records of between ninety and one hundred percent would

be assigned a "9", and flights with on-time performance records between eighty and eighty-nine percent would be assigned an "8"

The calculation process will be repeated monthly based on the data filed with DOT. Once the calculations are made, carriers must supply the vendor with the performance code either as part of their basic schedule tape submissions, or in separate tapes that will permit vendors to match performance codes with schedules in the CRS displays. New flights will be coded with an N. Carriers that provide basic schedule data to vendors through third parties are required to provide the data to third parties no later than the same time they would provide it to CRS vendors. We anticipate that the third parties would supply it to the vendors in the normal course of supplying them flight schedule data.

Carriers are required to calculate the performance code and submit it to vendors for each flight segment for which they are required to report data to the Department and for any multistop flights that they intend to have listed in CRS's that have any such nonstop flight segment as their last leg. For a multistop or one-stop flight, the performance code should be that assigned to the last relevant nonstop flight segment. For example, the flight performance codes would be assigned to a New York-Chicago-Seattle one-stop flight as follows: the New York-Chicago nonstop flight is assigned a performance code based on performance over the New York-Chicago nonstop segment; the Chicago-Seattle nonstop flight is assigned a performance code based on performance over the Chicago-Seattle segment; the New York-Seattle one-stop flight is assigned the performance code for Chicago-Seattle nonstop flight segment—the last relevant segment.

The rule permits carriers to calculate performance codes and submit them to vendors for all flights for which data is reported to the Department. Such submissions must continue for at least a 12-month period. This requirement is consistent with the provision on voluntary reporting to DOT and will help assure that carriers do not use voluntary disclosure solely to highlight good performances. Carriers therefore have a choice: either provide the on-time performance code for flights serving the 27 airports or for all flights.

The second element of this rule amends Part 255. CRS vendors will be required to include all performance codes supplied by carriers in primary schedule and availability displays. Codes for one-stop or multistop service

will be displayed as set forth above. For connecting flights, the code for each segment will be displayed. Vendors must revise their displays of the code monthly within 5 days after receiving updated information from participating carriers.

The amendment otherwise prohibits the use of flight performance data in construction of schedule and availability displays. The rule also prohibits vendors from providing additional information about on-time performance unless the information is based on data submitted to DOT pursuant to the new Part 234 and the same information is presented in the same fashion for all carriers.

B. Comments

Commenters that addressed regulation of CRS generally do not support regulations. American, ARTA, ACAP, Massport, Eastern and Northwest are the exceptions, but they do not support the same type of regulation. American and ACAP support mandatory disclosure of flight performance data in secondary screens. ARTA supports the primary screen option. Massport supports a DOT data bank on flight performance with mandatory inclusion in CRS's as well. Northwest, Eastern and American support regulation of CRS algorithms to reduce incentives for unrealistic scheduling.

1. The Need For a CRS Rule

A number of commenters oppose the concept of any regulation of CRS's in addition to criticizing DOT's specific proposals. Some commenters (Delta, Northwest) object that CRS regulation is premature, and that the problem of delays and scheduling does not require more than reporting of flight performance information to DOT at this time. Commenters, including Florida Express, United, Alaska Airlines, Mr. J. Kenneth Brubaker and the RAA, also argue that CRS regulation might not be effective. They contend that travel agents could not be relied on to assure that information actually reached customers; disclosure of information contained in CRS's would increase the time and hence the cost to travel agents of individual transactions. The cost considerations would discourage travel agents from taking the time to explain the on-time performance data in CRS's.

Commenters also complain that a CRS display regulation would exacerbate other CRS problems. USAir, PSA, Alaska Airlines, Continental, Delta, Eastern, RAA and Northwest fear that inclusion of flight performance information in CRS's would permit

vendors to reinstate carrier identity bias into CRS displays by manipulation of the performance data. Northwest, ATA, Southwest, Delta, Continental, Alaska Airlines, USAir, and PSA request that the Department prohibit the use of performance data in construction of schedule and availability displays, or at least prohibit use in a biased manner.

Florida Express, Delta, Pan American, Alaska Airlines, USAir, and PSA also object that inclusion of any flight performance data in CRS's would give vendors an excuse to raise participation fees, which they claim are already too high. They argue that the Department should not promote fee increases by requiring vendors to incorporate data on flight performance into their CRS's. In this connection, vendors United, Delta, and Eastern also note that a rule on CRS disclosure would increase programming and operating costs of CRS's. United also claims that regulations would damage delicate relationships with CRS participants. The United and Delta cost predictions focus on the proposals for secondary screens or regulations of display algorithms that the Department is not adopting at this time. On August 3, 1987, Continental and Eastern separately filed supplemental comments (we hereby grant their requests for leave to file those comments) in which they each contend that the inclusion of performance data would be inordinately costly for smaller CRS vendors. They state that their CRS vendor (presumably SystemOne) estimates the costs of including extensive performance data in CRS displays to be in excess of \$2 million, with an implementation time of one to two years. The two carriers caution that a CRS requirement could have an adverse impact on smaller CRS vendors because they do not currently have as much computer capacity as the larger vendors. As discussed below, the cost estimate reported by Eastern and Continental appears to be based either on the proposed secondary display option or on the assumption that the rule would require the maintenance of a substantial amount of performance information on every flight in the system.

American claims in a letter to the Assistant Secretary for Policy and International Affairs that it can add a single character code to primary displays at a reasonable cost. American also asserts in its letter that, because of current publicity, its own reservations agents are already spending a substantial amount of time responding to requests for schedule dependability information from customers. A copy of this letter has been placed in the docket.

2. Tagging of Frequently Late Flights

Except for ARTA, no commenter supports the proposal to identify frequently late flights with an asterisk or other symbol. Opponents argue that simply identifying late flights in this manner would not provide customers with much useful information, and that it would not permit a meaningful comparison among flights. American contends that the use of some form of flag could, for some flights in some CRS's, require more than one line on the display screen to be used for the display of each flight segment. Therefore "tagging" frequently late flights would reduce the number of flight segments that could be displayed on any one screen. American requests that the Department require the tagging of flights in all displays, including carriers' individual direct access displays, if we adopt this alternative. Northwest argues that the tagging approach might put undue pressure on carriers and crews to accomplish on-time performance in order to avoid having a flight stigmatized as frequently late.

In contrast, ARTA argues that on-time performance history is valuable information that assists passengers in choosing options. It claims that "frequently late" flights should be tagged in primary screens rather than on a secondary screen, which it believes would be less effective and efficient.

3. Flight Performance Data In Secondary Screens

With respect to disclosures on secondary screens, American and ACAP argue that such disclosures will provide information needed by consumers to make performance comparisons. In addition, American argues that this approach more closely reflects consumer interests than the tagging option because it permits the agent to use primary displays that are not burdened with on-time performance data for those passengers for whom on-time performance is not a concern. The secondary screen would make the data available when agents are dealing with a customer to whom performance matters. However, opponents state that there are strong disincentives for travel agents to look to secondary displays in the course of booking a reservation; therefore, they assert that customers will rarely get the benefit of the information from secondary screens. United claims that a secondary screen approach would be very costly. Its CRS, Apollo, would assertedly incur \$6.4 million in capital costs and \$3 million a year in operating costs under a combination primary and secondary

screen display rule, the only type of rule that United considers to be effective. Eastern and Continental state that their CRS vendor estimates the direct costs to itself of a CRS disclosure requirement at more than \$2 million. The two commenters differ somewhat in their descriptions of the information they received from their vendor, but the estimate is apparently based on the secondary display option. They state that the primary source of the increased costs is the increased computer capacity they believe a CRS disclosure rule would necessitate. Eastern states that the vendor's capacity requirements would be increased by eight to ten percent. This estimate assumes that the vendor would be required to maintain detailed arrival, departure and cancellation information for every one of the 285,000 world-wide nonstop flight segments contained in the vendor's system. The two carriers also state that, unlike larger vendors, their vendor currently has no available excess computer capacity.

4. Penalizing Frequently Late Flights in Display Algorithms

No commenter supports the proposal to add penalty minutes to elapsed time of frequently late flights. Commenters contend that a uniform penalty such as DOT proposed could be unduly harsh. Vendors argued that this alternative would be extremely costly. Some commenters also argue that inclusion of an elapsed time penalty would reduce the utility of the CRS because the CRS would contain potentially inaccurate data about the elapsed time of flights. Northwest argues that the elapsed time penalty might put undue pressure on flight crews to maintain good on-time performance records in order to avoid the penalty and maintain higher rankings in CRS displays.

5. Regulation of Display Algorithms

Four commenters, American, ARTA, Eastern and Northwest support regulation of display algorithms to reduce incentives for flight delays. These commenters argue that the use of elapsed time as a ranking factor provides incentives for carriers to publish unrealistic schedules, and that regulation is therefore necessary.

However, none supports DOT's proposal to prohibit the use of differences in elapsed time between two flights of less than 30 minutes as a factor to determine their relative display positions and to prohibit penalties for displacement from requested departure time for flights departing within 30 minutes of the requested time. Eastern

and ARTA support the Department's proposed rule on use of elapsed time, but not the restriction on treatment of displacement from requested departure time. American argues that our proposal on elapsed time would be insufficient to correct the problem and urges that DOT prohibit the use of elapsed time altogether. It further argues that the rule on displacement would have little effect on bunching of departure times because carriers have substantial non-CRS related incentives to schedule flights close together. Northwest argues that the elapsed time rule proposal is deficient because it calls for flight by flight comparison. Northwest suggests that, instead, the FAA should establish minimum elapsed times for each city-pair and DOT should prohibit carriers from publishing schedules with shorter elapsed times than the FAA minimum. Northwest supports the proposed requirement on displacement from requested departure time, but it contends that the use of 30 minutes as proposed would provide increased incentives to schedule departures on the half-hour. A 29 minute standard would avoid this result.

United specifically objects to regulation of the use of elapsed time in algorithms because such regulation would make CRS's less efficient in allowing consumers to exercise their preferences for minimizing the elapsed time of flights.

C. Response

The Department has concluded that a rule on display of performance ratings in CRS's as outlined above is justified at this time. The publication of unrealistic schedules is an unfair and deceptive practice under 14 CFR 399.81. CRS's are the primary source by which consumers get information on airline schedules, albeit indirectly, through travel agents. To permit carriers to publish potentially unrealistic schedules through CRS's without providing notice on the reliability of those schedules would permit carriers, including CRS vendors themselves, to use CRS's to deceive the public. In addition, travel agents are the primary outlet for airline tickets as well as being by far the most significant neutral source of travel information. The need to provide consumers with meaningful flight-by-flight performance information in a manner that allows them to use it in making their purchasing decisions can only be met by providing the information to travel agents in a usable form. Finally, although vendors' recent commitment to eliminate elapsed time as a ranking factor in their display algorithms for nonstop flights may reduce CRS-generated incentives, it will

not necessarily eliminate them. The use of displacement from requested departure time may still provide incentives for bunching flights, which can in turn lead to delays. Moreover, elapsed time will still be a factor for multi-stop and connecting flights. To the extent that CRS's are part of the problem, the effective use of CRS's as part of the solution appears to be reasonable.

The Department has determined that its final rule on CRS displays is an effective and efficient response to the delay problem; it will ensure that information on performance reliability is available to interested customers at the primary point of sale, i.e., the travel agent. Other sources of information may provide consumers with generalized performance information. The CRS rule will insure that information on specific flights is available to consumers at the time that purchase decisions are made. Moreover, this approach addresses many of the criticisms of the four specific proposals in the NPRM and of the concept of CRS regulation in this area.

1. Efficacy of the Rule

The use of a single digit percentile ranking on the primary screen should address the complaint that simple flagging of flights would not allow meaningful comparisons. Such a performance code will permit meaningful flight by flight comparisons without resorting to secondary display screens. Therefore the extra time and expense to use secondary screens should not act as a disincentive to travel agents to provide on-time performance information to customers. In addition, travel agents may have competitive incentives to use the information. American claims that consumers are already seeking reliability information. Once it is known that data is available to travel agents through CRS's, a travel agent may risk losing business if he or she refuses to use that information. To the extent that additional information will be useful to consumers, the rule permits vendors to establish quality of service displays in an unbiased fashion.

We recognize that the use of a single-digit code has some drawbacks. Because each number encompasses a ten percentage-point range, flights with the same performance number could differ in actual performance by as much as nine percentage points. Conversely, two flights whose on-time performance differed by as little as one percent could be assigned different codes. This outcome is an unavoidable consequence of using a single digit for the code. However, we anticipate that travel

agents will explain what the code means. Moreover, although a coding system allowing for more detail might be preferable, cost considerations lead us to reject an approach requiring the use of more than one digit at this time. American states that it can add a single character code to its Sabre displays at a reasonable cost, and we believe the same to be true for other vendors. We have no basis to conclude that the expense of adding multiple characters to primary displays would be similarly reasonable and, therefore, are hesitant to require vendors to make such an undertaking without testing the efficacy of the single-digit code.

This approach should also reduce the possibility that a CRS rule might adversely affect safety. Northwest's concerns stemmed largely from the use of an "arbitrary" definition of frequently late flights. The final rule specifies an on-time performance code for all flights on which data is reported. We recognize that this code will, in a sense, provide a performance measure for consumers. Incentives to achieve the highest grade will exist, but not nearly to the same degree as if we had employed a "tagging" system using one make or break standard. Without a category of "frequently late flights" or any penalty for flights falling into that category, carriers and flight crews should not feel strong pressures to avoid the stigma of such a classification. Similarly, we are not requiring vendors to adjust elapsed time of flights based on historic on-time performance at this time, and we are prohibiting vendors from using on-time performance as a ranking factor in flight displays. Since historic performance will not affect display position, it will not provide any undesirable incentives with respect to safety.

Northwest also suggests that any disclosure requirement that focuses solely on arrival time might put pressure to compromise safety. The CRS rule does focus on arrival time. However, no other commenter has suggested that arrival time reporting creates undue safety risks. Moreover, the CAB for many years required reporting of arrival time performance without any effect on safety. Even Northwest acknowledges that the Board's approach to arrival time performance, which like this rule, entailed a reporting requirement without standards, did not raise safety problems. Finally, the CRS rule accommodates safety concerns by excluding maintenance related delays from the calculation of the on-time performance code.

2. Potential for Abuse by CRS Vendors

The final rule specifically addresses the fear that a CRS rule would permit vendors to introduce bias into their displays. It prohibits the use of performance data as a factor in display algorithms, and it requires that any secondary service quality displays be constructed in an unbiased fashion based on data supplied to DOT. The rule specifies the type of data that must be included in primary displays and how it is to be included. In addition, carriers themselves will perform all data manipulations to establish the code to be included in the CRS. These features of the rule substantially reduce the risk of bias. The rule permitting carriers to calculate on-time performance codes based on voluntary reporting to DOT, and requiring vendors to display those codes should also reduce the risk of bias. It provides carriers with even greater control over how the on-time performance of their flights is reported in primary CRS displays.

Concerning the CRS fee issue, DOT is currently studying CRS fee levels in its inquiry in Docket 44643. The fee questions raised by the commenters in this rulemaking should not be studied in isolation, and we will address questions relating to overall fee levels in the general CRS inquiry. In any event, the direct costs to vendors for complying with the rule should be modest. In these circumstances, increased compliance costs should not provide vendors with any justification for substantial increases in fee levels.

3. Costs of the CRS Requirement

Vendor commenters (except for American) also expressed concerns over the cost of the rule. As shown in the Regulatory Evaluation, the direct costs of providing information to DOT and in CRS displays should be modest. Moreover, as shown in the evaluation, the costs to vendors should be a relatively minor portion of this total. In addition, DOT has fashioned the rule in a way to minimize the cost impact on vendors. The final rule avoids the programming costs of a second screen. United's estimate of substantial CRS costs is based in large measure on a secondary screen requirement and the need to process requests to view the secondary screen. Continental's and Eastern's estimates of substantial additional capacity costs also appear to be based on their anticipation of a rule that would require detailed secondary displays. Otherwise, Eastern's estimate that a CRS disclosure rule would increase its system's capacity requirements by eight to ten percent

would not be credible. The inclusion of a single-digit data field for a limited number of the system's displays could not represent such a large proportion of the system's overall capacity requirements. With a primary display requirement involving only a single digit, CRS capacity and operating expenses should be much less than United, Eastern and Continental estimated.

The rule also is designed to reduce programming burdens on vendors. The rule requires carriers to calculate the on-time performance code for their operations and supply it to vendors as part of basic schedule tapes or on a separate tape. As discussed in the Regulatory Evaluation, if carriers do the former, vendors would be required only to undertake a one-time reprogramming to include the code on their schedule and availability displays. If carriers do the latter, then at most, vendors would be required to develop and operate a program to merge schedule tapes with the performance data tapes. American states that SABRE can provide a primary display of the type specified in the rule for a reasonable cost. The decision to require display of a single on-time performance code also acts to reduce the burden on vendors. Arrival performance was chosen because the comments indicate that consumers are likely to be more concerned about on-time arrivals than on-time departures.

Commenters also expressed concern that a CRS display rule would substantially increase transaction costs for travel agents. Obviously some cost increases can be expected. When passengers ask about on-time performance, the travel agent likely will be required to take additional time to answer questions. Moreover, if addition of the performance code does reduce the number of flights that can be displayed on a screen, then the search time might increase. Precise quantification is difficult, but it does not appear that the cost impact on travel agents will be substantial, nor that it will exceed the benefits from the rule.

We note that none of the travel agent commenters complained that a CRS rule would impose a substantial burden on agents.

For a variety of reasons, the specific estimates of United and Northwest appear to be excessive. United's projection of potentially millions of dollars in increased transaction costs is based on a secondary screen rule. Since DOT's rule will not require travel agents to consult secondary screens, United's estimate of the amount of increased transaction time appears to be excessive. In addition, United

apparently assumes that every transaction will include a discussion of performance information, and Northwest clearly does. However, our rule does not require travel agents to disclose performance data during each transaction, only that the data be available. Therefore, United's and Northwest's assumption may not be reasonable. In addition, their argument appears to assume that the availability of data in CRS's should be treated as the cause of inquiries from passengers and hence the source of increased costs. However, American's comments suggest that the publicity on flight delays has already caused consumers to ask for performance data from reservations agents. The same is likely true for travel agents. Such a trend can be expected to continue, even with a simple DOT disclosure rule, if customers know that data is available from some source. The CRS rule may well provide the most efficient way for agents to obtain the information. Travel agents could more easily determine the relative performance levels of two flights by consulting the CRS primary display than by consulting a printed report published by DOT or a third party.

4. Regulation of Flight Display Algorithms

DOT is not at this time giving further consideration to adopting regulations governing schedule and availability display algorithms. In this connection, we note that at least one proposed alternative in this area, establishment of minimum elapsed times by the FAA, is outside the scope of the NPRM. With respect to the proposals listed in the NPRM, the CRS vendors recently agreed voluntarily to eliminate the elapsed time factor for nonstop flights from their display algorithms. This action may address many of the concerns raised in connection with the NPRM's proposal on algorithms. However, as noted above, there is a change that CRS algorithms may continue to create incentives for carriers to publish unrealistic schedules. We intend to monitor both the delay situation and vendors' algorithms closely, and will not hesitate to initiate action in this area if warranted.

VII. Baggage Handling Performance Reports

The Department is requiring that those air carriers subject to the schedule performance reporting requirements of this rule also file a monthly report with the Department disclosing the total number of scheduled service passengers enplaned on their domestic systems and the total number of reports on

mishandled baggage received over their domestic system. Mishandled baggage is defined to include all baggage reported as lost, delayed, damaged or pilfered. Carriers must report this information with the letter transmitting their schedule performance data tapes to the Department as specified in the Reporting Directive issued by the Office of Aviation Information Management attached as Appendix I. The Department will publish comparative baggage handling information as part of a monthly consumer report.

The Department's current regulations in 14 CFR Part 254 establish a minimum carrier liability limit (\$1,250.00) for loss, damage or delay in the carriage of baggage in interstate and overseas air transportation and require carriers to provide notice of their limits to passengers. Minimum liability limits for foreign air transportation are set by the Warsaw Convention, and 14 CFR 221.176 provides for notice about these limits. The Department currently has no reporting requirements on mishandled baggage.

The NPRM requested comments on baggage handling performance disclosure in response to Continental's petition for rulemaking to require carriers to report data on, among other things, the number of customers whose baggage is improperly handled per 1,000 passengers enplaned systemwide and for each hub. The NPRM specifically asked whether consumers view problems with baggage service as significant enough to warrant regulatory action and whether dissemination of baggage handling data would be useful. The Department proposed to require carriers to file monthly baggage reports that include the total number of bags checked, and the percentage of bags either lost or delayed, compared to total bags checked. It asked questions on what information would be useful, how the information should be consolidated (by flight, hub), who should disseminate it, how it could be made comparative, and the costs of reporting the information.

A. Specific Questions

1. Is There a Need for Disclosure?

The Department believes that there is a need for consumers to have available comparative information on carriers' baggage handling performance in order to assist in making flight selection decisions; consumers clearly expressed this need in their comments. Reporting of these statistics also will provide benefits by giving carriers the incentive to redress their baggage handling

problems and to reap the rewards for exemplary performance.

Comments: Several carriers, including signatories to ATA's intercarrier agreement, industry associations, civic and consumer organizations, and individuals favor disclosure of comparative performance statistics on lost/misdirected baggage, which they consider the most significant area of service competition after on-time performance.

RAA, America West and Midway oppose the disclosure of baggage statistics because they see no need for that information. In their view, any increase in baggage-handling problems is transitory, a result of integration difficulties following recent mergers. Midway believes that disclosure of this data would have anticompetitive effects.

Response: The Department believes that baggage handling problems exist irrespective of recent merger activity and that consumers interested in avoiding these problems will find comparative information useful. The fact that a carrier has merged, and is correcting a baggage problem, is not necessarily of concern to a customer whose baggage is mishandled. If Midway is correct, baggage handling performance reflected in the data should improve after merging air carriers have become fully integrated. The simple report that we are requiring will enable consumer comparison of carriers' general performance in this area.

2. Who Must Submit Data?

We are restricting the application of the baggage reporting requirement to the carriers required to file schedule performance reports.

Comments: Eastern believes that baggage handling data should be submitted by all air carriers. American argues that mandatory reports are necessary from all scheduled passenger service carriers. Other commenters did not address this issue.

Response: We agree that the reports must be mandatory to ensure that enough comparable information is received to be useful to consumers. However, we have decided to require that only large carriers report this information to reduce the reporting burden of the rule and to conform with its other reporting requirements. If this coverage does not prove to be satisfactory, we can extend the requirement later.

3. What Type of Comparative Data Must be Submitted?

Under ATA's voluntary intercarrier agreement, parties agreed to file monthly missing baggage information

that would include each carrier's total number of enplaned passengers traveling between points in the fifty states, and the number of such passengers who arrived at their respective destinations without one or more pieces of their checked baggage and who filed a missing-baggage trace report.

Comments: In addition to the ATA and DOT proposals, commenters suggest other ways of reporting carriers' baggage handling performance. Northwest suggests that baggage handling should be reported as the number of passengers who arrived at their destination whose checked baggage did not arrive with them and who notified the air carrier of the loss. The New York Department of Consumer Affairs suggests that airlines should disclose the percentage of total checked bags lost or involuntarily delayed. Pan American notes that only information on the number of passengers filing a missing baggage trace report would be useful.

ARTA argues that simple statistical information is all this is necessary to provide consumers with information to compare their chances of experiencing baggage problems by carrier. Both American and Northwest assert that baggage data should be aggregated on a domestic systemwide basis, but Northwest is amenable to including the international sector. It believes, however, that requiring flight-by-flight information is not realistic because of the interline problem. Continental requests that baggage mishandling involving any handling by another carrier through interline service or through ramp handling agreements be excluded from the reported data. There is no effective way to assess blame and carriers' actions to shift blame may result in more lost baggage. For similar reasons, Eastern and Northwest also request that baggage handling problems involving another carrier should be excluded.

Response: We have decided not to require a baggage report on the ratio between the number of bags checked and the number of bags received intact, because it does not necessarily reveal the number of passengers who may be affected or what their experience is likely to be on a given carrier (one person may lose all five bags checked). Also, as Pan American points out, these data are not normally kept by carriers and would be costly to produce.

We agree with ARTA, American and Northwest that simple statistical data are all that is necessary. Figures on total enplaned passengers in the domestic

system, exclusive of charters, and the total number of reports filed on mishandled baggage are normally kept and easily derived. A percentage derived from these two figures is useful to consumers as a general indicator of their chances of experiencing baggage handling problems with a particular carrier, without any need to develop a new report system or to substantially process the data. Requiring carriers to report total enplaned passengers and number of baggage mishandling reports on a domestic system basis involves less data manipulation than requiring data to be broken out by hub, airport, or type of baggage problem. Although data aggregated by hub, for example, would reveal to consumers that a particular carrier has more baggage problems at a certain hub, it could be much more burdensome to produce. Even restricting the data required to only checked baggage would make additional data manipulation necessary. Aggregation of data by carriers' domestic systems will reflect their individual baggage handling performance sufficiently for consumer comparison.

We agree with Eastern, Northwest and Continental that, if we were to require aggregation of data by flight, it would be difficult to assign responsibility for mishandled baggage on interline flights or where a carrier contracts with another carrier for baggage handling. Carriers have less control over baggage service in those situations, which are the most likely to cause baggage problems.

Domestic system reporting will not completely resolve this problem. Requiring a carrier to report all reports on mishandled baggage it receives may still result in the inclusion of reports for mishandling caused by other carriers; however, claims that are the responsibility of that carrier similarly will be reported by other carriers. The information should even out so that the domestic system percentage provides consumers with a reliable indicator. This assumption is used by the carriers, themselves, in their standard industry interline agreement, which generally assigns responsibility to the final carrier on the interline trip to process any baggage claims regardless of fault.

We also recognize that the data on total mishandled baggage reports made will include more than those for lost or misdirected checked baggage. Carriers also receive reports on pilferage, damage and mishandling of carry-on baggage; consumers want their baggage delivered on time and intact. The use of total reports filed, including damage and pilferage reports and reports for carry-on baggage, results in a simpler report,

with no need for the carriers to break out loss, delay or checked baggage figures. It also more accurately reflects all baggage mishandling problems likely to inconvenience passengers and of which they are entitled to be informed.

4. How Should the Information be Submitted or Disseminated?

We are requiring the carriers covered by this rule to submit their baggage handling information to the Department with the cover letter accompanying the schedule performance data tapes submitted to the Department each month as specified in the Reporting Directive attached as Appendix I. The Department will publish this information monthly as a rate of mishandled-baggage reports filed per 100,000 domestic passengers.

Comments: The NPRM and most commenters contemplate DOT collection and dissemination of baggage handling information on a monthly basis. ARTA supports DOT collection and dissemination of this information on a quarterly basis. The Competitive Enterprise Institute favors giving antitrust immunity to travel agents to collect and disseminate this information. ACAP believes that carriers' carry-on baggage policies should be described on the back of ticket jackets. The NYDCA suggested that baggage data be disclosed through the CRS's.

Response: We have chosen to require monthly reports because the information provided will be more recent and more useful to consumers. With quarterly reports, the information when finally published could be as much as four months out of date, which would be less useful to consumers. Also, this lag time would reduce the incentive for carriers to fix baggage problems, if they could not quickly benefit from improved statistics. ACAP's proposal to include carriers' carry-on baggage policies on the backs of ticket jackets is beyond the scope of this rulemaking. We are not requiring disclosure of this information through the CRS, because it would involve an unnecessary break-down of the data by flight and significant additional costs in using another space on the display screen. In any event, the Department will disseminate this information through a monthly consumer report. Travel agents are free to provide this information to consumers. We believe this action should be sufficient, but will continue to monitor the situation.

5. What Are the Costs of Disseminating This Information?

Comments: Eastern, ARTA and American believe that the cost of

providing and disseminating simple statistical data on passenger enplanements and baggage reports will be low, because carriers already collect it. Pan American, on the other hand, claims that, if the NPRM's approach were adopted, it would need to develop a new reporting system to determine the percentage of baggage checked and lost, since it currently does not collect data on the total number of bags checked. This new system and the additional time needed at check-in to record the data would be expensive, according to Pan American. Markair, a small intra-Alaskan carrier, argues that the cost of collecting this data would be substantial. Midway asserts that the expected benefits do not justify the costs of imposing these reporting requirements. None of the commenters provided any figures.

Response: The costs of reporting baggage information will not be significant. We have estimated that it will cost the industry a total of \$33,600 per year, based on \$200 per month per carrier and 14 carriers. In response to Pan American's concerns, we are not requiring carriers to break out data on the total number of bags checked, something that many carriers do not now keep.

That, we agree, would be more costly than requiring disclosure of data already collected or readily ascertained by carriers. We agree with ARTA that, after experience with the rule, benefits can be quantified by comparing statistics over a period of time. To the extent that there is service competition, we should see a gradual improvement in baggage handling.

VIII. Performance Standards

The Department is not adopting a standard for on-time performance at this time, but will continue to review the necessity for such a standard and may address this issue in a subsequent rulemaking document. Under 14 CFR 399.81, the Department can take enforcement action against individual carriers for unrealistic scheduling practices and in fact, as noted above, investigations of delays at several airports are now underway and enforcement action may result.

IX. Other Service Quality Indicators

The Department also proposed to require disclosure of information on air carrier telephone response time, lost or misdirected baggage, denied boardings, misconnections and cabin amenities. With the exception of the baggage proposal, the Department at this time is not adopting disclosure rules on these

items. These issues will continue to be reviewed and may be addressed in a subsequent rulemaking.

We note that the Department currently has regulations governing domestic baggage liability and oversales (denied boardings). 14 CFR Part 250 requires extensive reporting of denied boarding information on a quarterly basis (RSPA Form 251), and the Department publishes this information quarterly.

X. Discount Fare Marketing Practices

The Department at this time will not adopt a rule governing discount fare marketing practices. This issue will continue to be reviewed and may be addressed through a subsequent rulemaking document.

XI. FAA Peak Hour Authority/FAA Authority To Require Airports To Impose Peak Hour Pricing

The Department also sought comments on two legislative efforts to impose peak hour pricing. These alternatives will continue to be considered, but will no longer be considered in the context of this rulemaking.

XII. Federal Trade Commission Authority

This alternative will continue to be reviewed, but will no longer be considered in the context of this rulemaking.

XIII. Non-Legislative Option: Peak Hour Pricing by Airports

This alternative will continue to be considered, but will no longer be considered in the context of this rulemaking.

Department Regulatory Policies and Procedures

The Department has considered the impacts of the final rule and proposals still under review and determined that they are not major within the meaning of Executive Order 12291. The final rule and the proposals are considered significant under DOT regulatory policies and procedures because of substantial public and Congressional interest and because they involve important Departmental policies. A regulatory evaluation has been prepared and placed in the rulemaking docket.

The Department has also considered the economic impact of this rule for the purposes of the Regulatory Flexibility Act. I certify that it will not have a significant economic impact on a substantial number of small entities. None of the affected certificated air carriers are small businesses within the

meaning of the Act. The Department, in the NPRM, sought specific comments on the effect of any action on smaller airlines and asked how any impact could be lessened. This final rule does not require information to be filed with us by smaller air carriers, including those that RAA argues might be considered small businesses. Any other possible effects on small businesses (i.e. travel agents) may be an indirect result of this rule only, and thus the rule itself will not have a significant economic impact on these entities.

The Department has concluded that none of these proposals would represent a major federal action having a significant impact on the environment under the National Environmental Policy Act.

The final rule and some of the proposed alternatives still under consideration would impose information collection requirements that are subject to section 3504(h) of the Paperwork Reduction Act. We have submitted these requirements to the Office of Management and Budget for review and comment. The OMB approval number is 2106-0042.

Effective Date

Under section 553(d) of the Administrative Procedure Act, the Department finds good cause to make the rule effective immediately. In effect, this means that only the record keeping requirement will begin immediately. This requirement will not impose a burden on most of the carriers required to provide data to DOT by October 15, since 10 of the 14 now are providing data for 8 of the airports covered by this rule. The other requirements of the rule do not require action by the carriers until October 15 at the earliest, and thus making the rule effective immediately will not impose a significant burden on these carriers. In addition, requiring carriers to maintain data immediately will benefit consumers at the earliest possible time.

List of Subjects

14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Issued in Washington, DC, on September 2, 1987.

Elizabeth Dole,
Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapters A and B of the Code of Federal Regulations as follows:

Part 234 is added to read as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

- Sec.
- 234.1 Purpose.
- 234.2 Definitions.
- 234.3 Applicability.
- 234.4 Reporting of on-time performance.
- 234.5 Form of reports.
- 234.6 Baggage-handling statistics.
- 234.7 Voluntary reporting.
- 234.8 Calculation of on-time performance codes.
- 234.9 Reporting of on-time performance codes.
- 234.10 Voluntary disclosure of on-time performance codes.
- 234.11 Disclosure to consumers.
- 234.12 Waivers.
- 234.13 Sunset.

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. 553(e) and 14 CFR 302.38.

OMB Control Number: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 2106-0042.

§ 234.1 Purpose.

The purpose of this part is to set forth required data that certain air carriers must submit to the Department and to computer reservations system vendors in computerized form, except as otherwise provided, so that information on air carriers' quality of service can be made available to consumers of air transportation. This part also requires that service quality data be disclosed directly to consumers.

§ 234.2 Definitions.

For the purpose of this part: "Flight" means any nonstop scheduled passenger flight segment with a specific flight number scheduled to be operated pursuant to a published schedule within a specific origin-destination city pair, other than transborder or foreign air transportation. In the case of reporting to computer reservations system vendors, "flight" also means one-stop or multi-stop single plane scheduled operations that include any flight segments for which performance is reported pursuant to this part.

"Late" or "late flight" means a flight that arrives at the gate 15 minutes or more after its published arrival time.

"Mechanical delay" and "mechanical cancellation" mean, respectively, the arrival delay (by 15 minutes or more) or cancellation of a flight scheduled to be operated with a particular aircraft on a particular day due to mechanical problems on that aircraft that are reported to the Federal Aviation Administration pursuant to 14 CFR 121.705 or 14 CFR 121.703. Mechanical delays will include delays in both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, on the same day, where the delay was attributable to the initial mechanical problem.

"Mishandled-Baggage Report" means a report filed with a carrier by or on behalf of a passenger that claims loss, delay, damage or pilferage of baggage.

"New Flight" means a flight added to a carrier's schedule to operate in a specific origin-destination city pair and not scheduled to depart within 30 minutes of any discontinued flight that was contained in the carrier's published schedules for the same city pair during the previous month.

"On-Time" means a flight that arrives less than 15 minutes after its published arrival time.

"On-Time Performance" means the percentage of scheduled operations of a specific flight that an air carrier operates on-time during a month.

"On-Time Performance Code" means a single character determined in accordance with the provisions of this part that reflects the monthly on-time performance of certain nonstop flights and single plane one-stop or multi-stop flights, the schedule and availability of which are listed in a computer reservation system ("CRS") regulated by 14 CFR Part 255.

"Reportable Flight" means any nonstop flight to or from any airport within the contiguous 48 states that accounted for at least 1 percent of domestic scheduled passenger enplanements in the previous calendar year, as reported in reports submitted to the Department pursuant to Part 241 of this Title. Qualifying airports will be specified periodically in reporting directives issued by the Office of Aviation Information Management.

"Reporting Carrier" means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least one percent of domestic scheduled passenger revenues in the 12 months ending March 31 of each year, as reported in reports

submitted to the Department pursuant to Part 241 of this Title. Reporting carriers will be identified periodically in reporting directives issued by the Office of Aviation Information Management.

§ 234.3 Applicability.

This part applies to certain domestic scheduled passenger flights that are held out to the public by certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues. Certain provisions also apply to voluntary reporting to on-time performance by carriers.

§ 234.4 Reporting of On-Time Performance.

(a) Each reporting carrier shall file RSPA Form 234 "On Time Flight Performance Report" with the Department's Office of Aviation Information Management (OAIM), on a monthly basis, setting forth information for each of its reportable flights held out in the *Official Airline Guide*, in computer reservations systems, or other in schedule publications. The report shall be made in the form and manner set forth in reporting directives issued by the Director, OAIM, and shall contain the following information:

- (1) Carrier and Flight Number.
- (2) Origin and destination airport codes.
- (3) Published OAG departure and arrival times for each scheduled operation of the flight.
- (4) CRS scheduled arrival and departure time for each scheduled operation of the flight.
- (5) Actual departure and arrival time for each operation of the flight.
- (6) Date and day of week of scheduled flight operation.
- (7) Scheduled elapsed time, according to CRS schedule.
- (8) Actual elapsed time.
- (9) Amount of departure delay, if any.
- (10) Amount of arrival delay, if any.
- (11) Amount of elapsed time difference, if any.

(b) A reporting carrier shall not report any of the information specified in paragraph (a) of this section for any scheduled operation that was late or cancelled due to a mechanical cancellation or mechanical delay.

(c) Actual arrival, departure and elapsed times shall be measured by the times at which the aircraft arrived at and departed from the gate or passenger loading area.

(d) The published arrival time and departure time of a flight shall be, respectively, the scheduled arrival and departure times in effect on the date of the scheduled operation of the flight, as shown in the most recent *Official*

Airline Guide, and in computer reservations systems. Each carrier shall designate a single computer reservations system in addition to the *Official Airline Guide* as the sources of scheduled arrival time and departure time data in its reports to the Department and shall report the scheduled arrival times and departure times listed in those sources for each flight. Scheduled elapsed times, amount of departure and/or arrival delay, and elapsed time difference shall be calculated using the scheduled times shown in the designated CRS source.

§ 234.5 Form of Reports.

Except where otherwise noted, all reports required by this part shall be filed with the Department on ADP computer tape in the format specified in reporting directives issued by the Director, OAIM, within 15 days of the end of the month for which data are reported.

§ 234.6 Baggage-Handling Statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with that carrier. The information shall be submitted to the Department within 15 days of the end of the month to which it applies and must be submitted with the transmittal letter accompanying the data for on-time performance.

§ 234.7 Voluntary reporting.

(a) In addition to the data for each reportable flight required to be reported by this part, a reporting carrier may report to DOT for every other nonstop domestic flight that it schedules, the reportable flight data specified in this part.

(b) Any air carrier that is not a reporting carrier may file the data specified in this part for every reportable flight that it schedules, or for every nonstop domestic flight that it schedules.

(c) Voluntary reports containing information not required to be filed (1) must be submitted in the same form and manner, and at the same time, as reports containing data required to be filed, and (2) must be accompanied by a written statement describing in detail the information that is being voluntarily submitted. A carrier that files a voluntary report must continue to do so for a period of not less than 12 consecutive months.

§ 234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in reporting directives issued by the Director, OAIM. The calculations shall be performed for each reportable flight. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flight, or portion thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based upon reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include flight operations affected by mechanical delays or mechanical cancellations for which data are not reported to the Department.

(2) Based upon the on-time performance percentage calculated in paragraph (b)(1) of this section, assign a single digit code to each flight that reflects the percentile of on-time performance achieved by the flight, as set forth in the following table:

ON TIME PERFORMANCE

Code	Percentage
9	90-100
8	80-89.9
7	70-79.9
6	60-69.9
5	50-59.9
4	40-49.9
3	30-39.9
2	20-29.9
1	10-19.9
0	0-9.9

(3) For a one-stop or multi-stop flight, or portion thereof, listed in a CRS, the performance code for the nonstop flight segment arriving at the destination listed in the CRS shall be used.

(4) In the case of a new flight, carriers shall assign a performance code consisting of the letter "N." A flight that is not a new flight shall be assigned the performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number.

(c) Carriers shall calculate on-time performance percentages and assign on-time performance codes on a monthly basis. This process shall be completed no later than the 15th day of each month, when the reports required by this part are due to the Department, and the codes shall reflect the previous month's operations.

§ 234.9 Reporting of on-time performance codes.

No later than the 15th day of each month, each reporting carrier shall deliver, or arrange to have delivered, to each system vendor, as defined in 14 CFR Part 255, the on-time performance codes required to be determined above. Carriers may report the codes by insuring that they are included in basic schedule tapes provided to CRS vendors or by providing a separate tape that will permit the CRS vendors to match the performance codes with basic schedule tapes.

§ 234.10 Voluntary disclosure of on-time performance codes.

(a) Any air carrier may determine, in accordance with the provisions of 14 CFR 234.8, the on-time performance codes for the flights for which it voluntarily provides flight information to the Department pursuant to 14 CFR 234.7.

(b) A carrier may supply these additional on-time performance codes to system vendors at the same time and in the same manner as the required disclosures are made to system vendors, provided that voluntary disclosures must continue for a period of not less than 12 consecutive months, and must be supplied either (1) for each of the carrier's reportable flights and each of its single plane one-stop or multi-stop flights, or portions thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight or (2) for each of the carrier's domestic flights.

§ 234.11 Disclosure to consumers.

During the course of reservations or ticketing discussions or transactions, or inquiries about flights, between a carrier's employees and the public, the carrier shall disclose upon reasonable request the on-time performance code for any flight that has been assigned a code pursuant to this part.

§ 234.12 Waivers.

Any air carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Secretary, or his or her delegate, may be granted for good cause shown. The requesting party shall state the basis for such waiver.

§ 234.13 Sunset.

The provisions of this part shall terminate on December 31, 1990.

PART 255—CARRIER-OWNED COMPUTER RESERVATION SYSTEMS

1. The authority of Part 255 continues to read:

Authority: 49 U.S.C. 1302, 1324, 1374, 1381, 1389, and 1502.

2. Part 255 is amended by adding a definition of "on-time performance code" to § 255.3 and a new paragraph (e) to § 255.4, as follows:

§ 255.3 Definitions.

"On-time performance code" means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR Part 234 that reflects the monthly on-time performance history of a non-stop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

§ 255.4 Display of information.

(e) System vendors shall use or display information concerning on-time performance of flights only in accordance with the provisions of this part.

(1) Within 5 days after receiving the information from participating carriers, each vendor shall include in all primary schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system vendor shall not use on-time flight performance as a ranking factor in ordering information contained in a primary display.

(3) Except as otherwise specifically provided in this part, a system vendor shall not provide any information about on-time performance in a CRS on any air carrier or foreign air carrier unless that information is based on data reported to the Department. Any such information shall be displayed in an unbiased fashion and in the same manner for all participating carriers that report to the Department.

(Approved by the Office of Management and Budget under control number 2106-0042.)

Appendix I—Reporting Directive—Office of Aviation Information Management, RSPA

[Editorial Note.—This appendix will not appear in the Code of Federal Regulations.]

- I. Introduction
- II. Applicability
- III. Definitions
- IV. Data Requirements for DOT On-Time Disclosure Reports
- V. Report Format and Instructions for On-Time Disclosure Reports and Mishandled-Baggage Reports
- VI. Submission of Reports

VII. Record Retention

VIII. Data Requirements and Instructions for CRS Disclosure

I. Introduction

Part 234 of the Department's Regulations, "Airline Service Quality Performance Reports," requires certain U.S. air carriers to submit scheduled flight performance data and mishandled-baggage information to the Department, and to provide certain on-time performance codes to CRS vendors. These data will be used to monitor each carrier's on-time performance and baggage handling, and to provide information to consumers. The scheduled flight performance data will be filed on RSPA Form 234, "On-Time Flight Performance Report." The mishandled-baggage information will be submitted as a one-page addendum to Form 234 with the required certification and transmittal letter. The on-time performance codes will not be filed with the Department, but shall be computed and supplied to CRS vendors in accordance with the procedures set forth in §§ 234.8 and 234.9 and in this reporting directive.

II. Applicability

1. Each reporting air carrier providing scheduled domestic passenger operations at a reportable airport shall file RSPA Form 234, "On-Time Flight Performance Report," if its share of the industry's total domestic scheduled-service passenger revenues exceeds one percent, based on Form 41 data for the 12 months ended March 31, 1987.

2. The reporting air carriers are Alaska Airlines, American Airlines, America West Airlines, Continental Airlines, Delta Air Lines, Eastern Air Lines, Northwest Airlines, Pacific Southwest Airlines, Pan American World Airways, Piedmont Aviation, Southwest Airlines, Trans World Airlines, USAir, and United Air Lines.

3. The reportable airports with respect to which data must be submitted to the Department are those airports located within the 48 contiguous states enplaning one percent or more of the industry's domestic scheduled-service passengers, as reported on Form 41, Schedule T-3(a), and summarized in the publication *Airport Activity Statistics of Certificated Air Carriers for the 12 Months Ended December 31, 1986 (Preliminary)*. The 27 reportable airports are:

Atlanta, Hartsfield Intl.	ATL
Boston, Logan Intl.	BOS
Charlotte, Douglas	CLT
Chicago, O'Hare	ORD

Dallas-Ft. Worth Intl.	DFW
Denver, Stapleton Intl.	DEN
Detroit, Metro Wayne Cnty.	DTW
Houston Intercontinental	IAH
Los Angeles International	LAX
Las Vegas, McCarran Intl.	LAS
Memphis International	MEM
Miami International	MIA
Minneapolis-St. Paul Intl.	MSP
Newark International	EWR
New York, LaGuardia	LGA
New York, JFK Intl.	JFK
Orlando Intl.	MCO
Phoenix, Sky Harbor Intl.	PHX
Pittsburgh, Greater Intl.	PIT
Philadelphia Intl.	PHL
San Francisco Intl.	SFO
St. Louis, Lambert	STL
Seattle-Tacoma Intl.	SEA
Salt Lake City Intl.	SLC
San Diego Intl., Lindbergh Fld.	SAN
Tampa International	TPA
Washington, National	DCA

4. The reportable flight operations for which data must be submitted to the Department are all scheduled nonstop domestic passenger operations by a reporting air carrier to or from any reportable airport, except that reporting carriers shall not submit data to the Department for any scheduled flight operation that was delayed or cancelled due to a mechanical delay or mechanical cancellation as defined in § 234.2 of the Department's Regulations.

5. In addition to the required data for each reportable flight which must be submitted to the Department, a reporting carrier may also submit the required data for every other nonstop domestic passenger flight it holds out to the public pursuant to a published schedule. In addition, any carrier not included in paragraph II.2. of this reporting directive may voluntarily become a reporting carrier and submit Form 234 for its reportable flights or for every nonstop domestic passenger flight it holds out to the public pursuant to a published schedule, provided that the Director, Office of Aviation Information Management (OAIM), is advised beforehand. Such voluntary data must be submitted for a minimum of 12 consecutive months. The voluntary submissions must meet the exact reporting specifications set forth in this reporting directive. Volunteering carriers that wish to discontinue reporting after one year must advise the Director, OAIM, a minimum of 30 days before discontinuance, so that the necessary changes can be made to the Department's data programs.

6. Changes in reporting air carriers and reportable airports will be made as necessary by the Director, OAIM, under authority delegated in § 385.27 of the Department's Regulations.

III. Definitions

Definitions used in this directive include those in § 234.1 as well as the following:

1. "CRS" means a "system" as defined in § 255.3 of the Department's Regulations.

2. "Domestic operation" means a flight operation within or between the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Transborder operations are not included.

3. "Flight," for purposes of the data to be reported to the Department, means one or more scheduled nonstop operations identified by a specific flight number in conjunction with a specific origin-destination city-pair designation; e.g., flight 102 DCA-ATL-MIA includes two separate flights (DCA-ATL, ATL-MIA).

4. "Flight," for purposes of CRS disclosure, means nonstop operations as defined above, plus scheduled one-stop and multi-stop operations identified by a specific flight number in conjunction with a specific origin-designation city-pair designation; e.g., flight 102 DCA-ATL-MIA includes three separate flights for purposes of CRS disclosure (DCA-ATL, ATL-MIA, DCA-MIA).

5. "Flight operation" means a specific operation of a given flight on a given day; e.g., if flight 102 DCA-ATL operated daily, it had 31 flight operations in July.

IV. Data Requirements for DOT On-Time Disclosure Reports

1. Each reporting air carrier shall file Form 234 for each calendar month beginning with the month of September 1987. Each report shall include all nonstop domestic passenger scheduled flight operations by the reporting carrier that serve one or more of the reportable airports except operations that were delayed or cancelled because of a mechanical problem as defined in § 234.2.

2. For each nonstop flight operation serving a reportable airport, the following data elements shall be reported:

- Carrier (Two Letter Code)
- Flight Number
- Departure Airport (Three Letter Code)
- Arrival Airport (Three Letter Code)
- Date of this Flight Operation (Year/Month/Day)
- Day of Week of this Flight Operation (Monday = 1, . . . Sunday = 7)
- Scheduled Departure Time as Shown in the Official Airline Guide (OAG) Pursuant to § 234.4(d)

- H. Scheduled Departure Time as Shown in the CRS Selected by the Carrier as Its Data Source Pursuant to § 234.4(d)
- I. Gate Departure Time (Actual) in Local Time
- J. Scheduled Arrival Time as Shown in OAG
- K. Scheduled Arrival Time as Shown in CRS
- L. Gate Arrival Time (Actual) in Local Time
- M. Difference in Minutes Between OAG and CRS Scheduled Departure Time: G minus H
- N. Difference in Minutes Between OAG and CRS Scheduled Arrival Time: J minus K
- O. Scheduled Elapsed Time Per CRS in Minutes: K minus H
- P. Actual Gate to Gate Time in Minutes: L minus I
- Q. Departure Delay (Difference in Minutes Between Actual Departure Time and CRS Scheduled Departure Time): I minus H
- R. Arrival Delay (Difference in Minutes Between Actual Arrival Time and CRS Scheduled Arrival Time): L minus K
- S. Elapsed Time Difference (Difference in Minutes Between Actual Elapsed Time and CRS Scheduled Elapsed Time): P minus O

3. The data format for the elements listed in paragraph 2 above shall comply exactly with the flight record field specifications set forth in Section V of this reporting directive.

4. All scheduled and actual arrival and departure times shall be reported in local time using a 24 hour clock; e.g. 3:15 p.m. shall be 1515. In using local time, the reporting carrier must adjust for time zone differences in computing data elements O, P, and S.

5. Minutes shall be reported in whole minutes; e.g., two hours = 120.

6. Flight operations that begin and end in different months shall be reported in the month in which they begin.

7. Extra section flight shall not be reported.

8. Flight cancellation information (other than mechanical cancellations as defined in § 234.2) shall be incorporated in the appropriate flight record for the cancelled flight operations by entering four zeros in data field I (Gate Departure Time) and four zeros in data field L (Gate Arrival Time).

9. Information on flights which operated but were diverted to an alternate destination shall be incorporated in the appropriate flight record for the diverted flight operation by entering the actual departure time in data field I (Gate Departure Time), and four zeros in data field L (Gate Arrival Time).

10. All numeric fields for which data are unavailable shall be zero-filled.

11. Any data field resulting from calculations involving such zero-filled fields shall also be zero-filled.

12. For data fields Q, R, and S, use positive numbers to indicate time in minutes for departure/arrival/elapsed time delays. Use negative numbers to indicate time in minutes for departures, arrivals ahead of schedule and elapsed times less than scheduled.

13. Fields M, N, Q, R, and S, which may contain either a positive or a negative value, should indicate this attribute with the appropriate hexadecimal characters in the zone portion of the unit's position in the field, as follows:

For positive values: Use the hexadecimal character "C" (bit configuration 1100). Example: Positive 23 is coded as: FO FO F2 C3.

For negative values: Use the hexadecimal character "D" (bit configuration 1101). Example: Negative 138 is coded as: FO F1 F3 D8.

If the field has a zero value, code it as FO FO FO FO.

14. All numeric fields shall be right justified, with leading zeros.

V. Report Format and Instructions for On-Time Disclosure Reports and Mishandled-Baggage Reports

1. *Transmittal Letter.* A transmittal letter shall accompany each carrier's data submission. The transmittal letter must identify the carrier and the month and year for which the data are being submitted, and contain the following information:

(A) A certification statement signed by an appropriate official of the reporting carrier. The certification statement shall read:

I, the undersigned (Title) of the above-named air carrier, certify that the attached ADP tape of RSPA Form 234, "On-Time Flight Performance Report," and the attached Mishandled-Baggage Report, are to the best of my knowledge and belief, true, correct and complete reports for the period stated.

Date: _____

Signature: _____

Name (Please Type or Print): _____

(B) the name(s) and telephone number(s) of the air carrier's staff who can be contacted to resolve problems regarding both carrier data and ADP technical matters.

(C) for control purposes, a statement indicating the total number of flight operations and unique flight numbers in the Form 234 ADP tape submission.

(D) a mailing address for tape returns.

(E) for the initial submission, a description of the data submitted,

specifying whether the tape includes data only for the reportable airports or for all domestic scheduled nonstop flight operations.

(F) for the initial submission and for subsequent changes, a statement identifying the sources of the scheduled arrival and departure times used in the report: (1) Official Airline Guide in effect as of (date) ; and (2) the computer reservation system used for reporting purposes, pursuant to § 234.4(d).

2. *Mishandled-Baggage Report.* The reporting carrier's Mishandled-Baggage Report shall be attached on a separate sheet of paper to the transmittal letter. This report shall show the mishandled-baggage information for the reporting month and include the following items:

Name of Carrier _____
Month and Year of the Data Included in the Report _____
Number of Domestic Scheduled Passengers Enplaned _____
Number of Mishandled-Baggage Reports Filed with Carrier _____

3. *ADP Tape Requirements.* (A) Form 234, "On-Time Flight Performance Report," shall be filed on ADP magnetic tape. The data will be reported without summarization, with a separate flight record for each reportable flight operation. Flight records shall be sequenced by date of flight (field E) within market (fields C and D), within flight number (field B).

(B) The format for the ADP magnetic tape shall be:

(1) *Magnetic tape specifications.*

IBM compatible 9-track EBCDIC recording tape.

Recording density of 6250 or 1600 bpi.
Record Length = 71, Block size = 14200.

(2) *External tape label information.*

- Carrier name.
- Month and year of data reported.
- File identification.
- Name and Phone Number of ADP Contact.

(3) *The order of recorded information.*

- Volume label.
- Header labels.
- Data records.
- Trailer labels.

(4) *Volume, header, and trailer label formats.*

Use standard IBM label formats.

The file identifier field of the header labels shall be ON TIME SYSTEM XX, where XX is the carrier's two letter code.

(5) *Magnetic tape nonstop segment record layout.*

FIELD SPECIFICATIONS FOR FORM 234, DOT ON-TIME DISCLOSURE REPORTS

Field and description	Type	Location	Length	Remarks
A—Carrier code	Alpha	1-2	2	
B—Flight number	Num	3-6	4	
C—Origin airport code	Alpha	7-9	3	
D—Destination airport code	Alpha	10-12	3	
E—Date of flight operation	Num	13-18	6	Format: yymmdd.
F—Day of the week of this flight operation	Num	19	1	Mon = 1, Sun = 7
G—Scheduled departure time per OAG	Num	20-23	4	Local time, 24-hr clock.
H—Scheduled departure time per CRS	Num	24-27	4	Local time, 24-hr clock.
I—Gate departure time (actual)	Num	28-31	4	Local time, 24-hr clock.
J—Scheduled arrival time per OAG	Num	32-35	4	Local time, 24-hr clock.
K—Scheduled arrival time per CRS	Num	36-39	4	Local time, 24-hr clock.
L—Gate arrival time (actual)	Num	40-43	4	Local time, 24-hr clock.
M—Difference between OAG and CRS sched. departure time	Num	44-47	4	In minutes (2 hrs = 120).
N—Difference between OAG and CRS sched. arrival time	Num	48-51	4	In minutes.
O—Scheduled elapsed time per CRS	Num	52-55	4	In minutes.
P—Actual gate to gate time	Num	56-59	4	In minutes.
Q—Departure delay time (actual minus CRS)	Num	60-63	4	In minutes.
R—Arrival delay time (actual minus CRS)	Num	64-67	4	In minutes.
S—Elapsed time difference (actual minus CRS)	Num	68-71	4	In minutes.

(6) *Standards.* It is the policy of DOT to support the American National Standards Institute and the Federal Standards activity in all data processing and telecommunication matters. It is our intention that all specifications in this reporting directive are in compliance with standards promulgated by these organizations.

VI. Submission of Reports

1. *Address.* The address for the Form 234 data submission and the Mishandled-Baggage Report is:

Office of Aviation Information Management, DAI-1, Room 4125, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590

2. *Due Dates.* The due date for Form 234 and the Mishandled-Baggage Report is the 15th day of the month following that to which the data are applicable. If the 15th day falls on a weekend or Federal holiday, the submission will be due at the beginning of the next work day.

3. *Enforcement.* Penalties for late filing or noncompliance with these reporting requirements will be assessed in accordance with sections 901 and 902 of the Federal Aviation Act of 1958, as amended.

4. *Missing or Incomplete Records.* Any carrier subject to this directive which does not file the required data for any period, or files incomplete data, shall submit a sworn statement of an officer that the carrier was unable to provide the data because it did not have and could not obtain the necessary records. That statement, as well as the veracity of the information and data submitted, will be subject to 18 U.S.C. 1001, regarding criminal penalties for false statements made to a government agency. The statement shall be filed with the Director, Office of Aviation

Information Management, at the address in paragraph 1 above.

5. *Special Circumstances.* Requests for waivers, exceptions, extensions or other considerations shall be submitted in written form to the Director, Office of Aviation Information Management, at the address in paragraph 1 above.

6. *Return of Tapes.* ADP tapes will be returned to the carrier after the data have been reviewed and any problems resolved.

VII. Record Retention

Form 234 and the Mishandled-Baggage Report shall be considered statistical reports by the Department. The record retention requirements for statistical reports are governed by Part 249 "Preservation of Air Carrier Records" of the Department's Regulations. Specifically, § 249.20-6 requires the information supporting a statistical report to be maintained by the carrier for 3 years.

VIII. Data Requirements and Instructions for CRS Disclosure

As required by § 234.8 of the Department's Regulations, each reporting carrier providing data pursuant to this directive shall calculate a on-time performance code for each reportable (nonstop) flight included in its monthly data submission to the Department, and for each one-stop or multi-stop flight that includes a reportable flight segment as specified below. That calculation shall be carried out as follows:

1. Each reporting carrier shall compute the arrival delay in minutes for each reported (nonstop) flight operation in its monthly data submission by subtracting the scheduled arrival time for each flight operation per its CRS records (data field K) from the actual gate arrival time (data field L).

2. Using the data derived from the computation in paragraph 1 above, each reporting carrier shall calculate, for each nonstop flight in its data submission, the percentage of that flight's operations during the month that were on time (i.e., arrived within 15 minutes of the CRS scheduled arrival time). The calculation shall be performed by dividing the number of reported operations of each flight that arrived less than 15 minutes after the scheduled arrival time, by the total number of reported operations of that flight during the month.

3. For purposes of this calculation, any flight operation that was delayed or cancelled due to a mechanical delay or mechanical cancellation as defined in § 234.2, shall be excluded from both the numerator and the denominator. All cancelled and diverted flight operations not attributable to mechanical problems as defined in § 234.2 shall be included in both the numerator and the denominator and counted as late flights.

4. Each reporting carrier shall convert the percentage derived from the computations in paragraphs 2 and 3 into a one digit CRS on-time performance code for each reportable flight operated during the month, as follows:

Percent of operations of the flight that were on-time	CRS on-time performance code
90 to 100.0	9
80 to 89.9	8
70 to 79.9	7
60 to 69.9	6
50 to 59.9	5
40 to 49.9	4
30 to 39.9	3
20 to 29.9	2
10 to 19.9	1
0 to 9.9	0

5. New flights as defined in § 234.2 for which no on-time percentage is

available yet shall be designated with the CRS data code "N" (no record).

6. Each reporting carrier shall include the appropriate one digit CRS code (0 through 9, or "N") as a standard data element in each flight schedule it provides to the OAG and/or any CRS vendor(s), for every reportable flight.

7. In addition, using the procedure illustrated in this paragraph, each reporting carrier shall include the appropriate one digit CRS code (0 through 9, or "N") as a standard data element in each flight schedule it provides to the OAG and/or any CRS vendor(s), for every one-stop or multi-stop flight, or portion thereof, that includes a reportable flight as a final flight segment:

Examples:

If flight 102 operates EWR-DCA-ATL-MIA, provide one-time performance codes for:

102 EWR-DCA (calculated per paragraphs 1-5 above)

102 DCA-ATL (calculated per paragraphs 1-5 above)

102 ATL-MIA (calculated per paragraphs 1-5 above)

102 EWR-ATL: assign 102 DCA-ATL performance code

102 EWR-MIA: assign 102 ATL-MIA performance code

102 DCA-MIA: assign 102 ATL-MIA performance code

If flight 103 operates BUF-SYR-EWR-DCA, provide on-time performance codes for:

103 SYR-EWR (calculated per paragraphs 1-5 above)

103 EWR-DCA (calculated per paragraphs 1-5 above)

103 BUF-EWR: assign 103 SYR-EWR performance code

103 BUF-DCA: assign 103 EWR-DCA performance code

103 SYR-DCA: assign 103 EWR-DCA performance code

If flight 103 operates MKE-DTW-CMH-LEX, provide on-time performance codes for:

104 MKE-DTW (calculated per paragraphs 1-5 above)

104 DTW-CMH (calculated per paragraphs 1-5 above)

104 MKE-CMH: assign 104 DTW-CMH performance code

8. A flight that is not a new flight shall be assigned the on-time performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number.

9. No later than the 15th day of each month, each reporting carrier shall

deliver or arrange to have delivered in its CRS vendor(s), updated on-time performance codes. If a carrier relies on a third party to supply such flight information to CRS vendor(s), the carriers shall provide their flight information, including the appropriate CRS on-time performance codes, at the same time that the carrier submits its monthly flight data to the Department.

10. The calculation and assignment of on-time performance codes for flights other than reportable flights, as permitted in § 234.10, shall follow the procedures set forth above. Carriers are required to perform those calculations only for reportable flights, and for one-stop or multi-stop flights, or portions thereof, that include a reportable flight as a final flight segment, but may do so for all flights at their option.

11. No carrier may provide on-time performance codes to the OAG or to any CRS vendor(s) for any flight during any month unless the carrier also provides the required flight data for the month to the Department as specified in Part 234 and in this reporting directive.

[FR Doc. 87-20527 Filed 9-3-87; 4:35 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 234

[Docket No. 44827 Amdt. No. 234-2]

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Amendment to final rule.

SUMMARY: Under a rule issued September 2, 1987, and published elsewhere today in this edition of the *Federal Register* the Department of Transportation (DOT or Department) required 14 air carriers to submit certain flight data to the Department for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. The final rule provided a specific termination date of December 31, 1990. However, this amendment deletes that termination date.

EFFECTIVE DATE: The amendment to the final rule is effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Gwyneth Radloff, at 400 7th St., SW., Washington, DC 20590 or by phone at (202) 366-9307; Barry Molar, at the above address or by phone at (202) 366-9285; Shelton Jackson, at the above address or by phone at (202) 366-

5397; or Robin Caldwell, at the above address or by phone at (202) 366-9059.

I. Supplementary Information

On September 2, 1987, the Department issued a final rule that required 14 air carriers to submit certain data to the Department and to CRS vendors. In addition, these carriers were required to provide on-time performance data to consumers, upon request to the carriers' ticketing agents.

The September 2 final rule affected two parts of the Code of Federal Regulations, Part 234 and Part 255. It added Part 234 to require carriers to provide certain data to the Department, consumers and to computerized reservations systems vendors. It also had a specific termination date of December 31, 1990. Thus, after that date carriers would no longer be required to report data to the Department or to a CRS vendor under Part 255. This automatic termination date should not have been included in the final rule. Therefore, by this amendment, Part 234 is amended to reflect that Part 234 will not have a termination date. However, the Department will review the implementation of this rule 2 years after its effective date.

Because the September 2 final rule was effective upon publication, to eliminate any confusion, this amendment is also effective upon publication.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Issued in Washington, DC on September 3, 1987.

Jim Burnley,

Acting Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A of the Code of Federal Regulations as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. § 553(e) and 14 CFR 302.38.

§ 234.13 [Removed]

2. Part 234 is further amended by removing § 234.13.

[FR Doc. 87-20680 Filed 9-3-87; 4:35 pm]

BILLING CODE 4910-62-M