

actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007-0266, dated October 8, 2007, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1.—AIRBUS SERVICE INFORMATION

Airbus service bulletin	Revision	Date
A300-55-6043	01	December 3, 2007.
A300-55-6044	01	December 20, 2007.
A310-55-2044	01	December 3, 2007.
A310-55-2045	01	December 20, 2007.

Material Incorporated by Reference

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision	Date
A300-55-6043, including Appendices 1 through 4	01	December 3, 2007.
A300-55-6044, including Appendices 1 through 4	01	December 20, 2007.
A310-55-2044, including Appendices 1 through 4	01	December 3, 2007.
A310-55-2045, including Appendices 1 through 4	01	December 20, 2007.

Issued in Renton, Washington, on May 6, 2008.

Michael J. Kaszycki,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
 [FR Doc. E8-10978 Filed 5-20-08; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. RITA 2007-28522]

RIN 2139-AA12

Revision of Airline Service Quality Performance Reports and Disclosure Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (Department) will collect additional data elements when flights are cancelled, diverted, or experience gate returns. The additional data elements will close data gaps and provide consumers a more accurate portrayal of arrival and tarmac delays. The previous NPRM was inadvertently published under RIN 2139-AA13.

DATES: This rule will be effective on October 1, 2008.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be downloaded at <http://www.regulations.gov>, by searching docket RITA 2007-28522.

Background

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

improvement in carriers' on-time performance. For the remainder of 1987, the industry had an on-time arrival rate of over 74 percent.

The Department added data elements to the reporting system in 1995 to enable the Federal Aviation Administration (FAA) to identify choke points within the air traffic control system (60 FR 66722, December 26, 1995). Aircraft tail number, wheels-off time and wheels-on time gave the FAA information concerning aircraft routings through the air traffic control system and detailed data on tarmac and airborne delays. A tarmac delay is one that takes place on the ground, such as on the ramp or taxiway.

In 1999 and 2000, airline delays increased dramatically with the increase in airline operations. Consumer complaints concerning flight delays increased by 58%. Section 227 of the Aviation Investment and Reform Act for the 21st Century (AIR-21) called upon the Secretary of Transportation to disclose to the public the source of delayed and cancelled flights. During this period, the Air Transport Association of America also petitioned the Department to report the causes of delays and cancellations. In August 2000, an Air Carrier On-time Reporting Advisory Committee was established to

make recommendations on causal reporting. The committee recommended four delay causes—Air Carrier, Extreme Weather, National Aviation System, and Late Arriving Aircraft. In response to public comments to the notice of proposed rulemaking, a fifth cause, Security, was added to the final rule (67 FR 70544, November 25, 2002).

The occurrence of lengthy tarmac delays in late 2006 and early 2007 once again focused public attention on the Department's collection of Airline Service Quality Performance Reports under 14 CFR part 234. In response to a media inquiry, the Bureau of Transportation Statistics (BTS) determined that the air carriers were inconsistent in reporting gate-departure times when there was a return to gate. Some carriers reported the initial gate departure time while others reported the "second" gate departure time. There are advantages and disadvantages with both methods.

If an airline reports the first gate-departure time, the Department knows the interval between the time the aircraft was initially ready to depart and when the aircraft actually departed the airport (wheels-off time). However, the air carrier would be credited with an on-time departure when in reality the aircraft returned to the gate only to depart well after scheduled departure time. In this instance, the taxi-out time is also miscalculated, because the time the aircraft was parked at the gate waiting re-boarding is counted in the taxi-out time.

Reporting the second gate-departure time does not fully represent the inconveniences that the passengers endured, by making it appear that they were on the aircraft for a much shorter duration before wheels-off (take-off) time. The gate departure time for carriers reporting the second gate departure time provides a more accurate assessment of departure delays, but does not account for tarmac delays occurring during the initial gate departure.

A second data gap concerned the reporting of tarmac times for flights that were subsequently cancelled. For example these flights could spend hours on the tarmac waiting for storms to pass before being cancelled. Since airlines do not report any data on cancelled flights other than the fact the flight was cancelled, the amount of time passengers spent on the tarmac waiting for take-off is not recorded.

A third data gap concerned the reporting of tarmac times at diversion airports for diverted flights i.e., a flight that landed somewhere other than the scheduled destination. Under the current reporting system, airlines do not

report any data once a flight is declared diverted. Therefore, the amount of time spent on the tarmac at the diversion airport or at the original destination airport if the flight was resumed is not recorded.

Comments

The Department issued a notice of proposed rulemaking to fill tarmac-delay data gaps on November 20, 2007 (72 FR 65230). A joint comment was received from the Air Transport Association of America (ATA) and the Regional Airline Association (RAA), representing 18 air carriers currently reporting performance data. Other comments were received from Delta Air Lines, the National Business Travel Association (NBTA), the American Society of Travel Agents (ASTA), the Coalition for an Airline Passengers Bill of Rights, and from five private citizens/airline consumers.

Of the five citizen comments, two stated that airlines should report all delays and publish their delay data on their Web sites, and one stated that the Department should fine air carriers \$1 million for their first lapse in reporting. The issue concerning the displaying of on-time data on carrier Web sites is being addressed in a separate rulemaking titled Enhancing Airline Passenger Protections (72 FR 65233, Docket OST 2007-0022). The Department is limited by law on the assessment of fines to air carriers. Failure to file accurate and timely reports required by part 234 violates 49 U.S.C. sec. 41708, which subjects the carrier to civil penalties of up to \$25,000 for each violation and \$25,000 for each day any violation continues under 49 U.S.C. sec. 46301. Two other comments addressed issues in other aviation related rulemakings—Enhancing Airline Passenger Protections (72 FR 65233, Docket OST 2007-0022) and Oversales and Denied Boarding Compensation (final rule, 73 FR 21026). Those comments were forwarded to the personnel coordinating those rulemakings. The last comment dealt with a specific lost/stolen baggage issue. That letter was forwarded to the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings for appropriate action.

The Coalition for an Airline Passengers Bill of Rights said all carriers operating aircraft with over 30 seats should be required to report delay data; and that international flights should be reportable. This issue is being addressed in the rulemaking titled Enhancing Airline Passenger Protections.

Tracking Individual Passenger Delay

NBTA was the only party to comment on whether the Department should track individual passenger delays. It stated:

"It would be an inappropriate burden to require air carriers to create statistics for every contingency a flight might face. * * * There are too many passenger-specific scenarios that airlines should not be spending time tracking. For instance, a delayed passenger switching carriers on a connecting trip would require interfaces across corporate databases that do not exist. NBTA agrees * * * that capturing individual passenger delays on missing connections, cancellations or diversion, would be difficult and for little benefit. Also, * * * travelers would be wary about the federal government collecting information on their personal flight data. While NBTA recognizes the need to give personally identifying information for the purposes of national security; giving that same information for the purposes of tracking delays is unreasonable."

The Department is not requiring air carriers to track and submit individual passenger data.

Gate Returns

A gate return occurs when the aircraft departs the boarding gate with passengers aboard and returns to a gate at that airport to deplane the passengers before the flight progresses to wheels-off at the departure airport. As stated previously, some carriers are reporting the first time the aircraft leaves the departure gate as the official gate departure time. Other carriers are reporting the last time the aircraft leaves the departure gate as the official gate departure time. Both methods of reporting produce misleading information for flights with multiple gate departures. The earlier gate departure makes it appear that the flight experienced an on-time departure and overstates taxi-out time. The reporting of the later departure time properly records a late departure but masks the total time the aircraft and passengers were sitting on the taxiway.

Commenters agreed that the Department should correct this reporting inconsistency. ATA and RAA proposed that the last time a flight leaves the boarding gate be reported as the official gate departure time. NBTA states that "* * * a flight that is delayed and given a new departure time should not be considered on-time when it leaves at the subsequent time." ATA and RAA also suggested that the Department add new data fields to collect the first time the flight left the boarding gate, the total time the aircraft was away from the gate at the departure airport, and the average time the aircraft was away from the gate at the departure airport.

The Coalition for Airline Passenger Bill of Rights commented that the longest time period away from the boarding gate is more informative than the average time. They also recommended that the Department clarify that the carrier may only count a gate return if passengers are permitted to deplane.

The Department will require air carriers to report the last time the aircraft leaves the boarding gate as the official gate-departure time. When there is a gate return, carriers will report new data fields to indicate the first time the aircraft left the boarding gate, the total time the aircraft was away from the boarding gate at the departure airport, and the longest single period of time that the aircraft was away from the boarding gate at the departure airport. Carriers will only report a gate return when passengers are permitted to deplane.

The Department agrees that the longest time away from the boarding gate is more meaningful information to consumers than the average time and the final rule requires the reporting of the longest time.

Cancelled Flights

All parties concur that the Department should collect additional data when a flight is cancelled after the aircraft leaves the boarding gate but before the flight lifts off from the tarmac.

“NBTA understands that in some cases it may be far preferable to have an extended tarmac delay than returning a flight to a gate, thus canceling or delaying the flight considerably * * * However, if a plane is cancelled after a tarmac delay, that fact needs to be taken into account when evaluating airline and airport performance. Current law does not provide this information and thus is not helpful to sophisticated buyers capable of evaluating trends over time.”

Currently, the carriers report only the scheduled departure and arrival times and no actual times for cancelled flights. To capture tarmac times for these cancelled flights, carriers now will complete the actual gate departure field, and report the new fields developed for total time away from gate and longest single period away from gate.

Diverted Flights

The rulemaking component which received the most wide-ranging comments was the reporting of data pertaining to flight diversions. Delta Air Lines objected to reporting data on diverted flights. It claimed that the reported data from diverted flights will have little or no value to DOT for the purpose of setting policy. Delta said the new requirements will cost up to

\$500,000, and result in “no tangible benefit to passengers.” Delta asserts that most if not all diversions occur because of safety factors. “As such, no amount of analysis by DOT of the diversion data requested in this NPRM will change in the least bit the frequency and effect of diversions.”

ATA/RAA supports the Department’s desire to collect additional data on diverted flights but believes the data should be limited. ATA/RAA said that the structure of the Department’s proposal to collect items at diverted airports would compromise the integrity of the fixed-length record format which is oriented to a single scheduled flight. They submitted examples where multiple diversion and turn backs would be difficult to capture under the proposal. Diversions account for 0.16 percent of all flights. “ATA believes that if the Department were concerned with information on such a small segment of operations, we should submit a proposal that would collect information for all possible scenarios.”

The Coalition for an Airline Passengers Bill of Rights said the data gaps in the on-time reporting system should be closed. The coalition said that a new set of codes to identify the cause of diversions should be implemented with a unique code to distinctly identify diversions caused by insufficient fuel.

ASTA, the world’s largest association of professional travel agencies, said it is “particularly important to include the data on diverted flights, which, while a small percentage of total flights, impact a large number of passengers. This data may be hard to collect, as the Air Transport Association (ATA) claims, but every effort should be made to get it so the manner in which these events occur, and their impact on the public, can be better understood.”

The Department agrees with the comments that, while the incidents of flights diversions are infrequent (16 out of every 10,000 flights), the impact on travel resulting from these relatively rare occurrences is noteworthy and is not adequately reflected in the Department’s on-time reports. BTS’ existing data understate the problem of extended tarmac delays because of lack of data created by gaps in the reporting system. After receiving numerous requests for information on tarmac delays, BTS decided to display a web page on tarmac delays of 3 hours or longer (http://www.bts.gov/programs/airline_information/taxi_out_times/html/over_3_hours_airport_2007_12.html). The lack of data from cancelled and diverted flights has the potential to disguise a serious problem and block its resolution. Alternatively,

the data could show that the problem is not as severe as some parties suggest. New carrier reports, identifying long tarmac delays on cancelled and diverted flights, would provide additional information on the extent of the problem. The Department also agrees with ATA that the reporting structure proposed in the NPRM would make it difficult, if not impossible, to report all possible flight scenarios, especially in the case of gate returns at diverted airports.

As proposed in the NPRM, the Department will add five data elements to capture diversions. However, instead of adding the gate-arrival and gate-departure times at the diverted airport, the carrier will instead report total time away from gate at the diverted airport and the longest time away from gate at the diverted airport. This change will avoid reporting uncertainty when there are gate returns at diverted airports or when a diverted flight remains on the tarmac without proceeding to an airport gate. The five data elements will be repeated for each additional airport to which a flight is diverted.

For on-time reporting purposes, a diversion is a non-stop flight that lands at a destination other than the original scheduled destination. Returns to the origin airport without arriving at a destination other than the origin airport are considered diverted flights.

The new data elements to be reported to BTS are:

- Airport code of diverted airport.
 - Wheels-on time at diverted airport.
 - Total time away from gate at diverted airport.
 - Longest time away from gate at diverted airport.
 - Wheels-off time at diverted airport.
- If a flight terminates at a diverted airport, the carrier would not report Wheels-off time at the diverted airport. If a flight ultimately arrived at the scheduled destination airport, the carrier would complete the fields for Actual Gate Arrival Time (at scheduled destination) and Wheels-on Time (Actual).

This reporting structure captures the data elements most desired by the Department and those consumer groups that submitted comments. The new reporting elements will provide information on:

- (1) Where diverted flights landed,
- (2) The total time the flights were on the ground away from the gates at the diverted airport,
- (3) The single longest period of time that the passengers were in the plane, on the ground, and away from the gate,

(4) The total time spent at the diverted airport (wheels-off time minus wheels-on time),

(5) Time spent by passengers in the airport terminal, or in the aircraft at the gate, but with access to the terminal (wheels-off time minus wheels-on time minus total time away from gate at diverted airport),

(6) Whether the flight reached its final destination,

(7) The total minutes of delay for a diverted flight that reached its final destination.

Also, the Department will be able to differentiate between diverted flights that reach their final destination from those that terminate at alternative airports.

At this time, the Department will not require air carriers to report a code showing the cause for diverted flights. Since the issue was not raised in the NPRM, the air carriers and other parties did not have sufficient opportunity to comment. As ATA and Delta commented, diversions are unplanned, fairly rare occurrences which take place for a variety of reasons, including safety. The Department initiated collection of causal information in 2003 as a tool to spot problem areas within the aviation system and to identify the party best able to initiate corrective action to prevent or mitigate future incidences. For example, air carrier delays would be addressed by the airlines. National Aviation System delays would be addressed by the FAA and airports. Security delays would be the responsibility of the Transportation Security Administration. Additional codes on diverted flights would not provide the Department or the air carriers with relevant information that would prevent or lessen the incidences of future diversions.

ATA asked a number of questions, including a request for clarification that the definition of on-time performance is not changing due to the new requirements. For clarity, we are addressing each of ATA's questions in the order asked.

The definition of an on-time flight is unchanged. An on-time flight is still a flight that arrives at the destination gate less than 15 minutes after the published gate arrival time. In computing a carrier's on-time percentage, BTS divides total scheduled flights into the number of flights that arrived less than 15 minutes after their published arrival times.

ATA Q 1. Will diversion data be reported in a single or multiple records?

A 1. The Department prefers to keep the single-record format; however, that

opinion would change if it is shown that a multi-record format is more efficient or produces better data. The Department invites carriers to participate in a working group to determine the technical details for submitting and processing this rulemaking's required data. The Department will also ask for volunteers for a pilot test of the new reporting requirements. Finally, the Department will issue a technical directive. ATA accurately states that a collaborative effort will provide DOT "the greatest likelihood that the new data elements will accurately account for information on all flight scenarios. Furthermore, this approach will ensure that all carriers will implement the same methodology to report accurately, reliably, consistently, and comparably."

ASTA requested to be a party to any industry work group to determine the data that would be collected. The decision on the data to be collected was based on the comments filed in Docket RITA 2007-28522. Meetings with air carriers are needed to review the technical aspects of the reporting requirements and to assure that the regulated community understands the new requirements.

ATA Q 2. For flights that divert to an airport and do not reach a gate, how should the gate-arrival and gate-departure data fields be reported?

A 2. From the comments received, the Department determined that the data need would be met by collecting total time on tarmac and longest time away from the gate instead of the gate-arrival and gate-departure fields for diverted flights.

ATA Q 3. When a flight diverts, how should the flight data be represented?

A 3. Carriers will report the following:
Airport code of the diverted airport.
Wheels-on time at diverted airport.
Total time spent away from gate at diverted airport.

Longest single period of time spent away from gate at diverted airport.

Wheels-off time at diverted airport.

If the flight terminates at the diverted airport, the carriers would report a "0" (zero) in the wheels-off time field. If the flight departs the diverted airport on its way to the scheduled destination airport, the carrier would repeat these same 5 data fields.

ATA Q 4. When a flight over-flies an intermediate stop and diverts, how should the flight be represented?

A 4. Any time a non-stop flight segment is operated from its scheduled origin airport and lands at a place other than the scheduled destination airport,

carriers will report the 5 data elements listed in Answer 3.

ATA Q 5. When a flight originates at an unscheduled airport prior to the scheduled airport, how should the data be represented?

A 5. Flights that truly originate at nonscheduled airports are not reported. However, if a carrier's flight #123—BOS—DCA—MIA was diverted to an alternate airport (BWI) before landing at DCA, flight #123 BWI to DCA would not be considered an originating flight. The carrier would report the five data items for the diverted airport, and report the wheels-on and gate-arrival times at DCA for the BOS—DCA segment of flight #123. The DCA—MIA segment of flight #123 would be reported as normal. If, instead, flight #123 landed at BWI and operated directly to MIA, the BWI—MIA segment would not be reported. For the BOS—DCA segment, the carrier would still report the diversion data but it would have no time to report for wheels-off at BWI. Also, the DCA—MIA portion of flight #123 would be reported as a cancelled flight.

ATA Q 6. When a flight extends beyond the scheduled destination airport, how should the data be represented?

A 6. Using the flight #123 example, if the carrier announced to its passengers in advance that the flight would not land at DCA but would fly directly to MIA, both the BOS—DCA and the DCA—MIA segments would be reported as cancelled flights. But if it was determined that conditions at DCA made it impossible to land after departure from BOS, and the flight continued to MIA, the MIA landing would be considered a diversion of the BOS—DCA segment. The DCA—MIA segment would be reported as a cancelled flight. These reporting instructions are consistent with the historical reporting of cancellations and diversions.

ATA Q 7. When a flight operates to an alternate airport, same city, how should the flight be represented?

A 7. Flights that land at alternate airports are reported as diverted flights even when the alternate airport serves the same city.

ATA Q 8. What happens when we have multiple operation issues? Such as a flight that is scheduled to operate Seattle-Boston, has a gate return, then leaves Seattle but diverts to Denver due to a medical emergency, then continues on, but again diverts due to weather in Boston, then at last makes it to Boston. Are we to have four different data records to account for the mishaps?

A 8. The carrier would report the flight as follows:

The last time the aircraft left the gate at the scheduled airport would be reported as the *Actual Gate Departure Time*. The time the aircraft originally left the gate would be reported as the *Gate Departure Time—First Time Out*. The carrier would complete the fields, *Total Time Away from Gate for All Gate Returns, including cancelled Flights and Longest Time Away from Gate for All Gate Returns, including Cancelled Flights* for the gate return at Seattle. The fields: *Airport code of the diverted airport; Wheels-on time at diverted airport; Total time spent away from gate at diverted airport; Longest single period of time spent away from gate at diverted airport; and Wheels-off time at diverted airport* would be completed for the landings at Denver and Newark.

ATA Q 9. How is On-Time calculated since we left our scheduled origin airport and did not arrive at the scheduled destination?

A 9. Flights that are scheduled and do not reach their scheduled destination are counted against the air carrier when computing the percentage of on-time arrivals; however, no minutes for late arrivals are computed for flights that do not reach their scheduled destinations.

ATA Q 10. If you divert to another airport and report the times there, then continue to the original destination, what scheduled times do you use for On-Time performance calculations?

A 10. On-time calculations are made by comparing the scheduled gate-arrival time at the scheduled destination with the actual gate-arrival time at the scheduled destination airport.

Rulemaking Notices and Analyses

Economic Summary

Executive Order 12866

Under Executive Order No 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an

annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is a “significant regulatory action” under Executive Order No. 12866. The rule was reviewed by OMB. In addition, this rule is significant under the Department’s Regulatory Policies and Procedures.

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

Cost/Benefits

After a public meeting in June 2007 some carriers commented to BTS that the cost for programming to provide additional data on gate returns and cancelled and diverted flights could range from \$10,000 to \$60,000 per carrier. Delta Air Lines commented to the Docket that the reprogramming costs to capture information on diversions could be up to \$500,000 for Delta alone. Since the carriers have the additional data that the Department is requesting, the Department believes the original cost estimate of \$10,000 to \$60,000 is accurate. Delta’s estimate seems overstated because the new data elements are already available to the air carriers. Using the high end range of the original estimates, compliance with this rule could impose a one-time cost on the affected segment of the industry of \$1.2 million.

We believe that the rule will result in many unquantifiable benefits that exceed the costs. Consumers will have more accurate data for making their transportation selections. The public availability of these data may influence carriers to limit the length of the tarmac portion of delays (i.e., to reduce the amount of time that a delayed flight spends on the ground away from the gate). The FAA will have complete data on all long tarmac delays to use in its airport modeling. Aside from costs and benefits, it is important to note that H.R. 2881, the FAA Reauthorization Act of

2007 (Title IV—Air Service Improvements; Section 401), includes a provision that would require BTS to expand the reporting system to capture all operational data on gate returns and cancelled and diverted flights.

Regulatory Flexibility Act of 1980

This Act requires agencies to analyze the economic impact of regulatory changes on small entities. The carriers that are required to report Airline Service Quality Performance (ASQP) data are all large air carriers with annual passenger revenues exceeding \$600 million each. Thus, this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Agreements Act

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132, Federalism

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

Paperwork Reduction Act

The reporting burden associated with this final rule will be reviewed by OMB under the OMB Approval No. 2138–0041. The NPRM asked for public comments on costs and burdens. Based on carrier comments, the major burden increase will be reprogramming. We estimate a first-year increase in reporting burden of 900 hours per carrier or an industry increase of 18,000 hours. After the carriers have revised their systems, the reporting burden should increase slightly from 159 annual burden hours to 175 annual burden hours per carrier.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda each April and October. The RIN Number 2139-AA12 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

The Final Rule**List of Subjects in 14 CFR Part 234**

Air carriers, Reporting and recordkeeping requirements.

■ Accordingly, the Department of Transportation amends 14 CFR Chapter II as follows:

PART 234—[AMENDED]

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

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

■ 2. Section 234.4 is amended as follows:

- a. By adding paragraphs (a)(22) through (a)(29) as set forth below.
- b. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j), respectively.
- c. By adding new paragraph (b).
- d. By revising newly designated paragraph (c).

§ 234.4 Reporting of on-time performance.

(a) * * *

(22) For gate returns, first gate-departure time at origin airport

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

(24) Longest time away from gate for gate return or cancelled flight

(25) Three-letter code of airport where diverted flight landed

(26) Wheels-on time at diverted airport

(27) Total time away from gate at diverted airport

(28) Longest period of time away from gate at diverted airport

(29) Wheels-off time at diverted airport

(b) Repeat fields (25) through (29) for each subsequent diverted airport landing

(c) When reporting the information specified in paragraph (a) of this section for diverted flights, a reporting carrier shall use the original scheduled flight number and the origin and destination airport codes except for item (25).

* * * * *

Issued in Washington, DC, on May 15, 2008.

M. Clay Moritz, Jr.,

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

[FR Doc. 08-1274 Filed 5-16-08; 12:00 pm]

BILLING CODE 4910-HY-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 1b**

[Docket No. RM08-10-000; Order No. 711]

Submissions to the Commission Upon Staff Intention to Seek an Order To Show Cause

Issued May 15, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to expand and clarify the right of an entity to submit a written response to the Commission in the event staff intends to recommend that the Commission initiate a proceeding governed by 18 CFR Part 385, or make the entity a defendant in a civil action to be brought by the Commission. Subjects of investigations currently have the right under 18 CFR 1b.19 to be informed in the latter instance, but only in the event staff finds it appropriate and in the public interest. The amendment would grant that right, for both types of proceedings, in all cases except those in which extraordinary circumstances make prompt Commission review necessary to prevent detriment to the public interest or irreparable harm. The amendment also clarifies the timing requirements for such submissions. These changes codify current staff practice regarding recommendations for orders to show cause, and will allow subjects of investigations a fuller opportunity to present their positions to the Commission.

DATES: *Effective Date:* The rule will become effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathryn Kuhlen, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6855.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Final Rule

Issued May 15, 2008.

I. Background

1. The procedural rule set forth in 18 CFR 1b.19 (2007) governs the procedures to be followed regarding submissions to the Commission in the event Commission staff recommends that the subject of an investigation be made a defendant in a civil action to be brought by the Commission. Before enactment of the Energy Policy Act of 2005,¹ this provision rarely came into play, as most investigations have been resolved either through closure without further action or by settlement. Indeed, at a recent technical conference on enforcement held by the Commission,² it appeared that many energy practitioners were unaware of the submission process set forth in this regulation, and expressed a desire for more clarity regarding the due process rights of the subjects of staff investigations.

2. In light of the comments at the technical conference and the need to ensure due process in our investigations, the Commission has reexamined 18 CFR 1b.19 and determined to clarify its provisions and expand the procedural rights it provides.

3. The current language in the regulation provides that staff need only advise the subject of an investigation of staff's intent to seek an order to show cause in the event staff determines that it is appropriate in the interest of the proper administration of the law to do so. However, it is staff's practice to advise the subject of an investigation of such intent in all cases, except where exigent circumstances, such as the danger of irreparable harm, require prompt Commission action. Therefore, we believe it appropriate to codify the current practice and provide subjects the right to be informed of staff's intent, with the concomitant ability to present a response to be provided to the Commission for its consideration along with staff's recommendation.

II. Commission Determination

4. This Final Rule amends 18 CFR 1b.19 to provide that in the event Commission staff intends to recommend to the Commission that it initiate a proceeding under 18 CFR Part 385 against the subject of an investigation being conducted under the provisions of 18 CFR Part 1b, or to recommend that

¹ Energy Policy Act of 2005, Public Law No. 109-58, 119 Stat. 594 (2005) (EPA Act 2005).

² Conference on Enforcement Policy, Docket No. AD07-13-000, Nov. 16, 2007.