

# Proposed Rules

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

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. OST-95-248, formerly Docket 50053; RIN 2139-AA00]

### 14 CFR PART 234

#### Amendments to the On-Time Disclosure Rule

AGENCY: Office of Secretary, DOT.

ACTION: Notice of withdrawal.

**SUMMARY:** The Office of Secretary is withdrawing its rulemaking proposal to revise the on-time flight performance reporting requirements. The Department had proposed to re-establish the exclusion of flights delayed or cancelled due to mechanical problems. This withdrawal of the rule is taken in response to comments made to the notice of proposed rulemaking by consumer groups, safety experts and various airlines.

**FOR FURTHER INFORMATION CONTACT:** Bernard Stankus or Clay Moritz, Office of Airline Information, K-25, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590-0001, (202) 366-4387 or 366-4385, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 26, 1995, the Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (60 FR 29515; June 5, 1995) seeking public comments on the proposal to revise the on-time flight performance reporting requirements by re-establishing the exclusion of flights delayed or cancelled due to mechanical problems. The NPRM also sought comments on (1) the retroactive application of the proposal, (2) the collection and publication of flight completion data, and (3) the filing frequency of the data collection.

Shortly, after the RSPA issued the NPRM, its Office of Airline Statistics was transferred to the Bureau of

Transportation Statistics (BTS). BTS renamed the office the "Office of Airline Information" (OAI). OAI administers the on-time flight reporting program.

Comments to the NPRM were received from eight air carriers (America West, American Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Air Lines, and USAir); three labor unions (the Air Line Pilots Association, the International Association of Machinists and Aerospace Workers, and Southwest Airlines Pilots' Association); seven consumer groups (American Automobile Association, Aviation Consumer Action Project, Best Fares Magazine, Consumers Report Magazine, International Airline Passengers Association, J.D. Power and Associates, and the National Consumers League); one research group (Aviation Foundation); one state agency (Michigan Department of Transportation); and 19 individuals, which include three pilots and one mechanic. Also, letters to DOT Secretary Peña from Representatives Luther and Oberstar, Senator Pressler and the House of Representatives' Committee on Transportation and Infrastructure co-signed by Congressmen Duncan, Shuster, Costello, Weller, DeFazio, LaHood, Lipinski, Bachus, Clement, Seastrand, Kim, and Ewing were placed in the docket.

The issues addressed by the comments were safety, consumer interest, publication of a completion factor, reporting frequency, cost of reporting, and restatement of prior data. Each of these issues is discussed below under separate captions.

##### Safety

The American Automobile Association (AAA) has over 37 million members and operates approximately 900 accredited travel agency locations. AAA does not believe that any air carrier would cut safety to gain a perceived marketing advantage. According to an informal survey by AAA travel agencies, flight delays were low on the list of air passenger concerns.

The Airline Pilots Association (ALPA) believes the inclusion of mechanical delays and cancellations creates a conflict between safety and on-time performance. ALPA cites the report "Zero Accidents—A Shared Responsibility," prepared by a group of safety experts, that reporting mechanical

delays and cancellations could intimidate maintenance personnel and encourage unsafe practices. ALPA wrote, "While airlines and their employees will always consciously place safety ahead of on-time performance, the rule as amended in September, 1994—to include mechanical delays in the on-time reports—raises the potential of a conflict between one-time performance and the commitment to safety."

American Airlines believes that DOT should continue requiring airlines to report mechanical delays and cancellations as they have done since January 1995 without any impact on safe operations. American said that there has not been any reported instance where a pilot or mechanic was pressured to compromise safety, since American and other airlines did not change their safety-related dispatch of aircraft. By letter dated April 21, 1995, the chief safety officers of American, Delta, United and USAir advised Secretary Peña that airline employees would not compromise safety because of on-time reporting considerations. They stated that reporting mechanical delays and cancellations creates an incentive for air carriers to improve their mechanical performance through the use of spare aircraft and parts, mechanic staffing, scheduling practices, fleet decisions, etc.

In testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Aviation, Robert W. Baker, American's Executive Vice President—Operations, stated "No mechanic would jeopardize the lives of customers and fellow workers, as well as his or her career to give us a possible boost in a DOT dependability statistic." He went on to state that if the industry were now sending out unsafe aircraft to avoid delays, that fewer delays would be reported. However, the incidence of delays has not decreased.

In a letter to Secretary Peña, the Aviation Subcommittee on Transportation and Infrastructure stated, "Including mechanical delays may actually enhance safety by giving airlines an incentive to keep their aircraft in top condition to avoid mechanical problems." Moreover, since mechanical delays and cancellations have been included in the carriers' reports, there is no evidence that safety

has been impaired. A correlation to reporting mechanical-related delays is the reporting of weather-related delays. The subcommittee stated that it knows of no instances where an airline employee avoided deicing an aircraft, flew in dangerous weather conditions or engaged in risky behavior in order to improve on-time performance. "Given the competence and integrity of aviation workers, we cannot believe that any of them would put on-time performance ahead of human life."

Delta Air Lines states that there is "no safety issue associated with on-time reporting." Delta refutes Northwest's claim that, during a January 1995 safety conference, there was "unanimous" agreement that reporting mechanical delays and cancellations have negative safety implications. Delta along with American, United and USAir represent 68.4 percent of revenue passenger miles and 58.5 percent of departures among reporting carriers. These four carriers have confidence in the integrity of their pilots and mechanics that "they would not compromise safety to make an on-time goal."

Since there is no evidence that any airline or employee has ever compromised safety to achieve an on-time flight, Delta questions DOT's logic for singling out mechanical delays for exclusion from the reporting system. Delta believes that mechanical delays should be treated in the same manner as weather delays, fueling delays and deicing delays, since they all involve an element of employee judgment.

Mr. Jeffrey R. Grunow believes U.S. air travelers are intelligent consumers and do not need the benevolent protection of the government on this issue. One of the FAA's roles is to monitor the maintenance of aircraft. Maintenance delays should remain in the on-time reports.

International Airline Passengers Association (IAPA) believes that the consumer should know if an airline is "suffering many mechanical delays, it may be an early sign of financial distress or retention of older aircraft too long." Also, IAPA believes in the integrity of the professional mechanics, flight crews and cabin crews to operate in a safe manner. If DOT is concerned that a mechanic would take improper action to improve a carrier's on-time performance, it should impose substantial fines or criminal sanctions for such an act.

The international Association of Machinists and Aerospace Workers (IAMAW) strongly supports the exclusion of mechanical delays and cancellations from on-time reporting. It states that interests of airline safety

cannot be subordinated to the carriers' competitive need to improve on-time performance percentages. IAMAW stated that safety experts believe that "inclusion of mechanicals intimidates maintenance personnel and encourages potentially unsafe practices."

Mr. Darryl Jenkins, a visiting scholar at George Washington University, does not believe that safety will be adversely impacted by the reporting of mechanicals. However, if the Department believes otherwise, then delays due to weather should not be included in on-time performance report because dispatchers face a conflict between on-time performance and safety.

State of Michigan Department of Transportation believes including mechanical delays and cancellations could compromise safety. Airline personnel may feel compelled to send out an aircraft with mechanical problems to maintain on-time performance records.

Northwest Airlines contends that the inclusion of mechanicals may compromise safety by placing undue pressure on maintenance personnel and increase the likelihood of human error. Northwest states that the elimination of mechanicals from the Department's on-time reporting system ranked among the top five safety recommendations of the Aircraft Maintenance Procedures and Inspections Workshop at the 1995 Aviation Safety Conference. Northwest stated, "including mechanical delays in on-time reporting may well have an impact on the safety of our system. There is no legitimate reason for assuming any additional safety risk for the sake of more pristine on-time performance data. We can and should choose to eliminate this risk."

Southwest Airlines believes the only practical means of resolving the inherent conflict between on-time performance and safety is reinstatement of the exclusion for mechanical problems. Because on-time rankings are widely reported in the media, they have become an important component in airline advertising.

The Southwest Airlines Pilots' Association (SWAPA) states that the inclusion of mechanicals puts added pressure on an employee to get a job done properly and in a timely manner. SWAPA recommends that DOT take the safe and proven action of not reporting mechanicals.

TWA believes that there is a serious risk that operating personnel will feel pressured by the on-time reporting requirements to release aircraft faster, and that the risk of error will be increased by such pressure.

United Air Lines states that including mechanicals in its on-time reports for the first several months of 1995 has not otherwise affected United's operation or its commitment to safety. Passenger safety is still the most important responsibility of air carriers. For the Department to second-guess its earlier decision to include mechanical delays and cancellations and now reverse itself can only cause consumers and the airline industry, generally, to question the Department's credibility.

USAir (now US Airways) states that there is no evidence to support the argument that on-time reporting statistics affect safety or maintenance practices. Excluding mechanical delays rewards carriers that choose to operate with older, less reliable aircraft, or with less rigorous preventive maintenance programs.

Mr. Ed Wayman, an accountant with piloting experience, says that he always takes the safe course when it comes to flying, and this goes double when he has family along. He believes that mechanicals should be reported so that he and others can make more informed decisions.

Mr. Roger White, a pilot and airline consumer, believes that no pilot is going to take an aircraft with a questionable mechanical defect. No airline will survive if it intimidates mechanics into releasing non-airworthy aircraft. Too many people are involved in the process to say that one person alone can allow an unsafe aircraft to fly.

Representative Oberstar states, "The purpose of the [on-time] reporting was to encourage airlines to modify their behavior, not take risks. For that reason, mechanical delays, which are beyond the control of the carriers, wisely were not included in the counts." Representative Oberstar adds, "Mechanical delays are beyond the control of the carriers. It is critically important to safety that such delays be honored until the repairs are made. No good public purpose is served by giving an airline a black mark for fixing an airplane." Representative Oberstar argues that the Department should remove mechanical delays from the reports.

#### Consumer Interest

AAA stated that flights delayed or cancelled because of mechanical problems should be included in the air carrier on-time performance in order to provide the most reliable and accurate information to the consumer.

American and Delta believe that the inclusion of mechanical delays and cancellations is pro consumer, allowing

the consumer to know his overall chance of receiving on-time service.

Delta believes that if mechanical delays are excluded, the Department should limit the exclusion to the one flight where the mechanical occurred. The Department should not allow carriers to reap an unintended windfall by permitting exclusions of downline delays which may be only tenuously related to the initial event.

The National Consumers League, International Airline Passengers Association, Aviation Foundation, Best Fares, Consumer Reports Travel Letter, Aviation Consumer Action Project and JD Power Associates filed a consensus statement. Their main concern is that the traveling consumers receive "reliable, accurate, complete, and consistent information to make sound travel decisions." They believe that carriers must report their mechanical delays and cancellations to have reliable, accurate, complete, and consistent data.

Donald J. Arndt, a business traveler, wants more informative data to help when making travel decisions. Delays should be reported in five categories: weather, mechanicals, airline-induced, taxi delays, and other (passenger-induced, no fault of air carrier). If DOT drops mechanical delays and cancellations from the data, it should just stop providing the information. Mr. Arndt stated, "The main problem we have today is the amount of lying that goes on with airline information."

Peter Bentley requests that DOT not exclude mechanical delays and cancellations. He believes exclusion would distort the on-time results in favor of the least efficient airlines and be detrimental to the airlines that do not inconvenience their customers and still maintain safe aircraft.

The Aviation Subcommittee on Transportation and Infrastructure believes that on-time performance data provide important information to consumers that would lose value if certain types of delays were excluded.

Mr. Roy L. Farrelly, a pilot from Delta Air Lines, states that excluding mechanical delays would make the reports useless.

Ms. Laurie Fitch, Mr. Joseph M. Grohsan, Ms. Wendy Jaquez, Mr. Kenneth R. Kirkwood, Mr. G.L. Krayniak, Mr. Daniel C. Palmer, Mr. Gary Reed, and Mr. William M. Patterson filed separate comments. They want total, accurate information to make travel decisions. They support the inclusion of mechanical delays in the on-time statistics.

IAPA would like the reason for flight delays to be identified. Some delays are

caused by weather, by the air traffic control system or by the airlines. "Any accurate system of on-time reporting should give higher grades to the airline that gets its passengers to its destination, rather than the airline that has a mechanical, cancels a flight and strands the passengers." Excluding mechanical delays from on-time reporting ends up penalizing a carrier that serves its passengers by getting them to their destination by using a backup aircraft when it has a mechanical problem.

Mr. Darryl Jenkins wrote, "In reality, the Department has failed to appreciate the power of information in the hands of the consumer. Information that is incomplete, unreliable and inaccurate—such as is being proposed—only sustains poor performance and reinforces marketplace inefficiencies."

Mr. Keith. Johnson, a pilot from United Airlines, supports the exclusion of mechanical delays and cancellations. He also believes that carriers like United, Delta and American are at a disadvantage because they use the latest technology that records their takeoff and landing times automatically. Northwest and Southwest use manual input, which Mr. Johnson believes can work to those carriers' benefit.

National Consumer League asks that DOT provide complete information about airline on-time performance. Excluding mechanicals is basically unfair. An airline that encounters a few weather delays, which are unavoidable, loses out in the on-time rankings to another carrier that misses the bad weather but has many flights delayed and canceled because of mechanical problems, because mechanical problems are not part of the calculation. By excluding mechanicals, DOT penalizes the very airlines that have chosen to put in place aggressive preventive maintenance programs.

Mr. Craig Searls says that it is very important to business travelers to assess the probability of arriving at their destination on-time. He believes most delays are caused by the weather, mechanical problems and system operation delays. The weather can be estimated from the newspapers, but the only way to assess the likelihood of mechanical problems is through DOT's on-time performance reports.

United Air Lines believes that including mechanical delays avoids the differences in how airlines categorize mechanical delays, and provides uniform and complete public disclosure. Excluding mechanicals skews the data and produces an inaccurate assessment of air carrier performance.

USAir believes that excluding mechanicals would be a real disservice to consumers because it paints an inaccurate picture of carriers' performances.

Mr. James Whelan, an aircraft maintenance professional with 30+ years of experience, states that maintenance delays are part of an airline's overall on-time performance and should be included in the statistics.

Mr. White wants to know what percentage of all flights arrive on-time, not just the "good flights" or those that do not have a mechanical problem.

Autre E. Wilson and Betty S. Wilson filed a joint comment. They believe mechanicals should be included in the on-time performance reports to provide the public with a real picture of airline performance. Air traffic controllers at St. Louis Lambert International Airport are frequently cited as the cause of airline delays when, in fact, the actual cause is an air carrier that operates many older jet aircraft.

#### **Publication of a Flight Completion Factor**

American believes that mechanicals should be included in the completion percentage even if they are excluded from the on-time percentages. DOT could require air carriers to tag those flights which are to be excluded from dependability reporting due to mechanical problems. DOT would then have comprehensive data to compute an accurate departure-completion percentage for each airline, as well as the ability to audit carrier compliance with the rules governing mechanical exclusions.

Delta believes the Department should collect and publish the overall scheduled completion rates for all carriers, which is the ratio of total domestic flights scheduled to total domestic flights completed. Nonscheduled and extra-section flights should be excluded because the numbers of such operations vary from carrier to carrier and from season to season and would distort the percentages. Delta believes publishing a completion factor would reward carriers that incur the cost of having spare aircraft and crew available.

IAPA believes that airline passengers should have information on the actual number of flights completed by an airline compared to the number of flights scheduled. All flights should be included regardless of the reason for cancellation, i.e., mechanical or weather problems.

Northwest and Southwest support the publication of completion percentages so long as mechanicals are excluded and

airlines will not be forced to incur any significant additional burden or cost. They believe the reasons for excluding mechanicals from the completion percentages are the same for excluding mechanicals from the on-time reports. Northwest believes that the completion percentage should be based on the number of scheduled departures completed rather than the number of scheduled miles completed.

The National Consumer League believes that one of the deficiencies in DOT's *Air Travel Consumer Report* is the failure to include information on which carriers most often complete their scheduled flights.

TWA believes that the publication of a completion percentage will provide useful information to consumers but, because the information is already available in reports filed with DOT, no further submissions should be required of carriers.

United believes that DOT can readily publish a completion factor from the data that is now reported. However, if mechanicals are once again excluded, United see no benefit of only reporting weather and air traffic-control related cancellations.

USAir states that a completion percentage should be based on the number of scheduled flights completed compared to its number of scheduled flights. Using T-100 data would skew the data, because extra section flights would cause a carrier's completion percentage to be overstated.

### Reporting Frequency

American and Delta believes that less frequently reporting would not reduce reporting burden and support monthly reporting.

Northwest believes that significant savings to the airlines, CRS operators and the Department could be realized by the change to quarterly submissions.

Southwest states that less frequent reporting would not significantly reduce the burden on carriers or increase the usefulness of the information to consumers, who receive more current information by monthly, rather than quarterly reports.

TWA supports the continuation of monthly reporting. TWA states that since carriers will still have to collect on-time performance data, it will not make any difference whether they submit the data monthly or quarterly. There is no significant saving from less frequent reporting.

United Air Lines prefers monthly reporting, because consumers benefit from having the most recent and reliable information on which to base their purchasing decisions.

### Cost of Reporting

Delta states that it is less costly to report under the current system where carriers report all domestic scheduled passenger flights.

### Resubmission of Prior Data To Exclude Mechanicals

Northwest supports the retroactive application of the mechanical-based exclusion in order to preserve the integrity and consumer usefulness of the Department's historical on-time data.

While United Air Lines believes that airlines should continue to include mechanicals in their on-time performance, if the Department decides to exclude them, then the airlines should refile past reports for the intervening months to ensure that all monthly data are comparable and consistent.

### Determination

Based on the reporting experience since 1995, the Department has decided to withdraw its notice of proposed rulemaking. There have been no incidents where a carrier operated a flight with an unairworthy aircraft to improve its on-time flight performance. The requirement to report mechanicals may create a market-based incentive for airlines to improve preventive maintenance procedures and to have readily available back-up flight crews and aircraft. Title 15 CFR Part 234 does not specify an on-time flight performance standard that carriers must meet. Rather, the carriers' reports provide consumers with information on carrier performance, which the consumer may use in carrier selection.

The Department compared the carrier rankings for the calendar year 1994 with calendar year 1995. The former period excludes mechanical delays and cancellations, while the latter period includes all flights. With the exception of two carriers, on-time performance percentages were lower in 1995. The lower on-time percentages can be attributed, in part, to the elimination of the mechanical exclusion. We believe the 1995 reports are a more truthful portrayal of air carrier performance.

Because we are continuing current practice, there is no need for collecting and publishing flight completion data. The carriers expressed little interest in reducing filing frequency so we are, therefore, not making any change.

Issued in Washington, DC, on January 19, 1999.

**Rodney Slater,**  
Secretary.

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BILLING CODE 4910-62-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-106564-98]

RIN 1545-AW86

### Modifications and Additions to the Unified Partnership Audit Procedures

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

**SUMMARY:** In the Rules and Regulations of this issue of the **Federal Register**, the Internal Revenue Service (Service) is issuing temporary regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The text of those temporary regulations also generally serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written and electronic comments must be received by April 26, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 14, 1999, at 10 a.m. must be received by March 24, 1999.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-106564-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-106564-98), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed and temporary regulations, Robert G. Honigman, (202) 622-3050; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Michael L. Slaughter,