

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 241

RIN 2105-AE41 (formerly 2139-AA13)

[Docket No. DOT-RITA-2011-0001]

Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments

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

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is issuing a final rule that changes the mishandled-baggage data that air carriers are required to report, from the number of Mishandled Baggage Reports (MBR) and the number of domestic passenger enplanements to the number of mishandled bags and the number of enplaned bags. Fees for checked baggage may have changed customer behavior regarding the number of bags checked, potentially affecting mishandled-baggage rates. Finally, this rule fills a data gap by collecting separate statistics for mishandled wheelchairs and scooters used by passengers with disabilities and transported in aircraft cargo compartments. An additional topic covered in the proposed rule, the reporting of airline fee revenues, remains open and is not addressed in this rulemaking.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590, 202-366-5952 (phone), 202-366-5944 (fax), tim.kelly@dot.gov. You may also contact Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), blane.workie@dot.gov. TTY users may reach these individuals via the Federal Relay Service toll-free at 800-877-8339. You may obtain copies of this notice in an accessible format by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, the Department published a notice of proposed rulemaking (NPRM) in the Federal Register, 76 FR 41726, which addressed the following areas: (1) reporting of ancillary fee revenue; (2) data for computation of mishandled-baggage rates; and (3) data for mishandled wheelchairs and scooters used by passengers with disabilities that are transported in the cargo compartment. With regard to the reporting of ancillary fee revenue, the Department proposed to collect detailed information about ancillary fees paid by airline consumers to determine the total amount of fees carriers collect through the *a la carte* pricing approach for optional services related to air transportation. The Department also proposed to alter its matrix for collecting and publishing data on mishandled baggage. For many years the Department has required the larger U.S. air carriers to report the number of Mishandled Baggage Reports (MBRs) filed by passengers and the total number of passenger enplaned. The Department then divides the number of MBRs (the numerator) by the total number of passengers enplaned (the

denominator) and multiplies the result by 1,000 in order to arrive at a rate of MBRs per 1,000 passengers which it publishes in its monthly Air Travel Consumer Report. For example, if an airline reports 800 MBRs and 600,000 passengers enplaned, that carrier will have a published rate of 1.3 MBRs per 1,000 passenger enplanements. In the NPRM, rather than compute the number of Mishandled Baggage Reports per unit of domestic enplanements the Department proposed using the number of mishandled bags per unit of total bags checked. As noted in the NPRM, passenger behavior was altered regarding the unit of bags checked when many air carriers began charging passengers for each bag that they check. We believe that airline passengers would have better information to compare airline services if the matrix for mishandled baggage were changed to the number of the actual mishandled bags per unit of checked bags rather than the number of Mishandled Baggage Reports filed by passengers per unit of domestic scheduled-service passenger enplanements. As explained below in greater detail, although the NPRM proposed to require carriers to report the total number of “checked bags,” in this final rule we are clarifying this term to mean the total number of “checked bags enplaned.” Consequently, a one-way connecting passenger would have his or her checked bag counted each time the bag was enplaned—i.e., at the origin point and at the connecting point. This is consistent with the manner in which the existing rule requires the total number of passengers enplaned to be reported. Finally, the Department proposed to collect information regarding damage, delay or loss of wheelchairs and scooters transported in the aircraft cargo compartment.

The Department received 278 comments in response to the NPRM, including several representing the views of multiple entities. Of these, eight comments were from members of the airline industry, representing the views of Allegiant Air, American Airlines, Delta Air Lines,

Southwest Airlines, Spirit Airlines, United Air Lines, US Airways, and Virgin America. Six comments were from industry associations, representing the views of Airports Council International, North America (ACI-NA), the Air Transport Association of America (ATA) [now known as Airlines For America (A4A)], the American Aviation Institute (AAI), the American Society of Travel Agents (ASTA), the Association of Retail Travel Agents (ARTA), and the Regional Airline Association (RAA). The Department received two comments from FlyersRights.org and 260 comments from individuals, including 219 from members of FlyersRights.org. Other consumer and disability associations, including Consumer Action, the Consumer Federation of America, Consumers Union, the Consumer Travel Alliance, the National Consumers League, the Open Doors Foundation, and the Paralyzed Veterans of America submitted comments.

On April 27, 2012, the Department published a notice of public meeting in the Federal Register, 77 FR 25105, listing a series of questions that the Department intended to pose to the public in order to receive input on the costs and benefits associated with the proposals outlined in the July 15, 2011, NPRM. This public meeting was held at the Department's headquarters on May 17, 2012. Attendees provided the Department with oral comments, a transcript of which is available in the public docket. Subsequent to the public meeting, American Airlines, Delta Air Lines, and US Airways submitted additional written comments.

In general, consumers, consumer associations, disability associations, and airports support the rule as proposed while many airlines and airline associations oppose it. The section-by-section analysis will describe each provision of the final rule.

On January 17, 2014, President Obama signed into law the Consolidated Appropriations Act, 2014 (P.L. 113-76), which included language transferring the powers and duties, functions,

authorities and personnel of the Department's Research and Innovative Technology Administration (RITA) to the Office of the Assistant Secretary for Research and Technology (OST-R) in the Department's Office of the Secretary. Thus, the Office of the Assistant Secretary for Research and Technology is now an office within the Office of the Secretary. Based on the Act, this rulemaking received a new regulation identifier number.

COMMENTS AND RESPONSES

1. Reporting of Ancillary Fee Revenue

The Department bifurcated its rulemaking on the reporting of ancillary fee revenue into two separate rules: this rule to address the reporting of data used in the computation of mishandled baggage and wheelchair/scooter rates (2104-AE41), and another rule to address the reporting of ancillary fee revenue (2105-AE31). These rulemakings were split as they address unrelated matters and their separation will make it easier for stakeholders to locate information about a particular topic embodied in each separate rule. The Department's rulemaking on the reporting of ancillary fee revenue, including an analysis of the public comments received in response to the 2011 NPRM and 2012 public meeting, remains open.

2. Mishandled Baggage

The NPRM: In the NPRM, the Department proposed changing the methodology for reporting mishandled baggage on a domestic system basis, excluding charter flights. The rule's proposed text would require reporting the number of mishandled bags rather than the number of Mishandled Baggage Reports filed by passengers, and the total number of domestic checked bags enplaned rather than the number of domestic passenger enplanements. As noted above, the Department stated in the NPRM that it believes that the current matrix for comparing airline mishandled baggage performance is outdated and the proposed changes would give airline

passengers better information to compare airline services. Passenger behavior was altered regarding the number of bags checked when many air carriers began charging passengers for each bag that they check. Although the Department did not specifically solicit comments on alternative methodologies for reporting mishandled baggage, comments received from air carriers and their associations led the Department to consider alternatives discussed below.

Comments: Consumers and consumer groups, as well as ACI-NA and one carrier, Southwest Airlines, stated that the proposed methodology would render more accurate and useful results. The current methodology, these comments asserted, compares unrelated numbers since fewer passengers currently check bags than when the methodology was devised. Consumer groups commented that the Department should capture data regarding the number of mishandled bags that were checked at the gate, in addition to the number of mishandled bags that were checked at check-in counters and self-service bag drop locations.

On the other hand, A4A (excluding JetBlue and Southwest Airlines), RAA, and the carriers that submitted comments, with the exception of Southwest Airlines, contend that the Department's long-standing methodology for calculating mishandled baggage is useful and valid. They commented that the proposed methodology would cost industry more than the current methodology. Increased costs would stem primarily from recording interlined baggage, gate-checked baggage, and "valet" bags. (Interlined baggage is checked baggage of a passenger whose itinerary does not involve a code-share but includes more than one airline. Gate-checked baggage is baggage that the passenger brought to the gate but which was taken by the carrier at that location and checked into the baggage compartment of the aircraft. Valet bags, sometimes called planeside bags, are bags that a passenger drops at the end of the loading bridge or on the tarmac near the aircraft and which carrier personnel load into the baggage compartment of the

aircraft, a process that is frequently used by regional airlines.) In addition, individual carriers commented that the proposed methodology would mislead the public, and would benefit Southwest Airlines to the detriment of all other carriers, regardless of each carrier's ability to properly handle bags. One carrier, US Airways, disagreed with a conclusion in a report issued by the Government Accountability Office (GAO; report GAO-10-785, July 2010) that bag fees had altered consumer behavior by leading them to check fewer bags, thus resulting in fewer MBRs. A4A (excluding JetBlue and Southwest Airlines) and RAA recommended that should the Department deem a change is necessary, the denominator of the rate calculation should be the total number of domestic enplaned bags rather than origin-and-destination bags. For example, for a passenger with a checked bag who is traveling one-way from Denver to Boston with a connection (change of planes) in Chicago, a "total enplaned bags" system would count the bag twice, i.e. when it was enplaned on the Denver-Chicago flight and again when it was enplaned on the Chicago-Boston flight. An "origin-and-destination" system would only count the bag once, as a bag moving from Denver to Boston regardless of the flight or flights that were used.) Southwest Airlines expressed concern with using total domestic enplaned bags as the denominator, claiming that to do so would benefit hub-and-spoke carriers at the expense of point-to-point carriers.

American Airlines, Delta Air Lines, and US Airways commented that the Department severely underestimated the cost of complying with the proposed rule. They noted for gate-checked and "valet" bags, carriers would have to replace a manual bag tagging system with an automated one. Delta Air Lines stressed the importance of using an automated system because less than one hundredth of one percent often separates competitors in the Department's mishandled baggage rankings. That carrier estimated this would cost up to \$10 million in new

equipment and \$900,000 in programming, while requiring 18 to 24 months to fully implement. US Airways estimated that automation would cost \$1 million in new equipment and \$1 million in programming. In addition, Delta Air Lines commented that the rule would cause operational delays and passenger inconvenience because of the time involved in printing and then scanning automated bag tags.

On January 12, 2016, A4A filed supplemental comments. The organization objected to language in the Notice of Proposed Rulemaking on Transparency of Airline Ancillary Fees and Other Consumer Issues (“Consumer Rule 3”)¹ that would amend the mishandled baggage reporting rule (14 CFR 234.6) to require reports “for all domestic scheduled passenger flight segments that are held out with the reporting carrier’s code...,” including flights operated for a carrier by its regional-carrier code-share partners. A4A stated that the data are not captured by flight segment today and that devising a system to do so would be costly and time-consuming. A4A also objected to language in that NPRM which the organization said could impede “valet” or “planeside” baggage service widely offered by regional carriers and would have to be coordinated with the Transportation Security Administration (TSA).

Finally, the Department received comments questioning which airline must report baggage in interline situations or when multiple airlines place their codes on a single flight.

DOT Response: The Department has decided to require that airlines report mishandled baggage in terms of the number of mishandled bags and the total number of domestic enplaned bags, excluding charter flights. A bag will be counted as “enplaned” on each flight of a passenger’s journey. For example, if a passenger were traveling one-way from Denver to Boston with a connection in Chicago from one flight to another, the bag will be counted twice (once for each flight). Consistent with this approach, if that passenger were instead traveling on

¹ 79 Fed. Reg.29970, May 23, 2014, Docket DOT–OST–2014–0056

a direct flight from Denver to Boston with an intermediate stop in Chicago but no change of planes, the bag would be counted only once — when it was enplaned in Denver.

Passenger behavior was reportedly altered when many air carriers began charging passengers for each checked bag. Specifically, the GAO report cited above stated that the introduction of baggage fees resulted in a decline of 40 to 50 percent in the number of checked bags with a corresponding 40 percent decline in the number of MBRs per 1,000 passengers (GAO-10-785, July 2010, page 25). The ratio between checked bags and the number of passengers can vary greatly depending on the fees charged. Moreover, there is not a direct relationship between the number of MBRs and the number of mishandled (i.e., lost, stolen, delayed, damaged, and pilfered) bags because a single MBR could be submitted by a family — or even an individual — with multiple mishandled bags. In addition, the Department has decided to include in its revised mishandled baggage methodology all checked bags, including those checked at the gate and “valet” bags. As the GAO noted, as the amount of checked baggage has decreased, the amount of carry-on baggage has increased, resulting in airlines’ having to check more bags at the gate. The Department believes that the new methodology in this rule will better inform passengers of their chances to retrieve their gate-checked baggage in an acceptable and timely manner.

The Department agrees with the suggestion from A4A (excluding JetBlue and Southwest Airlines) and RAA that the Department use the number of domestic bag enplanements rather than origin-and-destination bags in the denominator. We have revised the language of the relevant section accordingly. Using the enplaned-bag approach will avoid the costs that would be entailed for tracking a given bag from origin to destination for connecting passengers under an origin-and-destination approach. The use of “enplaned bag” language in the final rule also

results in a carrier receiving “credit” for a properly-handled bag on each flight of a passenger’s journey. This ensures that when bags travel on multi-carrier itineraries or when interline agreements allow carriers to check bags through to the passenger’s final destination, even when that passenger possesses more than one ticket, the operating carrier on each flight will receive “credit” for a properly-handled bag. For example, if a passenger travels on a flight operated by airline A from Washington, DC to Los Angeles, and a flight operated by airline B from Los Angeles to Honolulu, for the “denominator” figure airline A would include the passenger’s checked baggage in its reporting for the Washington – Los Angeles flight while airline B would include the passenger’s checked baggage in its reporting for the Los Angeles - Honolulu flight. The same piece of luggage would be reported by both airlines (on different flights), thus giving both airlines the chance to receive “credit” for handling the bag. Whether or not airlines A and B operate one or both of those flights as part of a code-share or as part of an interline agreement would have no impact on their reporting requirements. In the comments received from A4A (excluding JetBlue and Southwest) and RAA, the associations noted that the “enplanement” approach would resolve much of the complexity stemming from interlining, gate checking, and “valet” bag situations. Thus, the Department believes that adopting the suggested methodology of A4A (excluding JetBlue and Southwest) and RAA will result in lower compliance costs for air carriers.

Using the total number of domestic bag enplanements rather than bags checked for origin-destination trips further reduces the rule’s cost because air carriers already count pieces of checked baggage in order to comply with the Federal Aviation Administration’s (FAA) existing weight-and-balance requirements. The FAA requires that carriers maintain, for at least three months, the number of “standard,” “heavy,” and “non-luggage” bags carried in the cargo

compartment. Delta Air Lines confirmed at the May 17, 2012, public meeting that, because of the FAA requirements, the carrier already possesses a tally of bags transported in the cargo compartment on each of its domestic scheduled flights.

With respect to A4A's January 12, 2016, supplemental comments, the language in the "Consumer Rule 3" NPRM concerning reporting by flight segment referred to a separate proposal in that proceeding that would require carrier reports about on-time performance, oversales, and mishandled baggage to include data for flights operated by their domestic code-share partners. The phrase "for all domestic scheduled passenger flight segments that are held out with the reporting carrier's code" in that NPRM was simply intended to capture the code-share operations, not to require reporting by flight segment. If this Consumer Rule 3 proposal is finalized, we will modify the phrase in question to make this clear. This final rule simply requires carriers to count the number of checked bags that are enplaned on each flight; it does not require carriers to conduct segment-by-segment tracking of the number of bags on board each segment of a direct flight, nor does it require origin-destination ("O&D") tracking based on each passenger's itinerary.

A4A also contended in its January 12, 2016, comments that in order to comply with the instant rule as proposed, the only realistic solution for most carriers is to begin tracking "valet bags" in the same way that all other checked bags are tracked today—with an automated bag tag (ABT) that is linked to the passenger's Passenger Name Record, rather than the existing paper valet tags. A4A further asserted that once a bag is tagged with an ABT, TSA requires it to be treated like all other checked baggage and prohibits the traveler from having access to it in the sterile area of the airport. A4A stated that this means that carriers could no longer return these bags to passengers on the jet bridge at the conclusion of the flight. However, the rule does not

require the use of ABTs. In addition, TSA has advised the Department that TSA's interest is in ensuring that passengers do not have access in the secure area of an airport to a checked bag that has not passed through the passenger security screening checkpoint. Valet bags are screened at that checkpoint. TSA explained that attaching an ABT to a bag that the passenger has carried through the screening checkpoint, or referring to such a bag as a checked bag, would not trigger the prohibition on the passenger having access to that bag in the airport's secure area.

The Department is not prescribing a particular mechanism through which air carriers must capture the data required by this rule. Carriers may adopt whichever method they find best suited to their business model. In terms of "valet" bags, for example, this rule does not require air carriers to provide passengers with individual bag claims that must be matched to bags on arrival; instead, air carriers need only ensure that the "valet" bag is properly counted in the data reported to the Department.

Finally, the Department has made a ministerial change to its proposed rule. In its NPRM, the Department cited "49 U.S.C. 329 and chapters 41101 and 41701" as the authority for the mishandled baggage portion of the rule. The correct citation is: "49 U.S.C. §§ 329, 41101 and 41701."

3. Data for Wheelchairs and Scooters Transported in Aircraft Cargo Compartments

A. Reporting Mishandled Wheelchairs and Scooters Transported in the Cargo Compartment

The NPRM: The Department proposed requiring carriers to report the number of mishandled wheelchairs and scooters and the total number of wheelchairs/scooters transported in the aircraft cargo compartment. The Department sought public comment to better understand the scope of this issue and whether the prospect of loss, damage or delay of such devices or the lack of data made consumers with disabilities reluctant to travel by air.

Comments: In general, consumers voiced support for the proposal to require air carriers to break out data on the number of mishandled wheelchairs and scooters transported in the aircraft cargo compartment, maintaining that such reporting would reduce the number of incidents, while providing passengers with disabilities with a metric for making better-informed travel decisions. The Paralyzed Veterans of America and the Consumer Travel Alliance made similar supportive comments, noting that their members frequently request this currently-unavailable data, although the former group did request that the Department define “mishandled” in its regulation. ACI-NA commented that the proposed rule will increase accessibility of airports in general because passengers will know more about the air travel experience.

On the other hand, A4A (excluding Southwest Airlines) and RAA commented that the Department had no basis for concluding that passengers with disabilities are reluctant to travel by air due to wheelchair mishandling, and that the proposal lacked a public policy justification. Several air carriers asserted that the Air Carrier Access Act and its implementing regulation (14 CFR Part 382) already provide carriers with an incentive to handle these devices properly. The associations, individual airlines, and ARTA commented that the proposed rule was unduly burdensome on industry. In particular, these comments noted that wheelchairs and scooters are manually tagged and checked, and thus air carriers would need to implement a new mechanism to capture the required data. In written comments, American Airlines and Delta Air Lines commented that there would be high costs involved in programming systems to differentiate wheelchairs and scooters transported in the cargo compartment from the larger universe of all checked baggage. At the May 17, 2012, public meeting, US Airways stated that costs would be high, while others, including Delta Air Lines and Southwest Airlines, indicated the opposite. As

an alternative to the Department's proposal, several carriers proposed the establishment of a working group to devise a workable method of capturing the required data.

The Open Doors Foundation did not support the proposed rule. This organization commented that collecting this data would lead to competition among carriers in an area that should not be competitive, would cause airlines to reduce training and policies to the bare minimum needed to obtain "good" numbers, and would divert Department resources from other projects intended to make air travel more accessible.

Although A4A's comments opposing the Department's proposal represented the views of all of that association's members except Southwest Airlines, US Airways filed a supplemental comment after the May 17, 2012, public meeting in which it indicated that it did not object to the Department's proposal to require carriers to report the number of mishandled wheelchairs and scooters transported in the aircraft cargo compartment. US Airways commented that it would need one year to update software to distinguish wheelchairs and scooters from other checked baggage and that it should have the option of stowing some assistive devices in the passenger cabin.

DOT Response: The Department has decided to require carriers to report the number of mishandled wheelchairs and scooters and the number of wheelchairs/scooters accepted for transport in the aircraft cargo compartment. The Department's applicable definition of "mishandled" is found at 14 CFR 234.1, which defines "mishandled" as "loss, delay, damage, or pilferage." When issuing its NPRM, the Department intended for the same definition to apply to mishandled wheelchairs and scooters. The Department agrees with the many comments received from the public and disability rights groups that this rule will make air travel more accessible as it will provide the traveling public with the data necessary to make informed travel decisions.

The number of wheelchairs and scooters accepted for transport in the aircraft cargo compartment is to be included in the total number of checked bags enplaned. Similarly, the number of mishandled wheelchairs and scooters is to be included in the number of mishandled checked bags. We believe that the number of mishandled bags (and the rate of mishandled bags per 1,000 bags enplaned, which will be calculated by DOT and included in our Air Travel Consumer Report) should include all items of which the carrier took custody.

In response to comments from industry that there is no basis to conclude that passengers with disabilities are reluctant to travel by air due to wheelchair and scooter mishandling, the Department believes that the public comments received from air travelers with disabilities and disability rights organizations are representative of a widespread reluctance. It is public policy that air travel should be accessible to all members of the public, and the Department believes that this rule advances that policy goal. The Department appreciates that the Air Carrier Access Act and 14 CFR Part 382 have provided air carriers with an incentive to handle wheelchairs and scooters properly. The Department believes that this final rule will not only act as an additional incentive, but most importantly will provide passengers with disabilities with a metric that they may use to compare air carriers and to make informed travel decisions. The Department agrees with US Airways' comment that capturing data on the incidence of wheelchair and scooter mishandling is in line with a carrier's obligations and duties to passengers with disabilities.

The Department appreciates the concerns raised by Open Doors. While we believe that air carriers do strive to provide good service to passengers with disabilities, we continue to think that consumers with disabilities have the right to know which airlines provide the best service and have a right to select their air carriers based on that knowledge. In addition, the Department's existing disability regulations already require airlines to provide training to their

employees. The new rule provides further incentive to airlines to provide the training necessary to result in as little mishandling as possible to wheelchairs and scooters. Finally, this rulemaking does not divert the Department's attention from other objectives, e.g., issuing rules requiring accessible in-flight entertainment systems, but instead provides passengers with mobility impairments, who represent a large segment of the population of travelers with disabilities, with information they deserve and need to make informed travel decisions.

B. Extension of the Rule to Other Assistive Devices and/or Devices Transported in the Passenger Cabin

The NPRM: The Department solicited comments on whether the rule should be extended to all wheelchairs and scooters, regardless of whether they are transported in the passenger cabin or in the cargo compartment, and whether the rule should apply to other mobility devices, e.g., walkers.

Comments: Many consumers and disability rights organizations commented that the Department should extend the rule in this manner. These comments generally relied on the same rationale as for their support of the proposed reporting requirement for mishandled wheelchairs and scooters transported in the cargo compartment; namely, that the number of mishandled assistive devices will be reduced and consumers with disabilities will have data necessary to make better-informed travel decisions. The Paralyzed Veterans of America further recommended that this rule be applied to foreign air carriers and a member of the public recommended that this rule be applied to other modes of transportation. Many air carriers commented that capturing data on mishandled wheelchairs and scooters transported in the passenger cabin would prove unworkable since no data is kept about items transported in the cabin. US Airways commented that it would not oppose an extension of the rule to other

mobility devices so long as the Department explicitly listed which mobility devices were covered by the rule, and so long as the Department explicitly excluded mobility devices not used by passengers with disabilities.

Members of the public made numerous recommendations intended to improve the air travel experience for passengers with disabilities. These recommendations included the creation of a uniform damage form, a requirement that air carriers maintain a list of repair shops located near each airport served, a blanket exemption from all ancillary fees for passengers with disabilities, a mandated retrofitting of aircraft so that all mobility devices may be transported in the passenger cabin, and a prohibition on the gate-checking of assistive devices.

DOT Response: The Department believes that requiring the reporting of data on the mishandling of all assistive devices, particularly those transported in the passenger cabin, is impracticable. The Department understands that airlines do not have a mechanism for tracking items carried in the passenger cabin. Further, wheelchairs and scooters are generally checked as single items, while other assistive devices are generally stored inside baggage. Requiring the reporting of data on assistive devices stored inside checked baggage would require passengers and airlines to inventory such baggage. As a result, the Department will require that carriers report data only on scooters and wheelchairs.

The Department appreciates the additional recommendations received from the general public, including the application of this rule to cover other modes or to foreign air carriers, but concludes that these recommendations fall outside the scope of the current rulemaking.

4. *Compliance Date*

The NPRM: The Department did not propose a specific compliance date.

Comments: None of the public comments received prior to the May 17, 2012, public meeting related to the compliance date of this rule. During the public meeting and in subsequent public comments, most air carriers commented that they would need 12 to 24 months after the final rule is published in the Federal Register to comply because of time necessary for re-programming existing systems, installing new equipment, and training employees. In addition, Delta Air Lines and US Airways commented that a compliance date of January 1 would be preferable because it would provide the clearest demarcation between data sets.

DOT Response: The Department has determined that air carriers must comply with the new reporting requirements for air transportation taking place on or after January 1, 2018. The Department agrees with Delta Air Lines and US Airways that a January 1 compliance date provides a clear demarcation between data sets, corresponding with a change in the type of data reported by air carriers. In particular, given that this rule significantly changes the mishandled baggage metric, choosing the first day of the year as the compliance date will make future year-over-year comparisons more meaningful. In addition, the selection of this compliance date provides air carriers with adequate time to update their internal systems and reporting processes.

Based on this compliance date, data in this new format on mishandled baggage for the month of January 2018 will be due February 15, 2018. Data on mishandled wheelchairs and scooters transported in aircraft cargo compartments for the month of January 2018 will also be due February 15, 2018.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined not to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has not been

reviewed by the Office of Management and Budget. These changes make the measure of the published mishandled baggage rate more informative for ticket purchasers trying to assess risk. The new metric of number of bags reported as mishandled reveals more than the old figure of the number of reports of mishandled bags, since a single passenger report can cover multiple bags or even multiple passengers (e.g., several members of a family). Also, the number of enplaned checked bags is more helpful than the number of passengers, particularly given that the ratio of checked bags to passengers will tend to vary among carriers depending on their baggage allowances and fees. With purchasers better informed on the comparative performance of different carriers, competition among airlines should sharpen and performance in baggage handling can be expected to improve. As for reporting of wheelchairs and scooters, making information available to the public on each carrier's performance on handling wheelchairs and scooters would enable passengers with disabilities to make better decisions about which carrier to fly. Comments submitted in this rulemaking from air travelers with disabilities and disability rights organizations suggest that fear of the airlines damaging or losing wheelchairs and scooters creates a reluctance to fly among those dependent on these devices. The expected present value of costs incurred by carriers to comply with the final rule over a 10 year period using a 7% discount rate is estimated at \$2,064,588 and using a 3% discount rate is estimated at \$2,483,436. The final Regulatory Evaluation has concluded that the benefits of the final rule justify its costs. A copy of the final Regulatory Evaluation has been placed in the docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. DOT

defines small carriers based on the standard published in 14 CFR 399.73 as carriers that provide air transportation exclusively with aircraft that seat no more than 60 passengers. No small U.S. air carriers are affected by these requirements, as they apply only to the “reporting carriers,” i.e., U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenue. No small carriers as defined in 14 CFR 399.73 are included in this group. On the basis of this examination, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule does not include any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibility among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. § 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

This rule adopts new and revised information collection requirements subject to the Paperwork Reduction Act (PRA). The Department will publish a separate notice in the Federal Register inviting the Office of Management and Budget (OMB), the general public, and other Federal agencies to comment on the new and revised information collection requirements contained in this document. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirements.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” The purpose of this rulemaking is to change the way in which air carriers report mishandled baggage to the Department and fill a data gap by collecting separate statistics

for mishandled wheelchairs and scooters used by passengers with disabilities and transported in aircraft cargo compartments. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

ISSUED THIS 18TH DAY OF OCTOBER, 2016, IN WASHINGTON, D.C.

-ORIGINAL SIGNED-

Anthony R. Foxx,
Secretary of Transportation

List of Subjects in 14 CFR Part 234

Air Carriers, Reporting, On-time statistics, Mishandled baggage, and Uniform system of accounts.

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, 41101 and 41701.

2. A definition of “Mishandled checked bag” is added to section 234.2, to read “a checked bag that is lost, delayed, damaged or pilfered, as reported to a carrier by or on behalf of a passenger.”

3. Section 234.6 is revised to read as follows:

§ 234.6 Baggage-handling statistics.

(a) For air transportation taking place before January 1, 2018, 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 the carrier.

(b) For air transportation taking place on or after January 1, 2018, each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights:

(1) the total number of checked bags enplaned, including gate checked baggage, “valet bags,” interlined bags, and wheelchairs and scooters enplaned in the aircraft cargo compartment,

(2) the total number of wheelchairs and scooters that were enplaned in the aircraft cargo compartment,

(3) the number of mishandled checked bags, including gate-checked baggage, “valet bags,” interlined bags and wheelchairs and scooters that were enplaned in the aircraft cargo compartment, and

(4) the number of mishandled wheelchairs and scooters that were enplaned in the aircraft cargo compartment.

(c) The information in paragraphs (a) and (b) shall be submitted to the Department within 15 days after the end of the month to which the information applies and must be submitted with the transmittal accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information.