DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–95–950]

RIN 2105–AB78

Passenger Manifest Information

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule requires that certificated air carriers and large foreign air carriers collect the full name of each U.S.-citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The rule is adopted pursuant to the Aviation Security Improvement Act of 1990.

DATES: This rule is effective March 20, 1998. Compliance with this rule is not required until October 1, 1998, except with respect to the plans in § 243.13, which must be filed by July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366–4398; or, for legal questions, Joanne Petrie, Office of the General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Background

During the immediate aftermath of the tragic bombing of Pan American Flight 103 over Lockerbie, Scotland on December 21, 1988, the Department of State experienced difficulties in securing complete and accurate passenger manifest information and in notifying the families of the Pan American 103 victims. The Department of State did not receive the information for ''more than seven hours after the tragedy'' (Report of the President's Commission on Aviation Security and Terrorism, p. 100). When the Department of State did acquire the passenger manifest information from Pan American, in accordance with airline practice, it included only the passengers' surnames and first initials, which did not permit the Department of State to carry out their legal responsibility of notifying the family members in a timely fashion.

Statutory Requirements

In response to the Report of the President's Commission on Aviation Security and Terrorism, Congress and the Administration acted swiftly to amend Section 410 of the Federal Aviation Act. P.L. 101–604 (entitled the Aviation Security Improvement Act of 1990, or ''ASIA 90,'' and which was later codified as 49 U.S.C. 44909), which was signed by President Bush on November 16, 1990, states:

SEC. 410. PASSENGER MANIFEST

(a) REQUIREMENT.—Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State: (1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.

(b) CONTENTS.—For the purposes of this section, a passenger manifest should include the following information:

(1) The full name of each passenger.

(2) The passport number of each passenger, if required for travel.

(3) The name and telephone number of a contact for each passenger.

In implementing the requirement pursuant to the amendment made by subsection (a) of this section, the Secretary of Transportation shall consider the necessity and feasibility of requiring United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to such requirement.

(c) FOREIGN AIR CARRIERS.—The Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed pursuant to the amendment made by subsection (a).

The ANPRM and Subsequent DOT Activity Leading to the NPRM

In order to implement the statutory requirements, the Department of Transportation first published an advance notice of proposed rulemaking (ANPRM) on January 31, 1991 (56 FR 3810). The ANPRM requested comments on how best to implement the statutory requirements. Among possible approaches, the ANPRM noted that the Department might require airlines to collect the data at the time of reservation and maintain it in computer reservations systems. Alternatively, the ANPRM noted that the Department might require each airline to develop its own data collection system, which would be approved by the Department. The ANPRM posed a series of questions about privacy concerns, current practices in the industry and potential impacts on day-to-day operations.

Twenty six comments were received in response to the ANPRM. Commenters included the Air Transport Association of America (ATA), the National Air Carrier Association (NACA), the Regional Airline Association (RAA), Alaska Airlines, American Trans Air, the American Society of Travel Agents (ASTA), the group ''Victims of Pan Am Flight 103,'' the Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), a combined comment filed by four foreign air carriers and one association of foreign air carriers (Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association), Aerocancun, Air-India, British Airways, Japan Airlines, Lineas Aereas Paraguayas, Nigeria Airways, Royal Air Maroc, Swissair, the Embassy of Switzerland, the Embassy of the Philippines, the United States Department of State (Assistant Secretary for Consular Affairs), the U.S. Department of the Treasury (U.S. Customs Service), the Commissioner of Customs, the United States Government Interagency Border Inspection System (IBIS), System One Corporation, and two individuals, Ms. Edwina M. Caldwell and Ms. Kathleen R. Flynn. In addition, the views of Meetings and Incentives in Latin America, an Illinois travel and tour company, were included in the docket because of a communication to a Department official after the ANPRM was issued. The comments were summarized in the notice of proposed rulemaking published in 61 FR 47692, September 10, 1996.

In January 1992, President Bush announced a ''Regulatory Moratorium and Review'' during which federal agencies were instructed to issue only rules that addressed a pressing health or public safety concern. During the course of the moratorium, the Department asked for comments on its regulatory program. Comments that addressed the passenger manifest information statutory requirement were filed by ATA, Northwest Airlines, American Airlines, Air Canada, and Japan Airlines. ATA included the passenger manifest proposal among ten DOT and FAA regulatory initiatives that, if implemented, would be the most onerous for the airline industry. ATA (supported by Northwest) recommended that if additional passenger manifest information were to be required, it

should be limited to the information that is required by the U.S. Customs Service's APIS program. American Airlines listed the passenger manifest rulemaking in its top five (out of over 100) pending aviation rulemakings that should be eliminated/substantially revised. Air Canada said that if air carriers were required to adopt the APIS standard advocated by ATA, its costs (and those of other foreign air carriers) would be unnecessarily raised. Japan Airlines said that any requirement to collect personal data from air passengers would conflict with the Constitution of Japan, would be costly, and, to the extent that it was anticipated that such data would be shared with the APIS program, should be the subject of prior public discussion.

In the FY 1993 DOT Appropriations Act, Congress provided that none of the FY 1993 appropriation could be used for a passenger manifest requirement that only applies to U.S.-flag carriers. This provision was repeated in the five subsequent DOT Appropriations through FY 1997. The provision stated:

> None of the funds provided in this Act shall be made available for planning and executing a passenger manifest program by the Department of Transportation that only applies to United States flag carriers.

In light of the totality of comments and the fact that aviation disasters occur so rarely, DOT continued to examine whether there was a low-cost way to implement a passenger manifest requirement. In 1995, DOT considered seeking legislative repeal or modification of the statutory requirements. In the November 28, 1995, Unified Agenda of Federal Regulations, the passenger manifest entry stated that DOT ''is recommending legislation to repeal the requirement [of passenger manifests] because of the high costs and small benefits that would result.''

The Cali Crash

On December 20, 1995, American Airlines Flight 965, which was flying from Miami to Cali, Colombia, crashed near Cali. There were significant delays in providing the State Department with a complete passenger manifest. Even when it was provided, the manifest was of limited utility to State because it lacked sufficient data. Department of Transportation staff met with American Airlines to explore the logistical, practical and legal problems that the airline encountered in the aftermath of the crash, and ways these problems could be ameliorated in the future. We also met with high level representatives of the State Department to discuss State's needs and concerns on this matter. The events surrounding this crash led DOT to reconsider its view that the passenger manifest requirements under ASIA 90 were unnecessary.

Public Meeting

On March 29, 1996, DOT held a public meeting on implementing a passenger manifest requirement. The notice announcing the public meeting (61 FR 10706, March 15, 1996) noted that a long period of time had passed since the 1991 advance notice of proposed rulemaking, and that a public meeting during which stakeholders could exchange views and update knowledge on implementing such a requirement was necessary as a prelude to DOT proposing a passenger manifest information requirement. The notice enumerated ten questions concerning information availability and current notification practices, privacy considerations, similar information requirements, information collection techniques, and costs of collecting passenger manifest information.

The meeting was attended by approximately 80 people. To facilitate discussion, representatives of three family survivor groups (The American Association for Families of KAL 007 Victims, Families of Pan Am 103/ Lockerbie, and Justice for Pan Am 103), the Air Transport Association, the Regional Airlines Association, the National Air Carrier Association, the International Air Transport Association, the American Society of Travel Agents, U.S. Department of State, U.S. Customs Service, and DOT formed a panel. Members of the audience, who included representatives of foreign governments, were invited to participate in the discussion and did so. The discussion lasted nearly 5 hours and covered a wide variety of topics. At the end of the meeting, it was the consensus that one or more working groups headed by the Air Transport Association would be formed to further explore some of the issues raised.

Memorandum of Understanding

ATA convened an initial working group that consisted of representatives of Families of Pan Am 103/Lockerbie, the American Association for Families of KAL 007 Victims, the National Air Disaster Alliance (a group representing families of victims of several aviation disasters), the Department of State, and several U.S. airlines, with IATA in attendance. DOT was not a participant in the group. The working group made progress in facilitating communication among divergent interests and in creating a workable system that should reduce confusion and improve the efficiency of the efforts of both the airline and the Federal Government following an airline crash.

As a result of the working group, the Department of State has entered into Memoranda of Understanding (MOU) Reflecting Best Practices and Procedures with 14 U.S. air carriers since November 1996. These carriers are American, Continental, Delta, Northwest, Trans World, United, US Airways, American Trans Air, Miami Air International, Southern Air Transport, Tower Air, World Airways, North American and Midwest Express. The MOUs provide a basis for cooperation and mutual assistance in reacting to aviation disasters occurring outside the United States with the goal of improving the treatment of victims' families. The MOUs contain provisions relating to passenger manifests, the exchange of liaison officers between the Department of State and the air carrier, and crisis management training in which personnel are exchanged between the parties so as to become more familiar with each other's internal procedures. The Department of State regards the MOUs as a cooperative effort that includes the issue of passenger manifests. The Department of State does not regard the MOUs as a substitute for the rulemaking process concerning passenger manifests because the MOUs do not address collection of emergency contact name and phone number. In addition, participation in the MOUs is voluntary and not every airline will enter into an agreement. The MOU envisions that the airlines are in the best position to provide initial notification to family members of passengers who were involved in aviation disasters, and that the airlines should provide the initial notification. The Department of State is still responsible for providing notification, even if the family has already been provided notification by the airline.

TWA Flight 800

On July 17, 1996, TWA Flight 800, which was flying from New York to Paris, crashed off Long Island, New York. Local government officials publicly commented on difficulties in determining exactly who was on board the flight and in compiling a complete, verified manifest. TWA caregivers were generally praised for their efforts in the crash aftermath. Although this was an international flight, the crash occurred in U.S. territorial waters and, therefore, the Department of State had no specific role in family notification and facilitation for U.S. citizens. The

Department of State received inquiries from foreign governments regarding the fate of their citizens, and worked closely with foreign governments and foreign citizens in the aftermath of the crash. Family notification was a problem following the disaster; indeed, some family members stated that they never received notification from TWA that a loved one was on board the aircraft, even after repeated phone calls to the airline.

The Notice of Proposed Rulemaking

Taking into account the experiences of the airlines, family members, and the government following American Airlines 965, TWA 800, and the process leading to the MOU, the Department of Transportation published a Notice of Proposed Rulemaking (NPRM) in 61 FR 47692, September 10, 1996. This notice proposed to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments to or from the United States (''covered flights''). U.S. carriers would collect the information from all passengers, and foreign air carriers would only be required to collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport were required for travel. Carriers would be required to deny boarding to passengers who did not provide this information. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of an aviation disaster. Airlines would be required to make a record of passengers who declined to provide an emergency contact. Passengers who declined to provide emergency contact information would not, however, be denied boarding. In the event of an aviation disaster, the information would be provided to DOT and the Department of State to be used for notification. DOT proposed to allow each airline to develop its own procedures for soliciting, collecting, maintaining and transmitting the information. The notice requested comment on whether passenger date of birth should be collected, either as additional information or as a substitute for required information (e.g. passport number).

Presidential Directive and Inter-Federal Government Memorandums of Understanding for Domestic Aviation Disasters

On September 9, 1996, President Clinton issued a Presidential Directive designating the National Transportation Safety Board (NTSB) as the agency to coordinate the provision of federal services to the families of victims following an aviation disaster in the United States. Following issuance of the Presidential directive, the NTSB entered into memorandums of understanding (MOUs) with the Departments of Justice, Defense, Transportation, State, Health and Human Services and the Federal Emergency Management Agency. In general, the MOUs commit the agencies to provide the NTSB with whatever logistical and personnel support is needed to fulfill the Board's newly-acquired family support role. The MOU between the NTSB and DOS requires each to maintain close liaison and coordination, including exchange of information. Neither the Presidential Directive nor the above-referenced MOUs alter State's role as the Federal Government's notifier of the families of the U.S. citizens who are killed in aviation disasters outside the United States.

The Aviation Disaster Family Assistance Act of 1996

On October 9, 1996, President Clinton signed Pub. L. 104–264. Title VII, the ''Aviation Disaster Family Assistance Act of 1996'' (ADFAA), was later codified as 49 U.S.C. 40101 note. The ADFAA pertains to aviation disasters occurring within the United States and its territories. It provides, in part:

Sec. 1136. Assistance to Families of Passengers Involved in Aircraft Accidents

(a) In General.—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the federal government for the families of the passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families;

(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board.—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a).

* * * * *

(d) Passenger lists.

(1) Requests for passenger lists.—

(A) Requests by director of family support services.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by designated organization.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of information.—The director of family support services and the organizations may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

Section 703 of the Act (§ 41113) further requires each certificated U.S. air carrier to file a plan to address the needs of families of passengers involved in aircraft accidents. Among other things, the plan must include ''[a] process for notifying the families, before providing any public notice of the names of the passengers,'' ''[a]n assurance that the notice * * * will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified)'', and ''[a]n assurance that the air carrier will provide to the director of family support services * * * immediately, upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

Finally, section 704 of the Act instructs the Secretary of Transportation to appoint a Task Force comprised of the Federal Government, the industry, as well as individuals representing the families of the victims of aviation disasters to review how to improve the assistance provided to families following an aviation disaster. Section 704(b)(6) instructs the task force to develop:

[R]ecommendations on methods to improve the timeliness of the notification provided by air carriers to the families of

passengers involved in an aircraft accident, including—

(A) An analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) An analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A);

(C) An analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

(D) An analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A) .

The Domestic Passenger Manifest ANPRM

On March 13, 1997, DOT published an advance notice of proposed rulemaking (62 FR 11789) on a potential passenger manifest requirement for domestic air travel. The ANPRM was designed to solicit information which could be used by the Task Force in assessing the costs and benefits of a requirement for enhanced domestic passenger manifests. The ANPRM requested information on operational and cost issues related to U.S. air carriers collecting basic information (e.g., full name, date of birth and/or social security number, emergency contact and telephone number) from passengers traveling on flights within the United States. The ANPRM discussed the problems experienced in the aftermath of a crash, statutory authority for requiring passenger manifest and emergency contact information, regulatory history, past domestic aviation disasters, and economic considerations. It asked commenters to respond to thirteen detailed questions on the following topics: (1) Basic approach; (2) information requirements and the capacity of computer reservations systems; (3) frequent flyer information; (4) privacy considerations and fraud issues; (5) coverage of potential domestic passenger manifest information requirements and the differing implications, if any, for different types of air carriers that might be covered; (6) sharing of domestic passenger manifest information within and among air carriers; (7) implications for different types of air carrier operations (point-to-point) and the current frequency of flights; (8) interactions between domestic positive baggage matches and a domestic passenger manifest information requirement; (9) domestic passenger manifests and electronic tickets; (10) implications for high frequency corridors, high frequency facilities and peak load capacity; (11) recurring costs of such a system; (12) fixed costs of such a system; and (13) integration of manifest requirements with processes for expedited positive identification and notification. Fifty-seven comments were filed in response to the ANPRM from a wide variety of interests. We are currently reviewing the comments. We will review the implementation of the international passenger manifest requirements as we determine how to proceed with this rulemaking.

The Task Force on Assistance to Families of Aviation Disasters

In March 1997, as requested in the ADFAA, Secretary Slater appointed 22 people to serve on the Task Force on Assistance to Families of Aviation Disasters. The Task Force, which was co-chaired by DOT Secretary Slater and NTSB Chairman Jim Hall, issued 61 recommendations to the Congress on October 29, 1997. Four of those recommendations concerned how to improve the passenger manifests used by the airlines to establish points of contact with the families of passengers. Pursuant to the ADFAA, the Task Force also issued findings on the cost of implementing a passenger manifest system. These recommendations and findings were based, in part, on the comments to the ANPRM.

The Task Force recommended that airlines have readily available for every flight, either in a passenger manifest or through some other system, the following data: the full name for each passenger; a contact phone number for each passenger; and a contact name for each passenger. The Task Force recommended that while each passenger should be encouraged to provide the information, furnishing contact name and phone number would not be a prerequisite to boarding the flight. Further, the Task Force recommended that all information provided by a passenger for passenger manifest reasons must only be used in the case of an emergency. DOT abstained from voting on these recommendations due to the ongoing rulemakings.

All members of the Task Force, including the Air Transport Association (ATA), found that the full name of every passenger should be included on the manifest. The Task Force as a whole also agreed that, in conjunction with the passenger's name, a contact phone number is the second most important data element in the notification process. It was also recognized that a contact name would aid the notification process. Task Force members representing the ATA, the Regional Airline Association (RAA) and the National Air Carrier Association (NACA), which represents charter carriers, stated that the increased costs of obtaining the contact name data element were not justified by the benefit this data element provided. The remainder of the Task Force disagreed, finding that with only a contact phone number, awkward situations could result, thereby making the notification process more difficult and time-consuming.

The Task Force reviewed the costs of implementing a system requiring full name, contact name and phone number. First, the Task Force found that an air carrier should be able to ''verify'' a passenger manifest within three hours of beginning the verification process. The Task Force did not find it possible or beneficial, however, to require an airline to have a manifest ''verified'' within one hour. The Task Force deliberations did not find significant costs to air carriers to ''verify'' a manifest within three hours. Second, the Task Force found that the annual cost of implementing a passenger manifest as outlined in the recommendation would be between $32 and $64 million for both air carriers and travel agents if it took 40 seconds to collect the additional data elements, and between $48 and $96 million if it took an additional 60 seconds. The Task Force did not address the issue of passengers who booked reservations and then, subsequently, did not board the flight.

Korean Air Flight 801

On August 6, 1997, Korean Air Flight 801, a flight between Seoul, Korea and Guam, a territory of the United States, crashed about 5 miles southwest of the Guam International Airport. There were 231 passengers, 20 flight attendants and 3 flight deck crew members on board. Twenty-nine people survived the crash. There were many problems encountered by anxious and worried family members because Korean Air did not have prompt, complete and accurate flight manifest information and procedures to notify the families. For example, there were significant delays in providing information to concerned families at Seoul's Kimpo Airport, in both responding to callers and notifying the families.

The Foreign Air Carrier Family Support Act

The Foreign Air Carrier Family Support Act (Pun. L. 105–148,111 Stat.

2681) was signed into law by President Clinton on December 16, 1997. The legislation was prompted by the Korean Air Flight 801 disaster. The Act requires foreign air carriers to develop family assistance plans comparable to that required by the Aviation Disaster Family Assistance Act for U.S. air carriers. The new requirements have been carefully drafted to apply to accidents that occur within the United States jurisdiction. The existing requirements for U.S. air carriers were adjusted for the foreign air carriers to be consistent with our international obligations. For example, foreign air carriers may provide substitute measures for certain provisions of the Act, such as compensation to an organization designated by the NTSB for services and direct assistance provided to families as a result of the aviation disaster.

Comments to the International NPRM

Forty six comments were received in response to the NPRM. Commenters included the Air Transport Association of America (ATA); the National Air Transportation Association (NATA); American Airlines; Northwest Airlines; Trans World Airlines; United Air Lines; North American Airlines; Carnival Air Lines; Gran-Aire; Hawaiian Airlines; the Air Line Pilots Association (ALPA); the American Society of Travel Agents (ASTA); Passages: A Travel Company; American Express Travel Related Services; the American Association for Families of KAL 007 Victims; the U.S. Department of Justice (Immigration and Naturalization Service); ; Mr. Richard P. Kessler, Jr.; Ms. Brenda Sheer; Ms. Liana Ycikson; a group of three individual citizens (Cayetano Alfonso; Nora Ramos; and Victoria Mendizabel); and a group of four students from Florida International University (My Trinh; Chau Trinh; Walter Hernandez; and Joanne Flores); the International Air Transport Association (IATA); the Arab Air Carriers Organization; the Orient Airlines Association; the European Civil Aviation Conference (ECAC); Air Canada; Aerolineas Argentinas; Qantas Airways; Scandinavian Airlines System; All Nippon Airways; Air New Zealand; Varig; Lauda Air; British Airways; Turkish Airlines; Swiss Air; Lufthansa; Japan Airlines; Cathay Pacific Airways; Laker Airways; Air Pacific; the Embassy of Belgium; a combined comment from the Embassies of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission; the Embassy of the United Kingdom (Britannic Majesty's); the British Airports Authority; and the International Civil Aviation Organization (ICAO).

In addition, as noted above, the Department received valuable testimony and advice from the Family Assistance Task Force meetings. Although their focus was on the passenger manifest issue on domestic flights, many of the issues and persons affected by this international rule are identical. The meetings of the Task Force were tape recorded and several written comments were filed.

Summary of Comments

The Air Transport Association of America (ATA) filed comments on behalf of its members (Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide Airlines, Evergreen International Airlines, Federal Express, Hawaiian Airlines, KIWI International Air Lines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Air [now US Airways]). American Airlines, Northwest Airlines, Trans World Airlines, and United Air Lines filed individual comments, as well.

ATA stated that its members stood ready to fulfill their responsibilities to collect and transmit passenger manifest information. ATA said that based on lessons learned during recent negotiations of a voluntary Memorandum of Understanding (MOU) between U.S. air carriers and the Department of State on cooperation and mutual assistance following air disasters outside the United States, any passenger manifest information requirement must: (1) apply to all carriers on all flights to and from the United States, and (2) delineate clearly U.S. Government agency responsibilities in handling passenger manifest information.

ATA stated that for legal and practical reasons passenger manifest information requirements must apply to all passengers on all flights, and not just to U.S. citizens and permanent legal residents on foreign air carrier flights. First, there will be no public tolerance for a post-aviation-disaster scenario in which more information is available to family members inquiring about passengers with a U.S. tie, either due to travel on a U.S. airline or U.S. citizenship or permanent residency, as compared to family members whose loved ones have no such tie.

Second, such a distinction contradicts the equality-of-treatment policy that the Department has expressed in *Agreements Relating to Liability Limitations of the Warsaw Convention Show-Cause Order* (Order 96–10–7 (Oct. 7, 1996)). Third, the proposed rule's U.S. and foreign carrier provisions are not ''comparable,'' the standard found in the underlying statutory language. Fourth, uniformity will result in properly assigning information collection responsibilities for code-share flights that foreign-flag carriers operate to and from the U.S. On these points, American Airlines said that: whereas the proposed rule omits coverage of some foreign passengers on the basis of privacy considerations, there is no citizenry to whom privacy is more sacred than U.S. citizens; the Department is legally able under the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83) to impose a passenger manifest information requirement covering all carriers and all passengers; and while the nationality of passengers is not always clear due to dual citizenship and mixed-nationality families, in the event of an aviation disaster the Department of State would want to know about all U.S. citizens aboard the flight, including those with multiple passports and nationalities.

ATA further stated that disparate U.S. Government information requirements impose unnecessary compliance costs on air carriers (and thereby passengers), and there is thus a need for U.S. Government agencies to coordinate current and contemplated information requirements with customer convenience and carrier operational practices. ATA stated that first and last name should be acceptable in any passenger manifest information requirement, as they are in the U.S. Customs Service's Advance Passenger Information System (APIS). ATA noted that international travelers, in particular, could have long last names or multiple middle names. Northwest noted that the advantages of collecting only first and last names would be reduced collection times and minimized demands on computer data fields. ATA said that date of birth should be able to be used as a substitute for passport number. Northwest said that date-of-birth digits are easier to comprehend and are fewer in number than passport number digits and recording them would therefore be less tedious, time-consuming and prone to error; that collecting date of birth when booking a seat would be easier than collecting passport number because passengers

know their dates of birth, whereas most do not know their passport numbers and rarely have their passports with them when they book a flight; and that unless date of birth is sufficient compliance, passengers and carriers will be greatly inconvenienced by the need to have a second conversation, whether over the telephone or at the airport, to provide passport information. United said that the use of date-of-birth information, rather than passport number information, would avoid the problem of collecting identification data from passengers on international flights to points where passports were not required; would facilitate the identification of passengers on such flights; and would simplify the development of programs and personnel training for collection of data by assuring that all international flights are subject to the same passenger manifest information requirement.

ATA stated that the treatment of two related areas of passenger response to requests for information should be reworked. First, ATA was very concerned that the proposed rule would deny boarding to passengers who do not provide name and passport number. ATA said that the proposed rule did not justify such an action, and the underlying statute did not mandate it. ATA alternatively suggested that the passenger should be allowed to decide whether or not to provide this information. That is, passengers would be given the option of providing all categories of passenger manifest information. No passenger manifest information would be mandated, although air carriers would be obligated to solicit all categories of passenger manifest information. On this point, United stated that if the purpose of collecting passenger manifest information was to enhance notification, then the passenger should be allowed to opt out. United posed a situation where an air carrier was collecting passenger manifest information by having passengers fill out boarding pass stubs, which the airline would then collect at the gate, and asked if a flight should have to be delayed for a passenger that refused to submit some of the required information or to give up his place on the flight. United pointed to the privacy rights of the passenger refusing to provide some of the passenger manifest information, and to the fact that many tickets would be non-refundable at that point, a fact potentially contributing to a disruption in the boarding process. Second, ATA thought that air carriers should not be required to record those passengers who did not provide contact information. United said that the carrier's responsibility should be met by offering the passenger the opportunity to participate, and that the absence of contact information would be sufficient evidence that the passenger has declined to provide it.

ATA then stated that the information requirements in the proposed rule raised two other significant issues that were unrelated to the content of the categories of data to be collected. First, ATA said that there is a clear difference between collecting information from passengers and verifying the information that passengers provided; that verification would be intrusive and time-consuming; and that carriers should not have to ''police'' the collection of information from passengers. Second, ATA said that the fact that the proposed rule would have passenger manifest information go to State and DOT raised important questions about the roles of government entities and the appropriate use of such information. On the latter point, ATA said that ASIA 90 is structured such that section 203 passenger manifest information requirements (49 U.S.C. 44909) support Department of State family-assistance responsibilities elsewhere in Title II (22 U.S.C. 5503–04). ATA said that there is no provision in the law for DOT to get manifest information and DOT has no manifest-handling functions under the law. ATA added that there now exists a series of Memoranda of Understanding between the National Transportation Safety Board (NTSB) and seven Executive Branch agencies regarding post-aviation disaster procedures and that, moreover, under the Aviation Disaster Family Assistance Act of 1996, air carriers must submit to NTSB and DOT aviation disaster plans to address the needs of families of passengers involved in aviation disasters. ATA said that what is needed in the aftermath of an aviation accident are clear, predictable lines of authority. ATA said that a clearer definition is needed of the Government's role in notification and the purpose for which DOT would use passenger manifest information. ATA stated that a related concern is the need to safeguard passenger manifest information, and that multiple recipients of this information created the very real possibility of its unauthorized or uncoordinated release, which could create confusion and be especially harmful to family members. American stated that it strongly believes that the information should only be provided to State, and that it was deeply concerned that broadly disseminating (to State, to DOT, and, per recent legislative and regulatory decisions, perhaps to the NTSB) passenger manifest data that is sensitive, and may change repeatedly as information is updated from the site of an incident, could only consume valuable time and might well lead to inconsistent and confusing communications to the next of kin and the public. ATA said that another issue requiring attention is that of how an air carrier is to respond to demands for passenger manifest information from other Federal Government agencies or other levels of government. ATA said that a final rule should provide thoughtful and clear guidance regarding such requests.

ATA said that the triggering event for transmission of a passenger manifest needed to be clarified. ATA noted that section 44909 was traceable to recommendations related to acts of terrorism and not to isolated on-board accidents, and suggested redefining ''aviation disaster'' as: ''loss of life due to crash, fire, collision, or sabotage/missing aircraft/air piracy.'' TWA said that the proposed rule covers incidents in which there appears to be no need to contact the U.S. Government, and suggested that the definition of an aviation disaster be changed to cover only those instances where the death or serious injury of a passenger occurs. TWA said that the proposed rule triggers the passenger manifest production process too early. TWA said that DOT must realize that the manifest is created as passengers turn in their boarding passes and their baggage is confirmed for boarding on the aircraft. TWA said that the airline cannot thus have a complete manifest in the instance of ''an emergency in which all passengers might not have boarded the aircraft'' that is mentioned in the proposed rule since those passengers that have not yet boarded the aircraft will not be on the manifest. TWA suggested that DOT limit the definition of incident to one that occurs after the door is closed and the manifest created.

ATA said that additional counter space at foreign airports would be the biggest implementation problem. ATA said that while the Preliminary Regulatory Evaluation gave an indication of the cost implications of the proposed rule, the costs there were understated because the estimate for the time needed at check-in (40 seconds) was very optimistic and the estimate of the time needed at reservation (40 seconds) was too low because passengers would pause to find their passports or would have to call back with passport numbers. ATA said that passengers would be further delayed by

passenger manifest information processing problems at airports, especially overseas, where no additional counter space was available.

ATA said that the detailed enforcement and penalty provisions in the proposed rule were extraordinary for a rulemaking under DOT's economic regulations, especially since the aviation industry had been developing an MOU with State in this area. ATA asked DOT to take into account the fact that carriers would, in many cases, be relying on third parties to collect manifest information, and said it believed that any passenger manifest final rule should be implemented cooperatively. ATA said that, alternatively, if the detailed enforcement and penalty provisions were kept in a final rule, then DOT needed to make clear that it would apply a ''reasonable person'' standard in enforcing the rule. TWA objected to specific references in the proposed rule to civil and criminal penalties. TWA noted the ambitious notification periods in the underlying statute, advocated industry and government cooperation in developing procedures that will result in expedited notification of the relatives of crash victims, said that the last thing the airline needs is for DOT to bring an enforcement proceeding in the aftermath of an aviation accident when the carrier may already be receiving adverse publicity that threatens its existence, and also said that there would be no deterrent effect from an after-the-fact enforcement proceeding because airline crashes occur so rarely. United also mentioned the detailed enforcement and penalty provisions in the proposed rule as a specific, particular concern and urged the Department to emphasize cooperation between air carriers and the U.S. Government in fulfilling the requirements of the underlying legislation.

ATA urged that any final rule be implemented in 180 days (rather than the 90 days in the proposed rule) primarily because third parties would be involved and depended upon to handle booking and airport processing duties that encompass passenger manifest information collection. ATA noted that airlines would have to work with the travel agent community to develop procedures, create interline procedures to handle passengers connecting from other carriers (which could be especially demanding on commuter air carriers), and develop new procedures for air carrier CRSs. United noted that while a passenger manifest requirement had been under consideration for some time, each air carrier would need to develop its own compliance program. United said that this work could not begin until a final rule was issued, and that it could not be fully accomplished (including training passenger service personnel) in 90 days.

Northwest said that military air charters should be specifically excluded from any passenger manifest requirements in a final rule because in these so-called ''MAC charters,'' which involve essentially a wetlease of aircraft and crew to the U.S. Government, the U.S. Government alone handles passengers and is solely in possession and control of all passenger and manifest information. Northwest stated that one interpretation of the phrase in the proposed rule, ''information on individual passenger shall be collected before each passenger boards the aircraft on a covered flight segment'' was that the proposed rule would require collection of manifest information separately for each covered flight segment, and asked for clarification in the final rule that passengers may provide manifest information at the time of booking for their entire one-way or round-trip itinerary, with updates made when checking in at the airport.

In response to a DOT request for comment regarding the collection of citizenship data for passengers aboard U.S. air carriers traveling to destinations that did not require a passport, TWA said that the collection of citizenship information on such flights would seem to be of marginal utility in the notification process, and that DOT has neither explained what benefit the citizenship information would provide when the airline does not have the full name and passport number of the passenger, nor why it proposed to impose this obligation only on U.S. airlines. TWA noted that if DOT decided to require citizenship information, it should be collected by both U.S. and foreign carriers.

Finally, American stated that since the traveling public is sensitive to any changes that affect air travel, public awareness of any new passenger manifest procedures adopted as part of a final rule would be critical to their successful implementation. American said it believes that DOT, together with the airline industry, would need to undertake a wide-ranging education campaign on a final passenger manifest rule.

American said that there are two levels of notification: (1) Notification as to whether a passenger was on board a flight involved in an incident, and (2) notification as to whether a passenger is alive, injured, deceased or unaccounted for. American contended that the second level is particularly subject to change as updated information is received from the site of the incident. While American listed reasons why it thought that the air carrier was in the best position to perform both levels of notification, it said that, at the same time, it understood why some feel that the carrier is an inappropriate party to have contact with families, given its involvement in the incident, and that American would not, therefore, fight for a role in the notification process if its presence is not welcome. In that case, however, American said that DOT must clarify whether it wants the carriers to cede the notification duty to a third party, and, if so, identify that third party. American said that it is imperative that there be no confusion as to where the notification duty lies; that otherwise the task of notification—difficult under the best of circumstances—will be confused and mishandled; that the confusion will only inflict more pain on loved ones; and that without a clearly delineated duty, the notification process will not be accomplished with the compassion that it deserves.

TWA said charters and code-share flights both present complex problems regarding passenger manifest information. TWA said that while in the proposed rule DOT would make all direct and indirect air carriers involved in either such arrangement responsible for providing the manifest, and threatened that the carriers will have to be vigilant because they would be jointly and individually responsible for compliance, DOT cannot wash its hands of the matter in this way.

Regarding charters, TWA said that the charter operator may provide the carrier with a manifest, but the airline has no way of checking its accuracy; that for many charter flights, airlines allow open seating for anyone who has documentation from the charterer; and that the airline does not have the names of the charter passengers in its computers, and would be most unlikely to meet the 1-hour deadline for providing the list to the government. TWA said there would be special problems with military charters, where the military undoubtedly want to control the notification process.

TWA said that code-share flights present more pervasive problems. TWA said that while DOT seems to believe that both code-share carriers would be responsible for the flight, the language of the proposed rule applies only to ''covered flights operated by air carriers and foreign air carriers.''

TWA identified two types of code-shares. The first is a marketing code-share agreement, under which a U.S.

carrier code is placed on a foreign flag flight, only the foreign air carrier is the operator. The U.S. carrier has sold seats as agent (and receives a commission for doing so) for the other airline, and, with respect to those sales, it is neither the direct air carrier, nor an indirect air carrier. (Example provided: Lufthansa flight from New York to Frankfurt, United is acting as agent for Lufthansa, receiving a commission on every UA-code ticket it sells. Lufthansa, as operator, has the passenger name records (PNRs) for all passengers, including those traveling on United's code. Both carriers cannot be responsible. United would have no records of passenger booked through Lufthansa and cannot be responsible for those it [United] booked either, since it may not know if they showed up and boarded the Lufthansa flight.) TWA concludes from this that Lufthansa alone, as operator of the flight, should be responsible for the manifest.

The second type of code-share is a blocked-space flight, such as operated by Delta and Swissair. In that case, Delta may have blocked 100 seats on a Swissair flight, and may be an indirect air carrier with regard to those seats. Delta would have PNRs for passengers it places in those seats, but it may not have operational control of the check-in process, and, just like United, may not know if its passengers actually traveled. Under these circumstances, it would be unfair to impose the passenger manifest obligations on the code-share carrier that is not operating the aircraft.

Two smaller air carriers that fly large jets, North American Airlines (North American) and Carnival Air Lines, filed comments. North American, a charter airline with 3 large aircraft and about 150 employees, said that charter carriers will be hardest hit by the proposed rule because a greater proportion of their flights are to international destinations. Carnival said that carriers that operate in limited international service, such as itself, would be disproportionately affected by a passenger manifest information requirement because it would require more extensive information and changes in procedures to accommodate only a small number of international passengers.

North American said that full name, phone number (including area code), and home city is all the data needed for notification, and that air carriers should not be forced to collect more information, such as APIS data. North American said that the proposed collection of passport numbers is a waste of time since a passport is valid for ten years and the information on the passport application often quickly becomes out of date. North American saw no need for collecting date of birth information. The carrier was skeptical that people would provide date-of-birth information, and believed that many people would view a request for it as an invasion of privacy, that asking for it would invite lawsuits based on age discrimination (e.g., in the case of people bumped from flights), and that collecting it would unduly slow down the airline ticketing and information gathering processes.

Carnival said that many passengers do not have passports available when booking a trip or may not have yet obtained a passport. Carnival estimated that collecting the information in the proposed rule at time of check-in would increase its current check-in time of 4 minutes per passenger by 25 percent, or 60 seconds, to 5 minutes. Carnival said that its associated check-in personnel costs would increase by a like percentage and that Carnival could not sustain such an increase in its low-fare international operations.

North American said that charter airlines doing business with tour operators are aware that a travel agent selling a ticket for a tour operator will likely refuse to reveal information about the passenger for fear that the tour operator will try to sell direct to the passenger in the future. North American said that the result of this dynamic, in the case of a disaster, is that notification can take longer, because the travel agency that has the passenger information may be closed for the evening or weekend.

North American said that the best way across all types of air carriers to collect information would be along the lines of the Pan Am 103 family suggestion (i.e., perforated stub on the boarding card that could be torn off upon boarding the flight and kept by the airline). However, North American noted that this process would be cumbersome and require more time than the 40 seconds per passenger at check-in found in the NPRM. (North American estimated at least a minute in check-in processing, in addition to any time earlier that passengers needed to check in.)

North American said that all the extra boarding time needed to implement a passenger manifest information requirement would eat into aircraft utilization, and noted that while DOT had in the NPRM calculated the costs, in terms of manpower, for a passenger manifest system, the greatest cost, that of tying up an expensive asset like a $60 million Boeing 757 jet due to the extra time involved to collect passenger manifest information, had been ignored.

North American said that charter air carriers were very concerned about a possible perception by passengers that manual collection of passenger manifest information (that is, non-CRS collection of this information) by a carrier could somehow indicate that such a carrier was unsafe. To allay such unfounded fears on the part of the public, North American said that only bare bones absolute minimum essential information should be gathered and that passenger manifest information requirements should be widely publicized so that it would not appear that one class of air carrier was being singled out over any other.

Both North American and Carnival suggested that implementation of a passenger manifest information requirement should be delayed or precluded based on the fact that they are not large air carriers. North American suggested delaying implementation of a passenger manifest information requirement for an airline flying 10 or fewer large aircraft, regardless of the airline's revenues. Carnival said that DOT should consider entirely exempting smaller carriers, which it defined as those transporting less than 250,000 international passengers annually, from the proposed requirements. Carnival said that, at the very least, such smaller carriers should be given an implementation date of not less than one year later than the effective date of any final rule.

North American also said that the phrase ''best efforts'' should be defined in advance of a final rule because of the enforcement penalties contemplated in the NPRM (i.e., airlines must exercise best efforts to get emergency contact information); that it makes sense to keep passenger manifest information for 24 hours after a covered flight, but not if the flight was canceled or if boarded passengers are deplaned without incident; that providing data within one hour to the Department of State is simply not practical in the event of an aviation disaster aboard a small carrier, particularly if the disaster happened during a holiday or off hours; that small carriers should not be required to provide a 24-hour phone number to the DOT, only a phone number that is operative when the carrier has aircraft airborne; that DOT should provide a list of the foreign countries exempted under any passenger manifest information requirement; and that the final rule should be drafted to state clearly that none of the passenger manifest information collected by airlines should be provided to any government agency except in the case of a disaster.

Finally, North American said that it would be wise for telephone companies to have a standby 800 number assigned to each airline that could be activated instantly in the case of an air disaster. North American also said that changes to the law were needed to require telephone companies to waive the privacy of unlisted phone numbers in the case of an airline or government agency trying to locate next-of-kin in the aftermath of an aviation disaster.

Gran-Aire, an individual air carrier, and the National Air Transportation Association (NATA), a trade association, filed comments regarding the proposed rule and Part 135 on-demand air charter operators (Part 135 operators). Both said that the proposed rule should not apply to Part 135 operators.

NATA maintained that there was no justification in the NPRM for including Part 135 operators, that the Preliminary Regulatory Evaluation that accompanied the NPRM had not included the costs of Part 135 operators, and that such operators had been excluded from DOT's ANPRM. NATA urged DOT to reconsider the negative effects of including nearly 3,000 Part 135 operators, who typically carry less than 9 passengers per flight and use turbine-powered aircraft that are less likely to be involved in fatal accidents. NATA said that Part 135 operators know their passengers, who must arrange travel privately (Part 135 operators do not publish schedules). NATA said that Part 135 operators already have notification and reporting mechanisms in place in the unlikely event of an accident or incident with the aircraft or passengers, and that compliance with the proposed rule would do nothing to enhance these mechanisms. NATA stated that Part 135 operators currently are exempt from the need to have DOT economic authority and asserted that imposing passenger manifest requirements on them would fly in the face of sound rulemaking.

Regarding the specifics of the proposed rule, NATA said that forcing a Part 135 operator to ask a business traveler to give the name of an emergency contact at the beginning of a Part 135 flight (perhaps to the person who would eventually pilot the flight) would create an extremely uncomfortable situation; requiring air carriers to make and keep records of those passengers unwilling to list an emergency contact was unnecessary, especially because Part 135 operators know their customers; soliciting date of birth would be just another reporting burden and invasion of privacy that would serve no purpose in aiding notifying families of passengers in the event of a disaster on a Part 135 flight; and requiring Part 135 operators to provide the U.S. State Department with a list of passengers within one hour of an aviation disaster would be impractical and unattainable since when an accident occurs on a Part 135 on-demand air charter flight, all carrier resources are usually needed for urgent lifesaving measures.

Finally, NATA said that none of the four ways to ameliorate the costs and potential burdens of the proposed rule on small air carriers that are listed in the NPRM apply to small, Part 135 operators; that filing a MOU with the Department of State amounted to asking carriers to comply with the requirements of the proposed rule, but through a different U.S. Government agency; and that extending the effective date for compliance of Part 135 operators with a final rule was the only means by which DOT suggested addressing the huge costs on small operators.

The Air Line Pilots Association (ALPA), representing 44,000 pilots who fly for 37 U.S. airlines, said that it had reviewed the NPRM and concurred with it as written.

The American Society of Travel Agents (ASTA), representing about 16,000 U.S. agency locations and members in about 168 foreign countries, and American Express Travel Related Services Company (American Express), one of the largest U.S. travel agencies also with hundreds of travel locations outside the United States, favored DOT imposing a single system for collecting passenger manifest information that would rely on a form for such information being made available at the gate areas of airports. A passenger would fill out a form as he or she waited for a flight, airlines would collect the forms, and gate attendants (who, according to ASTA, are typically engaged, anyway, in compiling ticket coupons and boarding passes) would put them into an envelope labeled with the flight number and turn the envelope into a central airport depository. ASTA said that in the event of a disaster, the envelope for the flight could be quickly retrieved and the needed information copied and supplied to the U.S. Government. Passages, a travel agency based in Los Angeles, said that given the rarity of air crashes it appeared to be a waste of time and computer space to collect the additional passenger manifest information for every flight.

ASTA and American Express said that employing a single system: was the only way to assure that the passenger manifest information collected would be complete and would match the actual persons on a flight (American Express noted that a travel agent has no way of knowing if a passenger that it books actually boards a flight since passengers routinely change travel plans at the last minute directly with the carrier); would avoid the need to reprogram computers or establish hundreds of varying and confusing procedures to collect, centralize and reproduce the few pieces of passenger manifest information; would avoid the alternative of dozens of different airline systems, many of them requiring some degree of involvement from travel agencies, and resultant chaos; would result in one, simple rule that the public could easily understand; and would make enforcement easier. ASTA said that if, alternatively, there was an attempt to gather the information using airline CRSs, some passengers could not provide it because they would not have their passports with them, or would not yet have obtained passports. ASTA said it believed that if passengers had to be asked to provide passenger manifest information at airport check-in, some would object on privacy grounds and that conflict, confusion and delay at the gate area would result.

Passages said that the assumption of 45 to 60 seconds to collect the additional passenger information in DOT's NPRM was in error. Passages said about 70 percent of its reservations were made by secretaries of businessmen who call back several times because they lack complete information and their bosses are ''on the fly'' and unavailable, and said these secretaries would have no idea of the particulars requested in the proposed rule. Passages anticipated also that requests for the additional passenger manifest information in the NPRM would be met with the response, ''none of your business.'' ASTA said that 40 seconds was a gross underestimate of the average time that would be required to solicit, explain, answer questions about, and collect the additional passenger manifest information in the NPRM. American Express gave a figure of $1 million annually as the cost of the proposed rule for its U.S. locations alone, and said that this was an unacceptably large amount given the erosion in travel agent margins that have occurred since imposition of airlines commission cap in 1995. American Express said that it was safe to assume that if airlines were allowed to shift the burden of collecting the mandated passenger manifest information to travel agents, they would not offer to cover the additional travel agent costs. Regarding travel agent wages, Passages said its principals earn $28,000 per year and ASTA mentioned, as a source for such data, the results of

a survey of travel agency compensation that appears annually in *Travel Counselor* magazine, a publication of the Institute of Certified Travel Agents.

The American Association of Families of KAL 007 Victims supported the proposed rule with two further explanations. First, it said that in the face of world wide deregulation and privatization of the air carrier industry, uniform standards on information gathering should be developed either by DOT or by the air carrier associations. Second, it said that information gathering enforcement provisions that would apply to air carriers that did not adhere to the standards, rules and regulations of the national or international air carrier trade associations should be included in a final rule.

Richard P. Kessler, whose wife, Kathleen, died on ValuJet Flight 592 on May 11, 1996, supported the proposed rule and said that it should be implemented for the good of the flying public and their families. He said that his understandings were that passenger manifest information was needed by the Department of State since it was to become the official point of contact for families in the aftermath of an aviation disaster that occurred outside the United States, and for aviation security, national security, and border control purposes. He noted that while section 204 of P.L. 101–604 required the Department of State to ''directly and promptly notify families of victims of aviation disasters * * * including timely written notice'' and tasked the Secretary of State with this responsibility, families of victims of the December 1995 American Airlines' crash outside of Cali, Colombia, were forced to make first contact with the Department of State. Mr. Kessler said he found economic arguments in opposition to the proposed rule to be incredible and asked how one could place a dollar figure on the proposed rule.

Ms. Brenda Sheer stated that in light of the experience following past aviation disasters, it was of the utmost importance that airlines collect basic information on all passengers. She proposed that airlines distribute information cards to all passengers at the time of check-in (parents and guardians would be responsible for filling out cards for children under 13 years of age) that would request full name; passport number and issuing country code, if a passport is required for travel; either drivers license number or social security number; and emergency contact number of a person or entity. She said that the cards would be collected by airlines at the time of boarding and the agent collecting them would be responsible for verifying the name on the card using a passenger's picture identification. She noted that this verification procedure would prevent any passengers attempting to fly under transferred tickets or false names from boarding the flight. She said the cards would be put into a box and kept confidential for 24 hours unless an aviation disaster occurred. Ms. Sheer said the benefit of such a plan for passengers was that they could feel secure that their families and loved ones would not have to experience additional suffering in the event of a disaster; the benefits of such a plan for airlines were that additional staff would not be needed and additional training would not be required to implement it. Ms. Sheer said that passengers would need to have their information cards filled out and identification ready at the time of boarding, and that passenger and airline efforts would have to be coordinated, in order for the plan to succeed.

Ms. Liana Ycikson supported collecting passenger manifest information consisting of full name, date of birth, address, and emergency contact telephone number. She said there needed to be an efficient way to contact family members of the victims of an aviation disaster before their names were announced by the media. She suggested not affiliating the collection of passenger manifest information with the U.S. Customs Service because some people are uncomfortable dealing with the U.S. Customs Service. She suggested that passenger manifest information be kept as part of frequent flyer information and a passenger's frequent flyer number be printed on boarding passes (the pulled boarding passes from a flight could then serve as a record of who boarded the flight). Alternatively, she suggested that an automated flight activation system—a system for flights designed to work in a fashion similar to automated credit card activation systems—could be set up to collect passenger manifest information. She envisioned that under such a system, each flight would have a unique number attached to it. A passenger would have to call a toll-free telephone number prior to the flight and, in response to electronic voice prompts, give passenger manifest information in order to ''activate'' himself for the flight. To safeguard the personal nature of the passenger manifest information, Ms. Ycikson said that only a check mark should show up on airlines' information screens to indicate those passengers that had provided the necessary information: that is, the information itself should not appear.

Caytano Alfonso, Norma Ramos, and Victoria Mendizabel filed comments as a group. They said that air carriers were in the best position to meet the goals and objectives of the NPRM and should be responsible for collecting passenger manifest information. Because of their concerns about the invasion of individual passenger privacy, however, they said that passenger manifest information should be used only in the event of an aviation disaster and that in no instance should it be kept for more than 24 hours or to create an ongoing data base. They said that the basis for their concerns about personal privacy was the fact that regulations for passenger manifest information fall under 49 CFR 449 (Security), and that elsewhere in 49 CFR 449 provision is made for the sharing of information among 10 separate intelligence units of the U.S. Government, DOT, and the FAA. They believed that U.S. air carriers as well as foreign air carriers should be equally burdened and be responsible for collecting passenger manifest information from all passengers. Finally, they said that DOB should not be substituted for passport number and should not be required as an additional data element because DOB can be obtained from the Department of State through passport-number-accessed records, and air carriers should not be further burdened by having to collect both types of information.

Four students from Florida International University (My Trinh, Chau Trinh, Walter Hernandez, and Joanne Flores), who are frequent air travelers, said that they submitted comments because of their concerns that the proposed rule would potentially raise airline ticket prices substantially and cause passenger delays. They said that passengers should not have to be at the airport hours before they depart to stand in lines to provide passenger manifest information and thus delay vacations and business trips, and that the costs of the proposed rule outweighed its benefits. They said that airlines should be required to collect only passenger name and passport number, and should be held responsible for quickly compiling a list of passengers in the aftermath of aviation disaster so that they could respond to families that ''called-in'' to the airline. They stated that they did not believe that airlines should be held responsible for ''calling-out'' to a person listed on an emergency contact form. They believed that if the proposed rule were

implemented, the U.S. Federal Aviation Administration would need to assist airports through increased expenditures from the Airport Improvement Program (AIP) to accommodate the increased passenger congestion at airports that would result. They pointed out that the additional time of 40 seconds per passenger at check-in that is postulated in the proposed rule to provide passenger manifest information does not take into account delays for passengers that need extra assistance, such as disabled passengers, small children flying alone, passengers who need language translation services, and pets traveling unaccompanied by a passenger.

The U.S. Department of Justice, Immigration and Naturalization Service (INS), pointed out that DOT's proposed rule imposed one passenger data collection standard on U.S. carriers (collection/solicitation of information from all passengers), and another passenger data collection standard on foreign carriers (collection/solicitation of information from U.S. citizens). INS noted that nonimmigrant aliens were excluded completely from information collection under this approach. INS proposed, instead, that a single standard, based on the Advance Passenger Information System (APIS), be established for satisfying Pub. L. 101–604 passenger manifest requirements. INS noted that were this to be done, the U.S. Department of State could access within seconds passenger manifest information for passengers on a flight to or from the United States that ended in disaster.

As part of this approach, INS proposed that both U.S. and foreign air carriers be required to collect basic information for all passengers consisting of: (1) full name, (2) passport number and issuing country code (if a passport is required for travel), (3) date of birth, and (4) gender. INS noted that the additional required data elements would further enable the law enforcement and intelligence communities to perform database checks in support of any investigation in the event of an aviation disaster. Regarding optional emergency contact information, INS proposed that the optional emergency contact information be limited to a U.S.-located emergency contact in order to conform with the preexisting INS requirement to collect the U.S. destination address for nonimmigrant aliens at entry.

INS noted that: the APIS system provides enforcement, facilitation, and automation benefits to the Federal Government, the air carriers and traveling public; the Federal Inspection System (FIS) had since 1990 been actively utilizing APIS, a subsystem of the mainframe-based Interagency Border Inspection System (IBIS); APIS had been designed to support the overlapping information requirements of over twenty government agencies; and stand-alone, PC-based software [PCAPIS] was available so that less-automated air carriers could participate in APIS. INS said, furthermore, it foresaw that future developments in automating arrival and departure data collection at U.S. ports-of-entry would involve electronic transmittal of manifest information processed through APIS. INS pointed out that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) tasked INS with undertaking a study and developing a plan for further automating arrival and departure data collection at U.S. ports-of-entry and with developing an automated entry-exit control system.

Associations of foreign air carriers, individual foreign air carriers, and foreign countries filed comments in which they objected to the United States imposing a passenger manifest requirement on foreign air carriers. Commenters included the International Air Transport Association (IATA); the Arab Air Carriers Organization (AACO); the Orient Airlines Association (OAA); Air Canada; Aerolineas Argentinas; Qantas Airways; Scandinavian Airlines System; All Nippon Airways; Air New Zealand; Varig; Lauda Air; British Airways; Turkish Airlines; Swiss Air; Lufthansa; Japan Airlines; Cathay Pacific Airways; Laker Airways; Air Pacific; the Embassy of Belgium; a combined comment from the Embassies of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission; and the Embassy of the United Kingdom (Britannic Majesty's). In general, these commenters shared similar views and, therefore, to prevent duplication, we have summarized the foreign comments as a whole.

The foreign commenters said that foreign airlines have demonstrated historically their concern regarding notification by constantly updating and strengthening their own internal emergency response guidelines, that the proposed rule was not achievable, and that it would disrupt and delay airport operations worldwide. They said that passenger manifest requirements of any sort must be negotiated directly with foreign governments bilaterally or through ICAO and noted that section 201 of the Aviation Security Improvement Act of 1990 directed the Secretary of State to make improved availability of passenger manifest information a principal objective of bilateral and multilateral negotiations with foreign governments and ICAO.

They said, in particular, that the proposed rule raised major issues with respect to inappropriate unilateral regulatory action on the part of the United States because it: (1) Mandated a legally enforceable obligation, collection of manifest data, be imposed on airlines at points outside the United States; (2) mandated that carriers (of any flag) refuse boarding to passengers of certain nationalities who refuse to provide certain information at points outside the United States; (3) obligated carriers (of any flag) to transmit and disclose to U.S. authorities data held outside the United States; (4) mandated that carriers (of any flag) be able to produce a passenger manifest on demand by U.S. authorities at points outside the United States; (5) would impose civil and criminal penalties on carriers of any flag, whose conduct at points outside the United States failed to comply with U.S. law; and (6) would prohibit carriers from providing data collected under the U.S. mandate to anyone other than U.S. authorities, including the government of the country where a flight originates, without consent by DOT.

They said that the prohibition on supplying collected passenger manifest information to anyone other than the U.S. Government in the aftermath of an aviation disaster is contrary to certain provisions of ICAO Annex 17—Aviation Security (RP 9.14 and the introductory paragraph of Standard 9.1), which call on States to cooperate with local authorities. They also said that the European Union Common Data Privacy Directive of 24 October 1995, which is to be adopted and implemented in EU Member States' national legislation by October 1998, provides:

> The Member States shall provide that the transfer to a 3rd country of personal data which is undergoing processing or are intended for processing after transfer may take place only if, without prejudice or compliance with the national provision adopted pursuant to the other provisions of this Directive, the 3rd country in question ensures an adequate level of protection. [Article 25]

They said that the United States is likely to be included on the EU's list of countries without adequate levels of protection, and, therefore, transfer of data to the U.S. would violate the EU's Common Privacy Directive. In addition, they said that the proposed rule was inconsistent with the U.S.-Austria Air

Services Agreement, Article 5, which provides that the law of each country shall be applied to aircraft of either country when in that country's territory; contrary to the U.S.-Turkey bilateral agreement; potentially conflicted with the German Data Protection Act (Bundesdatenschutzgesetz—BDSG); would conflict with the laws of Denmark, Norway, and Sweden, which would prohibit furnishing collected information to the U.S. Government; conflicted with U.K. law, which prohibits the different treatment of U.S. citizens from other nationalities; conflicts with the Constitution of Japan, which guarantees the right of privacy and protects from mandatory disclosure exactly the type of personal information that would be collected under the proposed rule; conflicts with Article 21 of the Swiss Criminal Code, which would prohibit any carrier (Swiss or other) from complying with any manifest rules that might be adopted with respect to flights whose last point of departure to the United States is Switzerland; and ignores the fact that foreign laws apply to foreign carriers in the event of an aviation catastrophe (i.e., foreign laws may not authorize a foreign carrier to release any information on its passengers until it has coordinated with the regulatory bodies of its own country or of those in whose territory the event has occurred). They said that if victims' families are unable to get accurate and prompt information because of the vagaries of the proposed rule's application, families will be disappointed, and carriers and the U.S. authorities will be subject to renewed criticism.

The commenters said that compliance with a passenger manifest information requirement would have the following negative impacts: measurable delays for the traveling public; a loss of confidence in the safety of international civil aviation precipitated by collecting next of kin information from passengers as they boarded their flight; slower passenger processing times at reservation and check-in; higher levels of congestion at already overtaxed airport terminals (where additional check-in desks are needed and space is available, they will be created, but where space is not available, airport operators will be forced to seek ways to expand terminal capacity to deal with the increased congestion); and diversion of check-in agents' attention away from security concerns due to additional demands to collect passenger manifest information. They said, in particular, that the proposed rule was incompatible with through check-in procedures worldwide (e.g., because the present system at many of the locations where the passenger will initially board an aircraft do not have the data fields necessary for emergency contact parties and telephone numbers).

The foreign commenters said that they objected to any effort to expand the proposed rule beyond DOT and the Department of State to suit the purposes of other, non-associated programs such as the Advance Passenger Information System (APIS) of the U.S. Customs Service.

They also said that the proposed rule contravenes several Standards contained within Annex 9—Facilitation of the Chicago Convention: (1) Standard 2.1—Governmental regulations and procedures applicable to the clearance of aircraft shall be no less favorable than those applied to other forms of transportation; (2) Standard 2.6—Contracting States shall not normally require the presentation of a Passenger Manifest, but when this type of information is required it may also be provided in an alternative and acceptable manner (IATA said that if the type of information referred to in 2.6 is required, it should be limited to the items shown in the format of a Passenger Manifest set forth in Appendix 2, which limits Passenger Manifests to specific flight information: Operator, Marks of Nationality, Flight Number, Date of Flight, Point of Embarkation and Disembarkation, and to the Surname and Initials of individual passengers); and (3) Standard 3.1—Regulations and procedures applied to persons traveling by air shall be no less favorable than those applied to persons traveling by other means of transport. IATA said that it has no records that the United States has filed differences to Standards 2.1, 2.6, and 3.1.

The foreign commenters said they anticipated that legal actions (individual or group) would be brought against carriers by passengers who had been denied boarding for refusing to allow mandated information to be collected and that defending against such suits would be time consuming and unnecessarily burdensome on the aviation industry. They said that DOT should indemnify airlines that are found liable for damages to a passenger that has been queried and/or denied boarding in accordance with any Passenger Manifest Information final rule.

They offered several points as just-cause to delete the requirement in the proposed rule that airlines deny boarding to a passenger who refuses to provide full name and passport number and country of issue: (1) The Data Protection laws of many States, while not expressly prohibiting collection or transmission of personal data, offer the individual the right to control how the data can or will be used; (2) airline tickets represent a contract between the traveler and the transportation provider that guarantees carriage, provided the traveler complies with the rules and regulations of the carrier as filed in its tariff documents and, thus, denial of boarding due to the passenger's refusal to comply with a law not recognized in the country of boarding cannot be justified, and would likely result in breach of contract lawsuits; (3) many airlines believe that a traveler's decision to allow personal data and emergency data to be collected and forwarded to any government agency is a personal choice made after a careful consideration of the potential impact on self and family and thus, instead of coercing compliance through threats of denial of boarding, the proposed rule should, instead, focus on methods to encourage systems by which passengers can voluntarily submit data prior to boarding any international flight, regardless of origin or destination; and (4) the rule, if implemented as currently drafted, would have significant operational impact on both airline and the traveling public, due to other related requirements imposed under ICAO Annex 17—Security (any individuals denied boarding would require that any baggage checked by that individual be removed from the aircraft as well, and doing so would involve significant flight delays since most baggage on international flights is placed in containers and loaded well before the passenger boarding process commences).

The commenters were critical of the fact that a description of the Memorandum of Understanding (MOU) that was mentioned in the NPRM was not included as part of the NPRM, and said also that non-U.S. air carriers did not participate in the Working Group that developed the MOU. They said that specific MOU language was needed so that it could be evaluated.

They said that it was in recognition of the difficulties of implementing a passenger manifest requirement that Congress decided in section 704 of the Aviation Disaster Family Assistance Act of 1996 to create a task force to examine such issues, and DOT should await the work of the task force before adopting any rules in this area.

One small foreign air carrier said that the administrative burden of a passenger manifest requirement would be too great and, therefore, small air carriers should

be exempted from any final rule. It suggested doing so by exempting air carriers that meet the definition of ''small business'' in 13 CFR 121.201.

Air Canada recommended that U.S.-Canada flights be exempt from any passenger manifest information requirement. Air Canada said that the U.S.-Canada aviation market was more like the intra-U.S. aviation market than other U.S.-foreign country aviation markets: the U.S.-Canada market is characterized by many transborder short-haul flights (often employing commuter aircraft) whereas other U.S.-foreign country markets are characterized by long-haul flights. It said that imposing a passenger manifest information requirement on shuttle-type U.S.-Canada transborder operations would be overly burdensome because compliance could mean that pre-flight check-in times would be extended to the point that they would be longer than the duration of the flight itself. Air Canada also pointed out that 96 percent of its U.S.-Canada passenger traffic was subject to INS and Customs preclearance, whereby passengers submit Customs and INS documents to the U.S. Federal Inspection Services prior to a flight's departure for the United States. Air Canada said that while this process requires it to ensure the collection of information similar to the information in the proposed rule, it does not require Air Canada to collect and maintain the information internally, as the proposed rule would. Air Canada said that it would be costly to develop and maintain such a system for collection and storage of passenger manifest information, and that doing so would be superfluous to the extent that similar passenger information is already supplied as part of the pre-clearance program.

On the details of the proposed rule, the foreign commenters said that the reporting obligation should apply only in instances that occur as part of the airlines' flight operation phase, which commences when the aircraft door closes upon completion of the boarding process and ends when the aircraft is fully stopped at the flight segment's destination, and the cabin door opened prior to passenger disembarkation. Loosening the definition to when ''any'' passengers have been boarded or who still remain on the aircraft would potentially lead to reporting requirements for incidents that occur on the ground in airport terminal environments. Such incidents should remain under the control of airport operators and local authorities.

In terms of recordkeeping, the foreign comments stated that carriers who opt to store in CRS/automated formats should not be required to maintain the information beyond the normal purging cycle. In addition, these commenters stated that requiring carriers who might be collecting manually to hold beyond completion of flight would be impractical.

The International Civil Aviation Organization (ICAO) provided information on the applicability of articles of the Convention on International Aviation (Chicago Convention) to the proposed rule. ICAO said that Article 29 of the Chicago Convention required every aircraft engaged in international navigation to carry certain documents, including, for passengers, ''a list of their names and places of embarkation and destination,'' and that Annex 9 to the Convention stipulated, in Standard 2.6, that presentation of the passenger manifest document shall not normally be required, and if passenger manifest information is required, it should be limited to the data elements included in the format prescribed in Appendix 2 of Annex 9, i.e., names, places of embarkation and destination, and flight details. ICAO said that implied in Article 29 and Standard 2.6 are both the requirement to collect passenger manifest information prior to the flight and a limitation on the amount of information collected. ICAO noted that the adoption of Standard 2.6 contemplated a paper document that would have to be delivered by hand. ICAO stated that the concept of a limitation on the amount of information to that which is essential to meet the basic objectives of safety, efficiency, and regularity in international civil aviation is also applicable to electronic data interchange systems such as Advance Passenger Manifest Information (API), in which additional (but not unlimited) data may be transmitted to the authorities in exchange for a more efficient inbound clearance operation. ICAO stated that it is widely recognized that in any system involving the exchange of information (automated or not), it is the collection of data that is the major expense, and that additional data collection requirements should, therefore, result in benefits that exceed costs. ICAO stated that a ''benefits exceeds costs'' principle was inherent in the adoption, by the Eleventh Session of the Facilitation Division of ICAO, of API systems as a Recommended Practice. ICAO noted that the information collected from inbound flights under the API system consists of (and is limited to) the data in machine readable lines of the passport plus flight information, and that carriers that transmit this information to U.S. Customs in advance of the flight have enjoyed large reductions in inspection delays at major ports of entry.

ICAO noted furthermore that under Article 22 of the Chicago Convention, contracting States are obligated to adopt all measures to facilitate international air navigation and prevent unnecessary delays, and that Article 13 requires compliance with a State's laws and regulations'' * * * related to entry, clearance, immigration, passports, customs, and quarantine * * * upon entrance into or departure from, or while within the territory of that State.'' ICAO said that in operational terms, a new procedure connected with arrival or departure of a flight can be justified if it serves to improve productivity of operations and if it improves compliance with the above-mentioned laws and/or enhances aviation security.

ICAO noted that the new collection requirements in the proposed rule—collecting the name and telephone number of an emergency contact for each passenger, and API and emergency data for outbound flights—are not designed to meet any of the objectives of the Chicago Convention. Rather, ICAO noted that the stated purpose of the proposed rule is to enable the U.S. Government to notify families or foreign governments more quickly in the event of an aviation disaster. ICAO noted also that the United States has not filed a difference to Standard 2.6 for the additional passenger information in the proposed rule.

ICAO also stated that Article 37 of the Chicago Convention recognizes that standardization of regulations and procedures is vital to international civil aviation and obligates contracting States to comply to the extent possible with ICAO standards and recommended practices. Specifically, ICAO stated that facilitation standards have been developed because standardized aircraft departure and arrival routines are considered essential to the efficiency of aviation operations worldwide. ICAO said that implementation of the passenger manifest requirement as described in the proposed rule would represent a radical departure from internationally accepted procedures for departing flights and would set a precedent that could inspire similar variances in many other States, to the detriment of the international aviation system.

The European Civil Aviation Conference (ECAC) submitted the text of a message from the President of ECAC that had been adopted by the ninety-eighth meeting of the Directors General

of Civil Aviation of the European Civil Aviation Conference. In the message, ECAC formally requested that the proposed rule be withdrawn for legal reasons (the proposed rule represents an extraterritorial application of U.S. law; breaks the Chicago Convention, in particular Articles 22 and 23, and Annex 9—Chapters 2 and 3; and is not compatible with legislation of Member States in the field of data protection) and practical reasons (the proposed rule is contrary to ECAC goals of facilitating and expediting the passenger flow at airports; creates a discrimination between air carriers since some might be exempted based on national laws prohibiting them from collecting the required data; will not produce reliably accurate data; and will result in time-consuming and inconvenient procedures causing extended check-in times and a need for additional check-in counters and staff).

British Airports Authority (BAA), the owner and operator of seven airports in the United Kingdom (Heathrow, Gatwick, Stansted, Glasgow, Edinburgh, Aberdeen, and Southampton) said that it had strong reservations about the practicality of the proposed rule and opposed it in its current form. BAA said that it was wholly impractical to require carriers either to obtain or verify passenger manifest information at airport check-in areas. BAA said that the average check-in time at present for passengers on U.S. services at its airports was 2.5 to 3.3 minutes, depending on the air carrier concerned. BAA said that it could not provide the additional check-in capacity that would be required by the increased check-in times needed under the proposed rule (40 seconds or more) even if airlines were prepared to pay for the extra costs of additional check-in capacity. BAA said that another means for collecting passenger manifest data needed to be found, perhaps one that would involve collecting the information at the point of sale and then verifying it at the departure gate immediately before passengers board the aircraft.

The Final Rule

In response to the comments, this final rule adopts the proposal with a number of significant changes. In addition, we have made a number of clarifications and minor changes throughout the rule. In almost all cases, the changes reduce the regulatory burden. The most important changes are the exemption of most small U.S. and foreign air carriers from the coverage of the rule, the simplification and equalization of what information must be collected or solicited, and the elimination of a MOU with the State Department as an alternative means of compliance. For clarity, we will discuss the rule section-by-section and then address issues that do not fit into this framework.

List of Subjects

Because of the concerns of some commenters, we have eliminated the reference to security. This rule is a part of the aviation economic regulations and is not a Federal Aviation Administration operational regulation. The rule has no direct bearing on security.

Authority

We have added two statutes (Title VII of Pub. L. 104–264 and Pub. L. 105–148) to the authority section to reflect recent Congressional enactments in this area. The primary authority for this rule, however, remains Pub. L. 101–604, which was codified as 49 U.S.C. 44909. During the 1993 recodification of the Transportation laws, there was some reorganization and rewording of the requirements. As noted by the introductory material in the recodification, the rewording was not intended to make any substantive change. To avoid confusion and most closely represent the drafters' intent, we have chosen to use the Public Law version in our analysis and cite both the Public Law and codified version in our authority citation.

Purpose

In response to the comments, this section has been streamlined and the references to DOT, DOS and the statutory authority have been removed. The change acknowledges that federal agencies have a responsibility to communicate among themselves, and to try to reduce the burden on the air carrier, at an exceptionally stressful time, of communicating simultaneously with multiple federal agencies. While there are ancillary benefits, the purpose of the rule is to provide DOS with information which will enable them to notify the families of the U.S. citizens killed overseas. The section now provides, ''[T]he purpose of this part is to ensure that the U.S. government receives prompt and adequate information in case of an aviation disaster on specified international flight segments.'' The rule does not prohibit airlines from providing initial notification to family members following an aviation disaster. The rule itself is silent on the subject. The Department of State and Transportation have advocated in various fora that airlines should provide the initial notification to the families of the victims of aviation disasters. Similarly, the Task Force found that the airlines are in the best position to notify families in the immediate aftermath of an aviation disaster. The purpose of the rule is to allow the Department of State to carry forward its legal obligation of notifying, in a timely fashion, families of U.S. citizens who die outside the United States. The Department of State is required to do this regardless of any previous notification received by a family.

Definitions

In the definition of ''air piracy,'' we made a minor grammatical correction for clarification. The term is now defined as, ''any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.''

Several commenters asked us to modify the definition of ''aviation disaster.'' Several airlines commented that the rule should be triggered only after the plane's doors have closed. Although this makes sense from an operational point of view, we are concerned about the possibility of some terrorist act, that by design or mistake, takes place during boarding or disembarkation. If an aviation disaster occurs during boarding, the airline would only be responsible for a manifest listing the passengers that have boarded, which would presumably be created from the boarding passes or tickets lifted at the gateway. We do not agree with IATA's comments that the airport operator is responsible in such a case. An airport operator would have no way of knowing the names of passengers who had boarded.

ATA objected to the inclusion of on-board accidents and TWA objected to situations only involving substantial damage to the aircraft. We have changed the rule accordingly. The definition of ''aviation disaster,'' is now, '' (1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident; (2) A missing aircraft; or (3) An act of air piracy.

A new definition, ''covered airline,'' was added in the final rule in order to simplify references in the rule. A ''covered airline'' is defined as, ''(a) certificated air carriers, and (b) foreign

air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).'' This new definition exempts the smallest airlines that operate aircraft with 60 or fewer seats or have a maximum payload capacity of 18,000 pounds or less from the rule. If an airline operates both large and small aircraft—that is, aircraft more than 60 seats and aircraft with 60 or fewer seats—all covered flight segments of the airline are covered regardless of the size of the aircraft used on a particular flight segment.

By definition, a certificated air carrier does not include air taxi operators or commuter air carriers operating under 14 CFR Part 298. Some air taxis and commuters have voluntarily chosen to become certificated for a variety of reasons. In some cases, the certification was at the urging of larger, code-sharing airline partners. In others, certification confers some operational, legal or public relations advantage. If an air taxi operator or commuter air carrier is certificated, it is covered by the rule.

Our definition of foreign air carriers that are covered by the rule mirrors the U.S. definition as closely as possible considering the different legal authority applicable to foreign operators. The rule exempts the smallest foreign air carriers who are operating *only* small aircraft. These airlines are primarily trans-border air taxis operating between the U.S. and Canada, and to a lesser extent between the U.S. and Mexico and the U.S. and the Caribbean. If an airline, such as Air Canada, operates both large and small planes, the flights on the small planes would still be covered because the airline holds authority to fly large airplanes.

There have been a number of clarifications in the definition of ''covered flight'' in the final rule. The definition now reads: ''[c]overed flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.'' We have added the term ''segment'' because some flight numbers cover multiple flight segments. The rule only applies to the segment to or from the U.S. We have also added the qualifier ''passenger-carrying'' to make clear that the rule does not apply to cargo or ferry flights.

The rule does not apply to flight segments between two foreign points. As a practical matter, carriers may voluntarily collect or maintain the information collected from covered flights for these foreign-to-foreign segments, consistent with local law, in order to have the same rule apply to all their operations.

We have changed the term ''emergency contact'' to ''contact'' at the request of a number of commenters. Some airlines believe that passengers will be anxious if they are asked for an emergency contact, and that the airline will need to engage in a dialogue regarding whether there is a problem involving the flight and the nature of the emergency. Comments and discussion of the Task Force indicate that use of the term ''contact name and phone number'' (as opposed to ''emergency contact name and phone number'') could make the collection of the information less burdensome but still provide the Department of State with information that will allow it to carry out its responsibilities. The air carrier must, however, make clear that the contact should be someone not traveling with the passenger who can be reached in the event of an emergency. If an airline prefers to use the term ''emergency contact'' it is free to do so.

In addition, we have added a statement clarifying that the contact should be a person not on the covered flight. The definition of ''contact'' now reads, ''a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.'' If an airline chooses to meet the requirements of this part by referencing on-going databases, such as frequent flyer accounts or an in-house frequent traveler computer profile, the airline needs to confirm that the listed contact is not a current traveling companion.

In response to the many comments on requirements connected to collecting the full name of the passenger, we have made an important modification to the definition of ''full name.'' The term is now defined as, ''the given name, middle initial or middle name, if any, and family name or surname *as provided by the passenger.*'' (emphasis added) This change lessens the burden on the airlines by making it clear that the airline need not verify that the name provided by the passenger is the legal name of the passenger. For the purposes of the regulatory evaluation, we assumed that most airlines will choose to record names consisting of first name, middle initial and last name.

In the past, many, if not most, airline manifests included only the passenger's first-name initial and last name. In addition, there was often not much emphasis placed on accurately spelling the passenger's name. There have been many operational changes in airline systems over the last decade that all contribute to the collection of a full, and accurate, name of the passenger. Between new federal security requirements and voluntary airline security procedures, most airlines require a passenger to show photo identification while checking in. On many international flights, this is accomplished by requiring a passenger to show a valid passport before he or she is allowed to board. For travel to countries not requiring a passport, many passengers show a driver's license or other government identification. Similarly, in an effort to stem unauthorized transfer of airline tickets, airlines have become much more careful about listing the full name of a passenger, including an appellation such as Mr. or Ms. Because of notification problems experienced by various airlines in the aftermath of aviation disasters, most airlines have paid much more attention to gathering the full name of the passenger. Finally, many airlines are now using electronic ticketing on some or all of their flights and, as a result, are paying close attention to collecting the correctly-spelled, full name of the passenger.

We are aware that a dogmatic insistence that an airline collect the full legal name of a passenger, and to deny boarding to the passenger if the airline is unable to obtain it, would lead to unnecessary mischief and operational confusion. As noted by some commenters, some passengers have multi-part names, such as Mary Jo Smith-Jones. Others might have a legal name, but are known by a different name such as a nickname or a combination of initial of the first name and full middle name. The possibilities seem as endless as the number of passengers. The purpose of this definition is to obtain as full a name as the passenger will voluntarily provide. We have, therefore, added the qualifier to the definition, ''as provided by the passenger.'' Based on the absence of comments, we believe that all, or virtually all, airlines currently collect first and last name. As a practical matter, the rule merely requires airlines to collect, if provided, a middle initial or middle name. In addition, the airline must provide the full name collected to the Department of State.

We made only minor editorial changes to the definition of ''passenger.'' The primary change is to revise ''person not occupying a seat'' to ''person occupying a jumpseat.'' The definition now reads, ''every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.''

We removed the definition of ''passport issuing country code'' because passport information is no longer required to be collected. We made no change to the definition of ''United States.''

In response to the comments and in consultation with the State Department, we changed the definition of ''U.S. citizen'' to eliminate application of the rule to lawful U.S. permanent residents. The rule envisions that it is up to passengers to identify whether they are U.S. citizens, either by presenting a U.S. passport when travel documents are required or used for travel, or in response to the solicitation for information. Airlines have no duty to inquire beyond this self-identification.

Applicability

This section was streamlined to incorporate the new definitions. It provides, ''[t]his part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part).'' The Aviation Disaster Family Assistance Act of 1996 exempted air taxis from having to file family assistance plans. We follow that Congressional lead in this rule. Small airlines that code-share with large airlines, in general, have voluntarily obtained DOT certification and, thus, will be covered by the rule. Air taxi operators that operate independently usually operate very locally and often only on demand. In case of an aviation disaster, they carry few passengers and would find it less of a burden to identify who is on board and notify the families than a carrier operating a large jet. Because of this and because applying the rule to these very small carriers would result in relatively significant cost and operational burdens with fewer benefits, we are not covering either U.S. or foreign air carriers operating only small aircraft.

Information Collection Requirements

We have substantially reduced the information collection requirements and equalized the treatment of U.S. and foreign air carriers in the final rule. In the NPRM, U.S. air carriers would have been required to collect the full name, passport number and issuing country code for each passenger. Foreign air carriers, on the other hand, would have been required to collect only the full name and passport number for U.S. citizens and lawful permanent residents of the United States. In the final rule, both U.S. and foreign airlines are only required to collect the full name (no passport number or issuing country code) for U.S. citizens. We eliminated the proposed coverage of other passengers because the purpose of the rule is to provide the Department of State with information to notify the families of U.S. citizens that die outside the United States.

If the passenger provides a contact name and phone number, the passport number is not needed because the passport number was only being used to get a contact name and phone number. In addition, obtaining the passport number is unlikely to be effective in obtaining contact information. Most passports are good for ten years, so that any information that is voluntarily provided on the application may not be current. The passport contact may also be a traveling companion of the passenger. The elimination of this data element will save time and money. With our more liberal definition of full name, as a matter of practice all carriers should already be in compliance, or close to compliance, with this requirement.

The final rule provides that if a covered airline does not obtain the full name of the passenger, the passenger should not be boarded. Some commenters were very concerned about this provision in the NPRM, particularly when it applied to the additional data elements. The airlines were concerned about angry passengers and unseemly and unnecessary delays at the boarding gate by requiring passport number as a prerequisite for boarding. Our changes have addressed these concerns.

Commenters stated that there will be no public tolerance for a post-aviation-disaster scenario in which there is more information available for the families of U.S. citizen victims. The purpose of this rule is to provide the Department of State with information which enables it to meet its statutory responsibility of notifying the families of U.S. citizens who die outside the United States. The U.S. government is not responsible for notifying the families of the citizens of foreign countries upon the death of a foreign citizen. (In practice, the airline involved in the aviation disaster notifies the families of all passengers.) Accordingly, the rule does not require either U.S. or foreign air carriers to provide information on non-U.S. citizens to the U.S. government for purposes of notifying the families of those foreign nationals of the death of a loved one.

If a U.S. or foreign air carrier believes that the public will not tolerate faster notification by the air carrier about U.S. citizen passengers than non-U.S. citizen passengers, the air carrier may extend the practice required by this rule to all of their passengers. Likewise, if a foreign government wants to require air carriers flying to or from their country to collect such information for its citizens, the Department would fully support such a requirement.

The rule also requires covered airlines to solicit a contact name and telephone number. It is up to the passenger whether or not to provide it. Airlines should not pressure the passenger; the government requirement is only to ask for the information. Airlines should not state or imply that it is a government requirement. Similarly, an airline cannot deny boarding under the authority of this rule if a passenger chooses not to provide a contact. As noted in the definition section, a contact can be whoever or whatever the passenger wants it to be. There is no requirement that it be a family member, next-of-kin, a friend or a business or social group.

The requirement to solicit prior to boarding does not necessarily mean that the airline needs to solicit before every covered flight segment. For example, the airline could solicit prior to the first covered flight segment, or through its frequent flyer program. For multiple segments, if each passenger is given the opportunity to provide contact information prior to the first flight segment, and it is clear to the passenger that the contact should not be traveling with the passenger on any flight segment, then the burden is upon the passenger to provide a contact not traveling with the passenger for any of those flight segments. The air carrier is then not responsible for soliciting this information prior to each flight segment.

The rule requires covered airlines to maintain a record of the information collected pursuant to this section. We have deleted the specific requirement that an airline maintain a record of those who decline to provide contact information. A covered airline is still

required to provide the Department with evidence, upon request, that all passengers were solicited for contact information and that the airline collects and maintains the information provided by its passengers.

The most dramatic change in this section is the addition of a new paragraph dealing with code-share operations. The provision provides, ''[t]he covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.'' We have placed the responsibility on the operating air carrier because the ticketing air carrier would not know if a passenger actually boarded the plane. We leave it up to the code-share partners, however, to work out a system that is most convenient and operationally effective for them in the markets served. If the flight segment is not operated by a covered airline, even though the ticketing carrier is a covered airline, there is no duty to collect the information or meet the other requirements of the new Part 243.

Procedures for Collecting and Maintaining the Information

Consistent with the proposal, the final rule continues to permit covered airlines to use any method or procedure to collect, store and transmit the required information, subject to several listed conditions. We anticipate that most scheduled airlines will use their computer reservation systems. Others may use a ''shoebox'' approach in which passengers fill out a simple form that is handed in at check-in or before boarding. As the rule is implemented, we expect other, creative solutions to be developed, including reference to an external database such as expanded frequent flyer records. Thus, we disagree with the comments from ASTA and American Express Travel Related Services Company that the rule should require a single system for collecting passenger manifest information. We are trying to use as light a hand as possible by setting a performance standard rather than mandating how very different types of airlines conducting very different types of operations must comply.

As in the NPRM, the final rule provides that the information on individual passengers must be collected before each passenger boards the aircraft on a covered flight segment. We anticipate that the information will be collected by whoever sells the ticket. In response to the comments, we have eliminated the requirement that the information be kept for at least 24 hours after the completion or cancellation of the covered flight segment. Instead, the information need only be kept until all passengers have disembarked from the plane. Airlines are, however, free to keep the information longer. At least one airline asked whether it might retain the information for the return flight on a round-trip ticket. The answer is ''yes,'' given that the passenger understands at the time of the solicitation that the request covers the return portion of the trip.

The final rule also clarifies who may receive the contact information under the rule. The final rule provides, ''the contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other government or governmental agencies that have an independent, legal right to obtain this information.'' The purpose of this rewording is to clarify the roles of the various federal agencies under this part. Under the ADFAA, NTSB will only request the information when the aviation disaster occurs within the United States. In addition, we want to make it explicit that this rule does not prevent other governments, whether foreign, state or local, or governmental agencies, such as law enforcement, from obtaining this information under their own independent legal authority.

After further consideration, we decided to add an additional, explicit provision banning covered airlines from using the contact information for any commercial or marketing purpose. Contact information is personal and is provided by passengers with the expectation that it will not be used for other purposes The new paragraph provides, ''[t]he contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes.''

Transmission of Information After an Aviation Disaster

In response to the comments, the rule now provides that air carriers must provide passenger manifest only to the State Department and, upon request, to the NTSB. For airline convenience, we have provided the full title of the State Department contact (the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs) as well as a telephone number that is staffed 24 hours a day at which he or she can be reached. We have eliminated the proposed requirement for routine transmission of the information to DOT. DOT's role is now limited to enforcement oversight of the rule. To ensure that airlines are in compliance with the rule, DOT may request a manifest for a given flight, or check to see if the contact information is being solicited.

Because of the statutory responsibilities of the NTSB for aviation disasters occurring in the United States, the section provides that the Director of Family Support Services at NTSB must be given a copy of the manifest upon request. If the aviation disaster is clearly one in which the State Department will not have the lead responsibility (such as KAL Flight 801), the State Department may inform the airline to provide ongoing updates to NTSB rather than to the State Department. In rare circumstances, there may be duplicate transmission responsibilities, at least for a period of time. The purpose of this section is to provide, to the maximum extent possible, a single Federal Government contact point.

Finally, the rule simplifies the NPRM requirement concerning the speed with which the information has to be transmitted. The statutory language provides that, ''[i]f it is not technologically feasible or reasonable to fulfill the [1-hour requirement,] then [the information shall be transmitted] as expeditiously as possible, but not later than 3 hours after [the airline learns of the disaster].'' The final rule requires transmission of the information, ''as quickly as possible, but not later than 3 hours after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier.'' This has the same effect as the Congressional standard: to get the information out as quickly as possible. When the Family Assistance Task Force considered this issue, it concluded that transmission of a complete manifest within three hours would provide for as prompt notification of families as would transmission within 1-hour. In addition, we have made a number of editorial clarifications throughout the section.

Filing Requirements

This section requires a covered airline to file with DOT a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. The description must include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be

consulted concerning information gathered pursuant to this part. Each covered airline must file any contact change as well as a description of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made. This brief statement and the requirement to notify DOT of significant changes is designed to assist DOT oversight of this part, as well as allow DOS to anticipate how the information will be collected and how it will be transmitted.

We have made several substantive changes to the language in the NPRM. In response to comments, we eliminated the requirement for a 24-hour contact at the airline. Instead, the contact must be available at any time the covered airline is operating a flight. Many charter operators and airlines operating only a few airplanes do not have personnel on duty 24 hours a day. An aviation disaster can only happen during the operation of the flight. The modification meets the regulatory purpose while avoiding undue burdens on these carriers.

The filings must be submitted to OST Docket 98–3305 at the Department of Transportation. All of the information relating to this rule will be maintained in the docket and be available for public inspection. (The Department retains the right to redact non-procedural information such as phone numbers of carrier contacts.) The summary statement must be filed by July 1, 1998. We have chosen this date so that we can ensure airline compliance and work with those who need additional guidance well in advance of the effective date of the rule. New carriers must file this information before beginning operations. Finally, there were a number of editorial and conforming changes throughout this section.

Conflict With Foreign Laws

As is apparent by the number of comments on this issue, this topic generated intense controversy. We believe that we have addressed virtually all of these concerns with the changes in the regulatory requirements and the exemption provisions for instances in which our rule would conflict with foreign law. In terms of flexibility for foreign air carriers, we note that we have exempted carriers operating small aircraft and maintained the applicability only to flight segments to or from the United States. As noted previously, we believe most carriers are already collecting full names. The additional burden is simply soliciting (but not requiring) contact information, filing a brief statement with DOT summarizing the airline's program with a contact phone number at the airline, and transmitting the manifest information to the State Department following an aviation disaster on a covered flight.

Several foreign carriers alleged that the proposal was inconsistent with certain standards and recommended practices of Annex 9, the facilitation annex. Specifically, they alleged that the rules are inconsistent with Annex 9, Standards 2.1 (regulations applicable to clearance of aircraft shall be no less favorable than (applicable to other forms of transportation), 3.1 (regulations applied to persons traveling by air shall be no less favorable than applicable to other forms of transportation), and 2.6 (States should not normally require a passenger manifest, but may require such information in an alternative and acceptable manner).

We do not believe that these rules are inconsistent with the provisions of Annex 9. No specific documentation is required, absent an aviation disaster. In such a case, the required information is consistent with Article 26 of the Convention relating to aircraft accident investigation and notification of next of kin. The information required to be collected or solicited by the rule is not materially different from other requirements applicable to customs, immigration and health on entry into the United States. To the extent that the solicitation of information may differ from that applicable to other forms of transportation, e.g., international passenger ships, the requirements apply specifically to situations peculiar to international aviation, and are more favorable, rather than less favorable, at least in terms of notification of next of kin in the event of an aviation disaster.

The final rule provides a specific exemption process so that covered airlines will not be required to solicit, collect or transmit information under this part in countries where such solicitation, collection, or transmission would violate applicable foreign law. In order to meet our statutory responsibilities, the carrier must file a petition requesting a waiver on or before the effective date of this rule, or on or before beginning service between that country and the United States. These issues will be decided by the DOT decisionmaker (see 14 CFR 302.22a) and an order will be issued memorializing that decision, just like any other exemption application under 49 USC Subtitle VII. To expedite our review and to ensure that we have a complete understanding of the request, the rule requires that the airline's petition include copies of the pertinent foreign law (including a certified translation) and opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. (If several carriers are serving the same place, they are, of course, free to file a single, joint waiver application.) The Department will also accept statements from foreign governments on the application of their laws.

The final rule provides that DOT will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law. The Department will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law. Carriers need not apply for a waiver to serve a country on this list.

In response to the comments, DOT is exploring whether to take the issue of passenger manifests to ICAO to allow for international deliberation on this issue. That decision does not, however, effect the provisions of this rulemaking.

Enforcement

The final rule provides that DOT ''may at any time require a covered airline to produce a passenger manifest including contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department.'' The changes in this section are merely editorial.

A number of carriers were offended by the section in the NPRM concerning civil and criminal penalties. The section merely restates potential statutory penalties for violation of any of the aviation economic regulations. It is completely within DOT's prosecutorial discretion whether to take enforcement action in a given case, and what type, and amount, of penalty to seek. Our objective is compliance, not enforcement. It is the Department's intention to help the industry to come into compliance with this part and to work with airlines that are trying to comply. Because restating the penalty

provision added no legal authority and caused confusion about our intention, we have eliminated it from the final rule. Our underlying statutory authority remains the same.

Waivers

The NPRM included a provision that if an airline entered into an acceptable Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following an aviation disaster, DOT would waive compliance with certain parts of this rule. At the time we issued the NPRM, the MOU working group was still negotiating the terms of the MOU and, therefore, we did not include the specific terms of the MOU. As noted earlier, fourteen airlines to date have entered into a MOU with State. Contrary to our hopes at the time of the NPRM, the MOU does not cover all the statutory requirements and is viewed by the State Department and DOT as a supplement to, rather than a replacement for, this rule. We have, therefore, dropped this section from the rule. We believe that the MOU process has been very helpful in focusing attention on many of these issues, facilitating communications between the different parties, and ensuring that a process is in place so that all sides can respond quickly and effectively after an aviation disaster.

Effective Date

The final rule provides two effective dates for different parts of the rule. As noted above, a covered airline must file a summary in the DOT docket by July 1, 1998, describing how it will collect and transmit the required information. We are providing a very long leadtime (October 1, 1998) before carriers are required to solicit and collect the information and meet the other requirements of the rule. Earlier compliance is, however, authorized. Although the final rule is not complex, it will require training of many airline industry personnel, changes to computer reservation systems, and/or printing and distribution of ''shoebox'' cards, depending on the method selected by each airline to comply with the rule. In addition, we want to provide adequate time for airlines to develop and implement innovative approaches to compliance. The airlines asked for 180 days to implement the rule. We are reluctant to have the rule go into effect in the summer, which is the busiest travel time. We have, therefore, decided to provide more time than the airlines requested, so that the rule can be implemented at a quieter travel time at the beginning of the month, rather than on a date calculated from publication in the **Federal Register**.

Advance Passenger Information System

When we issued the NPRM, we were exploring whether it would be appropriate to piggyback the passenger manifest requirements onto existing federal systems. It was our hope to avoid duplication of information and to contribute to the efficient movement of air passengers on flights to or from the United States. In particular, we were exploring whether the Advance Passenger Information System (APIS) of the U.S. Customs Service could be used in conjunction with, or in place of, the requirements of this rule. After exploring the issue thoroughly, we concluded that it could not for a number of reasons. APIS is used to expedite clearance of low risk passengers entering the United States and is, therefore, only directly applicable to inbound flights to the U.S. Participation is voluntary. APIS uses both full name and date of birth, which is more than our rule requires.

Economic Considerations

(**Note:** This section relies heavily upon the Final Regulatory Evaluation that accompanies this final rule; a copy of the Final Regulatory Evaluation is available in the Docket.)

In fashioning the final rule, the Department has adopted an approach that should result in the effective transmission, by U.S. and foreign carriers alike, of information after an aviation disaster in the least costly manner. This final rule is significant under the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest associated with the rulemaking action. The final rule was submitted to the Office of Management and Budget for review under E.O. 12866.

The final rule takes the form of a performance specification, that is, it is structured to give those affected by it the flexibility to minimize any necessary costs of soliciting and collecting passenger manifest information. In the final rule, the Department has attempted to accommodate the major (sometimes conflicting) concerns voiced by air carriers, travel agents, and others in their comments to the ANPRM and NPRM regarding the ease and costs of implementing a passenger manifest information requirement. First, the final rule should eliminate barriers to soliciting and collecting passenger manifest information at the time of reservation, the method that has been recognized by most as being best because it lessens the possibility of congestion at the airport. Moreover, the final rule applies only to certificated U.S. air carriers and their foreign air carrier counterparts and these air carriers and their travel agents are most likely to employ sophisticated electronic systems for handling passenger information. The final rule eliminates passenger passport number as a required element of passenger manifest information and puts nothing in its place. Passport number was cited above all else by air carriers and travel agents alike as making collecting passenger manifest information at the time of reservation impossible to achieve in a cost-effective manner. Commenters said that individuals might not have their passport with them or might not yet have procured a passport when reserving. Commenters also said that the individual reserving might not be the passenger and thus would not know the passenger's passport number. Commenters said that all of these situations would lead to call-backs. The final rule also allows passenger manifest information to be solicited and collected once from a passenger and held for the passenger's entire round trip.

Second, as in the proposed rule, the final rule stipulates that passenger contact name and telephone number must be solicited, but not necessarily collected. While we would expect that most passengers would choose to provide passenger contact information because they would realize that, in the event of an aviation disaster, their family members might be spared some pain and suffering because they would be notified more quickly, passengers are not required to provide this information. It is ultimately left up to the passenger to decide whether to provide the contact information. Since the passenger manifest information requirement is structured in this fashion, so long as an air carrier can be assured that passenger contact information has been solicited at the time of reservation, we would not expect that air carriers would need to verify this information at the airport. Since the need to verify passenger manifest information at the airport is minimized, the likelihood that the final rule will contribute to increased airport congestion is greatly reduced.

Third, the final rule would accommodate a system whereby passengers that join international flights at an international gateway airport gate could be confronted with a sign or notice at the gate informing them that, if they are a U.S. citizen, they may wish to complete a form available at the desk that could be useful in case of an

emergency. The fact that transit and interline transfer passengers (or any other passengers, for that matter) were provided such a notice would constitute compliance with the final rule.

Fourth, the requirement that U.S. air carriers solicit or collect passenger manifest information from all passengers has been modified to a requirement that U.S. air carriers solicit or collect passenger manifest from only U.S. citizens. The effect of this modification is to substantially reduce the number of passengers from whom information is required to be collected by U.S. air carriers. Moreover, in the final rule, both U.S. and foreign air carriers must collect passenger manifest information from only U.S. citizens, and not (as in the proposed rule) from permanent legal residents of the United States, as well. The effect of this change is to spare U.S. and foreign air carriers alike the uncertainties and difficulties surrounding trying to identify U.S. legal permanent residents, who, as pointed out by many commenters, may not be traveling on U.S. passports.

Even with these cost saving features, we estimate (see below) that the annual recurring costs of implementing section 203 of Pub. Law 101–604 will be $22.1 million. In calculating the costs of the final rule, the Department has made a major methodological improvement to the simple economic model used in the NPRM and has made more realistic the parameters used in the model. The parameter changes often reflect comments received in response to the NPRM. As result of the methodological improvement, the model now represents more accurately the changing costs of air carriers and travel agents as assumptions are changed regarding whether passenger manifest information is collected once or twice per round trip journey. In the NPRM, air carrier and travel agent costs did not change as assumptions were changed regarding whether passenger manifest information was collected once or twice per round trip journey. The model used in the NPRM did, however, take into account changes in the value of time forgone by passengers depending on whether passenger manifest information was collected once or twice per round trip journey. Air carrier and travel agent costs were constrained in this fashion in the NPRM to accommodate the statement in British Airways' comments to the ANPRM that the costs found in its comments were the minimum needed to implement any passenger manifest information requirement. But constraining costs in this fashion is obviously unrealistic. If passenger manifest information is collected once on each leg of a round trip, it is obviously going to cost more than if passenger manifest information is collected only once per round trip journey. It is probably going to cost twice as much in the former, as compared to the latter, case.

The parameters used in the economic model are: passengers taking round trips on scheduled air service for whom passenger manifest information needs to only be collected one time per round trip (85 percent); the number of reservations made per passenger boarded (1.75:1); additional time to collect passenger contact name (20 seconds); additional time to collect passenger contact telephone number (20 seconds); additional time to collect passenger middle initial (2 seconds)—it is assumed that, by and large, air carriers are currently collecting passengers first and last names; additional time to collect passenger first name (9 seconds)—assumed to be collected only from those few passengers from whom first and last names are not currently collected. Following comments received to the NPRM and a presentation that took place last summer before the DOT/NTSB Task Force on Assistance to Families of Aviation Disasters, in the model all charter air service passengers provide passenger manifest information by filling out a form at the airport at each end of their round-trip journeys. It is estimated that it will take a charter passenger 30 seconds to fill out a form at the airport that would request the scaled-back information found in the final rule.

The model parameters described above have been chosen to depict as realistically as possible how passenger manifest information will likely be solicited and collected under the passenger manifest information requirement in the final rule. They have important implications for the estimated costs of the final rule as does the amount of additional information required in the final rule. The estimates of the costs of the final rule are based on an additional information requirement in the final rule consisting of: (1) Passenger middle initial for most passengers (passenger first name for some passengers), (2) contact name, and (3) contact telephone number. Estimates of the costs of the NPRM were based on an additional information requirement in the proposed rule of: (1) Passenger first name, (2) passenger passport number, (3) contact name, and (4) contact telephone number. The differences in the information requirements for cost estimate purposes derive from the facts that, subsequent to the NPRM, it was determined that air carriers and travel agents, by and large, today collect passengers first and last names and passenger passport number was dropped.

The amount of time that it is assumed to take to solicit and collect passenger manifest information (it is assumed that all passengers provide voluntary contact information in the Final Regulatory Evaluation) was discussed at length in the NPRM. The Department used a total of 40 seconds in the NPRM as an estimate of the amount of time it would take to solicit and collect all four elements of passenger manifest information or, roughly, about 10 seconds per element. A sensitivity analysis of the time to collect passenger manifest information was also performed that used a total of 60 seconds to collect all four elements of passenger manifest information, or roughly about 15 seconds per element.

In the Final Regulatory Evaluation, it is estimated to take a total of 40 seconds to solicit and collect the two voluntary elements of passenger manifest information. Thus, the Department has, based on comments received to the NPRM and other information, increased its estimates (to 20 seconds each for these two elements) of the amount of time it would take to collect passenger manifest information. It is estimated to take two additional seconds to collect middle initials from most passengers who now give their first and last names when they reserve, and 9 additional seconds to collect first names from the small number of passengers who now give their last names and first initials when they reserve. The Department, moreover, believes that the time needed to solicit and collect the voluntary elements of passenger manifest information, passenger contact name and passenger contact telephone number, likely will decrease over time as passengers become accustomed to providing the information.

In developing the estimates for the amount of time it would take to solicit and collect the information in the final rule, the Department examined the results of a survey of seven air carriers that was included in the comments of the Air Transport Association of America to the Department's advance notice of proposed rulemaking (ANPRM) on Domestic Passenger Manifest Information. In the ANPRM, a domestic passenger manifest information requirement that paralleled the passenger manifest information requirement found in the NPRM that preceded this final rule was postulated. The Department found it necessary to modify the ATA survey results to adjust

them for, among other things, duplicate information collections, unjustifiably high-end results, passenger information that is already today collected, and the fact that passport number has been dropped from the final rule (the domestic counterpart to passport number was social security number/date of birth). As modified by the Department, the ATA survey results are not significantly different from the estimates outlined above for the time needed to solicit and collect the elements of passenger manifest information in the final rule.

The estimate used in the Final Regulatory Evaluation for the total hourly compensation (wage plus fringe) of air carrier reservation agents and travel agents is $15.07, which is taken from a Bureau of Labor Statistics proxy occupational category for these workers. It is an update to 1996 of the $14.66 figure used in the NPRM. The estimate used for the value of an hour of time forgone by passengers while they are being solicited for and providing passenger manifest information is $26.70. This figure is taken from recent Departmental guidance on the valuation of travel time in economic analysis. It supplants a much-higher $48.00 per hour figure for the valuation of passenger time that was used in the NPRM.

The Department estimates that the annual recurring costs of the final rule, which would be borne by covered air carriers, travel agents, and U.S.-citizen passengers (who forego time while being asked for and providing the information) would be about $22.1 million per year. These costs would break out as follows: air carriers $1.9 million (U.S. air carriers $1.1 million and foreign air carriers $0.8 million); travel agents $5.8 million; and U.S. citizen passengers on covered air carriers ($14.3 million). The one-time cost of the rule (primarily computer reservations systems modification costs that would be borne by air carriers and also training costs) is estimated to be about $15.0 million. The present value of the total costs of the final rule over ten years is estimated to be about $175.4 million.

There is one direct notification benefit of the final rule: more prompt and accurate initial notification to the families of U.S.-citizen victims of an aviation disaster that occurs on a covered flight to or from the United States (on a U.S. or foreign air carrier) and outside the United States. This benefit is available to the families of those passengers that chose to provide passenger manifest information. Based on the recent fatal accident history on the types of air carriers that would be covered by the final rule (and assuming that all passengers provide passenger manifest information) the Department estimates that, were the final rule in effect over a recent ten-year period, a total of 239 families of U.S. citizens would have received such direct notification benefits. Compared to the present value of the total costs of the proposed rule over ten years, the cost of the more prompt and accurate initial notification to these direct beneficiaries, on a per victim basis, is $734,000.

No accounting is made in these calculations for more prompt and accurate initial notification of families of U.S.-citizen victims of aviation disasters that occur on covered flights to and from the United States, and for which the disaster occurs within the United States (e.g., TWA flight 800 or Korean Air flight 801). None was made because the Department of State has no responsibilities regarding the notification of families of U.S.-citizen victims of an aviation disaster that occurs within the United States, even if the flight involved is an international flight. The primary focus of the statute is to provide information to the Department of State. However, since under the final rule, passenger manifest information would have to be collected for all flights to and from the United States for transmission to the Department of State in the event of an aviation disaster that occurred outside of the United States, it is quite possible that having it on-hand would also lead to more prompt and accurate initial notification of the families of U.S.-citizen victims (assuming, again, that all passengers provide passenger manifest information) of an aviation disaster on such a flight that occurs within the territory of the United States. Such families are considered to receive indirect notification benefits from the rule. If these families of U.S. citizens are accounted for, in addition to the families of U.S. citizens counted above, then, were the rule in effect for a recent ten-year period, the Department estimates that more prompt and accurate notification of the families of a total of 443 U.S.-citizen victims of aviation disasters would have taken place. The cost of the more prompt and accurate initial notification to these direct and indirect beneficiaries, on a per victim basis, now is about $396,000.

A different perspective on the cost of the final rule can be gained from assuming that the recurring annual costs of the final rule to travel agents, air carriers, and U.S.-citizen passengers on covered trips are all paid by the U.S.-citizen passengers, and then asking what do they pay per trip. Employing this line of reasoning (this is an ''as if'' analysis since who will be able, or not be able, to pass along the costs of imposing a passenger manifest information requirement is not calculated in the Final Regulatory Evaluation) for the final rule requires us to also identify and subtract from total annual recurring costs of the final rule those additional time costs that the final rule imposes on passengers that make, and then cancel, reservations (the additional costs to travel agents and air carriers from these individuals stay in the calculation). Since the calculation is based on cost per trip, we must also identify the mix of passenger one-way and round trips. The result of this calculation is that for each of the 31.2 million passenger trips taken (where a passenger trip is either a round trip or a one-way trip), the U.S.-citizen passengers that travel pay about $0.50 extra per trip because of the passenger manifest information requirement in the final rule.

The direct and indirect benefits of the final rule regarding more prompt and accurate initial notification of the families of U.S.-citizen victims of an aviation disaster on a flight to and from the United States that occurs outside the United States (direct) and within the territory of the United States (indirect) were outlined above. An idea of the magnitude of the reduction in initial notification time of families of U.S.-citizen victims of aviation disasters that occur outside the United States that might occur under the rule may be gained from examining the notification experience in the Pan Am Flight 103 aviation disaster. There, according to the Report of the President's Commission on Aviation Security and Terrorism, some families of victims were notified by Pan American within about nine hours or less after the disaster occurred, and all families were notified by Pan American within about 43 hours or less after the disaster occurred. Compliance with the final rule in the case of Pan Am Flight 103 should have reduced notification times (to the extent that passengers chose to provide passenger contact information) by a maximum of about six hours for the first group of families of victims, and by a maximum of about 40 hours for the remainder of the families of victims.

A third direct benefit of the rule lies outside the realm of notification benefits and was not mentioned above. The third direct benefit of the rule is an expected general increase in the disaster response capability of the Department of State following an aviation disaster. According to the Report of the

President's Commission on Aviation Security and Terrorism:

> Failure to secure the [passenger] manifest quickly had a negative ripple effect on the State Department's image in subsequent activities.
>
> Thereafter, the Department appeared to lack control over who should notify next of kin, an accurate list of next of kin, and communications with the families. (p. 101)

The final rule should provide the Department of State with information on the families of victims of an aviation disaster soon after it occurs, so that the Department of State can establish an early link with the families.

Some idea of how much more quickly the Department of State might, under the rule, receive passenger manifest information following an aviation disaster may be gained from examining the Pan Am Flight 103 aviation disaster experience. There, the Department of State was given by Pan American an initial passenger manifest, consisting of surnames and first initials, about 7 hours after the disaster occurred. A passenger manifest containing more complete passenger information together with contact information was provided to the Department of State about 43 hours after the disaster occurred, and, at that time, Pan American also notified the Department of State that all families of victims had been notified. The results of compliance with the rule in the case of Pan Am Flight 103 should have resulted in the provision of a passenger manifest together with passenger contact information (to the extent that passengers chose to provide passenger contact information) to the Department of State three hours after the disaster occurred.

Finally, while the Department believes that the simple economic model and parameters used above resulted in reasonable estimates of the costs of the final rule, the Department has, as part of its examination of the cost of the final rule, relaxed several of the assumptions used in the model in order to obtain ''outer bound'' estimates of the costs of the final rule. These outer bound estimates are provided for information purposes only. For purposes of deriving the outer bound estimates: (1) The ratio of reservations made to passengers that actually board the aircraft is 2:1 (instead of 1.75:1 above), (2) passenger manifest information not kept as part of frequent traveler information by travel agents or frequent flyer information by air carriers (instead of passenger manifest information being kept for 25 percent of passengers above), (3) fixed costs are assumed to be $30 million (instead of $15 million above), (4) the value of the time that passengers forego while being solicited for and providing passenger manifest information is valued at $32.90 per hour (instead of $26.70 above), (5) the time to collect passenger contact information is 26 seconds each for contact name and contact telephone number (instead of 20 seconds each above) and other times to solicit and collect passenger manifest information (e.g., the time needed to solicit and collect contact passenger middle initial for most passengers and the time needed to solicit and collect passenger first name for some passengers) increase by a factor of 1.3, and (6) the time it takes charter passengers to provide passenger manifest information on a form at the airport is 39 seconds (instead of 30 seconds above)—this is also an increase by a factor of 1.3.

The effect of these new assumptions is to a little more than double the Department's estimates of the costs of the final rule. The annual recurring costs of the rule now become $45.4 million (instead of $22.1 million above) and break out as follows: air carriers ($3.5 million—instead of $1.9 million above)—split between U.S. air carriers ($2.0 million—instead of $1.1 million above) and foreign air carriers ($1.5 million—instead of $0.8 million above); travel agents ($10.5 million—instead of $5.8 million above); and passengers' time forgone ($31.3 million—instead of $14.3 million above). The present discounted value of the future cost stream for these outer bound estimates over ten-years is now $359.7 million (instead of $175.4 million above). The associated outer bound cost per enhanced notification of the direct notification benefits of the final rule now becomes, on a per victim basis, about $1.5 million (instead of $734,000 above) and the outer bound cost per enhanced notification of the final rule that takes into account both direct and indirect notification benefits is now, on a per victim basis, about $812,000 (instead of $396,000 above). The cost per passenger per trip now becomes about $0.94 (instead of $0.50 above).

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small entities are not disproportionately burdened by rules and regulations promulgated by the Government. At the same time, P.L. 101–604 mandates that ''the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State.'' After notice and comment, and with the concurrence of the Small Business Administration (SBA), DOT's predecessor in the area of aviation economic regulation, the Civil Aeronautics Board, defined small entity for the purpose of the aviation economic regulations in 14 CFR § 399.73. The definition states, in part, ''a direct air carrier * * * is a small business if it provides air transportation only with small aircraft * * * (up to 60 seats/18,000 pound payload capacity).'' Under 14 CFR Part 298, air taxi operators and commuter air carriers are defined, among other things, as air carriers operating only small aircraft.

In its efforts both to comply with both Pub. L. 101–604 and not to disproportionately burden the smaller air carriers and travel agencies, the Department is: first, exempting non-certificated U.S. air carriers, which consist of 909 air taxi operators and 22 commuter carriers from the rule's requirements; second, it is allowing those carriers subject to the rule the flexibility to develop their own passenger manifest data collection systems. This will allow them to choose the most efficient process suitable to their operations.

Some air carriers that operate only aircraft with up to 60 seats/18,000 pound payload capacity have voluntarily chosen to obtain a DOT certificate; if an air carrier is certificated, it will need to comply with the rule. We estimate that 49 air taxis and commuter carriers have voluntarily obtained a certificate.

Since many commenters said that the optimal time to collect the passenger manifest information is at the time of reservation, and travel agents account for most reservations on flights to and from the United States, we expect that this rule will also indirectly affect travel agencies. In order to estimate this impact, the Department requested data on the number of small travel agencies from the U.S. Small Business Administration (SBA). SBA's Office of the Chief Counsel for Advocacy, with the assistance of the SBA economic research office, kindly provided us with estimates that showed that there were 22,672 travel agencies in 1994 and that, of this total, 21,873 were considered small agencies. For this analysis, the SBA used its own data and Census data to extrapolate the estimates with small travel agencies defined as those with annual revenues of $1 million or less and with fewer than 25 employees. Annual receipts for these small agencies were estimated at $4.3 billion (or 49 percent) out of a total of $8.7 billion for all travel agencies. Thus, even though the small agencies account for 96

percent of the total agencies on the basis of number of agencies, they account for a much smaller proportion of the receipts. Since receipts is a better measure of the market share of the smaller agencies, it is not unreasonable to assume that the small travel agencies will incur a proportion of the recurring annual cost of this passenger manifest requirement that is similar to their share of receipts.

In the regulatory evaluation, the Department has calculated the total annual recurring cost of the rule for the travel agency industry at $5.8 million. This estimate was based on several factors and assumptions. In 1996, there were approximately 54.6 million (one-way) trips by U.S. citizens on covered flight segments, with 52.5 million trips on scheduled flights and 2.1 million on charter flights. We estimate that about 85 percent of the passenger itineraries on scheduled flights are roundtrip and, therefore, involve only one interaction between a travel agent or an airline. We estimate that 25 percent of trips are by frequent flyers, and for these trips, we assume that the information is already stored and requires less time for collection since it needs only to be confirmed. Based on comments, various trade publications, and surveys, we estimate that about 75 percent of all airline tickets on the types of flights covered by this rule are issued by travel agents and that 95 percent of all travel agency locations use computer reservations systems. Also, for purposes of this analysis, we assume that 1.75 reservations are made for each passenger that eventually boards, thus allowing for cancellations of reservations. As shown in more detail in the Final Regulatory Evaluation, we estimate that the average time to solicit/collect/confirm the passenger manifest information is 35 seconds for all scheduled trips.

Using these factors, we calculate that the travel agency industry will solicit/collect/confirm passenger manifest information for 39.6 million scheduled passengers annually. This represents collections of 29.3 million for roundtrip flights and 10.3 million for one-way trips. From another perspective, it includes 22.6 million collections from those who actually complete their journeys and 17.0 million trips that are canceled following a reservation. Based on 39.6 million collections and 35 seconds per average collection, we calculate the annual hourly burden for the travel agency industry at approximately 385,000 hours. Multiplying these hours by an average salary per hour of $15.07, we estimate a total annual recurring cost $5.8 million for the travel agency industry. Alternatively, the average cost to a travel agent for collecting the information per reservation would be about $0.15.

The Department estimates that the small U.S. travel agencies will incur a portion of total recurring costs similar to their proportion of receipts. Applying this factor to the total costs for travel agents, we calculate that these agencies will incur approximately 49 percent of the total cost . We have calculated that it will cost travel agents worldwide $5.8 million, but we do not know how much of this is attributable to foreign travel agents. Assuming that no cost is attributable to foreign travel agencies, the maximum impact on small U.S. travel agencies would be $2.8 million annually. Therefore, for each of the 21,873 small U.S. agencies, the maximum average burden per U.S. travel agency would be approximately $128 annually.

The rule will affect a substantial number of small entities. Based on the previous information, however, we believe that there will not be a significant economic impact on any of them. We, therefore, certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This regulation applies to both U.S. air carriers and foreign air carriers that choose to serve the United States. The rule should not affect either a U.S. air carrier's ability to compete in international markets or a foreign air carrier's efforts to compete in the United States. Neither should the overall level of travel to and from the United States be affected.

Unfunded Mandates Act

This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This final rule contains information collections that were subject to review by OMB under the Paperwork Reduction Act of 1995 (Public Law 104–13). The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Passenger Manifest Information;

Need for Information: The information is required by Pub. L. 101–604 (49 U.S.C. 44909) for use by the State Department;

Use of Information: The State Department would use the information to inform passenger-designated contacts about aviation disasters;

Frequency: The manifests would be collected and maintained for each covered flight;

Burden Estimate: 1.05 million hours and $22.1 million per annum for air carriers, foreign air carriers, travel agents, and passengers;

Respondents: Approximately 144 U.S. air carriers, 318 foreign air carriers, and 22,672 U.S. travel agencies collecting information from 53.8 million annual respondents. We are unable to quantify the number of non-U.S. travel agents that will be affected by this rule;

Form(s): No particular format or form would be required;

Average burden hours per respondent: An average of about 35 seconds per collection across travel agents and air carriers.

The information collection and recordkeeping requirements contained in this final rule are approved under OMB Control Number 2105–0534, expiration 2/2001. Requests for a copy of this information collection should be directed to John Schmidt, DOT/OST (X–10), 400 Seventh St., SW., Washington, DC 20590: (202) 366–1053. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB number.

Federalism Implications

The regulation has no direct impact on the individual states, on the balance of power in their respective governments, or on the burden of responsibilities assigned them by the national government. In accordance with Executive Order 12612, preparation of a Federalism Assessment is, therefore, not required.

List of Subjects in 14 CFR Part 243

Air carriers, Aircraft, Air taxis, Air transportation, Charter flights, Foreign air carriers, Foreign relations, Reporting and recordkeeping requirements.

Accordingly, the Department is adding a new part 243, in chapter II of title 14 of the Code of Federal Regulations that reads as follows:

PART 243—PASSENGER MANIFEST INFORMATION

Secs.

Authority: 49 U.S.C. 40101, 40101nt., 40105, 40113, 40114, 41708, 41709, 41711, 41501, 41702, 41712, 44909, 46301, 46310, 46316; section 203 of Pub. L. 101–604, 104 Stat. 3066 (22 U.S.C. 5501–5513), Title VII of Pub. L. 104–264, 110 Stat. 3213 (22 U.S.C. 5501–5513) and Pub. L. 105–148, 111 Stat. 2681 (49 U.S.C. 41313.)

§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. government has prompt and adequate information in case of an aviation disaster on covered flight segments.

§ 243.3 Definitions.

Air piracy means any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

Contact means a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Covered airline means:

(1) certificated air carriers, and

(2) foreign air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

Covered flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.

Full name means the given name, middle initial or middle name, if any, and family name or surname as provided by the passenger.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

U.S. citizen means United States nationals as defined in 8 U.S.C. 1101(a)(22).

§ 243.5 Applicability.

This part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)

§ 243.7 Information collection requirements.

(a) For covered flight segments, each covered airline shall:

(1) Collect, or cause to be collected, the full name for each passenger who is a U.S. citizen. U.S.-citizen passengers for whom this information is not obtained shall not be boarded;

(2) Solicit, or cause to be solicited, a name and telephone number of a contact from each passenger who is a U.S. citizen; and

(3) Maintain a record of the information collected pursuant to this section.

(b) The covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.

§ 243.9 Procedures for collecting and maintaining the information.

Covered airlines may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept until all passengers have disembarked from the covered flight segment.

(c) The contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other governments or governmental agencies that have an independent, legal right to obtain this information.

(d) The contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes.

§ 243.11 Transmission of information after an aviation disaster.

(a) Each covered airline shall inform the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier. The Managing Director may be reached 24 hours a day through the Department of State Operations Center at (202) 647–1512.

(b) Each covered airline shall transmit a complete and accurate compilation of the information collected pursuant to § 243.7 of this part to the U.S. Department of State as quickly as possible, but not later than 3 hours, after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier.

(c) Upon request, a covered airline shall transmit a complete and accurate compilation of the information collected pursuant to § 243.7 of this part to the Director, Family Support Services, National Transportation Safety Board.

§ 243.13 Filing requirements.

(a) Each covered airline that operates one or more covered flight segments shall file with the U.S. Department of Transportation a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. This description shall include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be consulted concerning information gathered pursuant to this part.

(b) Each covered airline shall file any contact change as well as a description

of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to OST Docket 98–3305, Dockets Facility (SVC–121.30), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The statement shall be filed by July 1, 1998, or, for covered airlines beginning operations after July 1, 1998, prior to the date a covered airline operates a covered flight segment.

§ 243.15 Conflict with foreign laws.

(a) If a covered airline obtains a waiver in the manner described in this section, it will not be required to solicit, collect or transmit information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent it is established by the carrier that such solicitation or collection would violate applicable foreign law.

(b) Covered airlines that claim that such solicitation, collection or transmission would violate applicable foreign law in certain foreign countries shall file a petition requesting a waiver in the Docket Facility, on or before the effective date of this rule, or on or before beginning service between that country and United States. Such petition shall include copies of the pertinent foreign law, as well as a certified translation, and shall include opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. Statements from foreign governments on the application of their laws will also be accepted.

(c) The U.S. Department of Transportation will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law.

(d) The U.S. Department of Transportation will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require a covered airline to produce a passenger manifest including emergency contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department.

Issued in Washington, DC, on February 10, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–3769 Filed 2–12–98; 10:46 am]

BILLING CODE 4910–62–P