

provided when an agency promulgates new rules. APA § 553(b)(B) provides an exception to this requirement "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Commission staff have been advised by National Futures Association, the designated self-regulatory association ("DSRO") for CPOs, that despite the inadvertent amendment of Rule 4.26(b), CPOs have been following the rule as though the requirement for the most current account statement and annual report had not been eliminated. Thus, the Commission has determined that publication of this correction for comment is unnecessary because CPOs, the entities subject to the rule, have been operating as though the rule had been in effect.

#### Related Matters

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>4</sup> The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.<sup>5</sup> Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

##### B. Paperwork Reduction Act

This rule does not contain information collection requirements. Filing requirements regarding the disclosure document and information that must be distributed with it are included in section 4.21 and 4.22, which are part of an approved paperwork collection [OMB Control No. 3038-0005].

##### C. Cost-Benefit Analysis

Section 15 of the Commodity Exchange Act, as amended by section 119 of the CFMA, requires the Commission, before promulgating a new regulation under the Act, to consider the costs and benefits of the Commission's

action. Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The main area of concern relevant to this rulemaking is the first set forth in the Act, "protection of market participants and the public." The other factors are inapplicable to this rule. The Commission concludes that the benefit to the public of receiving the financial information specified above outweighs the costs of providing the information.

#### List of Subjects in 17 CFR Part 4

Brokers, Commodity futures Commodity pool operators, Commodity trading advisors.

Accordingly, 17 CFR part 4 is corrected by making the following correcting amendments:

#### PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.26 is amended by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

##### § 4.26 Use, amendment and filing of Disclosure Document.

(a) \* \* \*

(b) The commodity pool operator must attach to the Disclosure Document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22; provided, however, that in lieu of the most current Account Statement the commodity pool operator may provide performance information for the pool current as of a date not more than sixty days prior to the date on which the Disclosure Document is distributed and covering the period since the most

recent performance information contained in the Disclosure Document.

\* \* \* \* \*

Issued in Washington, DC on June 19, 2002 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 122

[T.D. 02-33]

RIN 1515-AD06

#### Passenger Name Record Information Required for Passengers on Flights in Foreign Air Transportation to or From the United States

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations, on an interim basis, in order to implement a provision of the Aviation and Transportation Security Act which requires that air carriers make Passenger Name Record (PNR) information available to Customs upon request. The availability of PNR information to Customs is necessary for purposes of ensuring aviation safety and protecting national security.

Under the interim rule, each air carrier must provide Customs with electronic access to requested PNR information contained in the carrier's automated reservation system and/or departure control system that sets forth the identity and travel plans of any passenger(s) on flights in foreign air transportation either to or from the United States. In order to readily provide Customs with such access to requested PNR data, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters. Any air carrier which has not yet taken steps to properly interface its automated PNR database with the Customs Data Center must do so within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. However, the Assistant Commissioner, Office of Field Operations (OFO), may allow an air carrier an additional extension of this period for good cause shown.

<sup>4</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>5</sup> 47 FR 18619-18620.

**DATES:** Interim rule is effective June 25, 2002. Comments must be received on or before August 26, 2002.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Liliana Quintero, Office of Field Operations, 202-927-2531.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 19, 2001, the President signed into law the Aviation and Transportation Security Act (Act), Public Law 107-71. Section 115 of that law amended 49 U.S.C. 44909, to add a new paragraph (c) in order to provide, in part, that, not later than 60 days after the date of enactment of the Act, each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States must electronically transmit to Customs, in advance of the arrival of the flight, a related passenger manifest and a crew manifest containing certain required information pertaining to the passengers and crew on the flight (49 U.S.C. 44909(c)(1), (c)(2) and (c)(4)). Furthermore, pursuant to 49 U.S.C. 44909(c)(3), these carriers are also required to make Passenger Name Record information available to Customs upon request. The availability of PNR information to Customs is necessary for purposes of ensuring aviation safety and protecting national security.

By a document published in the **Federal Register** (66 FR 67482) on December 31, 2001, as T.D. 02-01, Customs issued an interim rule that added a new § 122.49a to the Customs Regulations (19 CFR 122.49a) in order to implement the requirement in 49 U.S.C. 44909(c)(1), (c)(2) and (c)(4) for the electronic presentation to Customs of a passenger manifest and a crew manifest in advance of the arrival of each passenger flight in foreign air transportation to the United States. In particular, § 122.49a requires air carriers, for each flight subject to the statute, to transmit to Customs, by means of an electronic data interchange system approved by Customs, a passenger manifest and, by way of a

separate transmission using the same system, a crew manifest.

In T.D. 02-01, (66 FR at 67483), Customs stated that the requirement in 49 U.S.C. 44909(c)(3) that air carriers make Passenger Name Record information available to Customs upon request would be the subject of a separate document published in the **Federal Register**.

Accordingly, Customs is now issuing an interim rule that adds a new § 122.49b to the Customs Regulations (19 CFR 122.49b) in order to implement 49 U.S.C. 44909(c)(3).

Unlike 49 U.S.C. 44909(c)(1), (c)(2) and (c)(4), where the requirement that air carriers transmit passenger and crew manifests to Customs is expressly limited to those passenger flights in foreign air transportation that are destined for the United States, section 44909(c)(3) has no such limitation in requiring air carriers to make Passenger Name Record (PNR) information available to Customs upon request. Rather, if an air carrier, foreign or domestic, is engaged in foreign air transportation to the United States, section 44909(c)(3) authorizes Customs to request access to PNR information. Accordingly, this section applies to PNR information for inbound or outbound flights in foreign air transportation.

Thus, under § 122.49b, each air carrier must, upon request, provide Customs with electronic access to Passenger Name Record information that is contained in the carrier's automated reservation/departure control systems in connection with passenger flights in foreign air transportation either to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S. In order to readily provide Customs with such access to requested PNR data, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters.

*Passenger Name Record (PNR) Information Defined*

Passenger Name Record information that air carriers would need to make available to Customs upon request under section 44909(c)(3) and § 122.49b refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record number with respect to any

passenger flight in foreign air transportation to or from the United States.

*PNR Data Elements That Customs May Request*

The air carrier, upon request, must electronically provide Customs with access to any and all PNR data elements concerning the identity and travel plans of a passenger for any flight in foreign air transportation to or from the United States, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. The following list of PNR data elements is intended merely to be illustrative of those data elements to which Customs may request access in relation to a passenger:

- (1) Last name; first name; date of birth; address(es); and phone number(s);
- (2) Passenger name record locator (reservation) number;
- (3) Reservation date (or dates, if multiple reservations made), or if no advance reservation made ("go show");
- (4) Travel agency/agent, if applicable;
- (5) Ticket information;
- (6) Form of payment for ticket;
- (7) Itinerary information;
- (8) Carrier information for the flight, including but not limited to: carrier information for each segment of the flight if not continuous; the flight number(s); and date(s) of intended travel;
- (9) Seating; and
- (10) PNR history.

It is emphasized that there is no requirement that an air carrier collect any other Passenger Name Record information than the particular PNR data that the carrier already collects on its own and maintains in its electronic reservation/departure control systems. Generally speaking, the PNR information contained in an air carrier's automated PNR database may consist of as few as 5 data elements or in excess of 50 data elements, depending upon the particular record and carrier.

*Carriers' Electronic Systems Must Correctly Interface With the Customs Data Center To Provide Customs With Access to Requested PNR Data*

As previously indicated, in furnishing Customs with electronic access to requested Passenger Name Record data, the air carrier's electronic reservation/departure control systems must correctly interface with the U.S. Customs Data Center, Customs Headquarters. To fully and effectively accomplish this interface between the air carrier's electronic reservation/departure control systems and the

Customs Data Center, the carrier must do the following:

(1) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(2) Provide the Customs Data Center with the necessary airline reservation/departure control systems' commands that will enable Customs to:

(a) Connect to the carrier's reservation/departure control systems;

(b) Obtain the carrier's schedules of flights;

(c) Obtain the carrier's passenger flight lists; and

(d) Obtain data for all passengers listed for a specific flight; and

(3) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

Customs is aware that a number of air carriers have not yet taken steps to properly connect their automated reservation/departure control systems with the Customs Data Center. Consequently, any air carrier that has not yet done so must fully and effectively interface its automated PNR database with the Customs Data Center, as described, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. However, an air carrier may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO), for an additional extension of the period in which to properly interface its electronic reservation/departure control systems with the Customs Data Center.

Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is final.

#### *Sharing of PNR Information With Other Federal Agencies*

Passenger Name Record information under 49 U.S.C. 44909(c)(3) that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)) or as otherwise authorized by law.

#### *Technical Amendment of § 122.49a(c)(2)*

Under § 122.49a(c)(2), Customs Regulations (19 CFR 122.49a(c)(2)), in pertinent part, each air carrier must electronically transmit to Customs the United States visa number for each applicable passenger and crew member on a passenger flight covered by § 122.49a(a). Under § 122.49a(c)(3), this information is to be obtained by electronically transmitting to Customs the U.S. non-immigrant visa travel document. This transmission is in fact accomplished through the use of an electronic machine reader that scans the travel document and transmits the information on it to Customs.

However, it has been determined that the visa number is not located in the machine-readable zone of the U.S.-issued non-immigrant visa travel document, and thus the visa number on this document cannot be transmitted to Customs with the use of a machine reader. By contrast, the travel document number for the U.S.-issued visa is located in the machine-readable zone of that document, and, as such, this number can be transmitted to Customs under the existing system.

Hence, § 122.49a(c)(2) is changed by deleting the requirement for the U.S. visa number, and instead requiring that the carrier electronically transmit to Customs the travel document number for the U.S.-issued visa, that is located in the machine-readable zone of that document.

#### **Comments**

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

#### **Administrative Procedure Act, Executive Order 12866 and the Regulatory Flexibility Act**

This interim regulation has been determined to be urgently needed for purposes of ensuring aviation safety and

protecting national security. For these reasons, Customs finds that good cause exists for dispensing with the notice and public comment procedures of the Administrative Procedure Act (5 U.S.C. 553) as being contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does this interim regulation result in a "significant regulatory action" under E.O. 12866.

#### **List of Subjects in 19 CFR Part 122**

Air carriers, Aircraft, Airports, Air transportation, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

#### **Amendments to the Regulations**

Part 122, Customs Regulations (19 CFR part 122), is amended as set forth below.

#### **PART 122—AIR COMMERCE REGULATIONS**

1. The general authority citation for part 122 and the specific sectional authority citation for § 122.49a continue to read, and a new specific sectional authority citation is added to read, as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.49a also issued under 19 U.S.C. 1431 and 49 U.S.C. 44909(c).

§ 122.49b also issued under 49 U.S.C. 44909(c)(3).

#### **§ 122.49a [Amended]**

2. In § 122.49a(c)(2), remove the words "and the United States visa number" and add, in their place, the words "and the United States visa travel document number (located in the machine-readable zone of the visa document)".

3. Subpart E of part 122 is amended by adding a new § 122.49b to read as follows:

#### **§ 122.49b Passenger Name Record (PNR) information.**

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S., must, upon

request, provide Customs with electronic access to certain Passenger Name Record (PNR) information, as defined and described in paragraph (b) of this section. In order to readily provide Customs with such access to requested PNR information, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters, as prescribed in paragraph (c)(1) of this section.

(b) *PNR information defined; PNR information that Customs may request.*

(1) *PNR information defined.* Passenger Name Record (PNR) information refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record with respect to any flight covered by paragraph (a) of this section.

(2) *PNR data that Customs may request.* The air carrier, upon request, must provide Customs with electronic access to any and all PNR data elements relating to the identity and travel plans of a passenger concerning any flight under paragraph (a) of this section, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. There is no requirement that the carrier collect any PNR information under this paragraph, that the carrier does not otherwise collect on its own and maintain in its electronic reservation/departure control systems.

(c) *Required carrier system interface with Customs Data Center to facilitate Customs retrieval of requested PNR data.* (1) *Carrier requirements for interface with Customs.* Within the time specified in paragraph (c)(2) of this section, each air carrier must fully and effectively interface its electronic reservation/departure control systems with the U.S. Customs Data Center, Customs Headquarters, in order to facilitate Customs ability to retrieve needed Passenger Name Record data from these electronic systems. To effect this interface between the air carrier's electronic reservation/departure control systems and the Customs Data Center, the carrier must:

(i) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(ii) Provide Customs with the necessary airline reservation/departure control systems' commands that will enable Customs to:

(A) Connect to the carrier's reservation/departure control systems;

(B) Obtain the carrier's schedules of flights;

(C) Obtain the carrier's passenger flight lists; and

(D) Obtain data for all passengers listed for a specific flight; and

(iii) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

(2) *Time within which carrier must interface with Customs Data Center to facilitate Customs access to requested PNR data.* Any air carrier which has not taken steps to fully and effectively interface its electronic reservation/departure control systems with the Customs Data Center must do so, as prescribed in paragraphs (c)(1)(i)–(c)(1)(iii) of this section, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. After being contacted by Customs, if an air carrier determines it needs more than 30 days to properly interface its automated database with the Customs Data Center, it may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO) for an extension. Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is within the sole discretion of the Assistant Commissioner and is final.

(d) *Sharing of PNR information with other Federal agencies.* Passenger Name Record information as described in paragraph (b)(2) of this section that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)). Customs may also share such data as otherwise authorized by law.

**Robert C. Bonner,**  
*Commissioner of Customs.*

Approved: June 19, 2002.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
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## RAILROAD RETIREMENT BOARD

### 20 CFR Part 217

RIN 3220–AB46

#### Application for Annuity or Lump Sum

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) amends its regulations to permit a spouse application, when filed simultaneously with the employee's application for a disability annuity, to be filed more than three months in advance of the earliest annuity beginning date. These changes bring §§ 217.9 and 217.30 into agreement with the distinction already found in § 218.7.

**DATES:** Effective June 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board (312) 751–4945, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** Section 217.9 of the regulations of the Board provides for the effective period of an application. This rule amends § 217.9(b) to permit a spouse application, when filed simultaneously with the employee's application for a disability annuity, to be filed more than three months in advance of the earliest annuity beginning date. This rule also makes a conforming amendment to § 217.30 concerning the reasons for denial of an application, and provides greater clarity for such denials.

The Board published the proposed rule on November 29, 2001 (66 FR 59548), and invited comments by January 28, 2002. No comments were received. Accordingly, the proposed rule has been redrafted as a final rule without change.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory analysis is required. Information collections associated with § 217.9 have been approved by the Office of Management and Budget under control number 3220–0002.

#### List of Subjects in 20 CFR Part 217

Claims, Railroad retirement, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 217 of the Code of Federal Regulations as follows: