List of Subjects in 8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

Accordingly, part 322 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 322—CHILD BORN OUTSIDE THE UNITED STATES; APPLICATION FOR CERTIFICATE OF CITIZENSHIP REQUIREMENTS

1. The title of part 322 is revised as set forth above.

2. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1433, 1443, 1448.

3. Section 322.2 is amended by removing paragraph (c) and revising paragraph (a) to read as follows:

### § 322.2 Eligibility.

(a) *General.* To be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

(1) Comply with the requirements as provided in section 322 of the Act;

(2) Be readopted in the United States, in the case of an adopted child, if the foreign adoption was not full and final, or if the unmarried parent or United States citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings; readoption requirements may be waived if the state of the United States citizen parent(s) residence does not allow readoption and recognizes the foreign adoption as full and final under that state's adoption laws;

(3) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; a child under the age of 14 will generally be presumed to satisfy this requirement; and

(4) Comply with all other requirements for naturalization as provided in the Act and in part 316 of this chapter, including the disqualifications contained in sections 313, 314, 315, and 318 of the Act, except:

(i) The child is not required to satisfy the residence requirements under 8 CFR 316.2(a)(3), (a)(4), (a)(5), or (a)(6); and

(ii) The child is exempt from the literacy and knowledge requirements under section 312 of the Act.

* * * * *

4. Section 322.3 is revised to read as follows:

### § 322.3 Jurisdiction for filing application.

The Forms N–600 and N–643, applications for naturalization under section 322(a) of the Act, must be filed with the appropriate office of the Service as provided in the instructions on the application.

5. Section 322.4 is amended by revising paragraphs (a), (b), and (c) to read as follows:

### § 322.4 Application and examination on the application.

(a) An application for naturalization under this section on behalf of a child shall be submitted on Form N–600 by the citizen parent or, in the case of an adoptive citizen parent, Form N–643. The application must be filed with the filing fee required in § 103.7(b)(1), Form N–600/N–643 Supplement A, Physical Presence of Grandparent, Form FD–258, Fingerprint Chart (for children over the age of 14), and the initial evidence required by the instructions on the forms.

(b) An application for naturalization under this section in behalf of a child should be handled expeditiously by the Service and, in the case of an application filed from abroad, a stateside interview shall be scheduled after a preliminary adjudication of the application has been made.

(c) The child and the citizen parent must both appear at the stateside interview.

* * * * *

Dated: July 1, 1996.

Doris Meissner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 96–23033 Filed 9–9–96; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 243

**RIN 2105–AB78**

**[Docket No. OST–95–950, Notice No. 96–23]**

### Passenger Manifest Information

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes 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. U.S. carriers would collect the information from all passengers and foreign air carriers would 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 is required for travel. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of emergency. Airlines would be required to make a record of passengers who decline to provide an emergency contact. The information would be provided to the Department of Transportation and the Department of State in case of an aviation disaster. The Department proposes to allow each airline to develop its own collection system, a description of which would be filed with the Department. Alternatively, the rule would provide that DOT may waive compliance with certain requirements of the part if an air carrier or foreign carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad.

**DATES:** Comments must be received November 12, 1996.

**ADDRESSES:** Comments on this notice of proposed rulemaking should be filed with: Docket Clerk, U.S. Department of Transportation, Room PL–401, Docket No. OST–95–950, 400 7th Street, SW, Washington, DC 20590. Five copies are requested, but not required.

**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 current airline practice, it included only

the passengers' surnames and first initials, which was insufficient information to permit notification of the victims' families in a timely manner.

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 (now 49 USC 44909). PL 101–604, which was signed by President Bush on November 16, 1990, 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 (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.

The statute requires that the passenger manifest information include the full name of each passenger, the passport number of each passenger, if a passport is required for travel, and the name and telephone number of an emergency contact for each passenger. The statute further notes that 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 the passenger manifest requirements. Finally, the statute provides that the Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed on U.S. air carriers. The statute provided 120 days after the date of enactment for the Secretary of Transportation to require all United States air carriers to provide the passenger manifest information to the Department of State.

The ANPRM

In order to implement the statutory requirements, the Department of Transportation 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 concerning privacy concerns, current practices in the industry and potential impacts on day-to-day operations.

Comments to the ANPRM

Twenty-six comments were filed in response to the ANPRM. Commenters included the Air Transport Association (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 ''Victims of Pan Am Flight 103'', the Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), a combined comment (filed by 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, are included in the docket because of a communication to a Department official after the ANPRM was issued.

The U.S. carriers shared similar concerns. They argued that the requirements should be imposed equally upon U.S. and foreign airlines in order to maintain a ''level playing field.'' To the extent collecting the information causes passenger delays, it will degrade the service of U.S. airlines and result in loss of business to foreign competitors. Second, they argued that the information collection requirements must be designed to minimize additional passenger processing time. Those with automated reservations systems recognized that additional passenger processing time would be minimized if passenger manifest information is given at the time a reservation is booked. ATA, for example, stated that it believed that airlines cannot effectively collect this information at airport check-in because to do so would require at least an extra 60 seconds per passenger. Thus, if 200 people on a given flight arrived at the airport without previously having given passenger manifest information, such a requirement could prolong processing by 3.3 person-hours.

ATA stated that to implement a passenger manifest information requirement, airlines would need to augment personnel, reservation systems, equipment and counter space. The last requirement, augmenting counter space, is not possible at all airports, and is especially difficult at foreign airports. In addition, ATA noted that intercarrier information exchange procedures would have to be developed. ATA stated that it is currently working on these procedures and asked that they not be addressed by regulation. Further, ATA noted that the passenger manifest requirement would mean that computer reservation systems, carrier reservation and customer service/check-in, and travel agency personnel would need training in new procedures. Finally, it stated that it was unrealistic to expect airlines to produce a complete manifest within one to three hours.

ATA also noted that three-quarters of international journeys are booked through travel agents and stated that any rule issued by the Department should assign travel agents responsibility for collecting manifest information from the passengers who book through them. It believed that some passengers will refuse to provide emergency contact information and airlines, therefore, should only be required to solicit the information rather than collect it. It stated that the Department of State should treat the information as confidential and that the information in the manifest should only be provided to family members. ATA vigorously defended the airlines' historic role in having primary responsibility for informing victims' families and argued that nothing should be done to usurp that role.

ATA also provided detailed comments on specific issues raised in the ANPRM. It stated that the definition of an aviation disaster was both too narrow and too broad. It suggested that although carriers should be responsible for obtaining the manifest information, they should not be responsible for verifying its accuracy, and that if a passenger declines to provide an emergency contact, the passenger should not be refused transportation. It noted that charter and tour operators, air taxi operators and commuter airlines should also be required to collect information to the extent they are providing foreign air transportation. ATA further argued that the information should be required only for U.S. citizens based on the legislative history of the

law and the need to minimize burdens on the carriers. ATA expressed concern that the provision of manifest information by foreign air carriers and foreign travel agents to U.S. air carriers could become a very serious issue for U.S. air carrier operations at foreign locations. If the information were not provided in advance, carriers would have to collect it at check-in, which would seriously degrade the competitiveness of U.S. carriers. It urged the U.S. Government to negotiate with foreign governments assurances that such information would be provided by foreign air carriers and foreign travel agents. ATA also argued that, to the extent that foreign law prohibits collection of this information, carriers should not be required to collect it. ATA believed that the information collection requirement should be applicable to all international flight segments (including flights between two foreign points), except for flights between the U.S. and Canada, Mexico, or the Caribbean. It argued that an exemption for these latter flights is justified because of the proximity of these nations, the lack of a passport requirement for travel to and from them, the communities of interest between the countries, and the great volume of transborder and Caribbean traffic.

Finally, ATA argued that in order to ameliorate delays, the State Department should purchase, and distribute to carriers, automated passport readers. It argued that any rule should be compatible with the Advance Passenger Information System (APIS) program and that the Department of State should create and maintain a data base of the statutorily-required information.

The Regional Airline Association, whose members carry approximately 1.5 million passengers internationally per year, was concerned about the potential costs associated with its members' inclusion in a rule. It favored a system whereby carriers could adopt whatever data collection system would work best. It questioned whether requiring travel agents to collect the information would be practical. It believed that foreign air carriers should be subject to the rule to alleviate any possible competitive impact.

The comments of the National Air Carrier Association focused on modifications to computer reservation system software. It proposed that inclusion of passenger contact, passport number, etc. be a mandatory element required to exit from a computerized passenger reservation record. Second, it suggested that the ''passenger name list manifest'' should automatically access this information from the passenger name record in case of an emergency. NACA also stated that the information should be obtained on a ''best efforts'' basis, and that the U.S. carriers should not be legally responsible for collecting or verifying the information. It believed this caveat to be important particularly for travel to countries not requiring passports and travel to countries where applicable foreign law prohibits collection of personal information. NACA further argued that tour operators should collect the data for charter flights. Finally, it suggested that the data be collected by both U.S. and foreign carriers for all passengers, regardless of citizenship.

American Trans Air argued that the information collection request should be applicable to all passengers traveling internationally, and that if a passenger refused to provide the required information, the carrier should have the option of refusing transportation or requiring the passenger to sign a waiver. It noted concern over the high cost of the rule relative to the benefit to U.S. carriers, and the potential competitive impacts if foreign carriers were not required to collect the information. In an attached letter, American Trans Air indicated that for the 13 percent of its business for which it processed its own reservations (American Trans Air is primarily engaged in charter operations), it would not be that difficult a task to maintain passenger manifest information in its reservations system, although additional computer storage space would be required. It was concerned, however, about the potential impacts of any regulation on its other operations in which it does not directly handle reservations. These operations include wholesale charters, wetleases/subservice, military passengers, and incentive passenger charters.

Alaska Airlines was concerned that the rule might be applied to domestic flights that traverse foreign or international airspace enroute. It noted many practical difficulties in determining which flights might be covered and the need to restructure domestic travel in order to collect this information. Finally, like ATA, it argued that the rules should only apply to international flights that require a passport.

The foreign air carriers were unanimous in their opposition to having the rule apply to them. Most noted the legislative history of P.L 101–604 and the specific language in the statute directing the Secretary to consider, not mandate, application to foreign air carriers. Most discussed the principle of comity and argued that application of the rule to foreign carriers, foreign citizens and flights between two foreign points would be inappropriate and contrary to international law. Several of the foreign carriers (Japan Airlines, Royal Air Maroc, and Swissair) stated that collection of the information would violate the law of their home country or at least be restricted under foreign law. Others focused on practical difficulties relating to lack of automation (which would mean that passenger manifest information could only be collected at check-in), limited telecommunication facilities, language barriers, and the excessive cost and administrative burden that would result.

Japan Airlines also believed that its passengers would be reluctant to provide personal information that might be turned over to the U.S. Department of State, and which might be available to a range of other persons. It noted that travel agents would likely not wish information revealing the names of their clients placed in a computer reservation system accessible to their competitors. Royal Air Maroc was concerned that collection of the information would generally be by telephone conversations between their reservations staff or travel agents and individual passengers, and would be prone to error. Royal Air Maroc asserted that this would impose an unacceptable burden because the carrier would be forced to verify the information at check-in.

The Embassy of Switzerland stated that if the regulation were extended to foreign air carriers, it would be contrary to Article 23 of the Convention on International Civil Aviation and to Chapter 2 of Annex 9 of the Convention. It further stated that Swiss law makes unlawful, and subjects to criminal sanctions, the performance in Switzerland of an act for a foreign state which by its nature is an act performed by a public authority or a public officer. It stated that this law would apply to any data collection performed in Switzerland by Swissair pursuant to a Department of Transportation requirement under consideration in this rulemaking. The comments of Swissair reiterated these concerns and went on to argue that comity dictates that the regulation not be applied to foreign air carriers. To the extent that the Department is exploring foreign air carrier application, Swissair believed such consideration should take place within the context of bilateral negotiations or through the International Civil Aviation Organization.

British Airways objected to the application of passenger manifest requirements to foreign carriers, and argued that they were unnecessary to achieve the objective of ensuring that a

foreign carrier is able to identify all affected passengers in the event of an aviation disaster. It stated that it would even more strongly object to the extent that passenger manifest requirements were applied to foreign flight segments operated by foreign carriers.

British Airways believed that passenger manifest requirements would result in immense administrative and operational burdens and would increase passenger delay and inconvenience at already overtaxed international airports. While it recognized that, under optimal circumstances, the passenger manifest information would be provided at the time the reservation is made, it said that, in practice, some or all of the required information would need to be obtained during check-in, thereby significantly increasing the required check-in time for flights to and from the United States. It estimated the increased check-in time needed to collect passenger manifest information for its flights to and from the United States to be a minimum of 40 seconds per passenger. Using scenarios of one-half of all passengers and all passengers arriving at check-in without having provided passenger manifest information, British Airways calculated that this would translate into 2 to 4 hours of additional check-in processing time for a 360 seat airplane.

British Airways also believed that passenger manifest requirements, such as those set out in the ANPRM, would impose excessive and unnecessary financial costs. It estimated its minimum costs for any passenger manifest requirement to be: (1) Onetime costs of about $100,000 for reprogramming of its Departure Control System; (2) onetime costs of about $1 million for changes to its computer reservations system; and (3) annual charges of (conservatively) about $500,000 for additional reservations and check-in staff in the United States and the United Kingdom.

The joint comment representing eighteen foreign carriers (Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association, which includes, Air New Zealand, Air Niugini, All Nippon Airways, Cathay Pacific Airways, China Airlines, Garuda Indonesia, Japan Airlines, Korean Air, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, and Thai Airways International) objected to application of the rule to foreign air carriers and made three main arguments. First, the joint commenters argued that application to foreign carriers would not result in competitive balance, but instead would tip the scales further in favor of U.S. carriers because foreign carriers are excluded from the U.S. cabotage market. Second, the joint commenters argued that unilateral regulation of foreign carriers by the Department would conflict with the intent of other provisions of P.L. 101–604 that committed the United States to pursue its aviation security objectives through accepted multilateral and bilateral channels. In addition, they argued that unilateral regulation of foreign air carriers conflicts with the Chicago Convention and with the principles of comity and reciprocity. Finally, the joint commenters perceived little or no relationship between the collection of the specified passenger information and enhanced aviation security. They argued that compliance with the regulation would divert airline resources from enhanced aviation security and improvements to facilitate efficient air transportation, and would, at best, only marginally improve the State Department's ability to quickly notify victims' families in the very infrequent event of an air disaster. They argued that compliance would involve significant costs in the areas of automation and additional personnel, equipment, and airport counter space. In addition, they stated that foreign carriers would have higher compliance costs than U.S. airlines because foreign airlines are less automated, and because conforming interline ticketing procedures to accommodate passenger manifest information would be more expensive than conforming computer reservations systems to do the same. They concluded that the excessive costs of foreign carrier compliance are unreasonable.

AITAL, which represents 25 Latin American airlines, noted the heavy workload that might be required by this rule, particularly since many Latin American agencies and airport check-in counters are not automated. In addition, it noted potential difficulties in communicating this information promptly to the State Department in the event of a disaster.

Aerocancun and Lineas Aereas Paraguay questioned whether many, if any, concerned relatives would expect the U.S. State Department to have immediate passenger information in the event of an aviation disaster involving a foreign carrier. Aerocancun, which operates only charter service, also noted that it has little or no contact with passengers prior to their arrival at the departure airport. All of its sales and solicitation activities are performed by travel agents (who are the primary point of contact with the traveling public) and/or tour operators. It stated that, as is customary in the charter market, it is not given a copy of the passenger manifest until 48 hours before flight departure and does not know of last-minute passengers until just prior to departure. Moreover, Aerocancun does not have a computerized reservation system. Both Aerocancun and Lineas Aereas Paraguay stated that the passenger manifest requirements would lead to delays and crowding at international airports.

The Embassy of the Philippines commented that Philippines Airlines was concerned that a passenger manifest requirement would force it to conduct tedious airport check-in procedures. Philippines Airlines also anticipated that gathering of additional information from passengers would require costly modifications to its computerized Departure Control System.

ASTA, which represents approximately 15,000 travel agents, argued that the Department should not require travel agents to collect and report passport numbers and emergency contact information. ASTA suggested that passengers complete a form similar to the Custom Declaration at the time of departure and that the stack of forms should constitute the manifest for a particular flight. If DOT did require travel agents to collect information, it argued that the agent should not be required to refuse to write a ticket if a passenger could not or would not provide the requisite information. It noted that as a practical matter, this information generally would need to be processed through computer reservations systems, which not all agents can access. It suggested that agents who do not have computer reservations systems should be exempt from the rules. Failing that, it argued that these agents should be permitted to satisfy the statute by delivering whatever information is available to the airline by telephone when the booking is made. In all cases, ASTA said that the compilation of an actual ''manifest'' for each flight must be accomplished by the airlines.

The Customs Service and the Interagency Border Inspection System (which is comprised of the U.S. Customs Service, the Immigration and Naturalization Service and the Departments of State and Agriculture) urged the Department to design the passenger manifest requirements to support the Advance Passenger Information System (APIS). APIS is an existing, voluntary program that allows airlines to transmit the full name, passport number, country of issuance, and date of birth for each passenger

prior to arrival in the U.S. APIS data are used to identify high-risk passengers and to facilitate the processing of low-risk passengers. The facilitation benefits of APIS accrue to passengers, airlines, airport operators, and government agencies. The U.S. Customs Service asked that DOT require the collection of passengers' dates of birth, and said that if this was done, airlines would possess all the necessary data to participate in APIS. The Interagency Border Inspection System (IBIS) suggested using the APIS system to fulfill DOT's passenger manifest requirement and specified a comprehensive list of data elements that should be included. At a minimum, IBIS would like the following information for each passenger: last name, first name, date of birth, nationality, travel document number, issuing country code for travel document, passenger's travel origination point (country code), contact name, and contact telephone number. Some of the agencies involved in IBIS would also like to collect additional passenger information consisting of visa issuing post, date of visa issuance and intended destination (U.S. address or ''in transit'').

The Assistant Secretary of State for Consular Affairs suggested that the rule cover U.S. citizens flying on U.S. or foreign air carriers. The Assistant Secretary noted that the Department of State has the responsibility to inform the families of U.S. citizens who are victims of aviation disasters regardless of the nationality of the airline. In addition, the Assistant Secretary noted that inclusion of foreign air carriers would satisfy the concerns of certain U.S. carriers that believe that application of such a regulation only to them would imply that U.S. carriers are less safe than foreign carriers. Finally, the Assistant Secretary noted that possible foreign government objections to passenger manifest requirements on the basis of their extraterritorial application would be lessened if the information collection were limited to U.S. citizens on flights to and from the United States.

The group, ''Victims of Pan Am Flight 103'' proposed a specific method to collect passenger manifest information. It suggested that boarding passes be redesigned to have a detachable stub that could be filled out by passengers and dropped in a box just before boarding a flight. It argued that such a method would require little work for the airlines; would not violate privacy laws in foreign countries; would allow medical personnel to obtain medical histories for survivors; would give an accurate count of passengers so that rescuers would know when to stop searching; and would allow airlines to deliver a correct manifest to the State Department within one hour using a scanner on the stubs.

Meetings and Incentives in Latin America stated that passport numbers should be collected for all passengers, that collection of a work or home telephone number for each passenger should be mandatory, and that the party that makes the first contact with the passengers should be the one responsible for collecting the information.

Of the two individuals who provided comments, Ms. Caldwell, a former travel consultant, suggested that, to the extent possible, the travel agent or airline reservation agent should collect the required information. She suggested that the airport agent should check the record to ensure that the information is in the record. She further suggested that if a passenger refused to provide an emergency contact, the passenger should sign or initial some document prior to boarding. Finally, Ms. Caldwell stated that the rule should apply to all passengers on both U.S. and foreign air carriers for all international flights. Ms. Flynn, the mother of a passenger killed on Pan Am Flight 103, noted the hardships endured by the families and her belief that the traveling public would prefer to have passenger manifest information available in spite of some of the difficulties in implementing P.L. 101–604. She stated her belief that this additional information would deter certain terrorist activities.

System One, a computer reservations system provider, stated that although most of the issues related to the collection of passenger manifest data are airline issues, as a computer reservations systems provider, it would have no problem complying with any proposed regulations requiring data collection. It stated its willingness to participate in any industry effort to automate the transmission and collection of desired passenger data once agreed to by the Department and the airlines. Finally, it stated that automated handling of this type of information would improve compliance and facilitate the participation of U.S. and foreign airlines.

Subsequent DOT Activity

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, American, Air Canada, and Japan Airlines. ATA included passenger manifest among ten DOT and FAA regulatory initiatives that, if implemented, would be the most onerous for the airline industry. ATA recommended that if additional passenger manifest information was to be required, it should be limited to the information that is required by the U.S. Custom Service's APIS program. Northwest supported the ATA proposals and said they were part of an industry-wide effort to identify significant regulatory impediments. 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 subsequent DOT Appropriations. For the current year, section 319 of the DOT FY 1996 Appropriation Act states:

> 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.''

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 the passport numbers of the passengers. (The State Department did successfully carry out its other post-crash responsibilities.) Department of Transportation staff met with American Airlines to explore the logistical, practical and legal problems that they 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.

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 Air Transport 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. 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 a first working group that consisted of representatives of two family groups (Families of Pan Am 103/ Lockerbie and American Association for Families of KAL 007 Victims), the National Air Disaster Alliance, the Department of State, and several U.S. airlines, with IATA in attendance. DOT was not a participant in the group. The working group is negotiating a voluntary Memorandum of Understanding (MOU) to be signed by individual airlines and the Department of State. The MOU is expected to set forth a series of procedures to facilitate smooth communication and prompt and accurate notification of family members, including designation of points of contact, information sharing, exchange of liaison officers, specification of duties of liaison officers, cross-training and prompt transmittal of accurate and useful passenger manifest information.

ATA also plans to integrate data issues into the work of this first working group by expanding it. (Alternatively, a second working group on data issues could be convened.) The expanded group is expected to include, in addition to the first working group participants, additional industry representatives and, perhaps, others who have data bases that might provide quick access to information that might help in the notification process.

TWA Flight 800

On July 17, 1996, TWA Flight 800, which was flying from New York to Paris, went down 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 fates of their citizens, however, and DOT also received such inquiries. In general, the TWA Flight 800 accident dramatized the problems related to prompt notification.

The Notice of Proposed Rulemaking

This notice proposes 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 is required for travel. Carriers would be required to deny boarding to passengers who do 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 decline to provide an emergency contact. Passengers who decline 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 proposes to allow each airline to develop its own procedures for soliciting, collecting, maintaining and transmitting the information. The notice requests 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).

Section-by-Section Analysis

The authority for the rule would primarily be based on P.L. 101–604, which was codified as 49 USC 44909. In addition, the Department has broad authority under Subtitle XII (Transportation) of Title 49 of the U.S. Code (''Transportation Code'') for rulemaking, security, information collection and assessment of civil and criminal penalties.

Section 243.1 of the proposed rule notes that the purpose of the part is to ensure that the U.S. Department of Transportation and the U.S. Department of State have prompt and adequate information in case of an aviation disaster on specified international flights. In addition, it notes that the regulation is mandated by 49 USC 44909.

The definition section, Sec. 243.3, incorporates a number of statutory definitions for the reader's convenience and clarifies the use of various important terms used in the substantive requirements of the proposed rule. In response to a number of comments on this issue, the definition of aviation disaster has been tightened to follow more closely the statutory requirements. ''Aviation Disaster'' would be defined as

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 all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage, and in which the death, injury or damage was caused by a crash, fire, collision, sabotage, or accident; 2) a missing aircraft; or 3) an act of air piracy. We tentatively conclude the first part of this definition is vital because it relates to an objective occurrence that serves as the basis for determining the timing of the actions subsequently required. We request comments on whether the carrier should have the duty to present the manifest when ''any'' passenger has boarded the plane, or only when ''all'' passengers have boarded. The proposed definition would require that carriers have information on each passenger by the time each boards the airplane, rather than waiting until all passengers have boarded. Although ATA objected to this timeframe, it takes into account the possibility of an emergency in which all passengers might not have boarded the aircraft.

The term ''U.S. citizen'' includes U.S. nationals as defined in 8 USC 1101(a). ''Lawful permanent resident'' includes those defined in 8 USC 1101(a)(20). In simpler terms, U.S. citizen means a person holding a U.S. passport and a lawful permanent resident is a holder of a so-called ''Green Card.''

In order to clarify which flight segments are subject to the rule, the NPRM includes a definition for ''covered flight.'' In the NPRM, covered flight means a flight segment operating to or from the United States. It does not include any flight segment in which both the origin and destination point are in the United States, even though some portion of the flight may be over territory not belonging to the United States. The definition also excludes any flight in which both the origin and destination point are outside of the United States. There would be many practical difficulties in getting foreign travel agents to collect this information in foreign countries. Some countries would certainly object to such a proposal on the grounds of extraterritoriality. We tentatively find that the costs and legal questions raised would far outweigh by the marginal benefit and, therefore, are not proposing to extend the rule to these flights. We request comments, however, on whether these flights should be covered.

A number of commenters raised privacy concerns related to providing an emergency contact. In order to encourage passengers to provide the information, the NPRM proposes to allow the emergency contact to be either a person or an entity. The contact need not have any particular relationship to a passenger. We tentatively believe that this flexible approach will meet the needs of the State Department with the least possible intrusion into the private lives of passengers. Passengers that are uncomfortable, for whatever reason, with providing the name of a particular person can provide the name of an entity such as a business or other organization that should be contacted.

The term ''passenger'' is defined to include any person on board a covered flight with the exception of the flight crew assigned to that flight. In the past, there has been some confusion concerning the number and identity of certain categories of passengers, particularly non-revenue passengers, standbys and infants. The flight crew is excluded from the definition because the carrier knows their identity and has ready access to emergency information. Airline personnel who are on board but not working on that particular flight segment (e.g. ''deadheads'' and spare crews for onward flight segments) would be considered passengers for the purpose of this rule in order to ensure their accountability. Standby passengers, by definition, board at the last minute, when there is pressure on the airline to move the flight away from the gate. In the past, there have been problems with identifying standby passengers. Similarly, many airlines have not kept records of infants under two years old who are traveling for free on the lap of a passenger. In the case of an aviation disaster, we believe it is important to have a complete manifest, even if this requires a change of current airline practice.

Section 243.5, *Applicability,* states that this part applies to covered flights operated by air carriers and foreign air carriers. Under the Transportation Code, ''air carrier'' includes any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation. For example, air carriers include air taxis, commuter carriers, and charter operators. Similarly, ''foreign air carrier'' is defined in the statute to include any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation. In some instances, there may be two or more air carriers or foreign air carriers involved (e.g., a charter operator, which is an indirect air carrier, selling transportation on a flight actually flown by an unaffiliated direct air carrier or a carrier operating under a code share agreement in which the service is held out under the name of one carrier but actually provided by another carrier). In each example, the two entities would have the legal responsibility for meeting the requirements of this part. As a practical matter, we would anticipate that the involved carriers would agree, by contract, which one would collect, maintain and transmit the data. So long as the information is collected, we would not require duplication of effort. The parties to the contract would have to be vigilant, however, because they would be jointly and individually responsible for compliance. A likely scenario is that carriers will delegate some of the responsibility for soliciting and collecting the information to travel agents. The same admonition concerning ultimate responsibility would apply in that case.

In the comments, there was vigorous disagreement as to whether foreign air carriers should be covered by the regulation. The Department proposes to include foreign air carrier flight segments to or from the United States. The State Department's responsibilities in case of an aviation disaster apply to all U.S. citizens regardless of the nationality of the carrier on which the citizen flies. Indeed, since approximately one-half of all U.S. citizens who travel outside the U.S. choose foreign carriers, failure to include foreign airlines would severely hamper the ability of the State Department to carry out its duties under 49 USC 44909. The failure to include foreign air carriers could lead to disparate treatment of U.S. citizen passengers. Finally, the language in the DOT Appropriations Act precludes the Department from adopting a rule applicable only to U.S. carriers.

In order to ameliorate potential costs and other burdens, the Department is proposing to limit the impact of the proposed rule in four important ways. First, foreign air carriers would only be required to collect information on U.S. citizens and lawful permanent residents of the United States. Foreign air carriers would, of course, be free to solicit the information from all its passengers if it chose to do so and was not prohibited by applicable foreign law. Second, the rule would only apply to flight segments to or from the U.S. Third, as discussed below, we are proposing that carriers need not comply with the regulation in places where solicitation or collection of the information would be contrary to applicable foreign law, and carriers (or the foreign government) notify DOT of

that fact. Finally, in order to provide even greater flexibility, we are proposing that DOT may waive compliance with certain requirements of this part if a carrier has in effect a signed Memorandum of Understanding with the State Department.

The heart of the proposal, Sec. 243.7, *Information Collection Requirements*, has two data collection requirements. The first requires U.S. air carriers to collect the full name and passport number and issuing country code for each passenger. U.S. air carriers are being required to collect information for each passenger because the statute speaks in terms of passengers. The two letter passport issuing country code is being required, as an additional element beyond the information specified in the statute, because having it broadens and enhances the usefulness of having passport number alone. In the instance of an aviation disaster that occurs on a U.S. air carrier on a covered flight, collecting passport issuing country, in addition to passport number for non-U.S. citizens and lawful permanent residents, will allow the Department of State to respond more rapidly than has been possible in the past to inquiries from foreign governments regarding their citizens. It will also allow the response to be targeted to the specific government, a desirable alternative to providing several foreign governments each with an entire passenger manifest. Finally, collecting issuing country code would eliminate possible confusion in the aftermath of an aviation disaster that could result from two passengers having the same passport number. It would only require foreign air carriers to collect the full name and passport number for each passenger who is a U.S. citizen or lawful permanent resident of the United States. As collection of a passport number/passport number and issuing country code is not required if the passenger is not required to present his or her passport for travel to or from the foreign point involved, we request comment as to whether U.S. airlines should be required to collect country of citizenship from all passengers on flights when a passport is not required for travel. The second part of the rule would require each air carrier and foreign air carrier to solicit from each covered passenger the name and telephone number of a person or entity that should be contacted in the event of an aviation disaster.

We request comment on whether we should require solicitation of date of birth, either as a voluntary or required data element, and whether this data element could substitute for the passport number/passport number and issuing country code. Passenger first and last name and date of birth, taken together, constitute the minimal passenger information needed for participation in the Advance Passenger Information System (APIS) of the U.S. Custom Service, and U.S. government commenters raised the possibility that, once modified to accommodate passenger emergency contact information, APIS could itself fulfill all requirements of 49 USC 44909. Having the date of birth would allow U.S. Customs to expedite clearance of low risk passengers entering the United States and would facilitate the operations of air carriers, airports and other government agencies. We request comment generally regarding how APIS information can best be used to satisfy, within the bounds of the statute, the information requirements in this proposed rule. For those destinations where passports are not required, collecting the date of birth would aid identification. Finally, in the event of an aviation disaster, knowing the ages of passengers could aid local jurisdictions in their emergency responses.

The carrier's duty is to solicit the information concerning emergency contacts, and maintain it, if it is provided, for 24 hours after completion or cancellation of the flight. To be sure that every passenger is accounted for, the NPRM proposes that each carrier shall maintain a record for each passenger who declines to provide this information. No specific format for the record is proposed in order to give carriers' maximum flexibility.

Although the proposed rule does not specify that the information must be verified by the carrier, we would anticipate using a ''reasonable person'' standard before bringing enforcement action for information that is inaccurate. We would not envision having carriers check that the emergency contact is an actual person or entity or that the phone number is accurate. The passenger's name should, however, match that on the passport, if the passenger is required to present a passport for travel or the photo identification presented for security for travel where a passport is not required. 49 USC 44909 requires the Secretary of Transportation to consider whether the collection of this information should be a condition for boarding a flight. Because this information is necessary for the Department of State to carry out its responsibilities in notifying the families of victims of aviation disasters overseas, we propose that the collection of the name and passport number/passport number and issuing country code, if required for travel, for each covered passenger be mandatory for boarding the flight.

Another important provision of the proposal concerns the procedures for collecting and maintaining the information. In response to the nearly unanimous comments on this point, the Department is proposing to allow carriers to use any method or procedure to collect, store and transmit the required information, subject to three conditions. First, information on individual passengers shall be collected before each passenger boards the airplane. Some carriers might enlist travel agents in collecting the information, others might use airport check-in, while others might have passengers complete a form prior to boarding. Other, equally acceptable, methods are certainly possible. Proposing a performance-oriented standard rather than mandating exactly how the information should be solicited, collected, maintained, and transmitted should allow for innovation, efficiency, convenience, and cost-consciousness.

Second, the information shall be kept for at least 24 hours after the completion or cancellation of the covered flight in case there is some problem that is not immediately discoverable. A collateral benefit of this approach is that the information would be available for many connecting flights between two foreign points. We request comments, however, on what, if any, time should we require this information to be retained. Carriers would not be required to destroy the information after 24 hours, but could purge their files in their normal course of business. It is our understanding that, as a practical matter, most air carriers would probably keep the information in their computers until passengers completed their itineraries. Information would, therefore, be accessible for some international flight segments between two foreign points on multi-leg journeys to or from the United States. We request comments if our understanding is incorrect.

Third, to the extent that the information is otherwise confidential, the information shall be kept confidential and shall be released only to the U.S. Department of State or U.S. Department of Transportation in the event of an aviation disaster or pursuant to U.S. Department of Transportation oversight of this part. The only exception to this requirement is that the information may be provided for use in the Advance Passenger Information System, and to other U.S. or foreign governmental entities as may be authorized by the Department of

Transportation. We envision that airline employees who have access to passenger records would have access to this information, and that no special handling would be required. Carriers currently have access to potentially sensitive information, such as credit card numbers, special medical needs, and religious dietary restrictions. If the information is collected and maintained in the professional manner we have experienced from airlines in the past, we do not anticipate serious concerns regarding invasion of passenger privacy. We would, however, deal strictly with unauthorized release of this information to any third party, including the press.

The airline involved would be required to inform the U.S. Departments of Transportation and State as soon as it learned of an aviation disaster. Pursuant to the statutory mandate, the regulation proposes that carriers shall transmit a complete and accurate compilation of information to DOT and the Department of State within 1 hour. If it is not technologically feasible or reasonable to fulfill the 1-hour requirement, then the information must be transmitted as expeditiously as possible, but not later than 3 hours after the carrier learns of the disaster. We are aware that some carriers believe that this time frame is ambitious, if not impossible. The statute is very clear on this point, however.

The NPRM would also require each air carrier to file with DOT a statement summarizing how it will transmit and collect the passenger manifest data. The purpose of the requirement is to provide important information to the Departments of Transportation and State for planning and response in case of an aviation disaster. The purpose is, as well, to allow basic DOT oversight of the regulation. Given these purposes, it is envisioned that the summary statements would include a complete description of how the data will be transmitted, which we anticipate could be accommodated in one typewritten page or less, and a very brief description of how the data would be collected, which we anticipate could be accommodated in most cases in one typewritten paragraph. Carriers would be required to file their summary statements on or before the date they begin collection of passenger manifest information. The summary statements should also include a 24-hour contact at the carrier to which a request from the Departments of State or Transportation could be directed. Changes in how the information would be transmitted and collected would also be required to be filed on or before the date those changes were implemented. The responsibility remains with the carrier to ensure that its procedures meet the statutory and regulatory requirements.

The NPRM proposes that carriers not be required to solicit or collect information in countries where such solicitation or collection would violate applicable foreign law. Carriers that can support such a claim are asked to inform the Department on or before the effective date of this rule, or on or before beginning service to the United States. The Department intends to maintain an up-to-date listing of countries where adherence to all or a portion of this part would not be required because of conflict with applicable foreign law. We are hopeful that in the rare instances where this regulation may violate applicable foreign law, the Department, the Department of State, and carriers can work with the jurisdiction involved and agree to other methods to achieve the same results. In some countries, it may be illegal to require passengers to provide the information, but not illegal to simply request it. In such instances, carriers might ask for the information while making clear that it is up to the passenger whether to provide it. We will work with foreign governments to address any concerns.

Section 243.17 makes clear that the Department may exercise its enforcement authority by requesting a carrier to produce a manifest for a specified flight to ascertain the effectiveness of the carrier's system. In addition, it may request further information about collection, storage and transmission procedures at any time. If the Department finds the carrier's system to be deficient, it may order appropriate modifications. Section 243.19 notes that violations of the provisions of this part are subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

Section 243.21 provides that the Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the Memorandum. Such determination will be made in writing to the carrier. It is the Department's expectation that each carrier would still be required to file a summary description of its collection and transmission process and 24-hour contact number as required in § 243.13, and would be subject to the enforcement and penalty provisions of §§ 243.17 and 243.19.

### Implementation Date

The Department proposes to make the final rule effective 90 days after publication in the Federal Register. Carriers, particularly U.S. airlines, have been on notice of the requirements in 49 U.S.C. 44909 since November 16, 1990. Because of the disproportionate burden that this rule may place on small air carriers, we will consider delaying the effective date for those carriers for a reasonable amount of time.

### Economic Considerations

(Note: this section relies heavily on the Preliminary Regulatory Evaluation that accompanies this NPRM; a copy of the Preliminary Regulatory Evaluation is available in the Docket)

The Department is most interested in how it can fashion a final rule so that U.S. and foreign carriers alike can achieve the most effective transmission of information after an aviation disaster at least cost. This proposal, if adopted as a final rule, would be significant under E.O. 12866 and the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest associated with the proposed rulemaking action. The Department will make every effort to make the final rule as cost-effective as possible, consistent with the clear-cut statutory requirements (e.g., a phase-in period for small air carriers). The proposed rule has been reviewed by the Office of Management and Budget.

As currently proposed, the total costs of implementing 49 U.S.C. 44909 are potentially large. Based on ANPRM comments (especially those of British Airways, which provided the most detailed cost information regarding implementing a passenger manifest requirement along the lines of the statute), reasonable assumptions about the economics of implementing a passenger manifest information requirement, and other generally available information, the Department estimates that the annual recurring costs of the proposed rule (which would be borne by air carriers, travel agents, and covered passengers, who forego time while being asked for and providing the information) would range between about $27.6 and $44.8 million per year.

These costs would break out as follows: air carriers $6.2 million (U.S. air carriers $4.4 million and foreign air carriers $1.8 million); travel agents $4.3 million; and covered passengers $17.2 million to $34.3 million. The one-time cost of the proposed rule (which would be borne by air carriers) is estimated to be about $30.5 million and includes the costs of modifying air carriers' departure control systems, computer reservations systems, and interfaces with other computer reservation systems to accommodate passenger manifest information. The present value of the total costs of the proposed rule over ten years is estimated to range between about $208.9 and $319.6 million.

There are two direct notification benefits of the proposed rule: 1) More prompt and accurate initial notification to the families of U.S.-citizen victims of an aviation disaster that occurs on a flight to or from the United States (on a U.S. or foreign air carrier) and outside the United States, and 2) more prompt and accurate initial notification of the host governments of foreign-citizen passenger victims of an aviation disaster that occurs on a flight to or from the United States (on a U.S. air carrier) either outside or within the territory of the United States. The Department estimates that were the proposed rule in effect over ten years a total of 595 families and host governments would have received such direct notification benefits. That is, the Department estimates that over ten years there have been a total of 595 victims of aviation disasters in the two circumstances described above. 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, ranges between about $350,000 and $540,000.

No accounting is made in the calculations above for more prompt and accurate initial notification of families of U.S.-citizen victims of aviation disasters that occur on flights to and from the United States, and for which the disaster occurs within the United States (e.g., TWA flight 800). 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. And, the primary focus of the statute is to provide information to the Department of State. However, since, under the proposed 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 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 proposed rule. If such families are accounted for, in addition to the families and host governments counted above, then, were the rule in effect for a ten-year period, the Department estimates that more prompt and accurate notification of the families and host governments of 877 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 ranges between about $238,000 and $364,500.

A different perspective on the cost of the proposed rule can be gained from assuming that all recurring annual costs of the proposed rule are paid by the passengers that provide passenger manifest information. Employing this line of reasoning (this is an ''as if'' analysis since the Preliminary Regulatory Evaluation that accompanies the NPRM in the docket does not calculate who will be able, or not able, to pass along the costs of imposing a passenger manifest information requirement), were the proposed rule in effect in 1994 when about 71.5 million passenger (one-way) trips to and from the United States would have been covered, the estimated cost per passenger per one-way trip would have ranged between about $0.39 and $0.63. The estimated cost per passenger per round-trip would have been double these amounts, and would have ranged between about $0.77 and $1.25. (Numbers may not add exactly due to rounding.)

To summarize the above, direct and indirect benefits of the proposed rule accrue 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). Direct notification benefits also accrue to the host governments of foreign citizens of aviation disasters that occur anywhere (outside or within the territory of the United States) on U.S. air carriers, since the Department of State is able to respond to the inquiries of these governments more quickly.

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 proposed 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 was learned of, and all families were notified by Pan American within about 43 hours or less after the disaster was learned of. Compliance with the proposed rule in the case of Pan Am Flight 103 should have reduced notification times (to the extent that passengers chose to provide emergency contact information) by a maximum of about six to eight hours for the first group of families of victims, and by a maximum of about 40 to 42 hours for the remainder of the families of victims.

A third direct benefit of the proposed rule lies outside the realm of notification benefits and was not mentioned above. This third direct benefit of the proposed 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)

Some idea of how much more quickly the Department of State might, under the proposed 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 was learned of. 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 was learned of, 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 proposed rule in the case of Pan Am Flight 103 should have resulted in the provision of a

passenger manifest together with emergency contact information (to the extent that passengers chose to provide emergency contact information) to the Department of State in one to three hours after the disaster was learned of.

The Department seeks, within present authority, to achieve more prompt provision of manifest information and initial notification of families of victims in the most cost effective way that is possible. How to achieve this result is open to a good deal of uncertainty and potential controversy. In order to reduce the potential costs of the proposed rule, the Department could reduce passenger manifest requirements to the absolute minimums required by 49 USC 44909. The Department could, for example, not cover foreign carriers. However, elimination of the coverage of foreign carriers from the proposed rule would mean that about one half (40 percent) of all U.S. citizens traveling between the United States and foreign countries would be exempt from providing the passenger manifest information that is required by 49 USC 44909. Omission of this large a portion of U.S. citizens traveling between the United States and foreign countries would severely limit the ability of the Department of State to comply with the notification responsibilities that it is assigned by P.L. 101–604.

In requesting comment on requiring carriers to collect passenger date of birth (DOB) as an element of passenger manifest information, either in addition to those required by 49 USC 44909, or as a substitute for passport number/passport number and issuing country code, the Department is exploring what are the best types of information that are available to be collected in order to insure more prompt and accurate initial notification. Collecting DOB may encourage wider participation in the U.S. Customs Service's Advance Passenger Information System (APIS), which has offsetting benefits to air carriers and passengers in the form of better passenger facilitation. Moreover, as is explained more fully in the Preliminary Regulatory Evaluation, the incremental burden of a rule based on the statutorily-required information could be reduced by as much as 50 percent for any APIS-covered flight, since the information requirements of APIS and the proposed rule overlap. Since DOB is recorded for more APIS-covered passengers than is passport number, and DOB is known by passengers, whereas passengers do not usually know their passport number, collecting DOB may be, as well, less burdensome overall than collecting passport number/passport number and issuing country code. This may even be the case if DOB is collected for *all* locations, whereas passport number/passport number and issuing country code is only envisioned to be collected for countries that require a passport for travel to them.

As is mentioned in the proposed rule, the Department seeks to the extent possible within statutory constraints to not unduly burden smaller air carriers. Our decision to allow all air carriers to choose the method of meeting the requirements of the proposed rule should benefit small air carriers who may wish to use low-technology methods, such as the approach suggested in ANPRM comments by the group, ''Victims of Pan Am Flight 103,'' which proposed that boarding passes be redesigned to have a detachable stub that could be filled out by passengers and dropped in a box just before boarding a flight. In these comments, it was argued that such a method would require little work for the airlines and, among other things, would allow an air carrier to deliver a correct manifest to the State Department quickly by using a scanner on the stubs.

Moreover, as was stated above, the Department will consider delaying the effective date of the proposed rule for small air carriers for a reasonable amount of time.

The actual costs of a passenger manifest requirement will depend on a number of critical implementation and cost assumptions. With regard to carrier participation in the APIS program, for example, it is a goal of the U.S. Customs Service to have APIS cover 55 percent of all U.S.-arriving passengers by the end of FY 1996, and we assume that for these passengers the incremental costs of the manifest requirement could be relatively low. As is mentioned in the Preliminary Regulatory Evaluation, two U.S. air carriers have gone to the collection of APIS information for outbound passengers (''Outbound API''). The information is collected for the outbound passenger and then stored for input into the APIS system when the passenger returns to the United States. These carriers should have available for many passengers' round trips, information that duplicates some of the information that is required in the proposed rule. More air carriers may collect Outbound API once DOT implements a passenger manifest requirement. Nevertheless, subject to how air carriers participating in the APIS program choose generally to implement the overlapping passenger manifest requirement, participation in the APIS program may not influence the incremental costs of a passenger manifest requirement on U.S. departing passengers. Thus, even if a carrier participates in APIS, passenger manifest information requirements applied to its outbound flights may still create potentially high incremental costs.

The Department is also somewhat uncertain as to the final choice of technique that carriers will choose in fulfilling their statutory obligation to collect passenger manifest information. The choice could affect our calculation of the actual economic impact of a passenger manifest requirement. Smaller carriers could have more flexibility in their choice of technique. As is explained in the Preliminary Regulatory Evaluation, air carriers that use smaller aircraft, and whose smaller passenger loads would be less likely to cause congestion at the airport, would seem to be most able to take advantage of lower technology or manual methods of collecting passenger manifest information that might take place at the airport. Doing so could result in small costs to the carriers and virtually no time forgone on the part of the passengers from whom the information was collected, if the collection was structured to occupy already available time. One such method was mentioned above and would require passengers to submit passenger manifest information on a portion of the boarding pass that is collected by air carriers prior to boarding. However, we believe that only a small portion of U.S.-citizen trips between the United States and foreign countries take place on air carriers using smaller aircraft. And, moreover, most ANPRM commenters indicated that passenger manifest information would be collected using Computer Reservation Systems (CRSs). Nonetheless, if further comment suggests that a substantial number of carriers would use low technology methods of collecting passenger manifest information, some downward adjustment of the cost estimates of proposed rule could be warranted.

Finally, the Department is concerned about the reasonableness of some of the analytical underpinnings of the comments that were submitted in response to the ANPRM and the President's Regulatory Moratorium and Review. In developing estimates of the cost of the proposed rule, the Department has relied upon these comments generally but has made adjustments to them. While the passenger manifest information collection time estimates that appear in comments seem to be plausible, the Department is very concerned about the accuracy of the (implied) cost estimates for air carrier reservation and check-in

personnel compensation. As is gone into in detail in the Preliminary Regulatory Evaluation, wages imputed from the cost estimates submitted in response to the ANPRM work out to be far higher than would have been expected. In the most extreme case, they work out to be about $44.00 per hour or $91,500.00 per annum. Such wage rates are difficult to reconcile and have been adjusted downward in the DOT estimates of the cost of the proposed rule. In place of them the Department has used a yearly total compensation (salary plus fringe benefits) figure based on a Bureau of Labor Statistics (BLS) proxy occupational category. This figure, in 1994 dollars, is about $30,500.00.

However, as was shown at the beginning of this section, even using the BLS total compensation figures, Departmental estimates of the cost of the proposed rule continue to indicate a large cost of implementing the passenger manifest information requirement in 49 USC 44909. Moreover, the Departmental estimates are based on the 40 second estimate given in the ANPRM comments of British Airways for the additional time it would take to solicit and collect, at the time of airport check-in, the passenger manifest information specified in the statute. It was also assumed in the Departmental estimates that it would take this same amount of time to solicit and collect passenger manifest information at the time of reservation.

Adding seconds to or subtracting seconds from the 40 second estimate has substantial implications for the estimates of the cost of the proposed rule. For example, a one-second increase in the amount of time that it is expected to take to solicit/collect all passenger manifest information increases the estimated overall annual recurring costs of the proposed rule by between about $691,000 to $1.1 million, broken down by: U.S. air carriers $109,900; foreign air carriers $44,900; travel agents $107,200; and passengers time forgone between about $429,000 and $858,000. A sensitivity analysis of the economic model that is used to estimate the costs of the proposed rule using values of 40, 45, 50, 55, and 60 seconds (that is, the case presented at the beginning of this section and then adding 5, 10, 15, and 20 additional seconds) as the amount of overall additional time that it is assumed to take to solicit and collect passenger manifest information yields the following results:

| Type of cost | Number of seconds to solicit and collect passenger manifest information | | | | |
|---|---|---|---|---|---|
| | 40 sec. | 45 sec. | 50 sec. | 55 sec. | 60 sec. |
| Annual Recurring (low) | $27.6 mil | $31.1 mil | $34.6 mil | $38.0 mil | $41.5 mil. |
| Annual Recurring (high) | $44.8 mil | $50.4 mil | $56.0 mil | $61.6 mil | $67.2 mil. |
| —U.S. Carriers | $4.4 mil | $4.9 mil | $5.5 mil | $6.0 mil | $6.6 mil. |
| —Foreign Carriers | $1.8 mil | $2.0 mil | $2.2 mil | $2.5 mil | $2.7 mil. |
| —Travel Agents | $4.3 mil | $4.8 mil | $5.4 mil | $5.9 mil | $6.4 mil. |
| —Passeng. time (low) | $17.2 mil | $19.3 mil | $21.5 mil | $23.6 mil | $25.7 mil. |
| —Passeng. time (high) | $34.3 mil | $38.6 mil | $42.9 mil | $47.2 mil | $51.5 mil. |
| Per enhanced notification (low) | $238,200 | $263,600 | $289,000 | $314,500 | $339,900. |
| Per enhanced notification (high) | $364,400 | $405,700 | $446,900 | $488,100 | $529,300. |
| Per one-way trip (low) | $0.39 | $0.43 | $0.48 | $0.53 | $0.58. |
| Per one-way trip (high) | $0.63 | $0.71 | $0.78 | $0.86 | $0.94. |

The Department seeks to derive final estimates of the cost of the proposed rule that are as accurate as possible. Toward this end, the Department invites general comments on any and all aspects of the methods used to estimate the costs of the proposed rule that are contained in the Preliminary Regulatory Evaluation. In addition, the Department invites comments on the following six questions:

1. On average, what is the dollar amount for hourly total compensation for air carrier reservations personnel, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?

2. On average, what is the dollar amount for hourly total compensation for air carrier check-in personnel, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?

3. On average, what is the dollar amount for hourly total compensation for travel agents, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?

4. What percentage of reservations for a flight are subsequently canceled and then the same seat is resold to someone who actually boards the flight? That is, on average, for every 100 persons that eventually board an aircraft, from the time that the flight was available to be booked how many persons have made reservations?

5. Comments received by the Department in response to the ANPRM and otherwise have indicated that, were a passenger manifest information requirement to be implemented, at many airports it would not be possible for air carriers to expand counter space and employ more check-in personnel in order to maintain existing check-in times. All other things being equal, if this is the case, and other methods can not be found for collecting additional passenger manifest information more quickly at check-in or beforehand, congestion could result at airports. Such congestion could cause an individual passenger to suffer delays as he or she waits for other passengers to provide information, in addition to the amount of time it takes for the individual passenger to provide information. The comments received, however, offered no guidance on how to quantify these congestion costs. The Department solicits comment on how, were they to occur, such congestion costs could be integrated into the economic model in the Preliminary Regulatory Evaluation that underlies the Departmental estimates of the costs of the proposed rule. How could sensitivity analyses be performed on the congestion aspects of the resulting model?

6. The Department requests comments on the amount of fixed, one-time costs associated with the rule. From ANPRM comments, these costs would include primarily the cost of programmers' time (salaries and benefits). We ask that commenters provide information in as much detail as possible on the one-time costs associated with the proposed rule, as well as all supporting explanations of the source and derivation of the data. We specifically invite comments regarding the possible use of computer

reservations systems or other current data systems to meet the goals of the proposed rule and the estimated cost of changes to these systems.

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small businesses are not disproportionately burdened by rules and regulations promulgated by the Government. At the same time, 49 USC 44909 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.'' In its efforts both to comply with 49 USC 44909 and not to disproportionately burden the smaller air carriers and travel agents, the Department proposes to allow the carriers to develop their own passenger manifest data collection systems. Smaller air carriers will be free to adopt a system that minimizes the burden on them, so long as that system is capable of meeting the requirements set out in the statute. If adopted, the rule would affect air taxi operators, commuter carriers, charter operators, and possibly travel agents. Some of these entities may be ''small entities'' within the meaning of the Regulatory Flexibility Act. Although the rule might affect a substantial number of small entities if it is adopted as proposed, we do not believe that there would be a significant economic impact because of the flexibility provided by the proposal. We specifically request comments on whether there are significant economic impacts on small entities that we have not identified or that we should consider differently. In addition, we request comments on whether this rule would have any disproportionate impact on travel agents. Based on the information available at this time, I certify that this rule would not, if adopted as proposed, have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This regulation would apply to all 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.

Paperwork Reduction Act

This NPRM contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (P.L 104–13). The title, description, and respondent description of the information collections are show below and 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 49 USC 44909 for use by the State Department;

*Proposed Use of Information:* The State Department would use the information to inform passenger-designated emergency contacts about aviation disasters and to answer inquiries from foreign governments regarding aviation disasters. The information may be input into the U.S. Customs Service's Advance Passenger Information System (APIS) where it would be used to facilitate the processing of low-risk passengers, identify high-risk passengers, and facilitate the operations of air carriers, airports, and other government agencies.

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

*Burden Estimate:* Between $27.6 and 44.8 million per annum for air carriers, foreign air carriers, travel agents, and passengers;

*Respondents:* About 71.5 million passengers per year at a rate of between one or two collections per passenger; at least 1,074 U.S. air carriers, and 493 foreign air carriers. We are unable to quantify the number of travel agents that will be affected by this rule at this time;

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

Average burden hours per respondent; An average of about 36 seconds per collection.

Individuals and organizations may submit comments on the information collection requirements by [insert date 60 days after publication in the Federal Register] and should direct them to the docket for this proceeding and the Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, Attention: Desk Officer for DOT/OST. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism Implications

The regulation proposed herein 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, Security.

Accordingly, the Department proposes to add a new part 243, in chapter II of title 14 of the Code of Federal Regulations that would read as follows:

## PART 243—PASSENGER MANIFEST INFORMATION

Secs.



Authority: 49 U.S.C. 40101, 40105, 40113, 40114, 41708, 41709, 41711 , 41501, 41702, 41712, 44909, 46301, 46310, 46316.

### § 243.1 Purpose.

The purpose of this part is to ensure that the U.S. Department of Transportation and the U.S. Department of State have prompt and adequate information in case of an aviation disaster on specified international flights. This part is mandated by 49 U.S.C. 44909.

### § 243.3 Definitions.

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

*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 or in which the aircraft receives substantial damage, and in which the death, injury or damage was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

*Covered flight* means a 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 does not include a flight in which both the origin and destination points are in the United States, nor does it include segments between U.S. cities of flights originating or terminating in a foreign country, even though some portion of the flight segment is over territory not belonging to the United States.

*Emergency contact* means a person or entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

*Full name* means given name, middle name or initial, if any, and family name or surname.

*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 operating the flight. 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 any other person not occupying a 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.

*Passport Issuing Country Code* means the standard two-letter designation for the country that issued the passport.

*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* includes United States nationals as defined in 8 U.S.C. 1101(a)(22) and lawful permanent residents of the United States.

*U.S. lawful permanent resident* includes those defined in 8 U.S.C. 1101(a)(20).

**§ 243.5 Applicability.**

This part applies to covered flights operated by air carriers and foreign air carriers.

**§ 243.7 Information collection requirements.**

(a) For covered flights, each U.S. air carrier shall:

(1) collect the full name and passport number and issuing country code for each passenger. Collection of a passport number and issuing country code is not required if the passenger is not required to present his or her passport for travel to the foreign point involved. Passengers for whom this information is not obtained shall not be boarded;

(2) solicit a name and telephone number of an emergency contact from each passenger; and

(3) maintain a record of the information collected pursuant to this section as well as a record of each passenger who declines to provide an emergency contact.

(b) For covered flights, each foreign air carrier shall:

(1) collect the full name and passport number for each passenger who is a U.S. citizen or a U.S. lawful permanent resident. Collection of a passport number is not required if the passenger is not required to present his or her passport for travel to the foreign point involved. U.S.-citizen passengers or U.S. lawful permanent residents for whom this information is not obtained shall not be boarded;

(2) solicit a name and telephone number of an emergency contact from each passenger who is a U.S. citizen or a U.S. lawful permanent resident; and

(3) maintain a record of the information collected pursuant to this section as well as a record of each passenger who declines to provide an emergency contact.

**§ 243.9 Procedures for collecting and maintaining the information.**

Air carriers and foreign air carriers 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 for at least 24 hours after the completion or cancellation of the covered flight.

(c) To the extent that such information would otherwise be confidential, the information shall be kept confidential and shall be released only to the U.S. Department of State or U.S. Department of Transportation in the event of an aviation disaster or pursuant to U.S. Department of Transportation oversight of this part. The only exception to this requirement is that the information may be provided for use in the Advance Passenger Information System, and to other U.S. or foreign governmental entities as may be authorized by the Department of Transportation.

**§ 243.11 Transmission of information after an aviation disaster.**

(a) Each air carrier and foreign air carrier shall inform the Director, Office of Intelligence and Security, U.S. Department of Transportation, and the Director of American 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.

(b) Each air carrier and foreign air carrier shall transmit a complete and accurate compilation of the information collected pursuant § 243.7 of this part to the U.S. Department of Transportation and the U.S. Department of State within 1 hour after the carrier learns of the disaster. If 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 carrier learns of the disaster.

**§ 243.13 Filing requirements.**

(a) Each air carrier and foreign air carrier that operates one or more covered flights shall file with the U.S. Department of Transportation a statement summarizing how it will transmit and collect the passenger manifest information required by this part on or before the date it begins collection. This description shall include a 24-hour contact at the carrier who can be consulted concerning information to be provided to the U.S. Department of State or U.S. Department of Transportation and shall include sufficient detail to permit these Departments to develop appropriate methods of receiving the information.

(b) Each air carrier and foreign air carrier shall notify the DOT of any contact change and shall file a description of any significant change in its means of transmitting or collecting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to the Office of Intelligence and Security (S–60), Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**§ 243.15 Conflict with foreign laws.**

(a) Air carriers and foreign air carriers are not required to solicit or collect information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent that such solicitation or collection would violate applicable foreign law.

(b) Air carriers and foreign air carriers that claim that such a solicitation or

collection would violate applicable foreign law in certain foreign countries shall inform the Office of Intelligence and Security (S–60), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 of that claim on or before the effective date of this rule, or on or before beginning service between that country and United States. Such notification shall include copies of the pertinent foreign law as well as a certified translation. Notifications will also be accepted directly from foreign governments.

(c) The U.S. Department of Transportation shall maintain an up-to-date listing 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 an air carrier or foreign air carrier to produce a passenger manifest for a specified flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any air carrier or foreign air carrier further information about collection, storage and transmission procedures at any time. If the Department finds an air carrier's or foreign air carrier's system to be deficient, it will require appropriate modifications, which must be implemented within a specified period. In addition, the offending air carrier or foreign air carrier may be subject to enforcement action.

**§ 243.19 Civil and criminal penalties.**

Each air carrier or foreign air carrier that violates the provisions of this part is subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

**§ 243.21 Waivers.**

The Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the Memorandum. Such determination will be confirmed in writing to the carrier.

Issued in Washington, DC, on September 4, 1996.

Federico Peña,

*Secretary.*

[FR Doc. 96–23072 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–62–P

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 228, 230, 239, 240 and 249

**[Release Nos. 33–7326 and 34–37624; File No. S7–23–96]**

**RIN 3235–AG82**

## Expansion of Short-Form Registration To Include Companies With Non-voting Common Equity

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') today proposes amendments to rules and Forms S–3 and F–3 under the Securities Act of 1933 (''Securities Act'') to include non-voting as well as voting common equity in the computation of the required $75 million aggregate market value of common equity held by non-affiliates of the registrant.

In addition, the Commission is proposing conforming amendments to Form F–2 under the Securities Act, Forms 10–K and 10–KSB under the Securities Exchange Act of 1934 (''Exchange Act'') and the definition of ''Small Business Issuer'' in Rule 405 and in Item 10 of Regulation S–B under the Securities Act and in Rule 12b–2 under the Exchange Act. Under the proposed revisions, the aggregate market value of voting and non-voting common equity would be included in the calculation of the amount of the required public float for issuers to qualify to use Form F–2 and to be small business issuers and in stating the amount of the public float on Forms 10–K and 10–KSB.

**DATES:** Comments should be received on or before October 10, 1996.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–23–96. Include this file number on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Public Reference Room at the same address. Electronically submitted comment letters will be on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Mary J. Kosterlitz, Special Counsel, (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to Forms S–3[1] and F–3[2] under the Securities Act[3] to include non-voting common equity in the computation of the required public float. Conforming changes are also proposed to be made to Forms, F–2,[4] 10–K,[5] and 10–KSB[6] and to the definition of ''small business issuer'' in Rule 405[7] and in Item 10 of Regulation S–B[8] under the Securities Act and in Rule 12b–2[9] under the Exchange Act.[10]

### I. Introduction and Background

The Commission's short-form registration statements, Forms S–3 and F–3, require as one condition to eligibility for registration of a primary offering of non-investment grade securities (such as common stock) that the company have at least $75 million of voting stock held by non-affiliates (referred to as the ''public float'').[11] Some companies, both domestic and foreign, that have significant amounts of non-voting common stock held by non-affiliates (but not significant amounts of voting stock) are not eligible to use these forms for such an offering because non-voting stock is not included in the calculation of the required public float. The revisions proposed today would make Forms S–3 and F–3 available to these issuers provided they otherwise qualify for these forms. These changes are proposed to provide additional flexibility for registered capital raising transactions by extending the availability of the short form registration statements. The proposed revisions are

[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 15 USC 77a *et seq.*

[4] 17 CFR 239.32.

[5] 17 CFR 249.310.

[6] 17 CFR 249.310b.

[7] 17 CFR 230.405.

[8] 17 CFR 228.10.

[9] 17 CFR 240.12b–2.

[10] 15 U.S.C. 78a *et seq.*

[11] *See* General Instruction I.B.1 of Forms S–3 and F–3. General registrant requirements for Forms S–3 and F–3 eligibility are outlined in General Instruction I.A to these forms.