

dated April 24, 1998, as revised by Notice of Status Change NSC 01, dated May 7, 1998, Notice of Status Change NSC 02, dated May 8, 1998, and Notice of Status Change NSC 03, dated May 9, 1998, was approved previously by the Director of the Federal Register as of June 29, 1998 (63 FR 34271, June 24, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(p) This amendment becomes effective on October 15, 1998.

Issued in Renton, Washington, on September 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST-95-950]

RIN 2105-AB78

Passenger Manifest Information

AGENCY: Office of the Secretary, DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: The National Air Carrier Association (NACA) filed a petition for reconsideration of DOT's final rule concerning passenger manifests on airline flights to or from the United States. NACA asked that travel agents and tour operators be required to collect the full name of each U.S. citizen passenger and solicit the name and telephone number of a contact. Currently, this is required only of airlines. DOT is denying the petition.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20905; 202 366-9315.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1998, the Department of Transportation published a final rule (63 FR 8258) requiring certificated air carriers and large foreign air carriers authorized to operate large aircraft to collect the full name of each U.S. citizen traveling on flight segments to or from the United States, and to solicit a contact name and telephone number. In the event of an aviation disaster, airlines

would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The rule was adopted pursuant to the Aviation Security Improvement Act of 1990. The rule is intended to provide the United States government with prompt and adequate information in the event of an aviation disaster on covered flights.

Petition for Reconsideration

On June 18, 1998, the National Air Carrier Association (NACA), on behalf of American Trans Air, Miami Air International, Omni Air International, Tower Air, and World Airways, filed a Petition for Reconsideration. The petition requested that the Department modify the provisions regarding information collection requirements (§ 243.7) in the final rule to require that tour operators and travel agents, in addition to air carriers, be required to collect the full name of each U.S. citizen and solicit the name and telephone number of a contact for each U.S. citizen passenger boarded on covered flight segments.

NACA argued that the rule would be more successful if all sellers of air transportation are required to participate in the collection of contact information. NACA contended that the psychological environment is more conducive to soliciting the required information at the time the ticket is sold and the reservation made than at boarding, which is often chaotic and confusing. It stated that utilizing the first point of contact to solicit and collect the required information would reduce check-in time at boarding. In addition, NACA stated that passengers are more likely to provide their full name and contact information at the first point of contact rather than at the airport.

NACA asserted that because tour operators normally prepare manifests that include the full name of the traveler, the traveler's ticket number, and other pertinent information, it would be very easy for a tour operator to obtain the contact name and telephone number at the time of sale and include it on the manifest.

Additionally, NACA noted that the Task Force on Assistance to Families of Aviation Disasters recommended that travel agents and tour operators, as well as airlines, be required to obtain the contact information.

Comments on the Petition.

The Air Transport Association of America (ATA) supported NACA's

petition. It stated that NACA's proposal would lead to a more efficient system of information collection because the information would be collected in advance of check-in. ATA estimated that over 80 percent of passengers flying on international flights use travel agents to purchase their transportation. ATA said that collecting passenger information at check-in was not desirable because it would delay the processing of passengers, lead to slower and longer check-in lines, and place additional burdens on currently constrained facilities. In conclusion, ATA argued that modifying the rule will enhance the public interest in general and passenger convenience in particular.

The American Association for Families of KAL 007 Victims and the Families of TWA Flight 800 Association jointly filed comments in support of NACA's proposal. In addition, they asked that the tour operators and travel agents be required to share this information with the air carriers on which their passenger clients are actually transported because tour operators and travel agents may be difficult to reach in case of an aviation disaster. These organizations stated that a substantial number of bookings are made via travel agents and tour operators. In the case of charters, the air carrier has no relationship with any of the passengers prior to boarding. The groups argued that the change would be more cost-effective for all parties concerned, and thus, would better fulfill the intent of the rule and provide more accurate information and facilitate post-disaster crisis management operations.

The American Society of Travel Agents (ASTA) opposed the petition on substantive and procedural grounds. It noted that DOT considered this issue at length and would have to begin another rulemaking before making the change. It argued that the petition was untimely because it was filed four months after publication of the final rule in the **Federal Register**. ASTA stated that efficiency would not be enhanced by having travel agents and tour operators collect the information, but rather would result in wasted time because some of those from whom information was collected would ultimately travel on a different flight, or not at all. In other cases, the information will be out-of-date and will need to be updated. ASTA argued that the only way to obtain accurate passenger information is to collect it at the gate. ASTA concluded that the regulation properly assigned the responsibility to collect the information to the business that is actually providing the service.

American Express Travel Related Services (American Express) also opposed the petition. It stated that, as a result of travelers' frequent changes in travel plans, the air carrier is in the best position to know what persons are actually on the flight. American Express also said that because airlines have cut their commissions to travel agents, if the Department of Transportation requires travel agents to collect the necessary information, then the result will be an increase in the service fees that travel agents charge their customers. It noted that travel agents are merely sales agents of the airline principals, and that the legal requirement should remain on the principal.

Apple Vacations (Apple), a major national tour operator, also opposed the petition. Apple stated that its experience with passenger reservations indicated that in order to get accurate and up-to-date contact information, it must be collected at check-in. Apple also observed that passengers currently are asked to complete contact information on the reverse of the boarding card. Apple passengers are asked to check in 2 hours before the flight, which in Apple's opinion provides ample time to fill in the three lines of information on the back of the boarding card. Apple noted that almost 100 percent of its passengers book through a travel agent and more than 80 percent of these bookings are taken by the travel agent over the phone, with inherent mistakes in transmission of the information. It stated that a travel agent would not want to imply that air travel is unsafe and is, therefore, likely to advise the tour operator that it asked for the information, but that the customer declined to provide it.

Apple further observed that each seat in its inventory might turn over four or five times before the reservation is confirmed with a deposit and a participant contract. Collection of the information any time before confirmation would, therefore, be a waste of time for all concerned. In addition, Apple noted that most of its trips are booked several months prior to departure so that some of the contact information would be outdated. As an operational matter, Apple noted that it does not see documents and is, therefore, unable to confirm either the correct name or nationality of its clients. In conclusion, it argued that the petition would make the collection of data unduly complicated, and would decrease both the amount of data collected and its reliability. Apple believes that collection of the data by the airline or its agent at check-in will be accurate and timely, and will not

impose any additional or undue burden in either time or manpower.

Reasons for Denial

After careful review of the petition and all comments, the Department of Transportation has decided to deny NACA's request.

Pursuant to the final rule, the covered airline operating a covered flight is ultimately responsible for compliance with this rule and for communicating the information to the Department of State or NTSB. Only the covered airline operating a covered flight is aware of the passengers that ultimately board a covered flight. The Department, moreover, finds no evidence in the record to support NACA's claim that either the psychological environment is more conducive to soliciting the required information at the time the ticket is sold, or that passengers are more likely to provide such information at the first point of contact. Similarly, the Department finds no evidence in the record to support ASTA's claim that the only way to obtain accurate passenger information is to collect it at the gate.

The Department of Transportation believes each airline is in the best position to work out the most efficient manner for soliciting and collecting the information, and we want to give each of them the discretion to do so. For some airlines, this could be to solicit and collect the information at the time of first contact. For others, this might be at the time of booking. In its best business judgment, an airline may or may not choose, as part of its agency contractual relationship, to have travel agents and tour operators collect information, and to work out an appropriate arrangement to ensure that the information is solicited and collected. In the end, it is up to the airline to ensure compliance with the final rule. In their joint comment, the American Association for Families of KAL 007 Victims and the Families of TWA Flight 800 Association contended that the change requested by NACA would be more cost-effective for all parties concerned. If that is the case, there is a commercial motivation for the parties to come to agreement on such a procedure without the need for further rulemaking.

OST's rulemaking procedures are set forth in 49 CFR Part 5. The procedures do not include any explicit process for petitions for reconsideration. We are, therefore, treating this petition for reconsideration as a petition for rulemaking and do not consider it to be filed out of time. I am hereby denying the petition under authority delegated to

me by the Secretary of Transportation in 49 CFR 1.57.

Issued in Washington, DC, on September 24, 1998.

Nancy E. McFadden,
General Counsel.

[FR Doc. 98-26252 Filed 9-28-98; 12:34 pm]

BILLING CODE 4910-62-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final rules published in the **Federal Register** of Friday, February 20, 1998 (63 FR 8566). These final rules amended requirements of the Commodity Futures Trading Commission ("Commission") related to risk disclosures that must be provided by future commission merchants ("FCMs") and introducing brokers ("IBs") to customers.

DATES: Effective on April 21, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas E. Joseph, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418-5430.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this correction amended the Commission's disclosure requirements in order to relieve FCMs and IBs of the obligations to provide certain specifically defined customers with Commission-mandated risk disclosure statements and to receive from such customers a signed acknowledgement of receipt of such statements.

Need for Correction

The instructions to revise Rule 1.55 did not contain a reference to the "introductory text" of paragraph (a)(1) of that section when they were published in the **Federal Register** on February 20, 1998. As a result, 17 CFR 1.55(a)(1) (1998) fails to include language that the Commission did not intend to amend or remove by the February 1998 rule change. This