Proposed Rules

Federal Register
Vol. 68, No. 2
Friday, January 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 217, 231 and 251

[INS No. 2182–01]

RIN 1115–AG57

Manifest Requirements Under Section 231 of the Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), which requires the submission of arrival and departure manifests electronically in advance of an aircraft or vessel's arrival in or departure from the United States. This rule also proposes to require manifest data on certain passengers and voyages previously exempt from this requirement. This rule is necessary to provide the U.S. Immigration and Naturalization Service (Service) with advance notification of information necessary for the identification of passengers, crewmembers and any other occupant transported. This information will assist in the efficient inspection of passengers and crewmembers, and is necessary for the effective enforcement of the immigration laws.

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2182–01 on your correspondence. Comments may be submitted electronically to the Service at *insregs@usdoj.gov*. Comments submitted electronically must include INS No. 2182–01 in the subject heading so that the comments can be electronically transmitted to the appropriate program office for review. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 5237, Washington, DC 20536, telephone number (202) 305–9247.

SUPPLEMENTARY INFORMATION:

What Manifest Requirements Are Imposed By Section 231 of the Immigration and Nationality Act (Act)?

On November 28, 2001, Congress passed section 115 of the Department of Justice Appropriations Act of 2002 (Title I of Pub. L. 107–77), which authorized the Attorney General to impose by regulation requirements for submitting electronic arrival and departure lists or manifests by any public or private carrier transporting persons to and from the United States. Prior to the passage of section 115 of Public Law 107–77, section 231 of the Act did not explicitly address the electronic submission of such information. On May 14, 2002, section 115 of Public Law 107–77 was superseded when Congress enacted section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173).

Section 402 of Public law 107–173 amended section 231 of the Act by requiring that commercial carriers transporting passengers to or from the United States deliver arrival and departure manifest information electronically to the Service, beginning no later than January 1, 2003. The carrier must submit an arrival manifest prior to the commercial vessel or aircraft's arrival at a port-of-entry in the United States. In addition, with certain exceptions, carriers must provide departure manifest information before the departure of a commercial vessel or aircraft from the United States.

Section 231(c) of the Act, as amended by section 402, provides specific elements that must be included in arrival and departure manifests. Section 402 also eliminated prior statutory exemptions from the manifest requirements of section 231 of the Act previously applicable to alien crewmembers and persons arriving from or departing to foreign contiguous territory by air.

Finally, section 402 raised the penalty for failure to comply with manifest requirements to $1,000 per violation. Under section 231(f) of the Act, as amended, the Service may impose a fine on a carrier for each person for whom an accurate and full manifest is not submitted.

How Are Arrival and Departure Manifests and Lists Currently Collected for Passengers?

Arrival and departure manifests are currently submitted as follows: in the form of a separate Form I–94, Arrival-Departure Record, or as a Form I–94W, Nonimmigrant Visa Waiver Arrival-Departure Record, or as a Form I–94T, Arrival-Departure Record (Transit Without Visa) (collectively Form I–94) for each passenger not exempt from the manifest requirements. The Form I–94 is a perforated numbered card and is composed of an arrival portion collected by the Service at the time of arrival and a departure portion that is returned to the alien passenger. Upon departure, the reverse-side of the departure portion must be completed by the departure carrier at the time of the alien's departure and submitted to the Service at the port-of-departure. In accordance with 8 CFR 231.2, the outbound carrier currently has 48 hours to submit the departure Form I–94 to the Service. The Service enters Form I–94 data into the Nonimmigrant Information System (NIIS), thus recording the alien's arrival and departure into and out of the United States.

Which Passengers Are Currently Exempt From the Passenger Manifest Requirements?

Service regulations at 8 CFR part 231 currently provide that manifests in the form of a Form I–94 do not have to be submitted for the following passengers: United States citizens, lawful permanent resident aliens of the United States, immigrants to the United States, and certain in-transit passengers. Service regulations also exempt the manifest requirements for aircraft and vessels arriving in the United States directly from Canada, or departing to Canada. Vessels or aircraft arriving in the U.S. Virgin Islands directly from the British Virgin Islands, or departing the U.S. Virgin Islands directly to the

British Virgin Islands, are similarly exempt from the manifest requirements.

What Are the Current Arrival and Departure Manifest Requirements for Crewmembers?

Currently, crew arrival and departure manifest requirements are governed solely by section 251 of the Act and Service regulations at 8 CFR part 251. Arrival and departure manifests for vessels may be submitted on Form I–418, Passenger List-Crew List, while aircraft may satisfy this requirement by submission of a United States Customs Service Form 7507 or on the International Civil Aviation Organization's General Declaration. Pursuant to section 251(d) of the Act, the Service may impose a fine of $220 (as adjusted for inflation) for each crewmember for whom an accurate and full manifest is not submitted

How Does the New Law Change the Requirements for Crewmembers?

Prior to the enactment of section 115 of the Department of Justice Appropriations Act of 2002, and later, section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002, the scope of section 231 of the Act was limited to alien and U.S. citizen passengers. Section 231 of the Act, as amended by section 402, no longer contains such restrictions. Section 402 authorizes the collection of information not only on passengers being transported to or from the United States on commercial aircraft or vessels but on crewmembers and other occupants transported on such conveyances. Accordingly, the Service is using its authority under section 231 of the Act, as amended, to require electronic arrival and departure manifest information on crewmembers of commercial aircraft or vessels that are transporting passengers to or from the United States.

Will Carriers Be Required To Submit Electronic Manifest Information for Other Classes of Individuals Who Are Not Currently Included in the Manifest Requirement?

Yes. This rule proposes to require that electronically transmitted arrival and departure manifests be submitted for all passengers and crewmembers transported on commercial aircraft or vessels, including passengers who are United States citizens, Canadian citizens, lawful permanent resident aliens of the United States, immigrants to the United States, in-transit passengers, and persons on vessels or aircraft arriving in the United States directly from Canada or departing the United States directly to Canada as well as persons arriving in the U.S. Virgin Islands directly from the British Virgin Islands or departing the U.S. Virgin Islands directly to the British Virgin Islands.

What Is the Advance Passenger Information System (APIS)?

The APIS is a system where commercial air carriers collect and submit biographical data from a passport, visa or other travel document at a foreign port and transmit this information electronically to the Service and the United States Customs Service (USCS) in advance of the commercial aircraft's arrival in the United States. The Service began implementing APIS in conjunction with the USCS in 1989 as an effort to meet airport inspection challenges which included increased passenger volumes, especially during peak hours and seasons, combined with staffing and facilities limitations.

A Memorandum of Understanding (MOU) governs the administration of the APIS program and is a formal agreement between the three U.S. Federal Inspection Services (FIS) agencies (USCS, the Service, and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA–APHIS)) and participating air carriers. The APIS MOU specifies national performance standards for all parties. Under this MOU, the airlines agreed to send advance passenger information to the Government agencies and in return, the FIS agencies agreed to expedite the processing of APIS flights. Pursuant to the MOU, as carriers provided additional and more accurate passenger information, the FIS agencies would improve their processing times.

Currently, over 140 carriers are signatories to the APIS MOU, and two Governments (Australia and New Zealand) electronically transmit APIS data to the USCS Data Center in Newington, Virginia. Once this rule becomes effective, the need for this MOU will be superceded.

Prior to the enactment of section 115 of the Aviation and Transportation Security Act, Public Law 107–71, 115 Stat. 597 (2001), the electronic transmission of such manifest data was voluntary.

What Data Elements Must Be Submitted by a Carrier?

Section 231(c) of the Act, as amended, provides that the following information must be provided for each person listed on a manifest required to be submitted in accordance with section 231 (a) or (b): Complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; United States visa number, date, and place of visa issuance, where applicable; alien registration number, where applicable; United States address while in the United States; and such other information as the Attorney General, in consultation with the Secretaries of State and the Treasury, determines is necessary for the identification of the persons transported, for the enforcement of the immigration laws, and to protect public safety and national security.

Under some circumstances, however, not all of this information must be submitted. For example, a passport number and visa information may be omitted in the event a Canadian national is exempt from the passport and visa requirement under 8 CFR 212.1. The visa information may be omitted in the event a passenger under the Visa Waiver Program is exempt from the visa requirement under 8 CFR part 217. A passport number and visa information may be omitted in the event a U.S. citizen is exempt from the passport and visa requirement under 22 CFR part 53. All of the other data elements, however, will be required. The Service will notify the carrier industry of any policy or operational issues that affect the APIS program.

Will the Transmission of Data in Accordance With the Current APIS Program Satisfy the Proposed Rule's Electronic Manifest Requirement?

As noted previously, section 231(c) of the Act, as amended by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), prescribes specific information that must be included in arrival and departure manifests. The current data elements transmitted via APIS do not contain all of the elements that are statutorily required by section 231(c) of the Act, as amended.

The proposed rule includes the following statutorily-mandated manifest information that is not currently collected under the APIS system:

(1) Place of visa issuance;

(2) The United States address while in the United States; and

(3) The country of residence.

It is important to note, however, that all items listed above are currently required on the paper Form I–94, which has legally sufficed for this arrival manifest. This rule proposes to amend only the format and time frame by which this information must be provided. The proposed rule requires that this information be submitted by the air and sea carriers to the Service via the USCS APIS system.

What Is EDIFACT?

The Electronic Data Interchange for Administration, Commerce, and Trade (EDIFACT) is the technical message format that allows for the transmission of the APIS data elements to the U.S. government in a standardized way. There are two EDIFACT versions, (1) The United States EDIFACT format (US EDIFACT); and (2) the United Nations EDIFACT (UN EDIFACT) format. The USCS developed the US EDIFACT message format between 1989 and 1992 in cooperation with the governments of Australia and New Zealand during the initial implementation of the Advance Passenger Information System. The US EDIFACT standard is being used to transmit the current APIS information. The following US EDIFACT technical documentation and guidelines are available from the USCS: (1) Advanced Passenger Information for Airlines; (2) Advance Passenger Information (API) Guidelines for Customs and Air Carriers, and (3) US EDIFACT Overview. Carriers currently transmit APIS information using the US EDIFACT format. The amount of information that can be transmitted through the APIS system, via the US EDIFACT for now is limited. This format cannot accommodate the new data elements such as US address, visa number, date, and place of issuance, and country of issuance that are required by section 402 of Public Law 107–173. Given these limitations in the US EDIFACT format, the Service anticipates the carriers will convert their reservation or computer systems to the UN EDIFACT format which can accommodate the required additional data elements. Additional information on UN EDIFACT can be located at the following Web site: *http://www.unece.org/trade/untdid/welcome.htm.*

Converting to the UN EDIFACT format will improve the accuracy and efficiency of data, and comply with the new additional data element requirements. The USCS expects to upgrade the APIS system to accept the UN EDIFACT format in January 2003. The USCS will provide UN EDIFACT documentation and guidelines in the near future.

The Air Transport Association (ATA), International Air Transport Association (IATA), and the governments of Canada, Mexico, New Zealand, Australia, and United Kingdom all support the conversion to APIS UN EDIFACT format in an effort to establish a worldwide format standard for the electronic transmission of arrival and departure manifests.

In 2003, the Service anticipates the carriers will convert their systems from the US EDIFACT format to the UN EDIFACT format to facilitate their transmission of the new data element requirements. Until carriers convert their systems to the UN EDIFACT format, the APIS system will be able to accommodate both the US EDIFACT and the UN EDIFACT format transmissions. This conversion is not expected to affect small entities since the USCS is developing a Web-based APIS UN EDIFACT system, that is expected to be complete in April 2003.

Will the Service Impose Any Fines on the Carriers for Not Submitting the New Data Elements on January 1, 2003?

No. The Service will not impose any fines until the regulation is published as a final rule. The Service may impose fines under section 231 of the Act in cases where the carrier fails to transmit an electronic record after the final rule becomes effective. However, before issuing any fines during the conversion period (from the effective date of the final rule through December 31, 2003), the Service will evaluate a carrier's performance to determine whether it has made a good faith effort to comply with the electronic transmission requirement. The Service will consider the following factors: (1) Whether the carrier notified the Service of any problems it was experiencing in submitting the information; (2) whether the carrier has a backorder for the purchase of additional equipment, such as document readers; (3) the completion of the APIS UN EDIFACT format by the Service and the USCS; and (4) the totality of circumstances of each carrier's attempt to comply with this regulation. The Service has the authority to mitigate or remit fines under 8 CFR 280.5.

The Service will continue to accept the current APIS arrival and departure data elements in the US EDIFACT format until carriers can convert to the UN EDIFACT format, through at least the end of 2003. The Service will require that the carriers notify the Service of when they will be able to comply with the UN EDIFACT format.

Does the Service Propose To Require Any Other Additional Electronic Information?

Yes. The Attorney General, in consultation with the Secretaries of State and the Treasury, may also require additional manifest information if the information is deemed necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security. Pursuant to that authority, the proposed rule prescribes adding a Passenger Name Record (PNR) locator or a unique identifier or reservation number. The PNR locator is a unique passenger identifier that is specific to the airline industry in their reservation systems. This does not require carriers to create new identifying systems. In any database system a unique identifier is not difficult to create. This identifier is very important to the Service because this will assist the Service in matching an arrival record with a departure record. The Service is particularly interested in comments by the carrier industry to the proposal that carriers submit the PNR locator number or unique identifier electronically as part of the manifest requirement.

The Service has consulted with the USCS, the U.S. Coast Guard (USCG), and the U.S. Department of State on this proposed additional data element.

When Are Carriers Required To Submit the Electronic Arrival and Departure Manifests?

This rule proposes to require commercial carriers transporting any person by air to any port within the United States from any place outside the United States to submit electronic arrival passenger manifests to the Service no later than 15 minutes after the flight departs from the last foreign port or place. This will allow the Service to check the manifest information against appropriate security databases prior to arrival. This rule further proposes that air carriers be required to submit the arrival crew manifest electronically to the Service in advance of departure from the last foreign port or place. This is the current transmission requirement for air carriers submitting electronic arrival information under the APIS program, and this requirement will also conform to the USCS' rule published at 66 FR 67482 (December 31, 2001).

In consultation with the USCG and the cargo and cruise line industry, the Service proposes to require that a vessel on a voyage of: (1) 96 hours or more must submit the information required in the crewmember and passenger manifests at least 96 hours before entering the port or place of destination; (2) less than 96 hours but not less than 24 hours must submit the crewmember and passenger manifests not less than 24 hours before entering the port or place of destination; or (3) less than 24 hours must submit the crewmember and passenger manifests prior to departing the port or place of departure. These requirements will conform to 33 CFR

160.207(a) in the USCG's Notice of Proposed Rule Making (NPRM) published at 67 FR 41659 (June 19, 2002). These timeframes will provide the Service and USCG with adequate time to review the electronic arrival manifests for arriving vessels. In addition, these requirements are more in accord with commercial maritime operations, which differ greatly from those of the airline industry. This alignment of submission time requirements will facilitate the Government's ongoing efforts to develop a system that eliminates multiple transmissions of manifest information to both the Service and the USCG.

The proposed rule requires that carriers transporting persons to points outside of the United States submit electronic departure passenger and crewmember data lists or manifests to the Service no later than 15 minutes before the flight or vessel has departed from the United States. This will allow the Service to check the manifest information against the appropriate security databases prior to departure. If additional passengers or crewmembers board after the original manifest has been submitted, or if passengers or crewmembers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger and crewmember manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States. This will allow the Service to continue to check any new information against the appropriate security databases. Although the number of last minute passengers will vary, the Service believes that carriers will be able to provide electronic departure passenger and crewmember data lists or manifests on approximately 80 to 95 percent of their total number of passengers when submitting the required information 15 minutes prior to departure. Failure to submit an amended manifest 15 minutes after departure, if necessary, may result in a fine.

For purposes of determining the time of departure for purposes of submitting electronic manifest information under this rule, the Service will use the same definitions already used by other agencies. For air carriers, the time of departure is the point at which the wheels are up on the aircraft and the aircraft is directly en route to or from the United States. For vessels, the time of departure is that time when the vessel gets under way on its outward voyage and proceeds on the voyage without, thereafter, coming to rest in the harbor from which it is going. *See* 19 CFR chapter I, part 4 (August 30, 2002).

Will Transmission of Data in Accordance With the Proposed Rule Satisfy the Electronic Transmission Requirements Prescribed Under Section 217(h)(2)(B) of the Act?

Yes. Section 217 of the Act, relating to the Visa Waiver Program, contains similar requirements for the electronic submission of arrival and departure information pertaining to visa waiver program passengers. This rule proposes to amend 8 CFR part 217 to provide that an alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port-of-entry, will not be admitted under the Visa Waiver Program unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 CFR 231.1, for each Visa Waiver Program passenger being transported.

What Manifest Information Will Carriers Be Responsible for Submitting Between January 1, 2003, and the Publication of a Final Rule?

In accordance with section 402 of Public Law 107–173, not later than January 1, 2003, the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel to transmit electronically arrival and departure manifests to the Service for each passenger not currently exempt from the manifest requirements pursuant to 8 CFR 231.1, or 231.2. These manifests must contain the data elements specified in section 231(c) of the Act as amended, for each passenger listed on the manifest. In accordance with section 231(a) of the Act, arrival manifests must be electronically submitted to the Service prior to the arrival of the commercial aircraft or vessel. In addition, carriers may electronically submit departure data up to 48 hours after departure, exclusive of Saturdays, Sundays and legal holidays in accordance with 8 CFR 231.2

Until a final regulation is published, however, the Service will not require the electronic transmission of arrival or departure manifests for crewmembers because the submission of manifests containing crewmember information was not contemplated by the current regulations promulgated under section 231 of the Act.

Will Manifests in Paper Form Still Be Required on January 1, 2003?

As of January 1, 2003, carriers will no longer be required to submit Forms I–94 to the Service for the passengers they transport to or from the United States if they are electronically submitting arrival and departure manifests that include all of the data elements mandated by Section 231(c) of the Act. The carriers in full compliance with their obligations to transmit the prescribed manifest information electronically should still distribute Forms I–94 to their passengers who will be responsible for completing and submitting the Form I–94 to the Service to facilitate the inspections process. The Service will then compare and analyze the accuracy and efficiency of matching the electronic arrival and departure information with the paper arrival and departure information. In addition, not all travelers enter and exit the United States at the same location. A traveler may enter the United States at an air port-of-entry and leave at a land border port-of-entry. In this scenario, the Service will not be able to match the record of arrival with the record of departure electronically. A traveler who enters the United States via the air or sea port-of-entry may exit at a land border port-of-entry; therefore, this traveler will need a copy of the Form I–94. The traveler is required to return the departure Form
I–94 at the land border port-of-entry; otherwise the Service would not know that they had exited the United States.

Until those provisions of the Service's regulations in 8 CFR part 251 requiring the submission of crew manifests in paper format are rescinded, commercial air and sea carriers transporting passengers to or from the United States shall continue to submit the Form I–418. Carriers also should continue to submit USCS Form 7507 and/or the International Civil Aviation Organization's (ICOA) General Declaration, as appropriate. Any determinations to eliminate these forms will be made by the proper agency.

The Service is requiring both an electronic and paper format to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The Service will randomly select data from the paper I–94 input manually into the Non-Immigrant Information System (NIIS) and compare that data to the same record that was input electronically and received from the airlines. The Service will compare the accuracy, time of availability of the data, and completeness of the data. If the data received through the electronic manifest is superior to that of the manually input data, then a policy decision will be made as to whether or not to continue the use of the paper Form I–94 as a manifest.

In addition, the paper Form I–418 is currently used when vessels arrive in the United States and continue coastwise to other ports within the United States (for example, from Baltimore, Maryland to Newark, New Jersey to Boston, Massachusetts). The paper Form I–418 is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States. Therefore, an electronic manifest is required when a commercial carrier arrives in and departs from the United States, but an electronic manifest is not required when vessels are traveling between the ports-of-entry in the United States. The Service currently is assessing the continued value of the paper Form I–418. Carriers, however, will have to continue to submit this form, when required under 8 CFR 251.1(a), until such time that the technical infrastructure is in place between ports-of-entry.

Are There Any Penalties for Submitting an Incomplete or Inaccurate Electronic Arrival or Departure Manifest?

Yes. Section 231(g) of the Act, as amended, provides that if any public or private carrier, or the agent of any transportation line, has refused or failed to provide manifest information as required, or the manifest information provided is not accurate and full, such carrier, or agent shall pay the Commissioner the sum of $1,000 for each person with respect to whom accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed. Fines for violations of section 231 and 251 of the Act may be imposed and collected in accordance with 8 CFR part 280. However, the Service, as a matter of discretion, does not intend to impose fines against carriers for violations of section 231 of the Act until a final regulation is published.

Are Ferries Required To Submit Electronic Arrival and Departure Manifests?

No. This proposed rule adds a definition of the term ''ferry'' based on the existing USCG maritime safety regulations at 46 CFR 70.10–15. The determination of whether a particular service is ''ferry'' service is a case-by-case determination in which, should the question arise, the Service will refer to the USCG classification of the vessel or vessels providing the service.

The Service will also refer to other relevant definitions from the USCG regulations that are applicable to the definition of ''ferry.'' In particular, the USCG regulations define ''coastwise'' service as navigation in the ocean or Gulf of Mexico 20 nautical miles or less offshore (46 CFR 70.10–13), and ''ocean'' service as navigation in the ocean or the Gulf of Mexico more than 20 nautical miles offshore (46 CFR 70.10–31). Vessels in ocean or coastwise service are not ferries and, therefore, the Service proposes that sea carriers must submit electronic arrival and departure manifests for those vessels. This includes all vessels that travel between the United States and foreign adjacent islands.

However, otherwise qualifying services in ''lakes, bays, and sounds'' such as Puget Sound or the Great Lakes will be considered ferries (see 46 CFR 70.10–23) and therefore are not required to submit electronic arrival and departure manifests.

In order to qualify as a ferry, a vessel's service must be over the most direct water route and only make provisions for deck passengers and vehicles. The Service is aware that some vessels may offer extended dining services, even overnight accommodations or gambling, that are commonly associated with the operation of a cruise ship rather than a ferry. The Service will not extend this exemption to such vessels.

Regulatory Flexibility Act

The Service drafted this rule in consideration of the need to minimize its impact on small businesses. Based upon preliminary information available, the Service is unable to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described at 5 U.S.C. 605. Accordingly, the Service has prepared the following Regulatory Flexibility Act (RFA) analysis in accordance with 5 U.S.C. 603.

A. Need for and Objectives of This Proposed Rule

This proposed rule will implement section 231 of the Act as amended by section 402 of Public Law 107–73. Section 231 of the Act provides, among other things, that commercial vessels or aircraft transporting passengers to and from the United States must electronically transmit to the appropriate immigration officer not later than January 1, 2003, arrival and departure manifests containing such information and delivered in such a manner and timeframe as may be prescribed in accordance with section 231.

The enactment of section 402 of Public Law 107–173 reflects Congress' desire to ensure that commercial air and sea carriers submit to immigration officials passenger and crewmember information within a timeframe and in a particular format in order to maximize the Government's efforts to (1) identify persons being transported to and from the United States, (2) enforce the immigration laws, and (3) protect public safety and national security.

B. Description and Estimates of the Number of Small Entities Affected By This Proposed Rule

A ''small business'' is defined by the RFA to be the same as a ''small business concern'' under the Small Business Act (SBA), 15 U.S.C. 632. Under the SBA, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. It will be the duty of the appropriate officer of any commercial aircraft or vessel regardless of ownership, size or dominance in the field to provide the information prescribed in the proposed rule in the timeframe and format proposed therein.

Based upon the information available to the Service, there appear to be two distinct groups of businesses that will be affected by this proposed rule: (1) Larger commercial air and sea carriers, and (2) smaller commercial air and sea carriers (*e.g.,* air carriers that employ not more than 1,500 employees and sea carriers that employ not more than 500 employees) as defined by the United States Small Business Administration.

The Service estimates that there are approximately 108 large commercial carriers. Data provided by the United States Small Business Administration suggests that at least 446 small carriers will be affected by this rule. In addition, data provided by the USCG suggests that as many as 14,000 small commercial carriers potentially could be affected. Although the Service consulted with a number of the affected entities, including ATA, IATA, and the International Council of Cruise Lines (ICCL), the Service realizes that not all interested persons and entities may have been fully represented prior to the publication of this proposal. Therefore, the Service is requesting that comments be submitted to help ensure that the concerns of all interested parties are considered. Commenters may wish to identify the type of industry; including the number of companies/individuals involved and the annual income conducted; how the proposed regulatory requirements would impact that industry; and any suggestions on how the final regulations might be better tailored to the industry without

compromising the intent of the statute which is to enhance national security, public safety, and the enforcement of the immigration laws through timely identification of persons being transported to and from the United States.

Commenters should note that the submission of any comments or information on these or other matters addressed by this proposed rule is entirely voluntary and the Service is not prescribing the use of any form for this information.

Pursuant to the RFA and public policy concerns, the Service encourages all affected entities to provide specific estimates, wherever possible, of the economic costs that this rule will impose and the benefits that it will bring. The Service asks affected small businesses to estimate what these regulations will cost as a percentage of their total revenues, to enable the Service to ensure that small businesses are not unduly burdened.

1. Large Commercial Carriers

The Service has drafted this proposed rule to ensure the minimum possible impact on these businesses while complying with the statutory requirements. To ensure flexibility, the regulation does not mandate a specific electronic data interchange system that must be used. The regulation provides only that the transportation provider use a system that is approved by the Service.

The carriers must contact the USCS for additional technical information. The USCS and Service have APIS account managers to work with the carriers at the San Francisco, California, Houston, Texas, and Newark, New Jersey ports-of-entry. The APIS account managers have informed and notified the carriers of the new requirements, and will respond to any APIS issues, and act as a liaison between the carriers and the Service/USCS Headquarters. The USCS also provides APIS guidelines and documentation for the air carriers' technical staff. The USCS is currently updating a guideline for the sea carriers.

The Service and USCS have been working with the carrier industry for the past 10 years developing, implementing, and improving the arrival APIS information. The Service does not know how many systems are incompatible with APIS. However, EDIFACT is an international standard with which most carriers will be able to comply. For carriers that cannot comply with this requirement, alternatives are available. The Service believes that the EDIFACT system is flexible because it is an international standard with which all carriers and other governments can comply.

Because the information must be transmitted via the USCS Data Center, it is anticipated that carriers will transmit this data via the EDIFACT message format that was developed by the USCS in connection with the initial implementation of the APIS. The USCS has specified the data elements and codes to be used. The Service and USCS are currently working with the World Customs Organizations (WCO) to inform, update, and develop international electronic arrival and departure manifest standards for all carriers. The USCS is currently in the process of converting from the US EDIFACT message format to the UN EDIFACT format.

Moreover, commercial air carriers operating passenger flights have been required to electronically submit many of the data elements prescribed in the proposed rule to the USCS in advance of arrival since December 21, 2001. Other data elements in this proposed rule are statutorily mandated and, in accordance with statute, must be provided both upon arrival and departure. The Service and USCS have consulted with ATA, IATA, and ICCL on the current and additional data elements for the arrival and departure manifests. Where the proposed rule requires data elements that are not mandated by statute, the opinions of the industry representatives were taken into consideration so as to impose no greater burden than is necessary.

The requirement in this proposed rule that carriers submit specific manifest information electronically may require large commercial carriers to purchase equipment or develop integrated systems for that purpose. As discussed below in the section on Executive Order 12866, the Service estimates that larger commercial carriers may incur programming costs of $400,000 to implement these requirements, with an ongoing operational cost of $1 per passenger.

2. Small Commercial Carriers

In addition to large commercial carriers, the Service believes that there may be a large number of smaller commercial aircraft and vessel operators that will be affected by the proposed rule. The Service does not have specific information about how much of an economic impact this rule might have on smaller commercial carriers. According to the United States Small Business Administration, there are 383 scheduled air passenger transportation companies with less than 1,500 employees and 63 deep sea passenger transportation companies with less than 500 employees. The information provided by the United States Small Business Administration suggests that these 446 companies have average annual receipts of approximately $16 million. The Service believes that this rule will have a proportionally smaller economic impact upon smaller rather than larger carriers because of the volume of passengers they carry. In addition, smaller commercial carriers should not have to incur substantial initial programming costs. As discussed in the Executive Order 12866 section below, the Service estimates that the average reprogramming costs are approximately $400,000 per carrier for large carriers. A comparable conversion for a small carrier would be much less. Some vendors currently are providing equipment and software utilizing the US EDIFACT standard for small commercial carriers in the range of $6,800 to $7,200 per machine. One vendor has estimated that his conversion costs would be approximately $1,200 for his customers. This equipment automates much of the data submission process and performs functions comparable to equipment used by large commercial carriers, albeit on a much smaller scale. The Service estimates that new equipment and software that utilizes the UN EDIFACT standard should cost approximately as much as the current equipment and software.

The USCS also has an e-mail system that allows small entities to submit arrival and departure data electronically. In addition, the USCS is in the process of developing a Web-based APIS specifically for small entities, with an estimated completion date in April 2003. For either system, all that is required is a computer, e-mail, or access to the internet by the small entities to transmit the electronic arrival and departure manifests. This cost is minimal to the small entities. Indeed, the Service believes that most small carriers already will possess the necessary equipment and will not have to incur any additional costs. A carrier that decided to purchase a new personal computer should be able to do so for under $1,000. Access to the internet is estimated to cost approximately $20 per month.

While small entities will be required to submit new additional data (such as the United States address while in the United States, visa number, and place of issuance, where applicable, and country of residence), the collection of this information should not impose a significant burden on small entities. Therefore, the economic impact on

small entities by this rule will be minimal.

The ongoing costs to small carriers of submitting this information to the Service is difficult for the Service to quantify. The Service believes that the number of passengers that small commercial carriers transport in a given year may vary greatly. The IATA, however, estimates this rule will cost large commercial carriers approximately $1 per transaction per passenger for additional time costs. The Service believes that this estimate also may be applicable to small commercial carriers.

The Service is requesting comment on the impact that this proposed rule would have on small commercial carriers. The Service is particularly interested in comments concerning the number of these smaller entities transporting passengers, the number of passengers they transport each year, the ongoing costs this rule would impose (including any incremental cost per passenger), and their estimates on the economic impact of this rule.

C. Recordkeeping and Reporting Requirements

The purpose of this rule is to implement an ongoing reporting requirement for carriers. All small entities that transport passengers and crew to any seaport or airport of the United States from outside the United States will be required to comply with the arrival and departure manifest requirements. The submission of the required data elements will not require any unusual professional skills. The data that must be collected are basic and its submission should not be difficult. For purposes of complying with its Paperwork Reduction Act, the Service has estimated that 600 respondents will spend approximately 10 minutes a day in order to provide the required data. The Service based its estimate of 10 minutes on its experience in connection with the transmission of data elements under the Visa Waiver Program. See 67 FR 63246 (October 11, 2002).

D. Other Federal Regulations

This proposed rule does not duplicate, overlap, or conflict with other federal regulations. The rule was drafted after consultation with the USCS and the USCG and designed to work in coordination with their regulations. The Service, USCG, and USCS are currently coordinating their efforts to develop an electronic arrival and departure manifest system that meets the requirements of all three agencies. Submitting APIS meets the requirements of both the Service and USCS. The marine industry will have to continue to forward a separate Notice of Arrival (NOA) submission to the USCG, until such time that the technical infrastructure is in place to ensure that the USCG can obtain electronic data from APIS and import this data into a Coast Guard database.

As discussed above, the Service will require the continued submission of the paper Form I–94 in order to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The paper Form I–418 also is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States.

E. Issues Raised and Alternatives Suggested

The Service has little discretion regarding the scope of this rule and its impact on small entities because of explicit requirements in section 402 of Public Law 107–173. While consulting with ATA, IATA, and ICCL, a number of issues were raised concerning the impact on passenger check-in times resulting from the collection of the data required by this proposed rule. These requirements are, with only one exception (PNR locator or unique number), statutorily required. The Service considered the need for the inclusion of the PNR, and determined that it was necessary to simplify the data submission process. The use of an unique identifier is a standard data processing tool and is extremely useful both to the Service and to commercial carriers. Its elimination would only serve to make the submission and tracking of manifests more difficult.

The Service also considered different electronic data submission requirements. The Service could not continue with the US EDIFACT standard because it will not support the data elements called for by section 402 of Public Law 107–173. The UN EDIFACT standard was selected because it will be the dominant standard throughout the world and its use will simplify the data submission process for commercial carriers. The use of another standard would only serve to balkanize the data submission process.

The Service, however, has decided to allow commercial carriers to utilize alternative methods for the electronic submission of the manifests, as long as they are approved by the Service. For example, small carriers may use a USCS e-mail system. In addition, the USCS also is in the process of developing a Web-based APIS specifically for small entities which can be used for data submission when it is available. The purpose of these options is to reduce the possible economic impact the manifest reporting requirements will have on small commercial carriers. The use of these alternatives will benefit small commercial carriers who may not have access to the resources available to large carriers. The Web-based APIS and e-mail options eliminate the need for small commercial carriers to adopt data submission processes similar to those utilized by large commercial carriers.

Large commercial carriers also may utilize these options, but because of the volume of passengers whose arrival and departure data they may be submitting, the Service does not anticipate that these options will be used frequently by large carriers. The Service continues to entertain carrier proposals for pilot projects involving the collection of the required information electronically.

F. Conclusion

The Service believes that, given the statutory mandate in section 231 of the Act requiring that manifests containing certain prescribed data elements be electronically transmitted to the Service no later than January 1, 2003, this proposed rule meets the stated objectives while reducing as much as possible the burden imposed on affected transportation providers. The Service consulted with the air and sea carrier industries in developing this rule. The Service took into account their concerns in drafting the proposed rule. The Service intends to maintain an on-going dialogue with the affected industries.

The Service welcomes comments on its analysis under the RFA.

Unfunded Mandates Reform Act of 1995

This rule may result in approximately $124 million in operational costs and one-time programming costs of approximately $42 million on the private sector. Therefore, under the Unfunded Mandates Reform Act of 1995, this is a private sector mandate. Accordingly, the Service has conducted a cost/benefit assessment which is set forth in the Executive Order 12866 section below. This discussion assesses the costs and benefits resulting from the implementation of section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173). This rule, however, will not result in the expenditure by state, local and tribal governments, in the aggregate, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. The Service is requesting that comments be submitted

to help ensure that the concerns of all interested parties are considered.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule may result in an annual effect on the economy of $100 million or more and is therefore considered a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule, however, will not result in a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

1. This Rule Does Not Require Carriers To Switch to the UN EDIFACT Standard

Carriers currently submit arrival and departure manifests electronically to APIS. In accordance with section 402 of Public Law 107–173, this proposed rule also requires carriers to transmit additional data elements (*e.g.,* U.S. address, visa information, PNR locator). These additional data elements are not currently included in the APIS data being transmitted and carriers would have to incur some costs adapting their systems to include these elements.

However, many of the carriers with which the Service consulted, informed the Service that they have decided not to add the additional data elements to their APIS submissions. Rather, carriers plan on converting their systems from the US EDIFACT format to the UN EDIFACT format.

Carriers are making this change in data format for their own business reasons because it is the format being adopted in several foreign countries, such as Canada, Mexico, Australia, New Zealand, and United Kingdom. The Service wants to emphasize that neither section 231 of the Act nor this proposed rule require carriers to convert to the UN format. This movement to the UN format was based upon international agreements between the Immigration and Customs Services of several countries and is an international standard adopted by the IATA and ATA.

2. Estimated Costs

A. One Time Programming Costs

The conversion in EDIFACT data formats which the carriers are undertaking on their own initiative makes it difficult for them to provide the Service with the actual costs to them resulting from the new additional data elements required by the statute and this proposed rule. The estimated cost range has been from thousands of dollars for the smaller carriers with a low volume of passengers to several million dollars for a larger carriers with a high volume number of passengers. The high-end estimates include the conversion of the US/UN EDIFACT reprogramming costs to the carrier's existing reservation systems and the hiring of additional personnel.

Carriers have informed the Service regarding the cost of new equipment they will be purchasing on their own initiative as part of their conversion to the UN EDIFACT format. Since the additional data elements this rule requires carriers to collect are not, at present, machine-readable, the Service has not included new equipment costs in its estimates below. The reprogramming costs below include both the cost of changing from the US to the UN EDIFACT format (which is not required by this rule) and the costs of processing the new data elements required by this rule, but the estimates below are the best that the carriers have been able to provide the Service regarding their non-equipment related costs of complying with this rule.

According to IATA, the average reprogramming costs are estimated at $400,000 per carrier. The total reprogramming costs are estimated at $36,800,000 (92 air carriers x $400,000).

The International Council of Cruiselines (ICCL) represents 16 passenger cruiselines. The estimated reprogramming costs reported by ICCL members is $2,000,000 (16 x $125,000).

92 IATA carriers	$36,800,000	
16 ICCL carriers	2,000,000	
IATA and ICCL carriers	38,800,000	
Other carriers	2,716,000	($38,800,000 x 20% of remaining carriers = 7,760,000 x 35% of IATA/ICCL carrier costs).
Total	41,516,000	Estimated total one-time programming costs.

The 108 carriers represented by IATA and ICCL account for the vast majority (75–80 percent) of passengers covered by this rule. Therefore, the Service has estimated that the remaining 20 percent of the passengers transported by other carriers at a cost of $7,760,000 ($38,800,000 × 20 percent). The Service then estimated that these other carrier (non-IATA and ICCL carriers) costs at approximately 35 percent of the IATA and ICCL carrier costs. Since, the USCS already provides an e-mail APIS account and will be developing a Web-Base APIS system for the small entities, the Service estimates that the reprogramming costs for the small and medium size entities will be much lower than the IATA and ICCL carrier costs. Therefore, the other carriers estimated reprogramming costs are calculated at $2,716,000 ($7,760,000 × 35 percent).

B. Operational Costs

The IATA estimates this rule will cost carriers approximately $1 per transaction per passenger for additional time costs. The IATA has estimated that this will amount to approximately $62 million for the inbound and the same for outbound with total estimated annual costs at $124 million.

However, the Service believes that some of these processing costs can be deferred or reduced by travelers providing these additional data elements to the travel agencies, Web-based/Internet or kiosk type reservations systems, thereby reducing the check-in time.

3. Much of the Information Required By This Rule is Already Being Submitted Electronically to the Service

USCS regulations already require all air carriers to submit arrival manifests electronically. In addition, Service regulations already require air and sea carriers to submit arrival and departure manifests electronically, for passengers traveling pursuant to the Visa Waiver Program. However, carriers have informed the Service that it is more

efficient for them to transmit electronic manifest information for all (not just Visa Waiver Program) passengers. Over 80 percent of these carriers currently submit arrival and departure manifests electronically for all passengers. This fact suggests that the costs of this rule will not be great since a substantial majority of the carriers already provide most of the information this rule would require.

4. Benefits This Rule Provides

Advanced electronic manifest provide the Service with the ability to conduct advance record checks of passengers entering and departing the United States. This allows the Service to check and pre-screen the names of known inadmissible aliens, terrorists, and other dangerous criminals prior to entering the United States. With the recent improvements and enhancements to the APIS and other enforcement database(s), which can identify high-risk passengers for more intensive questioning upon arrival, the Service has been able to prevent an increase in the number of aliens attempting to enter the United States illegally.

APIS also allows the Service to check for removable aliens, terrorists, and other dangerous criminals prior to exiting the United States. With advance prescreening of passengers, the Service will be able to process low-risk travelers with minimum delay and concentrate on high-risk travelers who may pose a threat to national security. APIS allows immigration intelligence officers to analyze the patterns and associations of alien smugglers on a real-time basis.

The Service and the USCS are in the process of including the USCG's vessel crewmember manifest requirements into the APIS. Currently, the cargo industry must submit separate paper manifests, one to the Service and one to the USCG. The carrier associations have indicated that they prefer to transmit one manifest electronically that meets all of the requirements for the Service, USCS, and USCG, thereby reducing the need to submit three separate paper manifests. APIS is a joint effort supported by the Service, USCS, USCG, foreign governments, World Customs Organization (WCO), ATA, IATA, ICCL, and other intereste stakeholders.

The UN EDIFACT format will improve the transmission of the electronic arrival and departure data. Currently, all of the carriers cannot submit 100 percent of the required APIS data in the US EDIFACT format. In addition, passenger data elements sometimes get lost in the APIS transmission. The US EDIFACT does not allow the carrier to receive a confirmation message that the APIS transmission was submitted and received by the system (for example, if an e-mail message is sent, a receipt is sent back to the original sender to confirm that the e-mail was received and opened by the intended user). The potential exists that any lost records of a passenger will not be searched in the appropriate database(s), and the absence of such checks on a particular alien in advance of arrival could pose a threat to national security. In addition, each loss of records in the transmission will cause a delay in the inspection processing of passengers because the immigration inspector will have to manually enter each passenger's name in the database(s), process the information, and ask any additional immigration related questions. This delay may have an impact on the wait time of the other passengers waiting to be inspected at primary inspection for admission to the United States. These delays may cause some of the passengers to miss their connecting flights, thereby causing an additional expense to the carriers. Therefore, conversion to the UN EDIFACT is expected to greatly enhance and improve the transmission of the electronic arrival and departure manifests.

The Service welcomes comments on its assessment under Executive Order 12866.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires that carriers provide arrival and departure manifests electronically to the Service. This requirement is considered an information collection requirement under the Paperwork Reduction Act.

Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street NW., Suite 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before March 4, 2003. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Electronic arrival-departure manifests.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File number OMB–32), Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Business or Individuals. Section 402 of the Enhanced Border Security and Visa Entry Reform Act requires arrival and departure manifests to be delivered electronically no later than January 1, 2003. The information collection is necessary to comply with section 402 and to ensure that the Service receives accurate passenger and crewmember arrival and departure information in a timely manner.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600 respondents at 10 minutes multiplied by 365 days.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 36,500 burden hours.

If additional information is required contact Richard A. Sloan, Director, (202) 514–3291.

List of Subjects

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and Visas.

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements

8 CFR Part 251

Vessels, Alien crewmembers, Maritime carriers, Reporting and recordkeeping requirements.

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

PART 217—VISA WAIVER PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. Section 217.7 is revised to read as follows:

§ 217.7 Electronic data transmission requirement.

(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port-of-entry will not be admitted under the Visa Waiver Program unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 CFR 231.1, for each Visa Waiver Program passenger being transported on the aircraft or vessel.

(b) For those carriers that fail to submit electronic arrival and departure manifests electronically, the Service will evaluate the carrier's compliance with immigration requirements as a whole. The Service will inform the carrier of any noncompliance and then may revoke any contract agreements between the Service and the carrier. The carrier may also be subject to fines for violations of manifest requirements or other statutory provisions. The Service will also review each Visa Waiver Program applicant who applies for admission and on a case-by-case basis, may authorize a waiver under current Service policy and guidelines or deny the applicant admission into the United States.

PART 231—ARRIVAL AND DEPARTURE MANIFESTS

3. The heading for part 231 is revised as set forth above.

4. The authority citation for part 231 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229; 8 CFR part 2.

5. Section 231.1 is revised to read as follows:

§ 231.1 Electronic arrival and departure manifests for passengers and crew.

(a) *Definitions.* As used in this part, the terms:

Appropriate official means the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel.

Commercial aircraft means commercial aircraft as defined in § 286.1(c) of this chapter.

Commercial vessel means commercial vessel as defined in § 286.1(d) of this chapter.

Crewmember has the same meaning as the term crewman defined in section 101(a)(10) of the Act.

Ferry means a commercial vessel that has provisions only for deck passengers and/or vehicles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel. Vessels in coastwise or ocean service, as defined in the regulations of the USCG, 46 CFR part 70, are not ferries and, accordingly, are required to transmit electronic arrival and departure manifests.

Passenger means any person being transported on a commercial aircraft or commercial vessel who is not a crewmember.

United States means United States as defined in section 101(a)(38) of the Act.

(b) *Electronic arrival manifest.* An appropriate official of every commercial vessel or aircraft arriving in the United States from any place outside of the United States shall transmit electronically to the Service a passenger arrival manifest and a crewmember arrival manifest. The electronic arrival manifest must contain the data elements set forth in paragraph (e) of this section for each passenger and crewmember.

(1) For aircraft, an appropriate official must transmit the passenger arrival manifest no later than 15 minutes after the flight has departed from the last foreign port or place. The crewmember arrival manifest must be transmitted electronically to the Service in advance of departure from the last foreign port or place.

(2) For vessels, an appropriate official must transmit the passenger and crewmember arrival manifests:

(i) at least 96 hours before entering the port or place of destination, for voyages of 96 hours or more;

(ii) at least 24 hours before entering the port or place of destination, for voyages of less than 96 hours but not less than 24 hours; or

(iii) prior to departing the port or place of departure, for voyages of less than 24 hours.

(c) *Electronic departure manifests.* An appropriate official of every commercial vessel or aircraft departing from the United States to any place outside of the United States shall transmit electronically to the Service a passenger departure manifest and a crewmember departure manifest. The electronic departure manifest must contain the data elements set forth in paragraph (e) of this section for each passenger and crewmember.

(1) An appropriate official of a commercial vessel or aircraft must transmit both the passenger departure manifest and the crewmember departure manifest to the Service no later than 15 minutes before the flight or vessel departs from the United States.

(2) If additional passengers or crewmembers board or disembark after the original manifest has been submitted, an appropriate official of the vessel or aircraft concerned will also be required to submit amended or updated passenger and crewmember information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States. An appropriate official of the aircraft or vessel concerned must also notify the Service electronically if a flight or voyage has been cancelled after a departure manifest has been submitted.

(d) *Electronic format.*

(1) The arrival and departure manifests for passengers and crewmember must be transmitted electronically to the Service via the USCS, by means of an electronic data interchange system that is approved by the Service.

(2) The passenger arrival and departure manifests must be transmitted separately from the crewmember arrival and departure manifests. To distinguish the two manifests transmitted for a given flight or vessel, the crewmember arrival and departure manifests must have the alpha character ''C'' included in the transmission to denote that the manifest information pertains to the crewmembers for the flight or vessel.

(e) *Contents of arrival and departure manifests.* Each electronic arrival or departure manifest must contain the following information for all passengers or crewmembers:

AIR carrier information	SEA carrier Information
Complete name (Last name, first name, and middle name or initial)	Complete name (Last name, first name, and middle name or initial).
Date of birth	Date of birth.
Citizenship (Country of document issuance)	Citizenship (Country of document issuance).
Gender (F=Female; M=Male)	Gender (F=Female; M=Male).
Passport number and country of issuance, if a passport is required	Passport number and country of issuance, if a passport is required.
Country of residence	Country of residence.
United States visa number, date, and place of issuance, where applicable (arrivals only).	United States visa number, date, and place of issuance, where applicable (arrivals only).
Alien registration number, where applicable	Alien registration number, where applicable.
United States address while in the United States (number and street, city, state, zip code).	United States address while in the United States (number and street, city, state, zip code).
International Air Transport Association (IATA) Arrival Port Code	Arrival Port Code.
IATA Departure Port Code	Departure Port Code.
Flight Number	Voyage number.
Date of Flight Arrival	Date of Vessel Arrival.
Date of Flight Departure	Date of Vessel Departure.
Airline Carrier Code	Country of Registry/Flag.
Document Type (*e.g.*, P=Passport; V=Visa; A=Alien Registration)	Document Type (*e.g.*, P=Passport; V=Visa; A=Alien Registration).
Date of Document Expiration	Date of Document Expiration.
A unique passenger identifier, or reservation number or Passenger Name Record (PNR) locator.	A unique passenger identifier, or reservation number or Passenger Name Record (PNR) locator.
	Vessel Name.
	International Maritime Organization (IMO) number or the official number of the vessel.

(f) *Ferries.* The provisions of this part relating to the transmission of electronic arrival and departure manifests shall not apply to a ferry (if the passengers are subject to a land-border inspection by the Service upon arrival in the United States).

(g) *Progressive clearance.* Inspection of arriving passengers may be deferred at the request of the carrier to an onward port of debarkation. Authorization for this progressive clearance may be granted by the Regional Commissioner when both the initial port-of-entry and the onward port are within the same regional jurisdiction, but when the initial port-of-entry and onward port are located within different regions, requests for progressive clearance must be authorized by the Assistant Commissioner for Inspections. When progressive clearance is requested, the carrier shall present Form I–92 in duplicate at the initial port-of-entry. The original Form I–92 will be processed at the initial port-of-entry, and the duplicate noted and returned to the carrier for presentation at the onward port of debarkation.

PART—251 ARRIVAL AND DEPARTURE MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

7. The heading for part 251 is revised as set forth above.

8. The authority citation for part 251 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282; 8 CFR part 2.

§ 251.5 [Redesignated as § 251.6]

9. Section 251.5 is redesignated as § 251.6.

10. Section 251.5 is added to read as follows:

§ 251.5 Electronic arrival and departure manifest for crew member.

In addition to submitting arrival and departure manifests in a paper format in accordance with §§ 251.1, 251.3, and 251.4, the master or commanding officer, or authorized agent, owner, or consignee of any aircraft or vessel transporting passengers to any airport or seaport of the United States from any place outside of the United States or from any airport or seaport of the United States to any place outside of the United States must submit electronic arrival and departure manifests for all crewmembers on board in accordance with 8 CFR 231.1.

11. Newly redesignated § 251.6 is revised to read as follows:

§ 251.6 Exemptions for private vessels and aircraft.

The provisions of this part relating to the presentation of arrival and departure manifests shall not apply to a private vessel or private aircraft not engaged directly or indirectly in the carrying of persons or cargo for hire.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–33145 Filed 12–30–02; 4:31 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that would have required modification of the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers. This new action revises the proposed AD by expanding the applicability and, for certain airplanes, adding improved