

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