

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.