

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.