

**COMMENTS OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION
IN RESPECT OF:**

**US Immigration and Naturalization Service Notice of Proposed Rulemaking on Manifest
Requirements Under Section 231 of the Act**

**8 CFR Parts 217, 231 and 251
RIN 1115-AG57
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Submitted To:

**The Director, Regulations and Forms Division
Immigration and Naturalization Service
425 I St. NW, Room 4034
Washington, DC, 20536
USA**

Introductory Comments:

The International Air Transport Association (IATA), representing more than 270 of the world's scheduled air carriers and most of those serving the US market, is pleased to be able to respond to the Immigration and Naturalization Service (INS or the Service) Notice of Proposed Rulemaking referred to above. IATA, and the industry it represents, recognises that each State has an obligation to protect its citizens and its territory. We are also fully aware of the pressures being brought to bear on the Service to develop and implement programmes that will ensure such territorial integrity.

IATA, and many of its Members, have been actively involved in the evolution of the previously voluntary Advance Passenger Information System (APIS) program, and are now uniquely situated to respond to the many points contained in this proposal and to specific questions that it raises. The industry remains committed to achieving realistic improvements to today's APIS program. We join with governments around the world in seeking innovations that can be used to enhance the security of our passengers and our crews.

However - we must also ensure that the obligations imposed upon the civil air transport industry do not unnecessarily affect our ability to conduct a time-sensitive, service-related business, and our ability to comply with rules and regulations imposed at both ends of the journey. In the comments that follow, we intend to address a wide range of issues that are of critical concern to the industry, and which, we firmly believe, the Service must carefully consider and address in any final rule that it promulgates.

General Comments:

While reviewing the INS proposal, we have kept in mind the discussions that have taken place between officials from the Service and various industry representatives. Many of the concerns that we will describe and the issues that continue to be of interest have been part of the ongoing dialogue for several years and have been discussed on numerous occasions. All persons who have taken part in any of the previous meetings of the APIS National Implementation Committee and meetings of the "Group of 7" are well aware of the industry's concerns..

In general, the industry has embraced the concepts of APIS, as previously structured, and has been able to provide quality data in advance of arrival at levels not thought possible even one year ago. In large measure, this performance can be tied directly to the use of automation to gather required data elements, and a commitment, on the part of carriers serving the US market, to provide the funding (software development, hardware acquisitions and staff training initiatives) necessary to make it happen. This process has not appeared miraculously – it has taken years of hard work and tens of millions of dollars of expenditures. Now, in the aftermath of September 11th, all of the previous efforts may be set aside, and the industry tasked with starting the entire process over again.

Of the new procedures mandated by the Enhanced Border Security and Visa Reform Act of 2002 (Public Law 107-173), the most critical and problematic is the expanded list of required data elements. Many of the elements are those that are collected today using automated means and relatively non-controversial. However, a number of data elements have been added that are not currently present in the readable zone of official travel documents, and must, therefore, be manually captured – often following a verbal question and answer exchange between the passenger and check-in agent.

In its explanation, the Service indicates that Congress has mandated what the Service must collect, and therefore, it has no discretion in its rulemaking. We question this position – given the fact that earlier requirements imposed on the Service by Congress, some of which would have direct bearing on carrier obligations under this law, have not been implemented. Even before the expanded API requirements of the Enhanced Border Security Act were enacted, the Congress had mandated that INS, in cooperation with other Federal Agencies, must link the various government systems and databases so that information contained in one becomes available to the others.

Many of the most problematic data elements contained in this proposed rule are already known to the US authorities – gathered at the time a visa application is submitted. Information concerning the traveller, his residence, official travel documents to be used, the visa that is issued – and potentially, the address while in the US - are contained in the Department of State's database. This wealth of data – collected and vetted by US government agents as part of an officially required process - could be available to populate the API system. We submit that this would be a much more useful source of information for the US authorities than data manually captured by airline staff that - by virtue of the manual process – would be subject to error.

We believe that personal data, voluntarily submitted by the traveller to an official representative of the US government at the time a visa is requested, would be far more accurate than the same data manually collected and entered during check-in by an airline agent. Further, since that data was given directly by the individual to an official of another country in support of that individual's desire to travel and as part of the final clearance process once that (or subsequent) travel has commenced, the issue of data protection and/or privacy would be circumvented.

We ask that the Service consider this point carefully, and in its final rule, not require airlines – at great expense and with significant impact on airport operations – to gather and transmit information the US authorities already hold.

The issue of each passenger's right to privacy and the protection of personal data must not be overlooked in the discussion of what carriers can or cannot do. The burden placed on carriers by many of the technical aspects of the new APIS requirements can be overcome, and means found to collect and transmit more data through the application of time and money. Systems can be linked to allow for direct governmental access into airlines' reservation or departure control systems (DCS). However, these developments will not resolve the issues

surrounding what is and is not allowed under laws imposed by a number of countries outside the United States.

IATA has, for the past two (2) years, called upon the US government to enter into direct discussions with various other countries and inter-governmental organisation focused upon finding adequate solutions to data protection concerns. While data privacy concerns apply more directly to government access of carrier systems, the expanded list of data elements required under the API system is also raising concerns in governments outside the US. This has become a political issue – and can be resolved only by the governments themselves. Until such solutions are agreed, we ask the Service not to implement any regulation that would require an international air carrier to violate laws of another country as a condition for serving the US market.

We will address some of these, and other issues contained in the proposal, in greater detail later in this submission.

Clarification of Certain Points Made in the Notice:

We believe that a number of points discussed in the proposed rule are 1) misstatements of the facts that should be deleted, or 2) require greater clarification, and are detailed below for the Service's consideration:

UN-EDIFACT Not Required: On page 299, the Service states that “Carriers are making this change in data format for their own business reasons because it is the format being adopted in several foreign countries. . .” In fact, the US has led this effort since the data elements required for both INS and US Customs Service APIS applications cannot be supported by the existing messaging structure. Moreover, the US Customs Service is moving rapidly toward implementation of UN-EDIFACT as the sole method of host-to-host transmissions.

Carriers will be left no options other than to develop and use the new format. To suggest otherwise and to imply that airlines are voluntarily seeking to invest more than \$40 million dollars for “unnecessary” programming at this critical time is not an accurate assessment of the facts, and must be deleted.

UN-EDIFACT Will Improve the Transmission of API Messages: On page 300, the Service goes to great length to explain how using UN-EDIFACT will improve data transmissions – and thereby reduce delays and misconnections for arriving passengers. We question this assessment, and ask for additional clarification from the Service. Under the proposed US Customs Service implementation plan, the Service plans to continue to accept the APIS batch transmissions as SITA “Type B” messages – which are limited to less than 3500 characters per message block. Under the new API requirements, each passenger's details could run to 565 characters – potentially limiting each data block to no more than six passengers.

Accordingly, a manifest including details for an aircraft containing 400 passengers could be comprised of up to 67 individual blocks of data – any one of which can be lost in the transmission process. An e-mail back to the generator of the manifest stating that block 14 of 67 blocks was not received will likely result in the entire manifest being sent again – with the ultimate result that the US Customs Service system will be completely overloaded.

We also question the notice's assessment of additional time spent when an APIS record is not present in the system. In today's system, INS agents are "reading" passports for every passenger upon arrival to initiate the inspection process. Where no name-match is found, the system automatically accesses the Interagency Border Inspection System (IBIS) and initiates a full check against the same databases as is done as part of a successful APIS data transmission. Whether APIS data is present or not – the INS agent still asks immigration-related questions, and individual transactions still, on average, take more time than those conducted in other countries having no pre-arrival information available.

And finally, on this particular issue – the Service points to a reduction in queuing time upon arrival while awaiting inspection. It does not seek to address the additional queuing and delays that will occur at origin airports as airlines seek to capture and transmit the newly required data. Successful transmission of the new API requirements will not be a "Win-Win" situation, and will not result in improved service overall. We will see longer lines during check-in, at transfer desks and in departure gates. We will have flights delayed or even cancelled when departure slots are lost. We may even see airports reduce their stated capacity during peak times, due to the airlines' inability to move passengers through the system and on to their departure gates. In each of these, it will be airlines and the travelling public that will be required to bear the additional burden.

Electronic Manifest vs. Paper Form I-94:

On page 295, the Service first indicates that by fulfilling the requirement to provide full and complete manifest details, carriers would no longer be required to submit Forms I-94. The Service then indicates that for some unspecified period, the carrier must submit both electronic and paper record for each departing passenger. Since provision of a full and complete electronic departure manifest satisfies the Service requirements under 231(c), we question the need for continued Service reliance on the paper form that the electronic information replaces.

As part of any final rule, we ask the Service to provide specific information concerning liability currently imposed upon carriers for failure to submit a paper form at the port of departure. Will submission of a full and complete electronic manifest for each passenger obviate penalties that are currently imposed – particularly the \$1,000 fines to be imposed under revised Section 238 of the Immigration and Nationalities Act? In any final rule, we also ask the Service to fully justify any decision it takes to maintain the existing paper process, and to provide specific timelines for its discontinuance.

Specific Comments and Response to Questions Posed in the Notice:

Manifests For Crew Members: The proposal indicates (Supplementary Information, Column 1, page 293) that arrival and departure manifests are required for crewmembers of commercial aircraft “that are transporting passengers to or from the United States”. This indicates that the requirement will not apply to cargo or repositioning/ferry flights – a position that is not adequately described in the statutory language contained on page 301 concerning revision to Section 231.1, and which seems to contradict the definition of commercial aircraft found in Section 286.1(c). We ask that the Service clarify this point sufficiently to remove all doubt as to which operations the crewmember manifest requirement applies.

Required Data Elements:

The industry has become quite adept at supplying currently required APIS data elements, and therefore, we do not wish to address those at this time. However, we do wish to address each of the elements that are not required under today’s system, and their impact on airline operations.

1. “Citizenship” is not currently required except in limited circumstances, but can be obtained through the use of automation. No significant impact on operations.
2. “Country of Residence” is not shown on any official travel document’s visual or readable area, and can be obtained and transmitted only following a question and answer process. There will be a significant impact on check-in (5-10 seconds per transaction), and the accuracy of the information provided cannot be verified.

This information will be available as part of US Dept. Of State (DOS) visa application records, and should be retrieved internally by system connection between INS and DOS.

3. “US visa number, date of issue and place of issue” are data elements that do not appear in the readable zone of US-issued visas. Accordingly, each of these data elements will have to be visually located on the visa label itself, manually entered into the airline system and then visually checked again for accuracy. This process is time-intensive and subject to human error. We estimate that this will add between 10-15 seconds per transaction and have a minimum error rate of 3% - particularly with respect to the visa number.

This information is available in the DOS visa database and should be extracted to complete the APIS record.

4. “Alien Registration Number” can be “read” from the newly issued INS form, but cannot be captured using automated means for this application. To do so, for most systems, will simply overwrite the passport number and document type already captured. Accordingly, this data element (when required) will have to be manually entered into the airline’s system during check-in at the cost of 5-10 seconds per transaction. While not specified in the notice, we

seek clarification as well as to whether this data element should be included in departure manifests and, if so, the rationale behind that decision.

This data is already available to the INS within its own legacy systems, since it is the INS that issues the card. We believe that an internal system can and should be developed to match name, date of birth, and travel document information contained in the APIS record against Legal Permanent Resident (LPR) records. The resulting match can then be added to the individual API file.

5. “United States address while in the United States” is the data element likely to be the most difficult to successfully capture, and also the item that will affect check-in operations and flight schedules most seriously. This data element will certainly require a question and answer process frequently involving frantic searches of briefcases, handbags and pockets to find the information. Further, correct abbreviations for US States and appropriate postal codes are frequently not known or available to the passenger or transporting airlines. We estimate that capturing this element and entering it at any level of “provided” accuracy will take, on average across all check-ins, as much as 30-45 seconds per transaction. The airline will be unable to verify actual address accuracy. We ask the Service to specify in the rule that it will not hold the carrier liable for address information (or any other passenger-supplied data) that it provides without having the ability to confirm accuracy.

Another issue that must be addressed in any final rule involves those passengers who have no known US address at check-in, or who plan to select a hotel in a particular location only after arrival. Other passengers may plan to arrive and commence an immediate “backpacking” journey throughout the country. We ask the Service to specify the procedure that carriers must follow to handle these real, and very common, occurrences.

Other countries will soon implement their own API systems – some of which will involve requirements to provide addresses that do not match what the US requires. We specifically point to the United Kingdom and its soon-to-be-implemented requirement for the traveller’s home address. For flights from the US to the UK, this could result in legal obligations to provide two different addresses. The proposed UN-EDIFACT message, as designed and agreed by the World Customs Organization (WCO) Permanent Technical Committee Working Party in October 2002, cannot accommodate this requirement.

Further, we question the value of providing an address in the US for persons who are departing the country. Given the overwhelming technical issues involved, and the limits on the value that this information can add to the process, we ask the Service to carefully consider this requirement. Unless overwhelmingly compelling reasons can be provided, we ask that the Service delete this element from outbound reporting requirements.

6. “Date of document expiration”, while a new data element, it is one that can be captured by automated means. For carriers without automated means for data capture, we anticipate that

this new requirement will add 3-5 seconds per transaction.

7. “Unique Passenger Identifier, or reservation number or Passenger Name Record (PNR) locator”. While initially appearing to be a reasonable request and one easily accommodated by the carrier, establishing such a unique identifier that the Service can then use to match inbound and outbound records is far more complicated. Record Locators used and available for one airline are not necessarily the same for another carrier whose flights are reflected in the same itinerary. Passengers may travel to the United States with one ticketed reservation and from the country under another reservation – even with the same carrier. Each reservation has its own unique locator.

In other instances, a passenger may appear at check-in for a flight with no record of a reservation. Where space permits, the carrier may opt to check the passenger in using either a “Go/Show” or “NoRec” process, both of which can result in a boarding pass issuance without a formal reservation being created at time of check-in. That record may not be created by the system until well after the API reporting deadlines have passed.

No carrier can create a number that is unique to an arriving passenger, and then ensure that this same unique identifier will apply to that passenger upon departure via its own or another carrier’s services. Accordingly, we ask the Service to reconsider this requirement and the uses for which it was originally intended.

8. Passport Number and Country of Issue: Passengers frequently present one passport during check-in to facilitate departure controls and another upon arrival to speed their clearance. Carriers are generally not aware that a passenger holds dual citizenship, and therefore, should not be held liable for instances in which passengers apply this practice. We ask the Service to provide a clarification of its position on this issue.

Timelines for Manifest Submission:

In its proposals related to **arrival manifests for passengers**, the Service has indicated that it expects carriers to provide an initial API transmission not less than 15 minutes after the flight has departed (defined as wheels-up) from the last foreign port or place. While we have some concerns about the shifting nature of the “wheels up” definition for the term “departure” and how the Service might plan to confirm the actual time an aircraft left the ground, we have a far more basic issue to address.

For most carriers, API data transmissions are tied to and based upon a process known as post-departure close-out. During this process, an automated process eliminates the reservations or records of those who did not fly and updates the system with information concerning new additions to the flight, etc. Many systems have been programmed to generate the API message only upon completion of that process. Arbitrarily assigning a new transmission time ahead of that process may result in faulty records being sent ahead of the post-departure process and then another, update transmission generated automatically upon close-out. Such multiple

transmissions will lead to unnecessary additional communication costs, and may significantly strain the entire capacity of the IT process without adding an appreciable benefit.

We ask the Service to once again examine this requirement, and to align its policy with that implemented by US Customs. We believe that API data should be transmitted and available at the port of entry prior to the flight's arrival.

In its proposals related to **departure manifests for passengers**, the Service mandates two separate reporting times: 15 minutes prior to departure and then again 15 minutes following the aircraft's departure (wheels up). With respect to the pre-departure report, the Service is aware that most manifests will be incomplete, and has, accordingly made allowance for carriers to transmit a final, verified manifest. For most systems, programming is required that will allow for manual generation of the pre-departure manifest. With respect to the post-departure manifest sent within 15 minutes following wheels-up, we wish to raise the same point as stated in the arrival manifest section above. Even though an agent may manually transmit a revised API manifest 15 minutes after the flight has departed, the airline's system may automatically generate another at completion of its post-departure processing.

Since the aircraft has, by INS' own definition, already left the ground and is enroute to another country, we question the need to establish a policy that dictates API transmissions ahead of when automated systems normally take over. This is an unnecessary burden on the industry and serves no legitimate purposes that we can identify. Accordingly, we ask that the Service revise this policy to reflect an initial API transmission not less than 15 minutes prior to departure and a final, verified transmission at 60 minutes following departure or at close-out (whichever comes first).

As indicated earlier, the industry seeks clear guidance as to the application of these requirements for crewmembers on cargo-only or flights not carrying passengers. While the text on page 293 clearly indicates that manifest requirements for crewmembers apply only to commercial aircraft transporting passengers, the language found at Section 286.1(b) and (c) lacks the specificity that is required. We ask the Service to clarify this issue.

Separation of Crew and Passenger Manifests:

In the regulatory language found on page 301 of the Notice, the Service indicates that all crewmember manifest reporting will be made separately from passenger reporting, and that crewmember manifests must always be identified by appending the letter "C" to the flight number. This requirement discounts not only the difficulties already experienced today with respect to flight numbers already comprised of 4 numeric characters, but also the fact that the new US Customs procedures require the carrier to identify each person as a Passenger, a Crewmember or an In-transit Passenger.

If manifests must always be separated, and US Customs is to continue to accept manifests on behalf of INS, then we question the value of formalising such a rigid policy in the statute.

Further, other countries, such as Canada and Mexico, are seeking ways to ensure that all reporting occurs via a single manifest for the flight. It must be noted that some carrier systems cannot merge passenger and crewmember data into a single manifest. Other carrier systems do have the ability to create a single, comprehensive manifest, which, by virtue of the new Passenger Status indicator, could provide the Service with all information it requires in a single transmission.

The G8 countries, including the US, have called for adoption of a standard, harmonised approach to APIS systems. We ask the Service to examine this point once again, taking the US Customs Service and other countries' positions into consideration, and seek to align with a global approach. Moreover, we ask that the Service maintain a level of flexibility on this issue, and work to accommodate both split and joint transmission capabilities.

Data Privacy Issues

The Service is well aware of the concerns that the industry has raised repeatedly during the past several years related to expanding electronic data element exchange requirements and the application of national and inter-governmental data privacy legislation. We specifically draw the Service's attention to the European Commission's Common Data Protection Directive (95-46-EC), which places stringent controls on the collection, storage and electronic transmission of personal data from one commercial entity to another entity – particularly a third-country governmental agency.

The Commission and several individual European governments have raised significant questions related to the legality of carriers operating from European airports actually participating in the USAPIS program. These concerns have been communicated directly to the Service and to the US Department of Transportation, Department of State and to the Customs Service. Our concerns run even deeper when considering the implementation of provisions contained in the law that would permit the Service – through the connections established by the US Customs Service – to gain direct entry into the carriers' reservation and departure control systems.

This is an issue of utmost importance to the industry and of concern to many persons seeking to travel to the United States. The Commission has advised one carrier that if it allows US governmental access to its reservation system, then rights to operate to and from the EC member states could be withdrawn. This is potentially only the beginning. This is a political issue that demands and deserves a political solution agreed at the diplomatic level.

It is absolutely essential that the various US Departments and Agencies (including the INS) enter into discussions with other interested governments prior to implementing mandatory system access regimes. This will help to ensure that the civil air transport industry is not put into the position of being told that it must obey the requirements of one government that directly contravenes legislation of another. We ask the Service to consider this issue carefully prior to publishing its final rule.

Implementation Timeframe

We appreciate the position the Service has taken with respect to implementing the new data provision requirements over time. The scope of required programming and system development is enormous – particularly for airlines operating sophisticated and integrated reservations/DCS applications – at a time when programmers are already working to capacity.

For carriers using less complex systems, an absolute deadline to begin complying with the new requirement by the end of 2003 is quite probably achievable. For other, fully integrated systems, that same target date may not be possible – particularly if data requirements change with publication of a final rule. The INS has taken a reasonable position when it indicates that it would take carriers' efforts to comply with any new requirement into account following publication of the final rule.

We fully support this position, and ask the Service to continue this policy of flexibility with respect to the imposition of any final target dates for system implementation.

Costs of Implementation

In preparing the Notice, the Service sought estimates of costs that the industry would incur under this proposal from IATA. While no firm data was available that was representative of all carriers, anecdotal information was used to establish some baseline figures related to programming and ongoing costs to operation. In its discussion with the Service, IATA advised that the figures it was providing were estimates only and likely to be extremely conservative. The figures are reflected in the Notice, and indicate that the estimated cost of the program's implementation will be approximately \$164 million dollars. We believe now, based on a sampling of additional estimates now being reported by various airlines, that the actual costs for both initial implementation and data collection/airport operations will rise significantly higher.

Even as a maximum figure, \$164 million is a staggering financial imposition for an industry suffering the worst downturn in its 75-year history. The environment in civil aviation today does not support another round of fare increases to offset these new operational costs. Accordingly, this is just one more in a string of government-mandated financial obligations that the industry – in its already-weakened state – must absorb.

Since the goal of the congressional mandate is to enhance and ensure US territorial security, we ask the Service to consider methods, under which some or all of the costs associated with bringing this program on-line can be financed from general revenues. Where this is not possible, we ask the Service to consider ways to lessen its demands on the industry, so that costs can be reduced to the greatest extent possible.

Conclusions

As previously stated, the industry has shown its willingness to work with the Service in developing and implementing systems that help to secure the US borders and enhance aviation security. We have been actively involved in a range of discussions that have led to the vast improvements in APIS reporting that have taken place only during the past year, and seek to continue the partnership that we have enjoyed. However, many of the procedures contained in this proposed rule are overly burdensome on an industry that is in crisis today.

As an expression of the partnership that exists today, we ask the Service to review many of the demands that it is making upon the industry, and seek to identify better methods for obtaining the information that Congress has mandated to be collected. We ask that, where information is already available to the US authorities, systems be developed for its retrieval. We request the Service to re-examine the various data elements that have been proposed and eliminate, where possible, those items whose collection and transmission are most problematic and whose value to the process has been questioned. To reduce the impact that this program, and others that will shortly come, we ask the Service to work more closely with other governments and to agree on ways to harmonise the various API applications as directed by the G-8 governments.

We understand and accept that the US Passenger Manifest requirements will broaden. However, there are a number of things that can be done to reduce the overall impact of the expanded requirements on airlines, airports and the travelling public, whilst attaining the government's key objective. Since the basis for this requirement is an enhancement to US territorial security, the U.S. authorities themselves must take a far greater role in its success. The Civil Air Transport industry is ready and willing to continue its efforts – in cooperation with the Service and other US agencies – to identify and implement other, more reasonable and balanced solutions. The industry is not, however, in a position to continue to unilaterally fund this process, or to reduce government obligations through airlines' assumption of what have historically been considered official border control functions.

Respectfully submitted by:



Robert A. Davidson
Assistant Director, Facilitation Services
International Air Transport Association
800 Place Victoria, Suite 1251
Montreal, QC Canada
H4Z 1M1