U.S. Customs and Border Protection

CBP Decisions

19 CFR PARTS 4 and 122

USCBP–2005–0003

CBP Dec. 07–64

RIN 1651–AA62

ADVANCE ELECTRONIC TRANSMISSION OF PASSENGER AND CREW MEMBER MANIFESTS FOR COMMERCIAL AIRCRAFT AND VESSELS

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule adopts as final, with the modifications set forth in this document, proposed amendments to Customs and Border Protection (CBP) regulations concerning electronic manifest transmission requirements relative to travelers (passengers, crew members, and, in some instances, non-crew members) onboard international commercial flights and voyages arriving in and departing from the United States. The rule is designed to enhance national security and the level of security provided under the regulations for the commercial air and sea travel industries, and consequently increase national security in general. The rule also implements the Intelligence Reform and Terrorism Prevention Act of 2004, which requires that electronic manifest information for passengers onboard commercial aircraft arriving in and departing from the United States, and passengers and crew onboard arriving and departing commercial vessels (with certain exceptions), be vetted by DHS against a government-established and maintained terrorist watch list prior to departure of the aircraft or vessel.

Under this final rule, there are three options for air carriers to transmit manifest data for aircraft departing from or en route to the United States: (1) transmission of passenger manifests in batch form by an interactive method no later than 30 minutes prior to the securing of the aircraft doors (APIS 30); (2) transmission of individual

passenger manifest information as each passenger checks in for the flight, up to, but no later than, the time the flight crew secures the aircraft doors (APIS interactive Quick Query or AQQ); and (3) transmission of passenger manifests in batch form by a non-interactive method no later than 30 minutes prior to the securing of the aircraft doors (APIS 30 "non-interactive").

For sea travel, CBP will require vessel carriers to transmit passenger and crew manifests for vessels departing from the United States no later than 60 minutes prior to departure. For vessels departing from foreign ports destined to arrive at a U.S. port, CBP is retaining the current requirement to transmit passenger and crew arrival manifest data at least 24 hours and up to 96 hours prior to the vessel's entry at the U.S. port of arrival.

EFFECTIVE DATE: February 19, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Neumann, Program Manager, Office of Field Operations, Bureau of Customs and Border Protection (202–344–2605).

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations

The following acronyms and abbreviations are used throughout this document:

APIS: The Advance Passenger Information System; the electronic data interchange system approved by CBP for air carrier transmissions (to CBP) of electronic passenger, crew member, and non-crew member manifest data.

APIS 30: This refers to the two electronic batch passenger manifest transmission options available to air carriers under this final rule, one of which is interactive and the other of which is not; both are so named because the batch passenger manifest must be transmitted under either option no later than 30 minutes prior to the securing of the aircraft (defined below).

APIS 60: This refers to the two electronic batch passenger manifest transmission options proposed in the NPRM, one of which was interactive and the other of which was not; both were so named because it was proposed (but not adopted in this final rule) that the batch passenger manifest be transmitted under either option no later than 60 minutes prior to the aircraft's push-back from the gate. This term can also apply to the transmission process for commercial vessels departing from the United States, provided for in this final rule to require passenger and crew manifest transmissions 60 minutes prior to departure.

AQQ: APIS Quick Query, an interactive electronic transmission functionality for transmitting required individual passenger manifest data to CBP through APIS.

ATSA: Aviation and Transportation Security Act (2001).

CBP: Bureau of Customs and Border Protection.

DHS: Department of Homeland Security.

eAPIS: CBP Internet functionality for air carriers making required APIS transmissions to CBP.

eNOA/D: Refers to U.S. Coast Guard (USCG) Internet functionality available to vessel carriers for making required APIS transmissions to CBP and required Notice of Arrival transmissions to the USCG.

EBSVERA: Enhanced Border Security and Visa Entry Reform Act of 2002.

INS: Immigration and Naturalization Service.

IRTPA: Intelligence Reform and Terrorism Protection Act of 2004.

OCS: Outer Continental Shelf (of the United States).

OMB: Office of Management and Budget.

PIA: Privacy Impact Analysis.

SORN: System of Records Notice; a notice required to be published in the **Federal Register** under the Privacy Act (5 U.S.C. 552a) concerning a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

TRIP: Travelers Redress Inquiry Program; a DHS program for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs.

TSA: Transportation Security Administration, DHS.

TSC: Terrorist Screening Center, Department of Justice.

UN/EDIFACT: United Nations Electronic Data Interchange For Administration, Commerce, and Trade.

USCG: U.S. Coast Guard, DHS.

US/EDIFACT: United States Electronic Data Interchange For Administration, Commerce, and Trade.

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The "Supplementary Information" section of this final rule sets forth the basis, purpose, and particulars of this rulemaking and is organized as follows:

I. BACKGROUND AND PURPOSE

On July 14, 2006, CBP published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (71 FR 40035) proposing amendments to CBP regulations concerning the advance electronic transmission of passenger manifests for commercial aircraft arriving in and departing from the United States, and of passenger and crew manifests for commercial vessels departing from the United States. The proposed rule also solicited public comments. An economic analysis of the rule was made available to the public at

http://www.regulations.gov (under docket number USCBP–2005–0003). This final rule discusses the comments received by CBP on the proposed rule and adopts the proposed amendments as final, with the modifications explained further below.

A. Advance Passenger Information System

The Advance Passenger Information System (APIS) is a widely-utilized electronic data interchange system approved by CBP. APIS is used by international commercial air and vessel carriers to transmit electronically to CBP certain data on passengers and crew members. APIS often will be referred to as "the CBP system" in this document to reflect transmissions of information to and from CBP.

APIS was developed by the former U.S. Customs Service (Customs) in 1988, in cooperation with the former Immigration and Naturalization Service (INS) and the airline industry. As a voluntary program, APIS was widely used, making it nearly an industry standard. After a period of voluntary participation, the Federal government implemented requirements governing the advance electronic transmission of passenger and crew member manifests for commercial aircraft and commercial vessels in accordance with several statutory mandates. These mandates include, but are not limited to: section 115 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597; 49 U.S.C. 44909 (applicable to passenger and crew manifests for flights arriving in the United States); section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Public Law 107–173, 116 Stat. 543; 8 U.S.C. 1221 (applicable to passenger and crew manifests for flights and vessels arriving in and departing from the United States); and CBP's general statutory authority under 19 U.S.C. 1431 and 1644a (requiring manifests for vessels and aircraft).

The Transportation Security Administration (TSA) also regulates the security of, among others, certain U.S. aircraft operators (49 CFR part 1544) and foreign air carriers (49 CFR parts 1546 and 1550) that conduct passenger and all-cargo operations to, from, within, and overflying the United States. In addition to these regulations, TSA has implemented detailed security requirements tailored for specific sectors of the transportation industry that are implemented through security programs, Security Directives (SDs)[1], and Emergency Amendments (EAs). *See, e.g.*, 49 CFR 1544.305, 1546.105, 1550.5. Under certain SDs and EAs now in effect, TSA requires the advance submission of crew member and non-crew member manifest information for certain flights operating to, from, continuing within, and overflying the United States.

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[1] Security programs, SDs and EAs generally contain sensitive security information under 49 CFR 1520.5(b)(2) and thus are not disclosed to the general public.

A more detailed description of the legal authorities for DHS to collect advance passenger manifest information is set forth in a final rule issued by CBP on April 7, 2005 (70 FR 17820) (the 2005 APIS Final Rule), establishing CBP's current APIS regulations. *See* 19 CFR 4.7b, 4.64, 122.49a – 122.49c, 122.75a, and 122.75b. The 2005 APIS Final Rule also amended the APIS regulations to incorporate the requirement pertaining to electronic manifest transmissions for passengers and crew onboard vessels and aircraft arriving in and departing from the United States (8 CFR 231.1 and 231.2, respectively). *See* also 8 CFR 217.7 (pertaining to the electronic data transmission requirement and the Visa Waiver Program).

Under APIS, CBP requires air carriers and vessel carriers to collect and transmit information that consists primarily of information that appears on the biographical data page of travel documents, such as passports issued by governments worldwide. Many APIS data elements (such as name, date of birth, gender, country of citizenship, passport or other travel document information) routinely have been collected over the years by a country's government, when a traveler seeks entry into that country, by requiring the traveler to present a government-issued travel document containing that information. Today, CBP uses this biographical data to perform enforcement and security queries against various multi-agency law enforcement and terrorist databases in connection with, as appropriate, international commercial flights to, from, continuing within, and overflying the United States and international commercial vessel voyages to and from the United States.

For commercial air travel, CBP currently requires air carriers to electronically transmit passenger arrival manifests to CBP no later than 15 minutes after the aircraft's departure from any place outside the United States (§ 122.49a(b)(2)), and passenger departure manifests no later than 15 minutes prior to departure of the aircraft from the United States (§ 122.75a(b)(2)). Manifests for crew members on passenger and all-cargo flights and non-crew members on all-cargo flights must be electronically transmitted to CBP no later than 60 minutes prior to the departure of any covered flight to, continuing within, or overflying the United States (§ 122.49b(b)(2)), and no later than 60 minutes prior to the departure of any covered flight from the United States (§ 122.75b(b)(2)).

For commercial sea travel, CBP currently requires vessel carriers to electronically transmit arrival passenger and crew member manifests at least 24 hours (for voyages of fewer than 24 hours), and up to 96 hours (for voyages of 96 or more hours), prior to the vessel's entry at a U.S. port or place of destination, depending on the length of the voyage (for voyages of 24, but less than 96 hours, transmission must be prior to departure of the vessel from any place outside the United States). *See* § 4.7b(b)(2). A vessel carrier also must electronically

transmit passenger and crew member departure manifests to CBP no later than 15 minutes prior to the vessel's departure from the United States. *See* § 4.64(b)(2).

CBP currently requires that manifest information for passengers, crew members, and non-crew members, as appropriate, be electronically transmitted for these aircraft and vessel arrivals and departures, and for crew and non-crew member manifest information for flights continuing within and overflying the United States. These regulations serve to provide the nation, the carrier industries, and the international traveling public, with additional security from the threat of terrorism.

C. Rationale for Change

1. Continued Threat of Terrorist Attacks Affecting Commercial Travel

DHS's primary impetus for this rulemaking initiative is to respond to the continuing terrorist threat facing the United States, the international trade and transportation industries, and the international traveling public. The proposed rule referenced several terrorist incidents to demonstrate the longstanding and continued nature of the threat, including terrorist hijackings of commercial aircraft in the 1970s, the thwarted plot to explode 12 commercial airliners over a 48–hour period in 1996, instances where credible intelligence resulted in numerous flight delays and cancellations during the 2003 holiday season, and repeated intelligence-generated security alerts, including an alert identifying a threat to Washington, D.C., and New York City leading up to the 2004 Presidential election. The NPRM also mentioned past terrorist attacks against passenger vessels to demonstrate the wide range of possible targets that may be chosen by terrorists. Terrorist attacks on rail systems in Madrid and London in 2004 and 2005, further demonstrate the continued threat of terrorism to commercial travel. More recently, in August 2006, shortly after the July 14, 2006, publication of the proposed rule, U.S. and British law enforcement and intelligence agencies exposed a terrorist bomb plot in England involving a threat to several U.S.-bound flights by London-based terrorists intending to use common liquid materials to construct a bomb onboard aircraft. These incidents underscore the need to continue to review and revise travel and transportation-related security programs and systems. And terrorists threaten not only human life, but the economic well-being of the commercial air and vessel carrier industries – industries of great importance to the United States and world economies.

The current system –which requires transmission of information only after departure for flights en route to the United States– has resulted in costs to industry. Several times since Fall 2004, identification of a high-risk passenger by DHS after departure of an aircraft en route to the United States has resulted in the diversion of the air-

craft to a different U.S. port, or a "turnback" to the port of departure. While necessary to safeguard both national security and the passengers on an aircraft or vessel, these measures are costly to the affected carriers.

To address these legitimate threats of terrorism and enhance national security, DHS and the air and vessel carrier industries, under the governing statutes and regulations, are required to take steps to alleviate the risks and protect these vital industries and the public.

2. IRTPA

On December 17, 2004, the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, was enacted. Sections 4012 and 4071 of IRTPA require DHS to issue a notice of proposed rulemaking to establish procedures to allow for pre-departure vetting of passengers onboard aircraft, and passengers and crew onboard vessels, bound for and departing from the United States. IRTPA's goal is ensuring that potential terrorists are targeted prior to departure of the aircraft or vessel.

Congress, in enacting IRTPA, expressly recognized the need to fully perform vetting of manifest information prior to the departure of commercial aircraft and vessels traveling to and from the United States. Section 4012(a)(2) of IRTPA directs DHS to issue a rule providing for the collection of passenger information from international flights to or from the United States and comparison of such information by DHS with a consolidated terrorist watch list maintained by the Federal government before departure of the aircraft. Section 4071(1) of IRTPA requires DHS to compare vessel passenger and crew information with information from the consolidated terrorist watch list before departure of a vessel bound for or departing from the United States. In accordance with IRTPA, DHS will use the consolidated terrorist watch list of known and suspected terrorists maintained by the Terrorist Screening Center (TSC) of the Department of Justice (DOJ) to vet passengers and crew members traveling on flights to and from the United States and on vessels departing from the United States.

The IRTPA mandates that DHS collect manifest information in sufficient time to ensure that the Federal government can perform security analysis and take appropriate action prior to the departure of aircraft and vessels. To meet this requirement, CBP must amend its current APIS regulations. Accordingly, CBP, under this final rule, will collect and vet required APIS data before passengers board aircraft bound for or departing from the United States. For sea travel, CBP will collect and vet passenger and crew data earlier than is permitted under existing regulations for vessels departing from the United States, in order to increase our ability to detect high-risk persons before they can perpetrate a terrorist act.

Security is an ongoing process. Through this final rule, CBP establishes new requirements for the pre-departure transmission of traveler and crew data. These requirements will serve as a layer of protection against high-risk travelers while facilitating lawful travel.

II. DISCUSSION OF THE FINAL RULE

On July 14, 2006, CBP published its NPRM in the **Federal Register** (71 FR 40035) proposing to amend APIS regulations concerning aircraft bound for and departing from the United States and vessels departing from the United States. The preamble of the proposed rule sets forth various discussions regarding the proposed amendments, the background and purpose thereof, and the proposed manifest data transmission and security vetting process. DHS recommends reading that publication for a more detailed discussion and description of the proposed amendments.

A. Air Carrier Requirements

1. Change Regarding Definition of "Departure" for Aircraft

In the NPRM, CBP proposed to change the definition of "departure" of an aircraft from "wheels-up," (e.g. the moment the landing gear is retracted into the aircraft immediately after takeoff and the aircraft is en route directly to its destination) to "push back" (e.g. the moment the aircraft leaves the gate). This definition is important because a carrier's obligation to transmit data to CBP has been tied to departure.

CBP initially believed that redefining "departure" as noted above, and instituting earlier manifest transmission time requirements tied to that definition, would resolve these problems and provide sufficient time for effective vetting of aircraft passengers prior to departure. Thus, CBP proposed that "departure" for aircraft should be defined to occur the moment the aircraft pushes back from the gate, a point in the process closely proximate to the moment when the doors are closed on the aircraft. CBP subsequently determined, however, that some flights covered by the APIS regulations never "push back" from a gate prior to departure. Therefore, CBP is not redefining "departure" in this final rule; instead, CBP is adopting "securing of the aircraft," or the moment the aircraft's doors are closed and secured for flight, as the touchstone for transmitting information to CBP. *See* § 122.49a(a).

2. Manifest Transmission Options

The proposed rule explains some of the security risks of high-risk and potentially high-risk passengers boarding an aircraft before they have been fully vetted. Such a passenger might have the opportunity to plant or retrieve a disassembled improvised explosive device or other weapon, the detonation of which could have grave consequences in loss of life, damage to aircraft and airport infra-

structure, and economic harm to the airline industry and the U.S. and world economies in general. Once on board, a terrorist or terrorists could attempt to hijack or otherwise take over the aircraft with potentially devastating effect. To address this risk, the NPRM proposed a system that would enable CBP to prevent the boarding of a high-risk passenger, while providing options for air carriers to transmit manifest information in a manner suited to their operations.

The NPRM proposed three options for transmitting required manifest data, two that employ an interactive process and one employing a non-interactive process: (1) transmitting complete manifests in batch form no later than 60minutes prior to departure of the aircraft (APIS interactive batch or APIS 60); (2) transmitting passenger data as each passenger checks in for the flight, up to but no later than 15 minutes prior to departure (APIS interactive Quick Query or AQQ); and (3) transmitting passenger manifests in batch form no later than 60 minutes prior to departure by means of a non-interactive method (APIS 60 "non-interactive")[2]. These three options remain in the final rule with modification concerning the timing of transmissions. CBP has changed the timing for transmission of passenger data to require transmission of APIS batch submissions – both interactive and non-interactive – no later than 30 minutes prior to the securing of the aircraft doors, and the transmission of data by APIS AQQ up until the time the aircraft doors are secured by flight crew. (Accordingly, APIS 60 is now referred to as APIS 30 for both interactive and non-interactive batch options). CBP determined that the change from 60 minutes to 30 is possible as a result of system improvements developed during the period of heightened alert after the August 2006 failed London bombing plot.

Although the APIS regulations, under this final rule, will require transmission of passenger manifest data for air carriers no later than 30 minutes before securing the aircraft's doors for batch transmissions, and up to the time the aircraft's doors are secured for AQQ transmissions, CBP also encourages air carriers to transmit manifest information, if available, as soon as possible and up to 72 hours before the scheduled flight. While this early transmission is not mandatory under this final rule, early transmission would provide greater flexibility to CBP in vetting the information. This timing also is consistent with the timing under consideration by TSA in the development of its Secure Flight program. At their discretion, carriers could begin making transmissions up to 72 hours prior to sched-

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[2] As discussed in the proposed rule, carriers might elect not to employ an interactive method because of the cost of modifying their transmission systems or because their particular operations are not well suited to interactive communication. Such carriers are typically unscheduled air carrier operators, such as seasonal charters, air taxis, and air ambulances, that currently employ eAPIS (Internet method) for manifest data transmission.)

uled departure under this final rule, which would –if the 72-hour requirement in the Secure Flight rule becomes final – allow carriers to avoid making a second set of system adjustments to comply with the Secure Flight program's second phase pertaining to international flights. Advance transmissions will enable earlier vetting by CBP and earlier issuance of boarding passes by carriers if warranted by vetting results, relieving the pressure that a high volume of later-transmitted data could have on the carriers' operations. DHS believes that earlier transmissions, though not required, would be to the carriers' advantage and encourages carriers to adopt it as a best business practice. TSA has published a proposed rule for the Secure Flight program in this edition of the **Federal Register**.

The two interactive transmission options allow carriers to electronically receive return messages from CBP in real time. This is an improvement over the current APIS manifest transmission process, in which CBP's communications with carriers are by telephone or email. These real-time return messages can be sent to the carrier within seconds (in AQQ) or within a minute or two (in batch transmission) of the CBP system's receipt of passenger manifests or passenger manifest data. Under the AQQ option, return messages may be received at the carrier's check-in counter.

Either interactive option will require a modification to a participating carrier's electronic transmission system. Therefore, before commencing operation of the interactive system and transmitting manifest information in accordance with either interactive option, a carrier must be certified by CBP, i.e., CBP will test the carrier's system and certify it as presently capable of operating as required. (CBP notes that in the event of a system outage, carriers would use an alternative communication procedure, regardless of which manifest transmission option the carrier employed.)

Under this final rule, carriers choosing not to employ one of the interactive transmission options will transmit passenger manifests in batch form no later than 30 minutes prior to securing the doors by means of a non-interactive method. This option is now referred to as the "APIS 30 non-interactive" option. Because these carriers do not have to modify their transmission systems, they will not require CBP certification.

The interactive options are likely to be adopted by large carriers and most of these carriers are expected to employ the AQQ option (or both AQQ and APIS interactive batch).[3] Small carriers that transport significantly fewer international air passengers are likely to use the APIS 30 non-interactive option.

The manifest transmission and security vetting process set forth in the NPRM has been modified in this final rule, in part to reflect a

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[3] Large carriers are responsible for transporting over 95% of all international air passengers involving arrivals at or departures from a U.S. port.

more specific description of the various steps involved and to show more precisely the roles of DHS's component agencies CBP and TSA, as the government assumes the vetting function for APIS purposes (currently performed by the air carriers). We note that the watch list vetting process for international flights, in which CBP currently plays a major role under existing APIS regulations, will be assumed eventually by TSA, while, after this transition, CBP will continue to require complete APIS transmissions by applicable deadlines to support its traditional customs, immigration, and border enforcement/security purposes. (TSA's role as a partner in this APIS process under this final rule should not be confused with TSA's Secure Flight program, now in development, for vetting domestic flights and for assuming, at a later time, the vetting function for international flights.)

The APIS data transmission/security vetting process under this final rule is a joint CBP/TSA operation, since it combines data collection under the CBP APIS regulations through the CBP system; initial, automatic vetting of data by the CBP system; and the further, manual vetting by TSA analysts of data related to passengers identified as high-risk ("not-cleared") during initial vetting. TSA is assisted in the further vetting process by the TSC and, in some circumstances, by other Federal security/law enforcement agencies, such as the Federal Bureau of Investigation (FBI). The process involves the air carrier's transmission of passenger APIS data to the CBP system no later than a specific deadline prior to departure as specified in the final rule (but, as discussed above, transmission of data as early as 72 hours prior to scheduled departure is encouraged as a best business practice). The process also involves initial, automated vetting of the data against the No-Fly and Selectee watch lists by the CBP system, and a quick response by the CBP system, sending the initial vetting result for each passenger to the carrier as either a "cleared, "not-cleared," or "selectee" message. Together, the No-Fly and Selectee watch lists contain data on known and suspected terrorists, and persons involved in, and suspected of involvement in, terrorist activities. Passenger data that matches or possibly matches data on the No-Fly list will generate a "not-cleared" response from the CBP system. An inadequate passenger record of transmitted APIS data that cannot be properly vetted will also generate a "not-cleared" response. Passenger data that matches or possibly matches data on the Selectee watch list will generate a "selectee" response from the CBP system.

The message returned to the carrier by the CBP system, upon completion of the initial vetting, determines what action the carrier will take with respect to each passenger: the carrier will not issue a boarding pass to, or board, any passenger generating a "not-cleared" instruction; the carrier will identify a "selectee" passenger for secondary screening (typically, a further examination of the passenger's

person and/or baggage), in accordance with applicable TSA requirements; and the carrier will be required to retransmit corrected data or transmit new data relative to a passenger generating a "not-cleared" instruction due to incomplete/inadequate data. A "selectee" passenger is issued a boarding pass with an instruction that secondary screening is required.

CBP then forwards the data related to a passenger generating a "not-cleared" response to TSA for further analysis to confirm matches and resolve false positives. At the same time, the carrier will immediately contact TSA to seek resolution of the "not-cleared" message by providing additional information, if necessary. Where the further vetting of "not-cleared" passengers results in such passengers being cleared for boarding or in being identified instead as "selectees," TSA will contact the carrier with appropriate notification.

(a) Vetting response messages and secondary screening of "selectee" passengers

This final rule modifies the proposed rule to specify that a "selectee" vetting result also will be sent to the carriers by the CBP system regardless of the transmission option chosen by the carrier and that, in accordance with applicable TSA requirements, "selectee" passengers will be subject to secondary screening before entering the secure area.

(b) Connecting passengers

Unlike the proposed rule, the regulatory texts of this final rule include a reference to connecting passengers with boarding passes whose APIS data has not been collected by the responsible carrier and vetted by the CBP system when they arrive at the connecting airport. The applicable provisions of the regulation (the interactive batch and AQQ provisions), as amended in this final rule, specify that carriers must collect all required APIS data, at the gate or other suitable place, and await appropriate vetting results ("cleared" or "selectee") before boarding these passengers (validation also occurs as carriers will either swipe the travel document or personally observe it at the gate). This is the only instance under the APIS process where a carrier is allowed to issue a boarding pass to a passenger, or have a boarding pass issued to a passenger by another carrier it has made arrangements with concerning connecting passengers, for an APIS-covered flight without first having received an appropriate vetting result for that passenger.

Finally, where the interactive batch transmission option is employed and connecting passengers with boarding passes arrive at the gate (or other suitable location) within the 30-minute window, the carrier is not required to wait 30 minutes from the time the data is

transmitted to secure the aircraft and depart, provided that appropriate vetting results are received, and validation occurs, before any connecting passenger is boarded.

(c) Effect of a "not-cleared" instruction

In the NPRM, CBP proposed that a carrier using either of the batch transmission options must not board a passenger subject to a "not-cleared" vetting instruction. This final rule changes the requirement to prohibit these carriers from issuing a boarding pass to such passengers. This change merely brings the APIS regulation into conformance with existing TSA requirements to which carriers are already subject. CBP's proposed prohibition on issuing a boarding pass to such passengers under the AQQ option also is adopted in the final rule.

Also, the NPRM's regulatory text provides that a carrier is bound by a "not-cleared" instruction, even when the further vetting process has not been concluded before departure. While this specific language does not appear in the regulatory texts of this final rule, the rule makes clear that a carrier may not issue a boarding pass to, or board, a "not-cleared" passenger unless such passenger is cleared to board during further vetting and the carrier has received that further vetting result (either a "cleared" or "selectee" instruction).

(d) "Acknowledgement" requirement

CBP initially proposed that a carrier using the AQQ option must contact CBP to acknowledge receipt of a "not-cleared" instruction. This step in the process has been determined to present an unnecessary burden on the electronic transmission/ communication process. Accordingly, CBP has removed this requirement from the final rule.

(e) "Resolution contact" requirement

In the NPRM, CBP proposed that a carrier using the AQQ transmission option, at its discretion, could seek resolution of a "not-cleared" instruction by providing additional information about a "not-cleared" passenger to assist in the further vetting of that passenger. This final rule makes this resolution contact mandatory for all carriers regardless of the transmission option chosen and specifies that the carrier must contact TSA for this purpose.

(f) Close-out message

CBP proposed that carriers, regardless of the transmission option chosen, would send to CBP, no later than 30 minutes after departure, a unique identifier for each passenger that checked-in for, but did not board, the flight for any reason (referred to as a close-out message). This final rule changes the close-out message requirement by applying it only to the interactive transmission options (batch and AQQ), specifying that transmission must be no later than 30

minutes after the securing of the aircraft, and clarifying that the carrier may identify passengers who did not board the aircraft in the close-out message by specific passenger data (such as, and typically, by use of a passenger's name).

B. Vessel Requirements

As explained in the NPRM, and mentioned previously in this final rule, CBP determined that the appropriate level of security for vessels departing from the United States is to prevent such a departure with a high-risk passenger or crew member onboard (a known or suspected terrorist identified by vetting against the terrorist watch list). This determination was based on CBP's recognition that the commercial vessel travel industry operates in a vastly different manner than does the air travel industry. Commercial vessel carriers typically allow boarding several hours (usually three to six hours) prior to departure. (CBP also notes that the definition of "departure" for commercial vessels is found in 19 CFR 4.0(g) and, for APIS purposes, is regarded to mean the moment when the vessel, with all passengers and/or cargo onboard, leaves the dock directly en route to its foreign destination.) Thus, unlike the commercial air travel environment, a manifest transmission requirement designed to prevent the possibility of a high-risk vessel-boarding likely would require extraordinary adjustments to the carriers' operations and have a significant impact on passengers. This would frustrate CBP's intent, and the purpose of various requirements governing Federal rulemaking, to achieve the agency's goal (enhanced security) without imposing an unreasonable burden on affected parties.

Thus, CBP proposed that vessel carriers transmit passenger and crew manifests for vessels departing from the United States no later than 60 minutes prior to departure. This timing requirement will remain the same in this final rule. This change will achieve the level of security sought by CBP for these vessels and thereby meet the purposes of the governing statutes, including the pre-departure vetting mandate of IRTPA. CBP noted in the NPRM that the electronic system for transmission of required vessel manifest data (arrival and departure) is now the (Internet-based) eNOA/D system of the U.S. Coast Guard (USCG). This is not an interactive system; so, unlike air carriers operating under the APIS 30 interactive or AQQ options, vessel carriers would not have to obtain system certification.

After transmission of the manifest data, the initial automated vetting process, which will involve vetting against the same terrorist watch list used for aircraft passenger vetting, CBP will issue a "not-cleared" instruction for matches, possible matches, and incomplete/inadequate passenger records or crew data. Passengers or crew who are not matched by CBP will generate "cleared" messages. Carriers will be able to prevent the boarding of "not-cleared" persons if such persons have not already boarded (due to the very early boarding al-

lowed). CBP notes that a "not-cleared" message returned to the carrier by CBP for an inadequate record would instruct the carrier to retransmit complete/ corrected data.

CBP proposed that, during further vetting (which is the same process as described previously for air carriers), passengers and crew for whom "not-cleared" instructions were generated during the initial automated vetting procedure would be either confirmed as high-risks or resolved and cleared. The proposed rule pointed out that the current requirement for batch manifest transmission – no later than 15 minutes prior to a vessel's departure from a U.S. port – does not provide enough time to fully vet passengers or crew members or allow, where necessary, for the removal of a confirmed high-risk passenger or crew member from a vessel prior to departure. The APIS 60 procedure implemented under this final rule will provide CBP the time it needs, in the great majority of cases, to fully vet "not-cleared" passengers and crew members and to remove those confirmed as high-risk from the vessel prior to departure, thereby achieving the appropriate level of security sought by CBP. CBP does not guarantee these results in every instance and much depends on the carriers' procedures for locating and de-boarding identified high-risk travelers.

For vessels departing from foreign ports destined to arrive at a U.S. port, CBP is retaining the current requirement to transmit passenger and crew arrival manifest data at least 24 hours and up to 96 hours prior to a vessel's entry at the U.S. port of arrival. This requirement is consistent with the USCG's "Notice of Arrival" (NOA) requirements. (Under 33 CFR 160.212, arriving vessel carriers transmit manifest data to the USCG to meet its NOA requirement. The data is then forwarded to CBP, permitting additional compliance with CBP's APIS requirement with the one carrier transmission.) Moreover, the threat posed by a high-risk passenger or crew member once onboard a vessel is different to some extent from that posed by a high-risk passenger onboard an aircraft. A hijacked vessel's movements over the water and its range of available targets could be more readily contained than those of an aircraft, thus reducing the opportunity for a terrorist to use the vessel as a weapon against a U.S. port or another vessel.

III. DISCUSSION OF COMMENTS

The NPRM requested comments, to be submitted on or before August 14, 2006, regarding the proposed amendments and its accompanying economic evaluation. The comment period was extended to October 12, 2006, by notice published in the **Federal Register** (71 FR 43681) on August 2, 2006. A total of 54 comments were received. CBP responds to the comments below, first to those pertaining to the proposed amendments, and second, to those pertaining to the economic evaluation.

A. Comments Pertaining to the Proposed Regulation

1. General Comments

Comment: Five commenters requested an extension of the public comment period for the NPRM.

Response: CBP extended the comment period an additional 60 days (to October 12, 2006) in a notice published in the **Federal Register** (71 FR 43681) on August 2, 2006.

Comment: One commenter expressed general disagreement with the proposed rule without noting specific issues. Several commenters generally supported the NPRM. Two commenters expressed support for the interactive APIS process. Another commenter expressed support for CBP's assuming responsibility for watch list screening and removing this responsibility from the carriers.

Response: CBP appreciates the supportive comments and is unable to respond to non-specific disagreements.

Comment: One commenter expressed appreciation for CBP continuing to provide the eAPIS transmission method for those carriers that cannot implement the interactive APIS transmission options.

Response: CBP appreciates this comment and notes that it is working to establish a web interface that will greatly improve the speed and security of APIS transmissions via eAPIS.

Comment: Three commenters urged that dialogue continue between CBP and the airline industry prior to publication of the final rule. One commenter stated that CBP should launch an aggressive outreach campaign to inform the public of the new requirements. This commenter also asked that CBP assemble an advisory group comprised of air carrier and CBP representatives to examine emerging operational issues regarding implementation of a final rule.

Response: CBP has worked extensively with the carriers and their representatives throughout this rulemaking process and is committed to continue that work to successfully and efficiently implement this final rule. This communication between CBP and the industry serves the essential purpose of an advisory group. CBP is committed to a robust public outreach effort so that impacts of the final rule are minimized and understood by the traveling public.

Comment: Numerous commenters stated that the proposed implementation date for the final rule should be extended beyond 180 days. Alternatives suggested included 300 days, one year, 18 months, and two years following publication of the final rule. Eight commenters requested that CBP refrain from implementing the final rule until the APIS program has been coordinated with TSA's Secure Flight program. Two commenters suggested a phased approach to imple-

mentation of the rule for the airline industry. One commenter asked that carriers be exempt from employing interim transmission methods until certified by CBP to use AQQ.

Response: CBP does not agree with these comments to prolong implementation of the final rule. As was recently evidenced by the increased security alert for flights departing from the United Kingdom, there is, and continues to be, a real threat to the aviation industry. CBP has been directly engaged with the air carrier industry in the continued development of the pre-departure APIS process, and many air carriers are taking steps to design their internal and external (third-party) interface processes. CBP continues to work with the air carrier industry to implement the pre-departure vetting of passengers. Carriers that cannot transition their systems to implement either of the proposed interactive options within the 180–day time frame will have to employ the non-interactive batch transmission option after the delay period's expiration. During the interim period, after publication of the final rule and before expiration of the delay period, carriers will be allowed to transmit manifest data by an available non-interactive method. CBP will eventually discontinue email transmissions by carriers, but eAPIS will continue to be available to carriers for manifest transmissions.

Regarding coordination with the Secure Flight program, the APIS pre-departure requirements under this final rule will likely be effective prior to implementation of the Secure Flight program, which remains in development at TSA. CBP, and TSA, however, have worked to make programming changes required for APIS compliance compatible, to the extent possible, with those that are anticipated to be required under Secure Flight. For example, under the process to be implemented under this final rule, CBP is encouraging, but not requiring under the rule, carriers to make transmissions of data as early as 72 hours prior to scheduled departure for early security vetting and early issuance of boarding passes if warranted, a feature expected to be part of the TSA Secure Flight program in some form. DHS encourages carriers to adopt early transmissions as a best business practice. The CBP system will be able to receive manifest data transmitted early, and CBP will perform early vetting of this data if transmitted. CBP also is encouraging, but not requiring, that carriers include in their transmissions redress numbers issued by TSA (or any other unique passenger number approved by DHS for the purpose) to facilitate identification of passengers on a TSA cleared list (of passengers who have requested redress respecting a previous false positive vetting result) that will be checked in the vetting process.

Comment: One commenter stated that the NPRM, if adopted, would infringe on First Amendment rights because the rule restricts free movement of people into the United States.

Response: CBP does not agree that the changes made in this final rule will restrict the free movement of people arriving in and departing from the United States. Requiring carriers to submit passenger information in accordance with current APIS regulations and the amendments of this final rule, which affect the timing of data transmission and process, does not deny or impede the ability of people to travel to and from the United States. These regulations, as amended by this final rule, are within CBP's authority pursuant to the Aviation Transportation Security Act of 2001, the Enhanced Border Security and Visa Entry Reform Act of 2002, and the Intelligence Reform and Terrorism Prevention Act of 2004. As stated by CBP in the 2005 APIS Final Rule (70 FR 17828), the U.S. Supreme Court has recognized that the right to travel abroad is not an absolute right and that "no government interest is more compelling than the security of the Nation." Haig v. Agee, 453 U.S. 280, 307 (1981). The Supreme Court also has stated that the government may place reasonable restrictions on the right to travel in order to protect this compelling interest. *See* id. (reminding that the "right" of international travel can be regulated within the bounds of due process); *see* also Eunique v. Powell, 302 F. 3d 971, 974 (9th Cir. 2002)(Fernandez, J.); Hutchins v. District of Columbia, 188 F. 3d 531, 537 (D.C. Cir. 1999).

In addition, a "Civil Liberties Costs and Benefits" analysis was included in the 2005 APIS Final Rule (70 FR 17847), and it concluded that the non-quantified benefits (enhanced security, increased travel) exceed the non-quantified costs (the collection of personal data that would, to some extent, deter persons from traveling) flowing from the rule. This final rule does not affect the collection of data provisions. This final rule affects only the time requirements for transmission of that data and the process by which it is collected and transmitted to the CBP system and the system communicates with the carriers to report security vetting results. CBP, without agreeing that the rule's changes impose an additional cost on travelers, submits that any increase in the deterrent impact on prospective legitimate travelers that these changes might cause would be negligible, since carriers already require international passengers to arrive at the airport early and passengers will still be able to benefit from early check-in processes. This negligible increase in non-quantifiable costs, if there is one, should be weighed against the likely increase in the non-quantifiable benefits that will derive from the timing and process changes made in this final rule: an enhanced aviation security process, with a greater ability to prevent a terrorist incident, and the resultant possible increase in passengers who appreciate a safer air travel environment. In the 2005 APIS Final Rule, CBP stated that the regulation then published was designed to enhance the ability to travel, not to restrict it. CBP believes that the security enhancement achieved in this final rule published today will like-

wise further enhance, rather than impair, the public's ability and willingness to travel.

Comment: One commenter asked how and when the public would be notified of the finalization of the rule.

Response: The publication of this final rule in the **Federal Register** is notification that the rule has been adopted as final and will become effective on [Insert date 180 days after date of publication in the **Federal Register**].

2. Comments Beyond the Scope of the Rule

Comment: Eight commenters submitted several comments on the AQQ Interactive User Guide.

Response: Comments on the user guide (now known as the "Consolidated User Guide") are beyond the scope of this rule. The APIS regulation, unlike the guide, is not designed to provide detailed and comprehensive technical specifications, guidance, or instructions for operation of the electronic transmission system. An updated guide is currently in preparation.

Comment: Four commenters stated that the Form I-94 Arrival/Departure Record should be eliminated. One commenter stated that the Form I-418 Passenger List-Crew List should be eliminated, and another recommended that the general customs declaration (CF 6059B) be eliminated.

Response: Comments on the Form I-94, Form I-418, and the general customs declaration are beyond the scope of this rule.

Comment: One commenter stated that the planned PASS card should be accepted in the air travel environment.

Response: Comments on the PASS card, the State Department's proposed passport card for travel to the United States from within the Western Hemisphere, are beyond the scope of this rule.

Comment: One commenter stated that the transit without visa (TWOV) program should be reinstated.

Response: Comments on the currently suspended TWOV program, which allowed passengers from certain designated countries to transit through the United States without a visa, are beyond the scope of this rule.

Comment: One commenter stated that International Air Transport Association (IATA) should develop a standard for transmission and sharing of AQQ messages between air carriers.

Response: The decision to share APIS data between air carriers is outside the purview of CBP's authority and beyond the scope of this

rule. While data-sharing agreements between carriers are business decisions unique to each carrier or carrier alliance, CBP acknowledges that such agreements would enhance the APIS data transmission/security clearance process, particularly with respect to connecting passengers.

Comment: Two commenters stated that air cargo manifests could not be submitted 60 minutes prior to departure without seriously disrupting cargo operations on small carriers.

Response: CBP notes that this rule does not change any requirements for submitting cargo manifests for aircraft or vessels. The rule is narrowly applicable to passenger manifests for flights arriving in and departing from the United States and passenger and crew manifests for vessels departing from the United States. Comments on other sections of the CBP regulations or any other provisions of the current APIS regulations are beyond the scope of this rule.

Comment: Six commenters requested that the final rule require air carriers to transmit to CBP only the APIS data elements that are obtainable from the machine-readable zone of the travel document presented by the passenger.

Response: The NPRM did not propose changes to the required data elements under the APIS regulations; rather, the NPRM is limited to proposed changes in the timing and manner of submission of this information to CBP. Therefore, comments regarding required APIS data elements are beyond the scope of this rule, although CBP, in this document, encourages, but does not require, carriers to include in their transmission of manifests or manifest data passenger redress numbers issued by TSA (or another unique identifier approved by DHS for the purpose) to facilitate resolution of possible matches.

Comment: One commenter asked if the proposed change regarding vessel carrier transmission of passenger and crew manifests no later than 60 minutes prior to departure would be applicable for vessels departing from foreign ports bound for the United States. This same commenter asked if APIS data could be transmitted 10 minutes prior to departure. Another commenter asked if a final rule would affect pre-clearance processing for voyages beginning in Canada and bound for the United States.

Response: As set forth in the NPRM, the proposed change to a 60-minute prior to departure requirement is applicable only for vessels departing from the United States, not for vessels departing from a foreign port bound for the United States. Comments on the vessel arrival scenario are beyond the scope of this rule. CBP nonetheless notes that for arriving vessels, CBP is retaining the requirement to

transmit passenger and crew manifest data at least 24 hours and up to 96 hours prior to a vessel entering the U.S. port of arrival.

Comment: Two commenters stated that the rulings and regulations governing the U.S. Outer Continental Shelf (OCS) and Exclusive Economic Zone (EEZ) should be completely reworked in conjunction with the USCG.

Response: Changes to the regulations and agency rulings pertaining to OCS activities and the definition of the EEZ are beyond the scope of this rule.

3. Comments from (or on behalf of) Air Carriers

Comment: One commenter requested that CBP clarify in the regulations that air carriers alone supply APIS data and be liable for its accuracy.

Response: Under the current APIS regulations (§§ 122.49a(b)(1) and 122.75a(b)(1)), commercial air carriers are responsible for transmitting APIS manifest data. In addition, the current regulations require the carriers to compare the travel document presented by a passenger with the information it is sending to CBP for the purpose of ensuring, to the extent possible in the circumstances, that the information is correct, the document appears to be valid for travel, and the person presenting the document is the one to whom it was issued (§§ 122.49a(d) and 122.75a(d)). The final rule does not change these provisions.

Comment: One commenter asked that flights of less than one hour be exempt from the rule, that flights between the United States and territories in the Caribbean be exempt, and that carriers should be able to submit a request for exemptions on certain routes. Another commenter asked that passengers on flights chartered by the Department of Defense (DOD) be exempt from the rule.

Response: CBP does not agree with these comments, and the final rule's amendments will not include exemptions for the circumstances, routes, or passengers described. However, the transmission of APIS data is not required for flights between the United States and U.S. territories and possessions. It also is noted that the APIS manifest transmission requirement does not apply to active duty U.S. military personnel traveling as passengers on DOD commercial chartered aircraft. *See* §§ 122.49a(c) and 122.75a(c).

Comment: Three commenters requested that carriers operating flights from pre-clearance locations be exempt from APIS transmission requirements for passengers that have been processed at those locations prior to entering the United States. One commenter contended that requiring APIS transmissions for these flights would be redundant.

Response: CBP disagrees with these comments. The amendments of the final rule apply to flights from pre-clearance locations. Currently, carriers departing from pre-clearance locations are required to ensure that passengers are vetted for APIS purposes. Under this final rule, carriers are required to collect and transmit all required APIS data elements in accordance with applicable provisions (for either the batch or the AQQ process), including the timing of manifest transmission and others explained further in this section.

Comment: One commenter requested that the email system currently employed to transmit APIS batch manifests be maintained until the new interactive capabilities proposed are in place.

Response: CBP has established a web application, eAPIS, which will allow submitters to upload batch manifests in lieu of an email communication. Furthermore, CBP is developing a web service through eAPIS that will afford a more automated process for manifest submissions. CBP is expecting to discontinue email transmission for APIS manifests in 2007, at which time email users can adopt the eAPIS transmission process.

Comment: Four commenters inquired about the responsibility, under a final rule, for vetting passengers against the terrorist watch list. One commenter asked for clarification on the management of the list. Two commenters asked if carriers would be responsible for checking air carrier employees against the list. Three commenters requested confirmation that, under the proposed AQQ option, the government will perform terrorist watch list vetting for the domestic portion of an international itinerary. One commenter asked for AQQ to be available to vet airline crew.

Response: Under the manifest transmission/security vetting process as implemented under this final rule, the government will perform No-Fly and Selectee watch list vetting of passengers traveling on international flights to and from the United States and of passengers and crew traveling on international voyages departing from the United States (use of the No-Fly list not being limited to aircraft vetting). The carriers will be relieved of that responsibility upon the effective date of this rule, but only with respect to those flights and voyages subject to the APIS provisions of the CBP regulations. As the government is assuming the vetting responsibility for APIS purposes, carrier management of these watch lists (No-Fly and Selectee) for APIS purposes is beyond the scope of the rule. However, carriers remain subject to any applicable TSA requirements to check pertinent watch lists, such as a watch list for vetting carrier employees; management of such watch lists also is beyond the scope of this rule.

As noted previously, CBP is designing its systems to align, to the extent possible, international APIS security vetting requirements

and process with TSA's anticipated domestic Secure Flight program security vetting requirements and process.

Regarding the vetting of domestic flights, the APIS regulations cover international flights (i.e., flights to and from the United States and, relative to aircraft crew and non-crew members only, flights continuing within (after arrival from a foreign port) and over-flying the United States). Therefore, the APIS regulations do not cover the domestic portion of an international flight from one U.S. port to another before departure to a foreign port, and this final rule does not concern the vetting of flights continuing within the United States, a domestic leg, as APIS data is required only for crew and non-crew, not passengers, on those flights.

Finally, the amendments of the final rule do not affect the APIS regulations concerning air carrier manifest transmissions for crew and non-crew members; the AQQ process is for passenger manifest data transmission. Under applicable APIS regulations, the carrier must transmit crew manifests no later than 60 minutes prior to departure (wheels-up) (§§ 122.49b and 122.75b).

Comment: Numerous comments concerned the definition of "departure" for aircraft. Fourteen commenters stated that the definition of departure should remain "wheels-up," as set forth in the current regulation. One commenter agreed with the definition of departure as "push-back from the gate." A few commenters pointed out that not all carrier operations involve aircraft pushing back from a gate.

Response: CBP has reconsidered the matter and is retaining the current definition of departure (wheels-up) in the regulation. However, since the commenters' objection to the proposed definition change relates to the timing of manifest transmissions, CBP notes additionally that such transmissions under the final rule will be tied to the moment the aircraft's doors are closed and secured for flight (referred to as the "securing of the aircraft"), a time closely proximate to push-back from the gate but applicable to all aircraft, including smaller carriers whose operations do not involve a departure gate. Consequently, the final rule will not revise the definition of "departure" as proposed but will add the definition of "securing the aircraft." *See* § 122.49a(a).

Thus, as explained in further detail in comment responses below dealing with the proposed rule's manifest transmission time requirements, the final rule will require batch passenger arrival and departure manifest transmissions no later than 30 minutes prior to the securing of the aircraft. For the AQQ arrival and departure scenarios, passenger manifest data transmissions are allowed up to the securing of the aircraft. The retained definition of "departure" as wheels-up continues to apply to transmissions of crew and non-crew manifests.

Comment: Numerous comments concerned the NPRM's 60-minute APIS batch transmission option. Many commenters suggested that the proposed requirement to transmit batch information 60 minutes prior to departure (push-back) be reduced to something less than 60 minutes, stating primarily that manifests may not be complete at 60 minutes out and that this option places an unreasonable burden on carrier operations. One commenter stated that this option would be especially burdensome where passengers already have undergone a security background check. Recommendations for an alternative time requirement included 30 minutes and 15 minutes prior to departure, maintaining the current regulation's requirements (15 minutes after wheels-up departure for arriving flights and no later than 15 minutes prior to wheels-up departure for departing flights), and requiring transmission when a flight is downloaded to the carrier's departure control system.

Response: Based on lessons learned during the aftermath of the exposed bomb plot in London, and the consequent technical and operational adjustments made in the manifest transmission and security vetting processes during that time which allowed CBP to complete the process more quickly, CBP has determined that the proposed 60-minute time requirement can be reduced without sacrificing security effectiveness (a CBP-imposed pre-condition to any reduction). Thus, for batch manifest transmissions, for flights en route to (arriving flights) and departing from (departing flights) the United States, CBP is modifying the proposal in the final rule to provide that carriers must transmit batch passenger manifests no later than 30 minutes prior to the securing of the aircraft. *See* §§ 122.49a(b)(2) and 122.75a(b)(2) and the immediately previous comment and response regarding the definition of "departure" for aircraft.

This manifest transmission timing change allows carriers to make transmissions later in the process (aircraft loading/boarding/departure process) than was proposed in the NPRM, and therefore calls upon carriers to take into consideration that the carrier may not receive the results of vetting information transmitted to CBP close to the 30-minute deadline prior to the aircraft's scheduled departure. This could cause aircraft departure delays or departures that leave behind one or more customers (passengers generating "not-cleared" initial vetting responses) who are not permitted to board the aircraft because of a not-cleared response or inability to complete screening. While CBP believes that 30 minutes is sufficient time for completion of the full vetting process most of the time, it cannot guarantee this result in every instance. Carriers also should consider that under current TSA requirements and this final rule, carriers must contact TSA to seek resolution of "not-cleared" vetting results. Transmitting manifests as late as 30 minutes prior to securing the aircraft will leave little time for this required task. CBP,

therefore, encourages air carriers to submit manifest information as early as possible to ensure timely completion of vetting prior to the aircraft's scheduled departure.

CBP expects that carriers will exercise sound business judgment regarding when to transmit manifests. Sound judgment that lessens risk will have a positive impact on the process, making it more effective for all concerned. In this regard, the final rule also makes clear that multiple batch transmissions are permitted and that a carrier may employ both the APIS batch process for early transmissions and the AQQ process for transmissions within the 30-minute window.

In addition, carriers have requested that CBP allow manifest data transmissions as early as 72 hours prior to departure. CBP agrees that such early transmissions, which DHS encourages carriers to adopt as a best business practice, would generate early vetting results, subject to later validation by the carrier (swiping of passport or other travel document or examination of document by carrier personnel), and allow early issuance of boarding passes, resulting in fewer passengers to be vetted within the 30-minute window and a reduced risk of passengers missing their flights while further vetting is conducted. With respect to early transmissions, as noted previously, TSA is developing the Secure Flight program to be administered and enforced by TSA and is preparing a proposed rule for implementation of the program that may mandate carrier transmission of certain data pertaining to passengers as early as 72 hours prior to scheduled departure for security vetting purposes. With the best interest of the traveling public and the industry in mind, DHS encourages carriers to begin development of a process for making early transmissions to enhance later alignment between the APIS and Secure Flight programs; once Secure Flight is operational, TSA will eventually assume the complete terrorist vetting function for both international and domestic flights, while, after this transition, CBP will continue to require complete APIS transmissions by applicable deadlines for purposes of its traditional customs, immigration, and border enforcement/security functions. DHS is committed to working with the carriers to ensure that any processes developed include carrier input and take into consideration the important interests of the public and the carrier industry. CBP notes that it has dedicated a team of officers (operating over the past two years) to work with various carriers, carrier industry partners, and TSA in the development of coordinated processes that will benefit all parties.

CBP acknowledges that some carriers, typically smaller carriers that employ the batch transmission process (either interactive or non-interactive), may not be able to make early transmissions. CBP is confident that the transmission/security vetting process will work adequately for these carriers most of the time and that the intended security goals will be achieved.

Further to the matter of security effectiveness, CBP has determined that the batch transmission provisions of the APIS regulation should mirror current TSA requirements that prohibit carriers from issuing boarding passes to passengers who have not been either "cleared" for boarding or designated as "selectees;" thus, the batch transmission provisions of the final rule are modified accordingly to require that carriers must not issue boarding passes to passengers generating a "not-cleared" vetting response (the converse being that carriers may issue boarding passes only to "cleared" and "selectee" passengers). *See* §§ 122.49a(b)(1)(ii)(A) and (B) and 122.75a(b)(1)(ii)(A) and (B). The NPRM proposed that carriers using either of the batch manifest transmission options preclude a passenger from boarding the aircraft, without prohibiting issuance of the boarding pass, if not cleared by the CBP system. This change merely brings the APIS regulation into conformance with existing TSA requirements to which carriers are already subject.

Finally, regarding passengers who have already undergone a security background check, presumably conducted by an air carrier or by another private entity on the carrier's behalf, CBP cannot accept a carrier's privately conducted background investigation in lieu of the vetting of APIS data against government established and maintained watch lists.

Comment: Fourteen commenters stated that the proposed requirement that carriers must transmit APIS passenger data via the AQQ process by 15 minutes prior to aircraft departure (push-back) is unnecessary as long as the passengers receive security clearance prior to boarding the aircraft.

Response: Under the proposed rule, carriers using AQQ would be required to transmit individual passenger data up to, but no later than, 15 minutes prior to departure (push-back) and to not issue a boarding pass to any passenger not cleared by the CBP system. The final rule retains the latter requirement prohibiting issuance of the boarding pass; this prohibition mirrors current TSA requirements that prohibit carriers from issuing boarding passes to passengers until the passenger names have been compared against the applicable terrorist watch lists and cleared for boarding. However, CBP agrees with the commenters that the 15-minute transmission deadline is unnecessary because air carriers are prohibited from issuing a boarding pass until the passenger is cleared and the AQQ process is capable of producing an initial vetting response within seconds of the transmission of data to the CBP system. Therefore, CBP is eliminating the proposed 15-minute time frame from the final rule's AQQ provision; the final rule permits carriers using AQQ to transmit APIS data up to the securing of the aircraft, i.e., the moment at which the aircraft's doors are closed and secured for flight. *See* §§ 122.49a(b)(2) and 122.75a(b)(2) below. DHS has determined that

this procedure still accomplishes its security goal to keep high-risk passengers from boarding an aircraft and to prevent the baggage of such passengers from being loaded onto the aircraft.

CBP again notes that this transmission time change for the AQQ process calls upon the carriers to take into consideration the risk associated with late transmissions (those made just before or otherwise too close to the deadline for completion of further vetting of "not-cleared" passengers) and to exercise sound business judgment to avoid having to face a choice between delayed aircraft departures or departures that leave behind one or more customers (passengers generating "not-cleared" vetting responses) who were not permitted to board the aircraft.

Transmissions of data as early as 72 hours prior to scheduled departure, which carriers have requested and CBP encourages as a best business practice, would generate early vetting results, subject to later validation by the carrier (swiping of passport or other travel document or examination of document by carrier personnel), fewer passengers to be vetted later in the process, and a reduced risk of passengers missing their flights while further vetting is conducted. CBP encourages carriers to begin development of a process for making early transmissions to enhance later alignment between the APIS and Secure Flight programs. Once Secure Flight becomes operational, TSA will eventually assume the complete pre-departure terrorist vetting function for both international and domestic flights, while, after this transition, CBP will continue to require complete APIS transmissions by applicable deadlines for purposes of its traditional customs, immigration, and border enforcement/security functions.

Comment: Eight commenters asked about the steps or processes that would follow a carrier's receipt of a "not-cleared" message from CBP. One commenter stated that passengers receiving an initial "not-cleared" message must be processed promptly. Another stated that "false positives" must be minimized. A third commenter stated that most passengers generating "not-cleared" messages are innocent.

Response: Under the final rule's (interactive and non-interactive) batch manifest transmission and AQQ transmission options, a carrier may not issue a boarding pass to a passenger whose data generates a "not-cleared" response from the CBP system. Put another way, a carrier must not issue a boarding pass to a passenger unless it receives a "cleared" or "selectee" vetting response from the CBP system. In the latter instance, a "selectee" passenger may board the aircraft after successfully undergoing secondary screening (such as searching a passenger's baggage or person manually or otherwise), in accordance with applicable TSA requirements.

Additionally, the carrier may not load onto the aircraft, or must remove if already loaded, the baggage of a "not-cleared" passenger. A carrier may not, under any circumstances, transport baggage belonging to a passenger who has not been cleared. A carrier must contact TSA to seek resolution of "not-cleared" responses by providing additional information about the "not-cleared" passenger, if necessary (meaning if TSA requires additional information that the carrier can provide to complete further vetting). A requirement to acknowledge receipt of a "not-cleared" response by sending a return message to the CBP system was proposed for the AQQ option. CBP has decided to delete that step from the process in this final rule. The "resolution contact" requirement, which was discretionary in the NPRM for the AQQ option but is now mandatory for all transmission options, has been modified to mirror existing TSA requirements. While these changes regarding the resolution contact requirement (making it mandatory and also applicable to interactive and non-interactive batch users) represent a change from what was proposed, the final rule merely conforms the APIS regulation with the existing TSA requirements to which carriers are already subject. *See* §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C).

In addition, TSA will contact the carrier to clear a "not-cleared" passenger for boarding, or to downgrade such a passenger to "selectee" status, should the clearance or downgrade be warranted by the results of the further vetting analysis. However, should there be insufficient time to complete further vetting, the carrier is bound by the "not-cleared" instruction. Carriers are expected to exercise sound business judgment in implementing the steps or processes needed to ensure compliance with the amendments of this final rule and applicable TSA requirements regarding "not-cleared" passengers and their baggage. TSA will not contact the carrier to confirm a "not-cleared" vetting result (but will be able to inform the carrier about the status of a "not-cleared" passenger during the resolution communication).

CBP assures the commenters that steps are being taken to minimize false positives, but notes that these can never be eliminated entirely. The further vetting process and the requirement that carriers contact TSA to resolve a "not-cleared" vetting response are two measures designed to clear false positives. CBP also will have real-time access to the list maintained by TSA of people who have obtained redress through TSA's redress process; an automated check against the list could clear a passenger initially identified as "not-cleared" and preempt the CBP system from issuing the "not-cleared" instruction. The TSA redress list will be used to check every passenger who generates a "not-cleared" response during initial vetting, whether or not the "not-cleared" passenger has a redress number. Redress numbers are issued by TSA to passengers who request redress for a false

positive vetting result. CBP strongly encourages (but is not requiring under this final rule) carriers to transmit redress numbers (or any other unique identifier approved by DHS for that purpose) within their APIS transmissions if such numbers are available. DHS has recently published a notice announcing a department-wide redress policy that will be applicable to pre-departure passenger vetting as well as other watch list vetting activities (http://www.dhs.gov/trip). DHS's "Traveler Redress Inquiry Program" (TRIP) is a voluntary program that provides a one-stop mechanism to request redress for passengers who believe that they were erroneously denied or delayed boarding due to DHS security screening, denied or delayed entry into or departure from the United States at a port of entry, or identified for secondary screening. TRIP will provide traveler redress intake and processing support while working with relevant DHS components to review and respond to requests for redress. TRIP applies also to screening at seaports.

Finally, regarding false positives, CBP recommends that carriers minimize instances of manifest data transmissions too close to the transmission deadline (30 minutes prior to securing the aircraft or, for AQQ users, the securing of the aircraft) to allow for completion of the further vetting process. As stated previously, CBP believes that 30 minutes is sufficient time to complete the vetting process in most cases for batch transmissions but is unable to guarantee that result in every instance. The CBP system may not be able to complete further vetting when AQQ users transmit data too close in time to the securing of the aircraft.

Comment: Four commenters asked if a carrier would be required to wait 60 minutes before departing where there was a passenger change subsequent to the carrier's submission of an eAPIS report.

Response: Under the final rule, if a carrier using eAPIS (Internet process) or any batch manifest transmission process requiring transmission no later than 30 minutes prior to securing the aircraft has a passenger change subsequent to making a batch transmission, the carrier will be required to transmit the change no later than 30 minutes prior to securing the aircraft (updating a passenger manifest prior to the deadline is permitted). Should a "cleared" response be received for that passenger within that 30-minute window, the carrier could then issue the boarding pass and board the cleared passenger; the aircraft could depart without waiting for the 30-minute window to elapse.

Comment: Six commenters requested that carriers be able to select the method of APIS transmission (batch or AQQ) on a per-flight basis to allow for situations where AQQ is not practical.

Response: A carrier may utilize either or both of the options on a per-flight or per-manifest basis according to the carrier's operational

needs. CBP recognizes that some carriers may want to employ the batch process for early transmissions and then change to individual passenger, AQQ transmission within the 30-minute window. Any combination is acceptable, provided that the time and other requirements for each option are met.

Comment: Ten commenters expressed concerns regarding the proposed rule's requirement that carriers making transmissions under the AQQ option are precluded from issuing boarding passes to passengers until they are cleared by the CBP system.

Response: As mentioned (and cited) previously, current TSA requirements preclude carriers from issuing a boarding pass for any travelers who are not cleared against the No-Fly terrorist watch list. Thus, for originating passengers boarding flights en route to or departing from the United States, the AQQ vetting process under the final rule (as well as the final rule's batch transmission options) mirrors the current process with which the carriers already comply. DHS has determined that this is the most effective way, under either the batch or AQQ transmission processes, to ensure that passengers who are not cleared by CBP are prevented from posing a threat to the aircraft.

Comment: One commenter stated that, under the AQQ process, the initial vetting response must be sent immediately if it is to be awaited by the carrier as each passenger checks in.

Response: Regarding the initial (automated) vetting response under AQQ, CBP agrees with the commenters and assures carriers that the AQQ process will provide a "real-time" vetting result, which normally will be sent within seconds of receipt of the data.

Comment: One commenter requested that CBP eliminate the requirement to return a message to CBP confirming the receipt of a "not-cleared" message.

Response: CBP has removed the "acknowledgement" requirement from the regulatory texts in this final rule. CBP's technical experts recommended removal due to the burden on the electronic transmission/communication process. *See* amended § 122.49a(b)(ii)(B).

Comment: Nine commenters stated that through-checked passengers in transit (connecting passengers) will be negatively affected by the proposed rule's AQQ requirement that APIS information be sent at check-in. Another commenter stated that CBP should eliminate provisional boarding passes as discussed in the NPRM regarding connecting passengers.

Response: CBP understands that, under some circumstances, connecting passengers may be disadvantaged to some extent under the

rule as proposed and adopted; however, CBP has designed the process to minimize occurrences of delayed or missed flights. The comments pertain to a circumstance where connecting passengers arrive at the airport (from which the APIS-regulated connecting flight departs directly to or from the United States), already in possession of boarding passes for that flight, despite the fact that the APIS-responsible carrier has not collected required APIS data for those passengers and they have not yet been cleared by the CBP system. This circumstance contrasts with the ordinary AQQ transmission/security vetting procedure (applicable to originating passengers), as proposed in the NPRM, where the carrier transmits passenger data to the CBP system as passengers check in, and the CBP system responds in seconds with a vetting result. Under the proposed AQQ provision, vetting by the CBP system and the system's return of a "cleared" response to the carrier precede issuance of a boarding pass.

In the NPRM, CBP explained that it would consider boarding passes issued to connecting passengers in the described circumstance as provisional. Carriers would be required to obtain required data from these passengers, in a manner compatible with their procedures/operations, and transmit such data to the CBP system as required under the regulation. Thus, under the final rule, a carrier must provide APIS data upon the connecting passengers' arrival at the gate, or some other suitable place designated by the carrier, so long as either a "cleared" or "selectee" message is received prior to boarding the passengers. (As the carrier receives from the CBP system a "cleared" or "selectee" response for a connecting passenger, it may then board that passenger.) The applicable AQQ provision of the regulation is modified to clarify this procedure for connecting passengers with previously issued boarding passes, and the procedure has been added to the interactive batch transmission provision. *See* §§ 122.49a(b)(1)(ii)(B) and (C) and 122.75a(b)(1)(ii)(B) and (C). CBP notes that this procedure would not apply for connecting passengers who do not yet have boarding passes for the APIS-regulated flight to or from the United States. These passengers would have to report to the carrier's check-in/reservation counter (or other suitable location of the carrier's choosing) for collection of APIS data and issuance of boarding passes. Also, the non-interactive batch transmission option, employed by carriers that are not likely to have connecting flight operations, does not provide for this procedure to collect and transmit passenger data at the gate for connecting passengers. Any such passengers will have to follow the instructions of the carrier (such as, perhaps, reporting to the carrier's check-in/reservation counter).

The provisional boarding pass concept is also applied to any instance where a carrier issues a boarding pass before validating the APIS data, i.e., before the passenger's passport or other travel document is swiped through a machine reader for verification or the

travel document data is manually verified by carrier personnel. Until this is done, the carrier may not allow the passenger to board the aircraft. If the air carrier determines during validation that a passenger's data is different from what was used to obtain the boarding pass, the newly presented data must be transmitted to the CBP system for vetting and clearance.

Comment: One commenter asked why any passengers would be delayed and have to be rerouted if the carrier is using AQQ. Another commenter asked for clarification of why, in some instances, CBP would not be able to complete the vetting analysis and clear a passenger prior to departure (push-back).

Response: Under the AQQ process, a "not-cleared" response will be provided to the carrier within seconds of transmission of data, but the resolution of a "not-cleared" result will require further review of the data to confirm the result or identify a false positive. This will take additional time but could lead to a "not-cleared" passenger being cleared for issuance of a boarding pass (possibly as a "selectee") in time to make the flight. In the simple case, the vetting result will be produced more quickly than it will in a more complex case. Thus, where the carrier transmits manifest data to the CBP system shortly before the securing of the aircraft, there may not be sufficient time to obtain a further vetting result for a passenger generating a "not-cleared" response during the initial vetting process. (This also could happen with batch transmissions, although to a lesser degree of likelihood (compared to a last-minute AQQ transmission) because the deadline for batch transmissions is 30 minutes prior to the securing of the aircraft.) The carrier thus may face a choice between delaying the flight or departing without the "not-cleared" passenger. (Such a passenger could be rebooked but only if cleared during further vetting). It is expected that carriers will exercise sound business judgment in their manifest data transmission process and take this situation into account (for both batch and AQQ transmissions).

Comment: Seven commenters requested that carriers should be able to make AQQ APIS transmissions and obtain passenger clearances well in advance of departure (push-back), with some recommending as much as four days in advance.

Response: CBP agrees that carriers should be able to make APIS manifest data transmissions well in advance of the APIS regulations' transmission time frames and notes that nothing in the regulations precludes a carrier from doing so. As noted in a previous comment response, the CBP system has the ability to accept certain passenger data up to 72 hours in advance, including APIS data. Such very early transmissions would be more likely under either of the batch transmission options, as AQQ transmissions are more likely to occur in closer proximity to the time or day of the flight. However, as men-

tioned previously, any early "cleared" vetting result obtained in this process is considered provisional by CBP until the passport or other travel document is validated, either by the swiping of the travel document's machine-readable zone or through manual verification by the carrier. Successful validation by the carrier of any passenger holding a provisional boarding pass as herein described (i.e., based on early data transmission and early receipt of a "cleared" response) requires that the APIS passenger data checked during validation be identical to the passenger data transmitted early to obtain the boarding pass. Where the data transmitted differs from data presented at validation, the carrier must transmit the new data and obtain vetting clearance on that data. Until that occurs, the carrier may not allow the passenger to board.

As stated in a previous comment response, CBP encourages carriers to develop a process for making early transmissions.

Comment: One commenter asked for clarification on the check-in process when some passengers use kiosks or remote check-in (Internet), or when check-in occurs days in advance of arrival in the United States. Three commenters stated that the final rule must accommodate self-service check-in schemes.

Response: The check-in process begins when the passenger initiates a request for a boarding pass to a flight directly bound for or departing from the United States and can occur at the airport check-in counter, an airport kiosk, or an online web site within 24 hours of scheduled departure; carriers can issue boarding passes no earlier than 24 hours prior to scheduled departure and only to passengers who have been cleared by the CBP system. The final rule does not preclude passengers from continuing to use any of these check-in processes. However, regardless of the manner by which the passenger checks in, the carrier's obligation under the final rule is to transmit manifests containing required data (batch process), or transmit required manifest data for individual passengers (AQQ), by the required time, obtain a "cleared" result from the CBP system before issuing a boarding pass to passengers, and to validate the passenger's data before boarding if validation did not occur previously. The carriers are expected to exercise their sound business judgment to meet these requirements in a manner that best suits their operations and avoids departure delays or other problems. Carriers must continue to comply with TSA requirements as well.

Comment: Several comments concerned the close-out message that the proposed rule would require air carriers to transmit no later than 30 minutes after the securing of the aircraft. One commenter asked if the final rule will require air carriers to send the names of passengers who were previously cleared but were then off-loaded as a result of extenuating circumstances. Four commenters requested clarification regarding the use of a unique identifier for passengers.

Two commenters suggested that the regulation be amended to provide the carriers the option of sending either a close-out message listing passengers who did not board the aircraft or a cancellation message for each individual passenger not boarded. Three commenters indicated their preference for sending a cancellation message, stating that there is no need for departure close-out messages. One commenter requested that a close-out message be transmitted 45 minutes after departure (push-back) rather than 30 minutes as proposed. One commenter asked if a carrier using eAPIS would have to submit a final passenger manifest (close-out message).

Response: Under the final rule, an air carrier using one of the interactive options must send a close-out message identifying passengers who were previously cleared for the flight by the CBP system but then, for any reason, did not board the aircraft and make the flight (i.e., were not onboard the airborne aircraft). In the close-out message, the carrier may report, by use of a unique identifier or specific passenger data (such as full name), either all the passengers boarded and making the flight or only the checked-in passengers who did not board and make the flight. The final rule amends the applicable texts to clarify this option. *See* §§ 122.49a(b)(1)(ii)(B) and (C) and 122.75a(b)(1)(ii)(B) and (C) of this rule. CBP uses the unique identifier or personal data contained in the close-out message to manage the dynamic building of an APIS manifest. The designation of the unique identifier is within the sole discretion of the carrier. The close-out message will not contain any new information, even where passenger data (name) is used instead of a unique identifier. CBP recognizes that carriers using eAPIS will not be able to transmit a unique identifier and thus has amended the non-interactive batch transmission provision of the rule to remove this requirement. *See* §§ 122.49a(b)(1)(ii)(A) and 122.75a(b)(1)(ii)(A).

CBP disagrees that the close-out message is unnecessary, as the close-out message provides pieces of information that a cancellation message does not, including the individual passengers onboard the aircraft and the total passengers onboard the aircraft. Therefore, under the final rule, a carrier may choose either message for notifying the CBP system that a passenger did not board an aircraft, provided that a carrier sending a cancellation message for that purpose also sends a close-out message for the flight. Also, CBP disagrees that the proposed timing of the close-out message should be changed. The time frames set forth in the final rule ensure that close-out messages are received and processed for short-duration flights prior to their arrival in the United States.

A carrier will not be in compliance with the regulation should a flight arrive in the United States with a passenger onboard who is not on the flight manifest or without a passenger onboard who is on the flight manifest. The close-out message will be similarly evaluated for accuracy, and the carrier will be found in non-compliance for

inaccuracies of this kind. The same applies for flights departing from the United States upon their arrival at the foreign port of destination.

Comment: One commenter asked if a carrier would be able to delete a passenger from a manifest submitted early.

Response: At this time, a carrier cannot delete a passenger from a manifest previously submitted through eAPIS.

Comment: Three commenters asked if an on-demand or charter air carrier would be required to receive an "all clear" message from CBP prior to departure. One of these commenters asked how this message would be communicated and whether CBP will issue a "not-cleared" message to a third-party provider. Another of these commenters asked if the eAPIS process would accept a separate point of contact for each manifest submitted.

Response: Regarding vetting result messages using the non-interactive batch process (eAPIS), a confirmation message will be returned to the sender, provided that the sender's address is recorded with the CBP system. The CBP system will provide only the status of "not-cleared" and "selectee" passengers; "cleared" passenger results will not be indicated. The absence of a "not-cleared" message in the confirmation response, therefore, should be interpreted as a "cleared" message for all passengers, and the carrier would be free to depart with all passengers onboard. A "selectee" response would require the carrier or TSA (or, in some circumstances, an appropriate foreign authority) to subject the passenger to secondary screening, under applicable TSA requirements, but normally would not impede departure. The person identified as the primary point of contact in a carrier's eAPIS account will receive the message confirmation for each manifest that is submitted. CBP is currently exploring the possibility of enhancing the capability for eAPIS to allow for multiple points of contact to receive confirmations.

Comment: Five commenters stated that CBP should bear the costs of rerouting a passenger if CBP is the party responsible for delaying the passenger.

Response: CBP disagrees. TSA will review and conduct further analysis of "not-cleared" results to identify false positives and then use the CBP system to notify the carrier of the disposition. TSA cannot control the time required to resolve "not-cleared" messages, and that time will vary. CBP acknowledges that determining check-in times is a business decision that the air carrier industry has very clearly asked to be left free to make. However, CBP cannot guarantee that "not-cleared" messages relative to passenger data transmitted as late as 30 minutes prior to securing the aircraft (APIS batch transmission) or just prior to securing the aircraft (AQQ transmis-

sions) will be resolved in time to allow these travelers to make their intended flights. As the timing of check-in and manifest or manifest data transmissions is largely in the control of carriers, CBP will not be responsible for incurring the costs of these business decisions. For this reason, CBP encourages carriers to transmit data for as many passengers as possible as early as practicable.

Comment: Seven commenters asked what the back-up system would be in case of communications or system downtime.

Response: If a carrier or the CBP system experiences difficulties that impede the carrier's efforts to transmit manifests, the carrier's Principal Security Officer (PSO) or Operations Control Center (OCC) should contact the TSA Office of Intelligence to receive further instructions. Under no circumstances is a carrier permitted to issue boarding passes to or board passengers who have not been properly vetted and cleared for boarding (upon generating either a "cleared" or "selectee" vetting response). System outages will be discussed in detail in CBP's updated user guide currently in preparation.

Comment: One commenter stated that CBP should ensure that all arrangements have been made with foreign law enforcement officials to ensure that personnel are available to deal with passengers denied clearance. Five commenters stated that air carrier personnel should not be primarily responsible for what they perceive as law enforcement activities.

Response: Air carrier personnel will not be responsible to perform law enforcement activities under the final rule. Multiple U.S. Government agencies are continuing to coordinate with international law enforcement officials to ensure that travelers identified on government (terrorist) watch lists are handled expeditiously and with minimal impact on the carrier or the traveling public. Under current regulations and this final rule, carriers are responsible for validating passenger data (confirming that the passenger is the person identified in the travel document presented and that the travel document data matches the data that the carrier transmitted to the CBP system for that passenger) and for ensuring that any passenger generating a "not-cleared" message is not permitted to board an aircraft (which is achieved under this final rule by precluding issuance of a boarding pass to such a passenger).

Comment: Two commenters asked if, under the final rule, air carriers would submit crew manifests separately from passenger manifests.

Response: Under the current APIS regulations, transmissions under UN/EDIFACT (United Nations/Electrical Data Interchange for Administration, Commerce, and Trade) for passengers and crew may be included in a single manifest. The final rule does not change that

practice. However, under current regulations and this final rule, there are different transmission time requirements for passenger and crew manifests. Thus, because the APIS regulations currently require (and this final rule does not change) transmission of crew (or non-crew) manifests no later than 60 minutes prior to departure (wheels-up) (§§ 122.49b and 122.75b) and passenger manifests no later than 30 minutes prior to the securing of the aircraft, the carrier must be mindful of these different time frames if transmitting a combined manifest (containing both passengers and crew). It is noted that the APIS AQQ transmission option under this final rule is for passengers only, and these transmissions are permitted up to the securing of the aircraft. Any carrier that employs AQQ must submit a crew manifest no later than 60 minutes prior to departure.

Comment: Regarding the NPRM's proposed limit of the size of AQQ passenger record transmissions to ten passengers, one commenter asked that the limit be increased to twenty and another suggested fifty. One commenter stated that there should be no limit.

Response: While the NPRM's background explanation appeared to limit the size of AQQ passenger record transmissions, the final rule does not address this matter. Information on the number of passengers that may be contained in one message transmission is more appropriately covered in the user guide (an update of which is currently in preparation).

Comment: Three commenters sought reassurance that the matching algorithms used for passenger vetting are robustly designed and tested.

Response: CBP assures the commenters that the name-matching algorithms are routinely tested and calibrated to ensure that they are robust without generating an unmanageable workload in positive hits ("not-cleared" results) for either the government or the carriers.

Comment: One commenter stated that a passenger whose APIS data is insufficient for clearance purposes should be treated as a "selectee."

Response: CBP disagrees with this comment. A "selectee" vetting result does not preclude the carrier from issuing a boarding pass to the "selectee" passenger. Since the actual vetting status (or security risk level) of a passenger whose data is incomplete or inadequate remains unknown, treating such a passenger as a "selectee," and thus allowing him to board the aircraft, would constitute a security liability. Therefore, the vetting process under the final rule will ensure that such a "not-cleared" passenger is prevented from boarding an aircraft (by precluding issuance of a boarding pass) until a vetting result can be obtained.

Comment: One commenter requested that air carriers be able to use, for employing the proposed APIS 60 or AQQ interactive manifest transmission options, any software previously certified by CBP without having to seek additional certification.

Response: CBP notes that previously authorized software is acceptable for air carrier use without additional authorization; however, for the new interactive realm of communication, CBP will require appropriate testing to ensure proper connectivity between CBP and the transmitter before that software can be utilized. This testing and CBP's acknowledgement that the carrier's system is "interactive capable" are referred to as "certification" in the final rule. CBP notes that carriers not opting for interactive transmission do not require CBP certification.

Comment: Two commenters asked if APIS requirements would be applicable in emergency situations.

Response: The final rule does not change current regulations regarding APIS manifest transmission requirements in emergency situations. Under the current regulations, an aircraft not destined to the United States but diverted there due to an emergency must transmit a passenger manifest no later than 30 minutes prior to the aircraft's arrival at the U.S. port. For a vessel similarly diverted to a U.S. port, the passenger manifest is required prior to the vessel's entry into that port. Both provisions allow that in cases of noncompliance due to an emergency, CBP will take into consideration that the carrier was not equipped to make the APIS transmission (where that is the case) and the circumstances of the emergency situation. *See* §§ 4.7b(b)(2)(i)(D) and 122.49a(b)(2)(iii).

Comment: One commenter asked whether there would be a trial period to correct systems discrepancies prior to implementation of the interactive transmission systems provided for under the proposed rule.

Response: The final rule will be effective 180 days following its publication in the **Federal Register**. During this 180-day period, carriers will have the opportunity to test their systems with CBP and work cooperatively to correct system discrepancies.

4. Comments from (and on behalf of) Vessel Carriers and Carriers Operating Within the Outer Continental Shelf (OCS)

Comment: Two commenters asked for clarification on how the rule would affect operations on and movements on the OCS, and three commenters requested that carrier operations involving the transport of OCS employees be exempt from the rule. Two commenters asked if there are APIS reporting requirements for foreign and U.S. personnel (U.S. citizens) who arrive in the United States from a location on the OCS that is considered a U.S. port or place.

Response: Through this final rule, CBP does not intend to change the regime created by existing statutes, regulations, and rulings pertaining to OCS issues. The final rule applies to vessel movements from a U.S. port or place bound for a place on the OCS that is considered "outside the United States" (as opposed to a place (e.g., a vessel, rig, or platform) considered a U.S. point by virtue of its attachment to the OCS) under existing statutory authority, and to vessel movements from such a place on the OCS to a U.S. port or place. CBP notes that the final rule applies to similar air carrier movements. In addition, data must be transmitted for all persons, i.e., all travelers (crew members, workers, and others) regardless of citizenship or status under immigration laws, onboard OCS operating vessels and aircraft subject to the APIS regulations. Finally, carriers arriving from a U.S. port or place (on the OCS or not) into another U.S. port or place (on the OCS or not) are not required by CBP to transmit APIS data.

Comment: Two commenters asked if the terms "foreign area" used for aircraft and "foreign port or place" used for vessels are synonymous for the purposes of transmitting APIS data relative to carriers operating on the OCS.

Response: CBP notes that the term "foreign area" is not used in §§ 122.49a, 122.49b, 122.75a, or 122.75b pertaining to aircraft arrivals in and departures from the United States; nor does the term "foreign port or place" appear in §§ 4.7b or 4.64 pertaining respectively to vessel arrivals in and departures from the United States. As mentioned previously, the final rule applies to vessel and air carrier movements from a U.S. port or place bound for a place on the OCS that is considered "outside the United States" under existing provisions and rules, and to vessel and air carrier movements from such a place on the OCS to a U.S. port or place. However, CBP again notes that there are existing statutory and regulatory provisions, as well as agency rulings, concerning the OCS that provide clarification of this and other issues.

Comment: One commenter asked if vessel carriers would still be able to send updated APIS data no later than 12 hours after departure. One commenter asked if an update could be submitted in the event of a crew change-over.

Response: The final rule does not change the provisions pertaining to amendments to crew manifests. Therefore, vessel operators will still be able to send amendments after submission of the APIS crew manifest up to 12 hours after departure, as provided in § 4.7b(b)(2)(ii) pertaining to vessel arrivals and § 4.64(b)(2)(ii) pertaining to vessel departures. Passenger manifests, however, cannot be amended.

Comment: Two commenters stated that cruise lines should be able to transmit only the names of cruise passengers compiled during booking to meet the requirements of this rule.

Response: CBP disagrees. The eNOA/D submission portal managed by USCG, through which APIS manifest data are transmitted for both arriving and departing vessels, requires that all required data elements be transmitted for each passenger, not merely the names. A vessel carrier may, however, transmit the required data elements in § 4.64(b)(3)(i) through (x) for any portion of the passengers or crew in advance of the transmission deadline, provided that this transmission is followed by timely transmission of a final, complete, and validated manifest (through eNOA/D) no later than 60 minutes prior to departure from the U.S. port.

Comment: One commenter asked if a cruise carrier's receipt of a "not-cleared" message from CBP would result in the ship not being allowed to depart on time.

Response: Under the final rule, a cruise ship cannot depart with a passenger onboard whose data has generated a "not-cleared" message. Because cruise ships allow passengers to board early (as much as five or six hours early), CBP cannot guarantee that a "not-cleared" message will be sent to the carrier before the "not-cleared" passenger has boarded (as the passenger could be boarded before the data is transmitted to the CBP system for vetting). Where such a passenger has boarded the vessel, the carrier must locate and remove him and his baggage from the vessel. CBP believes that the 60-minute transmission requirement is sufficient time to fully vet passengers and crew and allow the carrier to remove a person generating a "not-cleared" response; however, CBP cannot guarantee that result in every instance. Where the full vetting process (initial and further vetting, both of which are performed by CBP for commercial vessels) has not been completed prior to scheduled departure, a carrier has the choice to either delay departure and await the results of further vetting or depart on time after removing the "not-cleared" passenger in question (and his baggage) from the vessel. Although a business decision, carriers can review their business process to determine the potential benefits related to early transmission of APIS data, which may afford more time for security vetting.

Comment: One commenter requested clarification on how CBP would transmit a "not-cleared" message for a crewmember to a vessel operator.

Response: CBP currently generates an APIS confirmation message for vessels transmitting manifests through the eNOA/D portal. The confirmation message, which is sent to the reporting party shown in the manifest, will contain the "not-cleared" message for the relevant crew member.

Comment: One commenter requested that reporting requirements for CBP and the USCG regulations be reconciled so that a carrier is able to file a single departure report.

Response: Under its current reporting requirements, USCG does not require notices of departure (departures from the United States) except in certain, limited situations (such as vessels with hazardous cargo). USCG is planning to amend its regulations to generally require a notice of departure. CBP will continue to work with the USCG to ensure that carriers are not subject to duplicative reporting requirements, just as was done for arriving vessels.

Comment: Two commenters requested that the proposed 60-minute prior to departure requirement be amended, stating that it is too burdensome for cruise lines to meet. One commenter stated that the 60-minute requirement is unworkable for operations on the OCS.

Response: CBP disagrees. Nothing in the final rule precludes a vessel carrier from transmitting available APIS data in advance of the 60-minute deadline for manifest transmissions. Early transmission and vetting of passenger and crew member data will facilitate and enhance the effectiveness of the process. Even where a carrier waits until 60 minutes prior to departure to transmit a single, complete manifest, the 60-minute window is expected to provide, in most instances, sufficient time for CBP to identify and notify the carrier of any "not-cleared" vetting results and to complete vetting, and for the carrier to locate and remove from the vessel the passengers and/or crew members who generated the "not-cleared" responses (along with their baggage). A shorter time for completion of the process would risk failure to achieve the desired security goal (preventing vessel departures with a high-risk passenger or crew member onboard) and would increase the risk of a delayed departure.

CBP believes that carriers operating on the OCS will be able to comply with the 60-minute requirement without an unacceptable impact on their operations.

Comment: One commenter requested that cruise lines be permitted to implement AQQ.

Response: CBP and USCG will continue working to develop manifest transmission methods that do not impose duplicative submission requirements on vessel carriers; this will include exploring with vessel carriers the feasibility of developing an interactive procedure for these carriers.

Comment: One commenter asked whether transmission of APIS data is required for voyages between two U.S. ports.

Response: Carriers are not required to transmit APIS data for voyages between two U.S. ports.

Comment: One commenter asked if a vessel carrier would be required to sit at the dock for 60 minutes following submission of APIS data awaiting clearance to depart (from a U.S. port).

Response: Under the final rule, the APIS transmission must occur no later than 60 minutes prior to the intended vessel departure. A confirmation message will be sent to the reporting party shown in the manifest. If the confirmation message clears all crewmembers and passengers on board, the vessel can depart regardless of whether the full 60-minute window has elapsed. If the confirmation message includes a "not-cleared" result, the carrier may wait until further vetting can be completed. If the further vetting result clears the "not-cleared" traveler within the 60-minute window, the carrier is free to depart.

B. Comments Pertaining to the Regulatory Assessment

A "Regulatory Assessment" of the proposed APIS rule was posted on the CBP Web page and in the Federal Docket Management System with the NPRM. The following are comments received on that analysis and CBP's responses to those comments:

Comment: Two commenters stated that a satisfactory assessment of costs and benefits cannot be made until the system and procedures have been fully tested.

Response: Executive Order 12866 and OMB Circular A-4 require that an agency conduct an economic analysis for all significant regulatory actions, as defined under section 3(f) of that Executive Order. This analysis must contain an identification of the regulatory baseline as well as the anticipated costs and benefits of the rule on relevant stakeholders. The analysis prepared for the NPRM was reviewed by the Office of Management and Budget (OMB).

Comment: One commenter argued that the costs estimated for passengers and air carriers relative to prohibiting boarding within 15 minutes of departure are too low and provided its own analysis. The commenter noted that air carriers, not the commenter, would have to provide the data necessary to reassess the economic impacts.

Response: CBP appreciates this comment and the detail that accompanied the estimate provided in the comment. However, the commenter presented an estimate that was overly pessimistic and represented an absolute "worst-case" scenario that would rarely, if ever, be realized.

Comment: Five commenters stated that the estimated delay of 4 hours for passengers who would not make their flights was too low.

Response: CBP notes that a sensitivity analysis was conducted that estimated the costs to passengers of an eight-hour delay. This

analysis has been retained in the final "Regulatory Assessment" available in the public docket for this rule in addition to an analysis of a 24-hour delay.

Comment: One commenter stated that the estimated annual two percent increase in international air passengers was "pessimistic" and underestimated overall costs for the industry.

Response: CBP agrees with this comment. The "Regulatory Assessment" has been modified to account for a five percent (5%) annual increase in international air passengers.

Comment: One commenter stated that the percentage of passengers who would miss their connecting flights under the AQQ option with the 15-minute transmission deadline should be closer to two percent (2%) rather than the 0.5 percent estimated in the "Regulatory Assessment," based on limited testing the commenter has conducted. Another commenter stated that the 0.5 percent estimate is too low.

Response: CBP appreciates the information provided by the commenters. CBP notes that under the final rule, carriers will be able to transmit APIS data using the AQQ option up to the time when the carrier secures the aircraft, rather than 15 minutes prior to departure. This modification should help connecting passengers make their intended flights and minimize delay. Thus, CBP has retained the 0.5 percent estimate to account for those few passengers that may still miss their connecting flights under the revised AQQ transmission requirements in the final rule.

Comment: One commenter stated that the "Regulatory Assessment" does not account for investments that airports will have to make to cope with earlier arrivals and extended checking delays.

Response: This comment is accurate. However, it is virtually impossible to estimate the changes that would occur in airports throughout the world as a result of this final rule. This is because CBP does not know how many airports, if any, may reconfigure ticketing and waiting areas, the number of carriers that will use the batch APIS transmission method versus the AQQ transmission method (which should result in fewer delays to passengers), the number of international passengers that would be affected in each airport, and daily peaks in passenger volume that may affect possible "crowding" in the ticketing area and other areas of the airport. While CBP cannot quantify these potential impacts on airports, they are important to note, and a qualitative discussion of these impacts is included in the final "Regulatory Assessment."

Comment: One commenter stated that the "Regulatory Assessment" does not account for international passengers who are making connecting flights in the United States.

Response: CBP disagrees with this comment. The percentage estimated in the "Regulatory Assessment" reflects international passengers connecting on flights made in both foreign and U.S. airports.

Comment: Two commenters stated that the hourly cost for a delay is closer to $10,000 than to the $3,400 estimated in the "Regulatory Assessment." Another commenter stated that the hourly cost for a delay is closer to $17,000.

Response: CBP appreciates these comments and has revised the hourly cost of delay using an estimate of $15,000.

Comment: One commenter stated that the offshore industry would experience hours of delay as a result of the rule and this was not accounted for in the "Regulatory Assessment."

Response: CBP acknowledges that costs to the offshore industry of delay were not included in the "Regulatory Assessment." This is because vessel operators do not board passengers and crew as air carriers do and should not experience delays as a result of this rule. As stated elsewhere, if the confirmation message received from CBP clears all crewmembers and passengers on board, the vessel can depart regardless of whether the full 60-minute window has elapsed. Furthermore, nothing in the regulation as proposed or finalized precludes a carrier from transmitting available APIS data well in advance of the 60-minute manifest transmission deadline.

Comment: One commenter stated that small carriers were much more likely to experience delays than large carriers.

Response: CBP disagrees with this comment. As stated in the "Regulatory Assessment," while large air carriers have connecting flights where affected passengers could face short layover times, small air carriers operate predominantly on charter schedules and make point-to-point trips without connecting flights. With respect to originating passengers, CBP expects that some of them will need to modify their behavior by arriving at the airport earlier than they customarily do. Occasionally, a passenger may not make a flight as a result of the rule, but the percentage is expected to be much lower than for passengers on large carriers. Furthermore, as discussed elsewhere, the transmission time for small carriers has been modified from 60 minutes prior to departure (meaning push-back from the gate) to 30 minutes prior to securing the aircraft. Should a "cleared" response be received within that 30-minute window, the carrier may board the cleared passengers and depart.

Comment: Two commenters stated that the cost estimated for ticket-agent time due to delay is too low because it does not include the costs for rerouting a passenger and arranging compensation for the passenger (hotel, meals).

Response: CBP did include the agent time required to reroute a passenger on either the same carrier or another carrier in estimating this cost. However, the 15-minute time estimated does not account for the agent arranging compensatory accommodations for a passenger in the event of a lengthy delay. CBP has included a sensitivity analysis in the final "Regulatory Assessment" that estimates the cost of 1 hour of combined ticket-agent time to accommodate a passenger's delay.

Comment: One commenter stated that under the "No Action" alternative, the statement that this allowed high-risk passengers to board aircraft is misleading, arguing that their carrier has never had an aircraft turned back or diverted.

Response: While CBP commends the commenter's record, it is clear that under the status quo, high-risk passengers are able to board aircraft bound for the United States. Many such instances were described in the preamble to the proposed rule and in the "Regulatory Assessment."

Comment: One commenter stated that privacy issues must be studied in depth and be transparent. One commenter stated that the current Privacy Impact Assessment (PIA) is no longer valid because the rule presents an entirely new use of data.

Response: The privacy impacts of collecting APIS data have been studied in depth, and both a PIA and a System of Records Notice (SORN) will be published in conjunction with this final rule. Both the SORN and PIA have been reviewed and approved by the Office of Management and Budget (OMB) in concurrence with this final rule.

Comment: One commenter stated that the Regulatory Flexibility Act (RFA) analysis erroneously omitted costs to passengers.

Response: CBP disagrees with this comment. An individual is not a small entity under the Regulatory Flexibility Act.

IV. CONCLUSION AND SUMMARY OF CHANGES MADE TO THE APIS REGULATIONS BY THIS FINAL RULE

Based on the comments received, and CBP's further consideration of the matter, CBP concludes that the proposed amendments, with the modifications discussed in the comment reponses above (and included in Section VI of this document), should be adopted as final to enhance national security by providing a heightened level of security for the commercial air and vessel travel industries. Achieving the level of security ensured under the regulatory amendments set forth in this rule (see "Changes Made to the APIS Regulation by this Final Rule" section below) places DHS in a better position to: (1) fully vet, as appropriate, passenger and crew member information prior to departure as required by IRTPA; (2) effectively coordinate with carrier

personnel and domestic or, where appropriate, foreign government authorities in order to take appropriate action warranted by the threat; (3) more effectively prevent an identified high-risk traveler (known or suspected terrorist) from becoming a threat to passengers, crew, aircraft, vessels, or the public; and (4) thereby ensure that the electronic data transmission and vetting process required under the CBP APIS regulations comports to a greater extent with the purposes of ATSA, EBSVERA, and IRTPA.

This final rule amends certain sections of the CBP APIS regulations to provide the following changes to the electronic passenger manifest transmission process applicable to arriving and departing commercial aircraft (*see* §§ 122.49a and 122.75a, respectively) and to the passenger and crew member manifest transmission process for departing commercial vessels (*see* § 4.64):

1. The NPRM proposed that the current APIS regulation's definition of "departure" for aircraft en route to, departing from, continuing within, and overflying the United States (for purposes of §§ 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b) be amended to provide that departure occurs at the moment the aircraft is pushed back from the gate. As explained in the "Comments" section, CBP is not pursuing this proposed change, and the final rule retains the current regulation's definition of "departure" as "wheels-up." *See* § 122.49a(a). However, for purposes of establishing a (relatively) fixed moment for calibrating the timing of manifest transmissions, CBP has determined to use the moment at which the aircraft's doors are closed and secured for flight (referred to as "the securing of the aircraft"). This action (securing of the aircraft) occurs for all flights and applies to all aircraft, including those that do not push back from a gate. Consequently, the final rule amends § 122.49a(a) by adding the definition for "securing the aircraft." The current regulation's definition of "departure" (wheels-up) will continue to apply to manifest transmissions for crew and non-crew, and the definition of "securing the aircraft" will not apply to these provisions.

2. For flights en route to and departing from the United States, air carriers will have discretion to choose one of three options for transmitting passenger manifests to the CBP system, as follows: (a) Transmitting batch passenger manifests to the CBP system by means of a non-interactive transmission system no later than 30 minutes prior to the securing of the aircraft (the APIS-30 non-interactive option); (b) transmitting batch passenger manifests via a CBP-certified electronic data interchange system with interactive communication capability no later than 30 minutes prior to the securing of the aircraft (the APIS-30 interactive option); and (c) transmitting, via a CBP-certified electronic data interchange system with interactive communication capability, passenger manifest data relative to each passenger in real time, i.e., as each passenger checks in for the flight, up to the moment of the securing of the aircraft (the

AQQ option). *See* §§ 122.49a(b)(1) (ii)(A), (B), and (C); 122.49a(b)(2) (i)(A) and (B); 122.75a(b)(1)(ii)(A), (B), and (C); and 122.75a(b)(2)(i) (A) and (B).

Though not explicit in the texts, DHS is taking over, from the carriers, the responsibility to perform watch list vetting. Under the process implemented with this final rule, DHS (i.e., CBP and TSA, as explained in this document) will perform the pre-departure vetting of passenger and crew manifest data for APIS purposes. The air carriers will no longer perform this function with respect to flights subject to the APIS regulations.

3. An air carrier opting to employ one of the interactive electronic transmission options (see 2(b) and (c) above) must obtain CBP certification of its interactive system. Certification is conferred by CBP upon testing of the carrier's system and confirmation that it is capable of functioning as configured for the interactive option chosen (or both options if both chosen). These air carriers may not transmit manifests interactively until certified. *See* §§ 122.49a(b)(1)(ii)(E) and 122.75a(b)(1)(ii)(E).

4. The final rule makes clear that a carrier may be certified to make both interactive batch and AQQ transmissions, for the same or different flights. *See* §§ 122.49a(b)(1)(ii)(D) and 122.75a(b)(1)(ii)(D).

5. Air carriers that do not choose an interactive option for transmitting passenger manifests (see 2(a) above) will continue to make transmissions via a non-interactive system. Certification is not required, and CBP will communicate with these carriers by a non-interactive means. *See* §§ 122.49a(b)(1)(ii)(A) and 122.75a(b)(1)(ii)(A).

6. The final rule makes clear that a carrier, at its discretion, may make more than one batch transmission. *See* §§ 122.49a(b)(1) (ii)(A) and (B) and 122.75a(b)(1)(ii)(A) and (B). The current regulation does not preclude this practice, but appears to contemplate that only one manifest is transmitted. Any single batch transmission covering all passengers checked in for the flight must be transmitted by the required time (no later than 30 minutes prior to the securing of the aircraft) and must contain all required data elements for the passengers it covers. Multiple batch transmissions must, together, cover all passengers checked in for the flight and individually contain all required data elements. Carriers employing this practice are not precluded from transmitting a batch manifest that covers passengers included on a previously transmitted manifest.

7. Upon the effective date of this final rule, any carrier certified by CBP will be cleared to transmit manifests via one or both of the interactive transmission options. CBP will allow a certified carrier to transmit manifests or manifest data by interactive means prior to the effective date of this rule. Upon the effective date, carriers not certified by CBP will be required to transmit batch passenger manifests no later than 30 minutes prior to the securing of the aircraft via

a non-interactive transmission method. Once any of these latter carriers subsequently obtains certification, they may commence transmissions via the interactive transmission option chosen. (See the "Dates" section of this final rule document.)

8. Upon receipt of a batch passenger manifest from a carrier using the interactive batch transmission option or an individual passenger's manifest data from a carrier employing AQQ, the CBP system will conduct an automated vetting procedure and will send to the carrier, by interactive means, a "cleared," "not-cleared," or "selectee" message (instruction or response). A "not-cleared" response will be sent relative to any passenger warranting further security analysis (as an exact match to data contained in the No-Fly terrorist watch list, a possible match, or an inadequate record that cannot be vetted). A passenger identified as a "selectee" will be so designated by the carrier and subject to secondary screening, in accordance with applicable TSA requirements. *See* §§ 122.49a(b)(1)(ii) and 122.75a(b)(1)(ii).

The same procedure applies to carriers using the non-interactive batch transmission option, except that the CBP system does not send "cleared" messages to these carriers; CBP sends a confirmation message with any "not-cleared" and "selectee" vetting results indicated. Where all passengers are cleared, the confirmation message will be without vetting results, thereby indicating that the carrier can issue boarding passes and the passengers are cleared for departure.

9. Regardless of the manifest transmission option employed (APIS-30 non-interactive, APIS-30 interactive, or AQQ), a carrier will not issue a boarding pass to any passenger subject to a "not-cleared" instruction issued by the CBP system during initial vetting, will not load onto the aircraft such passenger's baggage, and will remove such passenger's baggage if already loaded. *See* §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C). The carrier must not transport the baggage of a "not-cleared" passenger unless he is later (during further vetting) cleared and boarded. The carrier will issue a boarding pass to a "selectee" passenger with an instruction that secondary screening is required.

10. Regardless of the transmission option employed, a carrier must, in accordance with TSA requirements, contact TSA for the purpose of resolving a "not-cleared" instruction by providing, if necessary, any available relevant information, such as a physical description. *See* §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C).

11. Regardless of the transmission option employed by a carrier, any passenger subject to a "not-cleared" initial vetting response will be subject to further vetting, and TSA will notify the carrier that the passenger has been cleared or downgraded to "selectee" status if

warranted by the results of the additional security analysis. Carriers will not be notified by CBP messaging where further vetting confirms a "not-cleared" instruction (*see* §§ 122.49a(b)(1)(ii)(A), (B), and (C) and 122.75a(b)(1)(ii)(A), (B), and (C)), but CBP will inform the carrier in accordance with the resolution process mentioned immediately above.

12. A carrier employing one or both of the interactive transmission options (batch or AQQ) will transmit to the CBP system, no later than 30 minutes after the securing of the aircraft, a unique identifier or specific passenger data (typically a name) for any passenger that checked in for the flight but was not boarded for any reason. *See* §§ 122.49a(b)(1)(ii)(B) and (C) and 122.75a(b)(1)(ii)(B) and (C). These carriers may so identify only those passengers who checked in but did not board the flight or all passengers that were checked in and boarded the flight. A carrier using the non-interactive transmission option (eAPIS normally) is not required to send a close-out message.

13. Vessel carriers must transmit passenger and crew manifests for vessels departing from the United States no later than 60 minutes prior to departure. *See* § 4.64(b)(2)(i). While the APIS regulation concerning vessels departing from the United States is not further amended, the APIS manifest transmission and vetting process for these vessels is similar to that for aircraft to the following extent: the vessel carrier may transmit multiple batch manifests; the CBP system will conduct the vetting of manifest data in a two-stage process; the CBP system will send to the carrier "cleared" and "not-cleared" instructions to the carrier after initial automated vetting; the data for all "not-cleared" passengers and crew members is subject to the further vetting process; CBP will contact the carrier where the results of further vetting clear an initially "not-cleared" passenger or crew member for boarding. A carrier also must not allow a vessel to depart with a "not-cleared" passenger or crew member, or his baggage or belongings, on board.

V. REGULATORY REQUIREMENTS

A. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the rule plus a range of alternatives considered. The complete "Regulatory Assessment" can be found in the docket for this rulemaking (http://www.regulations.gov; see also http://www.cbp.gov).

Summary

Air carriers and air passengers will be the parties primarily affected by the rule. For the 30-minute option, costs will be driven by the number of air travelers that will need to arrive at their originating airports earlier and the number of air travelers who miss connecting flights and require rerouting as a result. For AQQ, costs will be driven by implementation expenses, data transmission costs, and a small number of air travelers who miss connecting flights.

CBP estimates a range of costs in this analysis. For the high end of the range, we assume that passengers will provide APIS data upon check-in for their flights and that all carriers will transmit that data, as an entire passenger and crew manifest, to CBP at least 30 minutes prior to the securing of the aircraft. We estimate that this will result in 1 percent of passengers on large carriers and 0 percent of passengers on small carriers missing connecting flights and needing to be rerouted, with an average delay of 4 hours. We also estimate that 5 percent of originating passengers will need to arrive 15 minutes earlier than usual in order to make their flights. For the low end of the range, we assume that all large air carriers will implement AQQ to transmit information on individual passengers as each check in. We estimate that this will drive down the percentage of passengers requiring rerouting on large carriers, attributable to this rulemaking, to 0.5 percent. The percentage on small carriers remains 0 percent because we assume that small carriers will not implement AQQ; rather, they will continue to submit manifests at least 30 minutes prior to the securing of the aircraft through eAPIS, CBP's web-based application for small carriers. Thus, costs for small air carriers are the same regardless of the regulatory option considered.

The endpoints of our range are presented below. As shown, the present value (PV) costs of the rule are estimated to range from $827 million to $1.2 billion over the 10 years of the analysis (2006–2016, 2005 dollars, 7 percent discount rate).

Costs of the Final Rule ($Millions, 2006–2016, 2005 dollars)

	High Estimate (30-Minute Option)			Low Estimate (APIS Quick Query Option)		
	Large Carriers	Small Carriers	Total	Large Carriers	Small Carriers	Total
First-Year Costs (2006)	$116	$1	$117	$184	$1	$185
Average Recurring Costs	$150	$2	$152	$92	$2	$94

Costs of the Final Rule ($Millions, 2006–2016, 2005 dollars)

	High Estimate (30-Minute Option)			Low Estimate (APIS Quick Query Option)		
	Large Carriers	Small Carriers	Total	Large Carriers	Small Carriers	Total
10-Year PV Costs (7%)	$1,168	$14	$1,182	$813	$14	$827
10-Year PV Costs (3%)	$1,413	$17	$1,430	$959	$17	$976

We quantify four categories of benefits, or costs that could be avoided, under the final rule: costs for conducting interviews with identified high-risk individuals, costs for deporting a percentage of these individuals, costs of delaying a high-risk aircraft at an airport (either at the origination or destination airport), and costs of rerouting aircraft if high-risk individuals are identified after takeoff. The average recurring benefits of the rule are an estimated $14 million per year. Over the 10-year period of analysis, PV benefits are an estimated $105 million at a 7 percent discount rate ($128 million at a 3 percent discount rate).

The primary impetus of this rule, however, is the security benefit afforded by a more timely submission of APIS information. Ideally, the quantification and monetization of the beneficial security effects of this regulation would involve two steps. First, we would estimate the reduction in the probability of a successful terrorist attack resulting from implementation of the regulation and the consequences of the avoided event (collectively, the risk associated with a potential terrorist attack). Then we would identify individuals' willingness to pay for this incremental risk reduction and multiply it by the population experiencing the benefit. Both of these steps, however, rely on key data that are not available for this rule.

In light of these limitations, we conduct a "breakeven" analysis to determine what change in the reduction of risk would be necessary in order for the benefits of the rule to exceed the costs. Because the types of attack that would be prevented by this regulation are not entirely understood, we present a range of potential losses that are driven by casualty estimates and asset destruction. We use two estimates of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk: $3 million per VSL and $6 million per VSL. Additionally, we present three attack scenarios. Scenario 1 explores a situation where only individuals are lost (no destruction of physical property).

Scenario 2 explores a situation where individuals are lost and the aircraft is destroyed. Scenario 3 explores a situation where individuals are lost and substantial destruction of physical capital is incurred.

We subtract the annualized benefits of the rule (7 percent discount rate over 10 years) from the annualized costs (high and low estimates) and divide these net costs by the value of casualty and property losses avoided to calculate an annual risk reduction range that would be required for the benefits of the rule to at least equal the costs.

The annual risk reductions required for the rule to breakeven are presented below for the three attack scenarios, the two estimates of VSL, and a range of casualties. As shown, depending on the attack scenario, the VSL, and the casualty level, risk would have to be reduced 0.2 (Scenario 3, 3,000 casualties avoided) to 44.2 percent (Scenario 1, 100 casualties avoided) in order for the rule to breakeven.

Annual Risk Reduction Required (%) for Net Costs to Equal Benefits
(annualized at 7 percent over 10 years)

Casualties Avoided	Scenario 1: Loss of Life Only	Scenario 2: Loss of Life and Aircraft	Scenario 3: Loss of Life and Catastrophic Loss of Property
$3M VSL			
100	30.4–44.2	29.2–42.5	0.4–0.6
250	12.2–17.7	12.0–17.4	0.4–0.6
500	6.1–8.8	6.0–8.8	0.4–0.6
1,000	3.0–4.4	3.0–4.4	0.4–0.5
3,000	1.0–1.5	1.0–1.5	0.3–0.4
$6M VSL			
100	15.2–22.1	14.9–21.7	0.4–0.6
250	6.1–8.8	6.0–8.8	0.4–0.6
500	3.0–4.4	3.0–4.4	0.4–0.5
1,000	1.5–2.2	1.5–2.2	0.3–0.5
3,000	0.5–0.7	0.5–0.7	0.2–0.3

See the "Regulatory Assessment" at http://www.regulations.gov or http://www.cbp.gov for details of these calculations.

Regulatory Alternatives

CBP considered a number of regulatory alternatives to the rule. Complete details regarding the costs and benefits of these alternatives can be found in the "Regulatory Assessment" available in the docket for this rule (http://www.regulations.gov; see also http://www.cbp.gov). The following is a summary of these alternatives:

(1) Do not promulgate any further manifest transmission requirements (No Action)—the baseline case where carriers would continue to submit APIS manifests for arriving aircraft passengers 15 min-

utes after departure and, for departing aircraft passengers, 15 minutes prior to departure. There are no additional costs or benefits associated with this alternative. High-risk passengers would continue to board aircraft both destined to and departing from the United States, and instances of such aircraft departing with a high-risk passenger onboard would continue. As explained previously in this document, these results are inconsistent with the protective security objectives and/or mandates of ATSA, EBSVERA, and IRTPA. Because this is the status quo, and therefore has no additional costs or benefits, it is not analyzed further.

(2) A 30-minute transmission requirement and implementation of AQQ—this is the final rule, discussed earlier in this document, which generally requires carriers to either submit batch manifests 30 minutes prior to the securing of the aircraft or, if implementing AQQ, transmit manifest data for each passenger as he checks in for the flight, up to the securing of the aircraft. If flying on a carrier using AQQ, individuals would be queried while they checked in and would be prevented (denied a boarding pass) from continuing to check in or having their bags checked if not cleared by CBP. If flying on a carrier using the APIS 30 batch manifest transmission option, individuals not cleared by CBP would not be issued a boarding pass. High-risk individuals would thus not enter passenger screening or the departure gate area.

First-year costs are $118–185 million, average recurring costs are $94–152 million per year, and 10-year present value costs are $827 million–1.2 billion (7 percent discount rate) and $976 million–1.4 billion (3 percent discount rate).

(3) A 60-minute transmission requirement—this is the rule as proposed, without the AQQ option. Carriers would submit their manifests in their entirety at least 60 minutes prior to departure. CBP assumes that 2 percent of passengers on large carriers and 0.25 percent of passengers on small carriers will be delayed an average of 4 hours and will need to be rerouted. CBP also assumes that 15 percent of passengers would need to arrive at their originating airport an average of 15 minutes earlier than normal to make their flights. Benefits will include interview costs avoided, deportation costs avoided, delay costs avoided, and diversion costs avoided, as well as the non-quantified security benefits that are the impetus for this rule.

Based on comments to the proposed rule, and reconsideration of the matter by CBP in light of lessons learned during the manifest transmission and security vetting process developed after the exposed bomb plot in the United Kingdom last summer, this alternative was rejected as unnecessarily burdensome for air carriers. CBP now believes that a 30-minute transmission requirement provides greater flexibility for air carriers while still providing the level of security sought for this rule.

First-year costs are $265 million, average recurring costs are $343 million per year, and 10-year present value costs are $2.7 billion (7 percent discount rate) and $3.2 billion (3 percent discount rate).

Benefits are higher than the No Action alternative because the high-risk individual will be identified prior to boarding. In addition to this security benefit, there is an estimated $14 million in costs avoided annually.

(4) A 120-minute transmission requirement—this rule would require carriers to submit manifests 120 minutes prior to departure. The costs would be higher than under the final rule because originating passengers, not just connecting passengers, would now be affected. High-risk passengers would be prevented from boarding aircraft. CBP would be able to more easily coordinate and plan a response to a hit on the watch lists well before the boarding process began.

This alternative would be quite disruptive because even though passengers and carriers would have the predictability of a predetermined transmission time, passenger check-in at the original departure airport would be greatly affected. Instead of passengers checking in 2 hours prior to departure, carriers would have to advise passengers to arrive even earlier to assure timely manifest transmission.

We assume that 20 percent of passengers on large carriers and 5 percent of passengers on small carriers will be delayed an average of 6 hours and will need to be rerouted. We assume that 30 percent of passengers would need to arrive at the airport 1 hour earlier than previously. First-year costs are $3.4 billion, average recurring costs are $4.3 billion per year, and 10-year present value costs are $33.8 billion (7 percent discount rate) and $40.8 billion (3 percent discount rate).

Benefits are higher than the No Action alternative because a high-risk individual would be prevented from boarding or departing on an aircraft destined to or departing from the United States. Benefits are slightly higher than under the final rule because in some instances, the high-risk passenger's baggage would not reach the aircraft. Otherwise, the results achieved do not change appreciably given the extra time. Nonetheless, this procedure would be consistent with the protective security purposes of ATSA, EBSVERA, and IRTPA.

The following table summarizes the costs and benefits of the regulatory alternatives:

Comparison of Costs and Benefits of the Rule and Regulatory Alternatives

	Final Rule			
	30-Minute Option	AQQ Option	60-Minute APIS	120-Minute APIS
First-year costs	$118 million	$185 million	$265 million	$3.4 billion
Average recurring costs	$152 million	$94 million	$343 million	$4.3 billion
10-year PV costs (7%)	$1.2 billion	$827 million	$2.7 billion	$33.8 billion
10-year PV costs (3%)	$1.4 billion	$976 million	$3.2 billion	$40.8 billion
Average cost per passenger	$0.36–$1.55	$0.36–$1.03	$1.37–$3.45	$17.39–$43.81
Benefits comparison to No Action	Higher (risk identified prior to boarding)	Higher (risk identified prior to boarding)	Higher (risk identified prior to boarding)	Higher (risk identified prior to boarding)
Benefits comparison to Final Rule			Comparable (security benefits + $14 million in costs avoided annually)	Comparable (security benefits + $14 million in costs avoided annually)

Accounting Statement

As required by OMB Circular A-4 (available at http://www.whitehouse.gov/omb/circulars/index.html), DHS (through CBP) has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table provides our best estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at three percent and seven percent discount rates. We estimate that the cost of this rule will be approximately $126.8 million annualized (7 percent discount rate) and approximately $126.2 million annualized (3 percent discount rate). Quantified benefits are $14.9 million annualized (7 percent discount rate) and $15.0 million annualized (3 percent discount rate). The non-quantified benefits are enhanced security.

Accounting Statement: Classification of Expenditures, 2006 through 2016 (2005 Dollars)

	3% Discount Rate	7% Discount Rate
COSTS		
Annualized monetized costs	$126.2 million	$126.8 million
Annualized quantified, but un-monetized costs	None	None
Qualitative (un-quantified) costs	None	None
BENEFITS		
Annualized monetized benefits	$15.0 million	$14.9 million
Annualized quantified, but un-monetized costs	None	None
Qualitative (un-quantified) costs	Enhanced security	Enhanced security

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

We have examined the impacts of this rule on small entities as required by the Regulatory Flexibility Act. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has identified 773 small U.S. air carriers that could be affected by the rule. CBP does not expect these carriers to experience great economic impacts as a result of the rule. Small carriers do not need to modify their reservation systems, their transmission methods, nor do they have many connecting passengers that may miss their flights and require rerouting. CBP estimates that, at most, 5 percent of passengers on small carriers will be affected by this rule annually. In the 2005 APIS Rule, we estimated that small carriers transport an average of 300 passengers annually. As calculated in the "Regulatory Assessment," the total cost of delay per passenger is $118.97, and only $4.57 of this is incurred by the air carrier. Initial analysis for the proposed rule estimated the impacts of a 60-minute prior to departure transmission requirement. Now that the transmission requirement has changed for this final rule to 30-minutes prior to the securing of the aircraft, we estimate there will be no direct impacts to small carriers. The costs of arriving earlier than customary are incurred only by the passenger.

We conclude, therefore, that this rule will not have a significant economic impact on a substantial number of small entities.

The complete analysis of impacts to small entities is available on the CBP web site at: http://www.regulations.gov; see also http://www.cbp.gov.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule would not impose any cost on small governments or significantly or uniquely affect small governments. However, as stated in the "Executive Order 12866" section of this document, CBP has determined that the rule would result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation) in any one year and thus would constitute a significant regulatory action. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA. CBP's analysis of the cost impact on affected businesses, summarized in the "Executive Order 12866" section of this document and available for review by accessing http://www.regulations.gov; see also http://www.cbp.gov, is incorporated here by reference as the assessment required under Title II of the UMRA.

D. Executive Order 13132 (Federalism)

This final rule would 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.

E. 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. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

In connection with the final rule published by DHS/CBP in April 2005, and discussed in this rule, a Paperwork Reduction Act (PRA) analysis was set forth concerning the information collection involved under that rule (see OMB No. 1651–0088). The analysis pertained to the information collection contained in 19 CFR 4.7b, 4.64, 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b. The final rule published today, which amends the regulation as amended by the April 2005 final rule, affects only the timing and manner of the submission of the information already required under the regulation. The collection of information in this document is contained in 19 CFR 4.64, 122.49a, and 122.75a. An Information Collection Report reflecting a change in the collection burden due to this final rule has been submitted to OMB for review, in accordance with the PRA, under OMB 1651–0088.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Estimated annual reporting and/or recordkeeping burden: 30,669 hours.

Estimated average annual burden per respondent/recordkeeper: 129 minutes.

Estimated number of respondents and/or recordkeepers: 14,265.

Estimated annual frequency of responses: 129

H. Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR § 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his delegate) to prescribe regulations not related to customs revenue functions.

I. Privacy Statement

A Privacy Impact Assessment (PIA) was published in the Federal Register (70 FR 17857) in conjunction with the April 7, 2005, APIS Final Rule (70 FR 17820). To address the changes made in this final rule, DHS is publishing an update to the APIS PIA on its web site. DHS is preparing a separate SORN for APIS for publication in conjunction with this final rule.

LIST OF SUBJECTS

19 CFR Part 4

Aliens, Customs duties and inspection, Immigration, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, parts 4 and 122 of the CBP regulations (19 CFR parts 4 and 122) are amended as follows:

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citation for section 4.64 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 2071 note; 46 U.S.C. 6015.

* * * * *

Section 4.64 also issued under 8 U.S.C. 1221;

* * * * *

2. Section 4.64 is amended by, in paragraph (b)(2)(i), removing the words "no later than 15 minutes" and replacing them with the words "no later than 60 minutes".

PART 122 – AIR COMMERCE REGULATIONS

3. The general authority citation for part 122 and the specific authority citations for sections 122.49a and 122.75a continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.49a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

* * * * *

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

* * * * *

4. Section 122.49a is amended by, in paragraph (a), adding in appropriate alphabetical order the definition of "securing the aircraft" and by revising paragraphs (b)(1) and (b)(2), such addition and revisions to read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * * * *

Securing the aircraft. "Securing the aircraft" means the moment the aircraft's doors are closed and secured for flight.

* * * * *

(b) Electronic arrival manifest. (1) General. (i) Basic requirement. Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.49b if transmission is in US EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place

and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) Transmission of manifests. A carrier required to make passenger arrival manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required transmissions, covering all passengers checked in for the flight, in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) Non-interactive batch transmission option. A carrier that chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a "not-cleared" instruction for passengers identified as requiring additional security analysis and a "selectee" instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a "selectee" any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a "not-cleared" instruction and must contact TSA to seek resolution of the "not-cleared" instruction by providing, if necessary, additional relevant information relative to the "not-cleared" passenger. TSA will notify the carrier if the "not-cleared" passenger is cleared for boarding or downgraded to "selectee" status based on the additional security analysis.

(B) Interactive batch transmission option. A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifests, each containing the required data for the

identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, the carrier must transmit all required manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a "cleared" instruction for passengers not matching against the watch list, a "not-cleared" instruction for passengers identified as requiring additional security analysis, and a "selectee" instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a "selectee" any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a "not-cleared" instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a "cleared" or "selectee" response for that passenger. Where a "selectee" instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a "not-cleared" instruction by contacting TSA and providing, if necessary, additional relevant information relative to the "not-cleared" passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a "not-cleared" passenger is cleared for boarding or downgraded to "selectee" status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (e.g., name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) Interactive individual passenger information transmission option. A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the con-

necting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier, for the flight. With each transmission of manifest information by the carrier, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a "cleared" instruction for passengers not matching against the watch list, a "not-cleared" instruction for passengers identified as requiring additional security analysis, and a "selectee" instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a "selectee" any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a "not-cleared" instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such passenger until the CBP system returns a "cleared" or "selectee" response for that passenger. Where a "selectee" instruction is received by the carrier for a connecting passenger, the carrier must ensure that secondary screening of the passenger is conducted before boarding. The carrier must seek resolution of a "not-cleared" instruction by contacting TSA and providing, if necessary, additional relevant information relative to the "not-cleared" passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a "not-cleared" passenger is cleared for boarding or downgraded to "selectee" status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) Combined use of interactive methods. If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) Certification. Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier's system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages in accordance with those paragraphs.

(2) Place and time for submission. The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the arrival manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) or (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft;

(iii) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation; and

(iv) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation.

* * * * *

5. Section 122.75a is amended by revising paragraphs (b)(1) and (b)(2), to read as follows:

§ 122.75a Electronic manifest requirements for passengers onboard commercial aircraft departing from the United States.

* * * * *

(b) Electronic departure manifest. (1) General. (i) Basic requirement. Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) departing from the United States en route to any port or place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger departure manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.75b if transmission is in US EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) Transmission of manifests. A carrier required to make passenger departure manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required trans-

missions covering all passengers checked in for the flight in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) Non-interactive batch transmission option. A carrier that chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a "not-cleared" instruction for passengers identified as requiring additional security analysis and a "selectee" instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a "selectee" any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to the "not-cleared" instruction and must contact the Transportation Security Administration (TSA) to seek resolution of the "not-cleared" instruction by providing, if necessary, additional relevant information relative to the "not-cleared" passenger. TSA will notify the carrier if a "not-cleared" passenger is cleared for boarding or downgraded to "selectee" status based on the additional security analysis.

(B) Interactive batch transmission option. A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make manifest transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifests, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a flight departing from the United States whose data have not been collected by the carrier, the carrier must transmit required

manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a "cleared" instruction for passengers not matching against the watch list, a "not-cleared" instruction for passengers identified as requiring additional security analysis, and a "selectee" instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a "selectee" any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a "not-cleared" instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a "cleared" or "selectee" response for that passenger. Where a "selectee" instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a "not-cleared" instruction by contacting TSA and providing, if necessary, additional relevant information relative to the "not-cleared" passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a "not-cleared" passenger is cleared for boarding or downgraded to "selectee" status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) Interactive individual passenger information transmission option. A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a flight departing from the United States whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier for the flight. With each transmission of manifest information by the carrier, the

CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a "cleared" instruction for passengers not matching against the watch list, a "not-cleared" instruction for passengers identified during initial security vetting as requiring additional security analysis, and a "selectee" instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a "selectee" any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a "not-cleared" instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such passenger until the CBP system returns a "cleared" or "selectee" response for that passenger. Where a "selectee" instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a "not-cleared" instruction by contacting TSA and providing, if necessary, additional relevant information relative to the "not-cleared" passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a "not-cleared" passenger is cleared for boarding or downgraded to "selectee" status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) Combined use of interactive methods. If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) Certification. Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier's system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages under those paragraphs.

(2) Place and time for submission. The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the departure manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) and (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft; and

(iii) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes after departure.

* * * * *

W. RALPH BASHAM,
Commissioner,
Customs and Border Protection.

[Published in the Federal Register, August 23, 2007 (72 FR 48320)]

General Notice

Automated Commercial Environment (ACE): Expansion of Processes Supported in the ACE Truck Manifest System

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that Customs and Border Protection (CBP) has expanded the processes that are supported in the Automated Commercial Environment (ACE) Truck Manifest System. Previously, CBP did not possess the capability for the electronic release of cargo off the manifest for certain release types. Now, through the collection of cargo information through ACE, electronic release of the cargo can be accommodated for the following release types: General Note 1 Exemptions as provided in General Note 3(e) of the Harmonized Tariff Schedules of the United States; Free of Duty (CBP Form 7523); Unaccompanied Goods (CBP Form 3299); and Free Returned U.S. Goods (CBP Form 3311).

DATES: Truck carriers will be able to take advantage of the additional processes supported in ACE beginning on August 20, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at *james.d.swanson@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

ACE Truck Manifest Test

On February 4, 2004 and September 13, 2004, CBP published notices in the **Federal Register** (69 FR 5360 and 69 FR 55167) announcing a test, in conjunction with the Federal Motor Carrier Safety Administration (FMCSA), allowing participating truck carriers to transmit electronic manifest data in ACE, including advance cargo information as required by section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002 (see 68 FR 68140). The advance cargo information requirements are detailed in the final rule published in the **Federal Register** at 68 FR 68140 on December 5, 2003.

Truck carriers participating in the test were required to establish ACE Secure Data Portal (ACE Portal) Truck Carrier Accounts which would provide them with the ability to electronically transmit truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

In the September 13, 2004 notice, CBP stated that, in order to be eligible for participation in this test, a carrier must have:

1. Submitted an application (*i.e.*, statement of intent to establish an ACE Account and to participate in the testing of electronic truck manifest functionality) as set forth in the February 4, 2004, **Federal Register** notice (69 FR 5360);
2. Provided a Standard Carrier Alpha Code(s) (SCAC);
3. Provided the name, address, and e-mail of a point of contact to receive further information.

In addition, participants intending to use the ACE Portal as the means to file the manifest were required to submit a statement certifying the ability to connect to the Internet. Participants intending to use an EDI interface were required to first test their ability to send and receive electronic messages in either American National Standards Institute (ANSI) X12 or United Nations / Directories for Electronic Data Interchange for Administration, Commerce and Transport (UN/ EDIFACT) format with CBP.

Subsequently, in a **Federal Register** notice published on March 29, 2006 (71 FR 15756), CBP announced a change advising truck carriers that they were no longer required to open ACE Truck Carrier [Portal] Accounts to participate in the ACE test. Specifically, truck carriers were advised that they could elect to use a third party to submit electronic manifest information to CBP via EDI. Truck carriers participating in this fashion do not have access to operational data and do not receive status messages on ACE Accounts, nor do they have access to integrated Account data from multiple system

sources. These truck carriers are able to obtain release of their cargo, crew, conveyances, and equipment via EDI messaging back to the transmitter of the information. A truck carrier using a third party to transmit via EDI cargo, crew, conveyance and equipment information to CBP is required to have a Standard Carrier Alpha Code (SCAC). Any truck carrier with a SCAC may arrange to have a third party transmit manifest information to CBP via EDI consistent with the requirements of the ACE Truck Manifest Test. Due to limited functionality available via the portal at that time, truck carriers were advised that if they elected to use a third party to transmit the truck manifest information to CBP via the ACE portal (rather than EDI), the truck carrier who is submitting that information to the third party (for transmission to CBP) would be required to have an ACE Truck Carrier Account as described in the February 4, 2004, notice.

In a notice published in the **Federal Register** on March 15, 2007 (72 FR 12181), CBP announced that truck carriers participating in the ACE portal test and electing to use third parties to submit manifest information to CBP via the ACE portal are no longer required to have ACE portal accounts. Thus, truck carriers without ACE portal accounts, while participating in the test of the ACE truck manifest system, may now use third parties (such as Customs brokers or other truck carriers) with ACE portal accounts to electronically transmit truck manifest information, via the ACE portal, on their behalf.

Release Types

Previously, CBP did not possess the capability for the electronic release of cargo off the manifest for certain release types. Now, through the collection of cargo information through ACE, electronic release of the cargo can be accommodated for the following release types: General Note 1 Exemptions as provided in General Note 3(e) of the Harmonized Tariff Schedules of the United States; Free of Duty; Unaccompanied Goods; and Free Returned U.S. Goods. When applicable, the appropriate CBP forms, noted below in parenthesis for each release type, and supporting documentation are required to effectuate release of the cargo.

General Note 1 Exemptions

A General Note 1 Exemption release can be used for goods imported into the customs territory of the United States that are exempt from the provisions of the tariff schedule per General Note 3(e) of the Harmonized Tariff Schedule of the United States. Such goods qualifying for this exemption are as follows: corpses, together with their coffins and accompanying flowers; telecommunications transmissions; records, diagrams and other data with regard to any business, engineering or exploration operation whether on paper; cards,

photographs, blueprints, tapes or other media; articles returned from space within the purview of section 484a of the Tariff Act of 1930; articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service; and any aircraft part or equipment that was removed from a United States-registered aircraft while being used abroad in international traffic because of accident, breakdown, or emergency, that was returned to the United States within 45 days after removal, and that did not leave the custody of the carrier or foreign customs service while abroad.

Free of Duty (CBP Form 7523)

Pursuant to the provisions of 19 CFR 143.23(d), a CBP Form 7523 (Free of Duty) can be used for the release of shipments not exceeding $2,000 in value which are either unconditionally free of duty and not subject to any quota or internal revenue tax, or are conditionally free and all conditions for free entry are met at the time of entry. Pursuant to the provisions of 19 CFR 143.23(g), shipments, regardless of value, which are imported for noncommercial purposes which qualify for entry free of duty under the Generalized System of Preferences and for which informal entry may be made can be released on a CBP Form 7523.

Unaccompanied Goods (CBP Form 3299)

A CBP Form 3299 (Unaccompanied Goods) can be used for the release of effects that are claimed to be free of duty under subheadings 9804.00.10, 9804.00.20, 9804.00.25, 9804.00.35, or 9804.00.45, Harmonized Tariff Schedule of the United States (HTSUS), that do not accompany the importer on his arrival in the United States or are forwarded in bond, pursuant to the provisions of 19 CFR 148.6. It may also be used for release of household effects used abroad and claimed to be free of duty under subheading 9804.00.05, pursuant to the provisions of 19 CFR 148.52, or tools of trade claimed to be free of duty under subheadings 9804.00.10 or 9804.00.15, pursuant to the provisions of 19 CFR 148.53.

Free Returned U.S. Goods (CBP Form 3311)

A CBP Form 3311 (Free Returned U.S. Goods) release can be used for certain shipments of products of the United States being returned without having been advanced in value or improved in condition abroad in accordance with the provisions of 19 CFR 123.4(c) or 19 CFR 143.23(b) and 19 CFR 10.1.

Previous Notices Continue To Be Applicable

All of the other aspects of the ACE Truck Manifest Test as set forth in 69 FR 55167, as modified by the General Notice published in the

Federal Register (70 FR 13514) on March 21, 2005, continue to be applicable. (The March 21, 2005 notice clarified that all relevant data elements are required to be submitted in the automated truck manifest submission.) All of the aspects of the February 4, 2004, notice (69 FR 5360) continue to be applicable, except as revised in this notice.

Date: August 15, 2007

DENISE CRAWFORD,
Acting Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, August 20, 2007 (72 FR 46492)]

Modification and Extension of the Post-Entry Amendment Processing Test

AGENCY: Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces a modification of U.S. Customs and Border Protection's (CBP) Post-Entry Amendment Processing test. The test allows the amendment of entry summaries prior to liquidation. The modification to the test requires the filer of a post-entry amendment to submit an individual amendment letter no later than 20 days prior to the scheduled liquidation date for the subject entry summary. This document also sets forth that CBP is terminating the supplemental information letter policy so that the post-entry amendment procedure will be the only procedure for submitting post summary adjustments on entry summaries prior to liquidation. Except for the modification set forth in this document, the test procedure is the same as that set forth in previously published **Federal Register** notices. The document also announces that the test is being extended for another year.

DATES: The Post-Entry Amendment Processing test modification set forth in this document is effective on September 20, 2007. The test is extended for a one-year period commencing on August 21, 2007. CBP will discontinue accepting Supplementary Information Letters on September 20, 2007.

ADDRESS: Written comments regarding this notice, should be addressed to U.S. Customs and Border Protection, Entry and Drawback Management Branch, Office of International Trade, ATTN:

Post-Entry Amendment, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to any aspect of this notice should be directed to Jennifer Dolan, U.S. Customs and Border Protection, Entry and Drawback Management Branch, Office of International Trade, at (202) 344–2568 or via email at Jennifer.Dolan@dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The U.S. Customs Service (Customs; now U.S. Customs and Border Protection or CBP) announced and described the Post Entry Amendment Processing test (the test or PEA test) in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. The notice announced that the test would commence no earlier than December 28, 2000, and run approximately one year. The test was extended on three subsequent occasions by publication of notice in the **Federal Register** as follows: to December 21, 2002 (67 FR 768; January 7, 2002); to December 31, 2003 (68 FR 8329; February 20, 2003); and to December 31, 2004 (69 FR 5860; February 6, 2004).

The PEA test procedure, authorized under section 101.9(a) of the CBP regulations (19 CFR 101.9(a)), allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with CBP either an individual amendment letter upon discovery of certain kinds of errors or a quarterly tracking report covering certain other errors that occurred during the quarter. The November 28, 2000, and the February 6, 2004, **Federal Register** notices describe in full detail the PEA test procedure, including an explanation of the kinds of errors mentioned above. Also, an explanation of the procedure is available at www.cbp.gov (under the following links: "Import" and "Cargo Summary").

Modification

Under the PEA test, an individual amendment letter (also known as a single PEA) must be filed by the importer (or its broker) upon discovery of: (1) a revenue related error in an entry summary where the error results in either an overpayment or underpayment of duties, taxes, and/or fees in the amount of $20 or more; (2) any error in an entry summary relating to antidumping or countervailing duties; and (3) any non-revenue related statistical information errors in an entry summary that must be reported to the U.S. Census Bureau. Prior to publication of this document, individual amendment letters were required to be filed promptly after discovery of the error(s) and prior to liquidation of the one or more entry summaries covered in the letter.

Effective upon publication of this document in the **Federal Register**, an importer or broker filing a single PEA must submit the PEA at least 20 days prior to the scheduled liquidation date of each entry summary covered in the letter. This 20-day period will provide CBP sufficient time to review all entry summaries covered in a single PEA prior to the scheduled liquidation date. Liquidation of single PEAs (i.e., of the entry summaries covered) under the test is a manual function and past performance has shown that more time is needed to process these amendment requests effectively. Single PEAs submitted untimely will be rejected and returned to the filer. In those instances where the single PEAs are submitted timely but the entry summaries are not unset or processed by the scheduled liquidation date and liquidation occurs without benefit of the requested amendment, CBP will treat them as protests under 19 U.S.C. 1514 or, if appropriate in the circumstances, as evidence warranting reliquidation under 19 U.S.C. 1501.

Other than this modification, the test procedure remains as set forth in previously published notices.

Extension

This notice announces a further extension of the PEA test for a period of one year, such period to commence on the date this document is published in the **Federal Register**.

Discontinuation of the SIL Policy

Finally, as of the effective date of this notice, the PEA test will be the only procedure in place for post summary adjustments prior to liquidation, and the SIL procedure (see Administrative Message 97–0727, August 3, 1997) will be discontinued. CBP will issue an administrative message regarding this change soon after publication of this notice.

Dated: August 15, 2007

DANIEL BALDWIN,
Assistant Commissioner,
Office of International Trade.

[Published in the Federal Register, August 21, 2007 (72 FR 46654)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, August 22, 2007

The following documents of U.S. Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office of Trade.

PROPOSED REVOCATION OF A RULING LETTER AND MODIFICATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN COATED FABRICS

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of certain coated fabrics.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification of certain coated fabrics under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before October 5, 2007.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch: (202) 572–8791

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of certain coated fabrics. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) M80456, dated March 7, 2006, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In the above mentioned ruling, CBP determined that the subject fabrics were classifiable as woven fabrics of synthetic filament yarn under subheadings 5407.42.0030 and 5407.42.0060, HTSUSA. Based upon our analysis of headings 5407 and 5903, HTSUS, we have determined that the coated fabrics are properly classified in subheading 5903.20.2500, HTSUSA, the provision for "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Other: Other"

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY M80456 and any other ruling not specifically identified, to reflect the proper classification of the certain coated fabrics according to the analysis contained in proposed Headquarters Ruling Letter W968381, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: August 16, 2007

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY M80456
March 7, 2006
CLA–2–59:RR:NC:TA:350 M80456
CATEGORY: Classification
TARIFF NO.: 5407.42.0030; 5407.42.0060

MR. JACKSON CHUANG
SYNTHETIC RESOURCES, INC.
22772 Centre Drive, Suite 260
Lake Forest, CA 92630

RE: The tariff classification of three plastics coated textile fabrics, for use in the manufacture of banners and luggage items, etc., from either Thailand or Taiwan.

DEAR MR. CHUANG:

In your letter, that was received February 14, 2006, you requested a tariff classification ruling.

Please be aware that any style numbers referred to in a binding ruling should be the same as those indicated on any shipping documents, such as

invoices, etc. This is to facilitate the classification of the merchandise at the respective port of entry.

The first item, style 2006454AU, consists of a plain woven fabric (600D x 600D/45 x 30) that is dyed black and coated with a clear polyurethane plastics material. Your letter, however, is ambiguous about the fiber content of the base fabric, and, therefore, we will not be able to rule on this material until you provide a clearer description. Specifically, your letter refers to the fiber content as being either a nylon or polyester depending upon the context.

The second item, style 4005036AU, consists of a plain woven fabric (400D x 400D/50 x 36), which is dyed black and is composed of 100% non-textured nylon man-made fibers. This material is dyed and has been coated on one side with a clear polyurethane plastics coating which is not in sufficient quantity to be visible to the naked eye. You provided the following weight specifications for this material:

Wt. Of Fabric: 140 g/m^2 (89%) Wt. Of PU: 18 g/m^2 (11%)

Total Wt.: 158 g/m^2 (100%)

The third item, style 4006038AU, consists of a 100% nylon, plain weave fabric (400D x 400D/60 x 38). You supplied two representative samples. One sample is dyed black while the other is red in color. These materials have been coated on one side with a clear polyurethane plastics coating which is not in sufficient quantity to be visible to the naked eye. You provided the following weight specifications for this material:

Wt. Of Fabric: 154 g/m^2 (79%) Wt. Of PU: 41 g/m^2 (21%)

Total Wt.: 195 g/m^2 (100%)

Note 2 to Chapter 59, Harmonized Tariff Schedule of the United States, (HTS), defines the scope of heading 5903, under which textile fabrics which are considered to be coated, covered, impregnated, or laminated with plastics. In addition, it provides guidance on the classification of combinations of textile and plastics.

Specifically, Note 2 states in part that heading 5903, HTS, applies to: (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than: (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60): for the purposes of this provision, no account should be taken of any resulting change in color; Since the plastic coatings on the fabrics described above are not visible to the naked eye, these fabrics are not considered to be coated fabrics for the purposes of classification in heading 5903, HTS.

The applicable subheading for style 4005036AU will be 5407.42.0030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, dyed, weighing not more than 170 g/m2. The duty rate will be 14.9 percent ad valorem.

The applicable subheading for style 4006038AU will be 5407.42.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85

percent or more by weight of filaments of nylon or other polyamides, dyed, weighing more than 170 g/m2. The duty rate will be 14.9 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at http://www.usitc.gov/tata/hts/.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Walsh at 646–733–3044.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W968381
CLA–2 OT:RR:CTF:TCM W968381 ADK
CATEGORY: Classification
TARIFF NO.: 5903.20.2500

MR. RANDY RUCKER
DRINKER BIDDLE GARDNER CARTON
191 N. Wacker Drive
Suite 3700
Chicago, Illinois 60606

RE: Tariff classification of two coated textile fabrics; Reconsideration of New York Ruling M80456

DEAR MR. RUCKER:

This letter is in response to your request of July 20, 2006, on behalf of your client Synthetic Resources, Inc. (Synthetic Resources) for reconsideration of New York Ruling Letter (NY) M80456, dated March 7, 2006. In that ruling, United States Customs and Border Protection (CBP) determined that the two woven fabrics at issue were classifiable under heading 5407, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY M80456 and find it to be in error.

FACTS:

The first item, style 4005036AU, consists of a plain woven fabric (400D x 400D/50 x 36), which is dyed black and is composed of 100% non-textured nylon man-made fibers. This material has been coated on one side with a clear polyurethane plastic coating. Synthetic Resources provided the following weight specifications for this material:

Wt. Of Fabric:	140 g/m^2 (89%)
Wt. Of PU:	18 g/m^2 (11%)
Total Wt.:	158 g/m^2 (100%)

The second item, style 4006038AU, consists of a 100% nylon, plain weave fabric (400D x 400D/60 x 38), which is dyed black. This material has been coated on one side with a clear polyurethane plastic coating. Synthetic Resources provided the following weight specifications for this material:

Wt. Of Fabric:	154 g/m^2 (79%)
Wt. Of PU:	41 g/m^2 (21%)
Total Wt.:	195 g/m^2 (100%)

In NY M80456 a third item, style 2006454AU, was also at issue. However, due to insufficient information, CBP did not rule on the classification of that fabric. Style 2006454AU is not under consideration in the present matter.

ISSUE:

What is the proper classification under the HTSUS for styles 4005036AU and 4006038AU?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

5407 Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404:

Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides:

5407.42.00 Dyed:

5407.42.0030 Weighing not more than 170 g/m^2 (620). . . .

5407.42.0060 Weighing more than 170 g/m^2 (620). . . .

* * *

5903 Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:

5903.20 With polyurethane:

* * *

Of man-made fibers:

* * *

Other:

* * *

5903.20.2500 Other (229)

* * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. Note 2 to

chapter 59, provides, in pertinent part:

> Heading 5903 applies to:
>
> (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), **other than**:
>
> (1) **Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye** . . . ; for the purpose of this provision, no account should be taken of any resulting change of color.
>
> (Emphasis added)

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The EN to heading 5903 provides, in pertinent part:

> This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g. poly(vinyl chloride)).
>
> Such products are classified here whatever their weight per m^2 and whatever the nature of the plastic component (compact or cellular), **provided**:
>
> (1) That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.
>
> (Emphasis in original)

* * *

In NY M80456, CBP classified the subject fabrics in heading 5407, HTSUS, as "woven fabrics of synthetic filament yarn." In the request for reconsideration, Synthetic Resources argues that the fabrics are instead classifiable under heading 5903, HTSUS, as "textile fabrics impregnated, coated, covered or laminated with plastics."

It is undisputed that the subject fabrics have been coated with a polyurethane layer as required by heading 5903, HTSUS. At issue is whether this coating is visible to the naked eye as required by note 2 to chapter 59. In making such determinations, CBP may consider a number of factors, including:

(1) Whether the coating has visibly altered the surface of the fabric (Headquarters Ruling (HQ) 967884, dated October 26, 2005);
(2) Whether the plastic is visible in the interstices of the fabric (See HQ 961172, dated August 6, 1998);
(3) Whether the thread or weave is blurred or obscured, (HQ 089772, September 11, 1991); and
(4) Whether the surface of the fabric is leveled or smoothed and whether the coating itself creates a distinct visible pattern (Id.).

These factors are not exclusive and none is determinative. See HQ W968300, dated February 8, 2007.

In NY M80456, CBP determined that the fabrics at issue were not visible to the naked eye and were therefore excluded from classification in heading 5903, HTSUS. We now find that determination to be in error. A visual inspection of these fabrics shows that the polyurethane has altered the surface of the fabric by obscuring the thread or weave. The coated surface of the fabric is smoother than the uncoated surface. In addition, the coating is visible in the interstices of the fabric. According to the criteria enumerated by CBP administrative precedent, the subject fabrics, style numbers 4005036AU and 4006038AU, feature a coating which is visible to the naked eye. They are therefore classifiable as coated textile fabrics under heading 5903, HTSUS.

HOLDING:

By application of GRI 1 and Note 2 to chapter 59, style numbers 4005036AU and 4006038AU are classifiable under heading 5903, HTSUS. Specifically, they are classifiable under subheading 5903.20.2500, HTSUSA, which provides for "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other." The 2007 general, column one rate of duty is 7.5 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY M80456, dated March 7, 2006, is hereby revoked

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.