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(H) A [REDACTED]

(I) In locations that have biometric verification systems, (equipment that reads a person's fingerprint and compares it to the print imbedded in the card,) all border crossing card holders who require a Form I-94 to complete their entry documentation must have a biometric verification performed between the card and the holder before being issued the Form I-94.

(c) In your role as primary officer, you must rely heavily on your powers of observation. On the vehicular lanes, as you clear one vehicle and turn to watch the next approach, you make several determinations in the short time it takes for the vehicle to stop.

[REDACTED] In most cases you will determine almost immediately if you will be referring the vehicle for a secondary inspection. In other cases, the occupants may initially appear to be admissible, but their responses to your questions, combined with your observations, may indicate that further inspection is required. A conversational knowledge of Spanish for officers assigned to the Mexican border or French, for officers assigned to some Canadian border ports, is essential.

(d) As a primary officer dealing with pedestrians, you can learn by observing arriving persons (especially during very heavy traffic periods) as they approach the inspection point. [REDACTED] may all have some bearing on the determination that you make as to admissibility. As quickly as possible, you must determine the nationality of each applicant for admission.

(e) (1) As a general rule, every person will either present a passport or border crossing card or make an oral declaration of nationality. An oral declaration for a child may be accepted from an accompanying adult.

(2) Aliens will frequently attempt entry using fraudulent documents of every description at land border locations, hoping to escape detection because of the high traffic volume. A comprehensive discussion of fraudulent documents is contained in Chapter 17.3. Also refer to discussions of Intelligence functions in Chapter 32 and tools for detecting fraudulent documents in Chapter 34.

(f) (1) [REDACTED]

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[REDACTED]

[REDACTED]

(g) (1) You must then determine the nationality and admissibility of each applicant for admission as well as obtain an oral CBP declaration from the operator of each vehicle and other persons as may be indicated. Based on the answers to questions asked and your observations of the occupants of the vehicle, you must determine immediately whether an in-depth inspection is required. If you are satisfied that all of the Federal requirements have been met, you will admit the vehicle/and or persons.

(2) (A) In determining which oral claims to accept as is, an officer may rely on the confidence of the applicant's demeanor and English language ability. Veteran officers rely upon their developed questioning skills, recognition of applicants and past experience to conduct an effective inspection.

(B) An officer should develop a consistent, systematic approach to the visual examination and assessment of the validity of a document. Additionally, an officer should attempt to gain experience with a wide range of counterfeit and altered documents typical of those presently being used by inadmissible aliens applying for admission at their particular port of entry. Officers should be constantly aware of the possibility of concealed aliens and compartment cases, impostor loads, lead vehicles (guide cars to impostor vehicles).

(C) In determining which applicants to refer to secondary, an officer should rely on his or her powers of visual observation (i.e., matching the person to the vehicle). This, combined with strong interviewing skills, familiarity with the surrounding geography, customs and traditions (especially in determining false claims to U.S. citizenship.) should help in secondary determination. Quick check features such as a laminate check, single feature facial identification for impostors and genuine security checks will aid in the primary inspection.

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[REDACTED]

[REDACTED]

(h) (1) Mexican Land Border Ports. At southern land border crossings, the majority of applicants for admission will fall under the documentary requirements of 8 CFR 212.1(c). The frequent border crosser at the southern land border crossings will readily present proof of citizenship/visa without being asked. Most border crossers are familiar with the documentary requirements of the INA.

[REDACTED]

(2) The questions below, in addition to Customs and Agriculture declarations, will aid an officer in the primary inspection:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(3) The most frequently encountered documents presented at Mexican land border ports are:

Mexican Passport with visa

Alien Resident Cards/Commuter Resident Alien Cards (I-551)

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Stand-alone visa (BBBCC)

Forma Trece/Temporary BCC (in lieu of document, used in place of a passport)
Naturalization certificate

Birth certificates/State issued drivers license or identification card U.S. passport

"Laser Visa" B-1/B-2 Visa and Border Crossing Card (DSP-150)

(i) (1) At U.S./Canadian land border crossings, you will often accept oral declarations of nationality (United States or Canadian citizens) from most applicants for admission because of the waiver of visa and passport requirements for Canadian citizens. See 8 CFR 212.1(a). However, documentary proof of Canadian citizenship may be required to satisfy the immigration officer that the applicant is entitled to enter the United States and not inadmissible.

(2) A landed immigrant of Canada requires a passport and a valid, unexpired visa to enter the United States, unless he or she is a national of and presents a passport issued by a country eligible for the Visa Waiver Program (VWP).

(3) (A) Each adult applying for admission should be questioned as to citizenship. Never accept a single spokesperson (driver) for an oral group declaration of citizenship. Questions, such as the following, should help in determining oral claim admissibility as well as when to require documentary proof of citizenship:

[REDACTED]

(B) See Chapter 12.3 for a discussion of oral claims as evidence of U.S. citizenship. (IN98-16)

(C) Common Documents Encountered at Canadian Land Border Ports. Among the documents you will frequently encounter and should be familiar with are the

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following:

Canadian Passport

Canadian Citizenship Card

Provincial driver's license with a birth certificate (or baptismal birth certificate - Quebec)

Canadian Travel Document (issued to Convention Refugees who are permanent resident of Canada but not Canadian Citizens)

Certificate of Identity (issued to permanent residents of Canada who are unable or unwilling to get a passport from their country of nationality)

Certificate of Indian Status

Commuter resident alien card

(4) (A) Canada Border Services Agency (CBSA) stamps commonly appear in foreign passports as an indicator of the date of arrival of the person in Canada and the authorized length of stay. It is important to determine current status in Canada to ensure re-admission back into Canada if that is the applicant's intention. The stamp is usually next to the Canadian Visitor Visa (CVV); however, this is not mandatory.

(B) Notes, written by the officer who granted entry, regarding the length of stay and so forth, may accompany such entry documents.

(C) Generally, a visitor is admitted to Canada for a period of 6 months. Additionally, on a reciprocal basis (Canada/U.S.A), an applicant who is admitted to Canada on a one-entry visitor visa will usually be re-admitted to Canada from contiguous territory within the original authorized period of stay.

(D) Anyone seeking to remain in Canada permanently requires an immigrant visa. Immigrant visas are issued by Canadian foreign missions abroad in the same manner as visitor visas. Immigrant visas are issued on a form entitled "Record of Landing" (commonly referred to as an "IMM 1000"). In actual fact, it only becomes a Record of Landing once the immigrant has been admitted (or "landed") by an officer at a port of entry for the first time. The permanent resident process is similar to that of the United States. (IN98-16)

21.2 Secondary Inspection.

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(a) General. Follow established local procedures for referrals to secondary, using I- 443 referral forms, written notes, or whatever other local system is set up to communicate precisely with the secondary officer. Where possible, persons suspected of making a false claim to United States citizenship or suspected of making a fraudulent application for admission should be escorted to the secondary area and isolated from other persons, to the extent possible, until the secondary inspector is able to initiate interrogation. Advise the secondary inspector of statements made to you by the applicant at the initial inspection.

Most secondary referrals will be for routine matters such as the processing of immigrants (see Chapter 14) and nonimmigrants (see Chapter 15). Matters relating to processing inadmissible aliens are discussed in Chapter 17. Handling of paroles and other special classes are discussed in Chapter 16.

Conduct an IDENT query if equipment is available at the port. If it is found that a U.S. citizen or lawful permanent resident has had problems at the border or with other agencies, it should be brought to the attention of the agency concerned. (A discussion of the IDENT program is contained in Appendix 45-1 of the *Special Agent's Field Manual*.)

(Revised IN01-21)

(b) Special Procedures for Aliens Not Admitted at Canadian Ports. At a Canadian border port, if an alien is refused entry and returned to Canada or paroled, execute Form I-160A, Notice of Refusal of Admission/Parole into the United States. The top copy is given to the alien for presentation to the Canadian Immigration officials, the second copy is retained at the port. This procedure is in addition to the procedures described in Chapter 17, relating to withdrawals and exclusion hearings and in Chapter 16, relating to paroles. (IN98-16)

21.3 Persons Arriving by Common Carrier.

As with the inspection of persons applying for admission as pedestrians or in automobiles, it is the policy of this Service and of the Customs Service to have only one officer conduct the primary inspection for all agencies of passengers arriving on buses or trains at land border ports. The primary officer refers to an officer of the agency concerned only those persons requiring detailed secondary inspections.

Persons arriving by ferry are inspected at the landing as though they were arriving at a land border port. Where ferry passenger are pre-inspected, they can be screened by one inspector as they enter the loading area, but space must be provided for required secondary inspections. (IN98-16)

21.4 Land Border Inspection Responsibilities. (Revised 11/3/04; CBP 6-04)

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The main objective of a primary inspector is to determine quickly and accurately whether the arriving person and goods are clearly admissible and meet all customs, agricultural, and immigration requirements for entry. To keep traffic moving smoothly, persons or goods not immediately admissible are referred to other specialized CBP officers for resolution or further processing, as necessary.

Land border ports are seen as resources of the community in which they are located. Local news outlets often feature the ports in articles and they notice when changes occur. Ports function as the connection point with government groups in the neighboring country. Often civic officials from the community meet with port directors from the U.S. or from both adjoining countries to clarify government procedures or work on joint projects.

Port managers and officers maintain close liaison with border law enforcement officials from the neighboring country to complete inspection responsibilities; this includes police forces as well as immigration and customs officials. Port building projects and equipment installation often require the ports to interact with CBP facility personnel and GSA.

See Chapter 41.1 for additional information on port liaison activities.

21.5 Mexican Border Crossing Cards. (Revised 11/3/04; CBP 6-04)

(a) General. The term "border crossing identification card," as defined at Section 101(a)(6) of the Act, means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations provide that (1) each such document include a biometric identifier (such as the fingerprint or hand print of the alien) that is machine readable and (2) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien (effective October 1, 2002).

(b) Inspection Procedures for BCC Holders and other Mexican citizens at Mexican Land Border Ports. At United States/Mexico land border crossings, all aliens, except those specifically exempt passport and/or visa requirements, seeking admission to the United States are required to present documentary proof not only of their citizenship, but also of their right to enter the United States. Mexican nationals, who account for the vast majority of aliens crossing into the United States across the southern border, do not need to present either a passport or visa if they are in possession of a valid DSP-150 biometrically enabled border crossing card. Bearers of Mexican diplomatic or official passports and their spouses and children traveling with them do not require a visa for entry into the United States if they are not here for either a diplomatic or government purpose, and will be here for six months or less. Officials of the International Boundary and Water Commission, entering in connection with their employment, require only their official identification for admission to the border area.

Document fraud and impostors are serious problems on the southern border. In order to

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process the large number of people seeking entry in pedestrian lanes within a reasonable amount of time, inspectors must quickly examine documents presented. The use of document readers, the biometric verification systems where available, and conducting IBIS queries provides additional verification that an entry document is valid and belongs to the person presenting it. The same holds true for vehicular traffic. Often several individuals in a vehicle will make detailed document identification difficult.

[REDACTED] The majority of Mexicans who cross the border do so frequently. Those who are legal crossers will more often than not exhibit the presence of mind of someone who is doing something out of habit.

(c) Use of the Mexican Border Crossing Card on the Canadian Border. Occasionally, an officer at a Canadian land border port will encounter a border crossing card. If the Mexican citizen still resides in Mexico, and the card is the current edition of the DSP-150, the card may be used for entry until the date of expiration. However, if the Mexican citizen is no longer a resident of Mexico, the card may be voided on the grounds that the card requires the bearer to reside in Mexico.

(d) Issuance Procedures for Border Crossing Cards (Form DSP-150). Effective April 1, 1998, the Department of State began issuing Mexican Border Crossing Cards, Form DSP-150, B1/B2 Visa and Border Crossing Card (also known as the "laser-visa"). Issuance procedures are set forth at 22 CFR 41.32.

(e) Revocation. An immigration officer may revoke a Form DSP-150 issued by a consular officer in Mexico if the holder is found to be inadmissible. Authority for the revocation is found at 22 CFR 41.122(h). Cancellation of a DSP-150 requires supervisory approval, must be recorded on Form I-275, and the I-275 is then returned to the issuing consular post.

21.6 Canadian Border Crossing Cards. (Revised 11/3/04; CBP 6-04)

(a) General. Refer to Chapter 21.5(a) above for a general discussion of the term "border crossing card." Until March 31, 1998, a Canadian citizen or British subject who had permanent residence in Canada could apply for and receive from the Immigration and Naturalization Service a Nonresident Alien's Canadian Border Crossing Card. The laminated card (Form I-185) was issued to facilitate that alien's admission into the United States.

The card was usually issued to persons who had shown rehabilitation or had otherwise overcome grounds of inadmissibility (usually criminal) by the previous granting of a section 212(d)(3)(B) waiver; however, any citizen of Canada or British subject who had permanent residence could apply for and be issued a card. The card was valid until revoked. In cases where grounds of inadmissibility had been overcome, the alien's file number and the grounds of inadmissibility that applied were printed on the reverse side of the card.

As Form I-185 does not meet the definition of a border crossing card in Section 101(a)(6) of the Act, it ceased to be issued on April 1, 1998 and cannot be used as a travel document. Form I-185 issued prior to April 1, 1998, may be accepted as evidence of a valid section 212(d)(3)(B)

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waiver if the card is annotated with the waiver and the waiver has not expired or otherwise been revoked or voided. With the publication of the regulation titled "Requirements for Biometric Border Crossing Identification Cards (BCCs) and Elimination of Non-Biometric BCCs on Mexican and Canadian Borders" on December 2, 2002, CBP may now approve section 212(d)(3)(B) waivers for up to 5 years. Such waivers are now documented on Form I-194.

(b) Use at the Mexican Border. A Canadian citizen or British subject residing in Canada may continue to use Form I-185 as evidence of a waiver granted, provided that the term of the waiver has not expired, at any U.S. port of entry (although British subjects now also require a nonimmigrant visa).

(c) Revocation. Form I-185 may be declared void at a port of entry by a supervisory immigration officer on the grounds that the holder has violated the immigration laws; is inadmissible to the United States; or has abandoned residence in Canada.

(Procedures to be followed are set forth at 8 CFR 212.6(d).)

21.7 Use of Form I-94. (Revised 11/3/04; CBP 6-04)

(a) General. Most Mexican and Canadian land border applicants are exempt issuance of a Form I-94 pursuant to the policy described in Chapter 15.1(b). In addition, aliens reentering after short trips to Canada or Mexico, as described in Chapter 15.3(b), do not require a new Form I-94 if they still hold a valid form issued at a land border port-of-entry during a prior visit. Each nonimmigrant issued a Form I-94 at a land border is required to pay the fee prescribed in 8 CFR 103.7, except if the applicant is paroled.

Issue a Form I-94 to each Mexican nonimmigrant who is otherwise admissible and entering for more than 30 days and/or going beyond a 25-mile distance from the border or who is entering for other than visiting for business or pleasure (class B1 or B2) or transit. For those Mexican nonimmigrants entering through the Arizona ports-of-entry at Sasabe, Naco, Mariposa, Nogales, and Douglas, a Form I-94 is only required if the applicant is otherwise admissible and entering for more than 30 days and/or going beyond a 75-mile distance from the border. Issue a Form I-94 to Canadian nonimmigrants entering for other than visits for business or pleasure (class B1 or B2).

[Rev. IN 00-09]

(b) Multiple entry Form I-94. Issue a Form I-94, valid for multiple entries over a specified period, to any nonimmigrant alien who is otherwise admissible and frequently needs to cross at land border ports-of-entry. Form I-94 may be issued to Canadian visitors to facilitate the inspection process. Upon expiration, the form should not be extended, but canceled and reissued. Forward multiple entry Forms I-94 for data entry in the same manner as single entry forms. Endorse the departure copy of the Form I-94 with a "multiple entry" stamp on its face; note the reverse of the form "multiple entry" in the remarks block. [See Chapter 22.7 for I-92/I-94 forwarding instructions.] If the Form I-94 is not to be used for multiple entries, the departure copy should be endorsed on its face with the number of entries for which it is valid, and the reverse of the form should be annotated accordingly in the remarks block.

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(c) Departure I-94 forms and other documents. Collection of departure I-94 forms at land borders has always been difficult, resulting in inaccurate Nonimmigrant Information System records. Canadian immigration officials collect some departure documents for DHS, other I-94 departure forms may be retained by the alien for reentry. Collection boxes for depositing some departure I-94 forms are in place at some Mexican border crossings. Whenever a departure Form I-94 is found in the possession of an arriving nonimmigrant, unless the form remains valid, annotate the reverse of the Form I-94 with the correct departure date, if this can be ascertained, and the method of departure [See Chapter 15.1(b)]. Do not endorse the back with your admission stamp when the new Form I-94 is issued, as this may indicate an incorrect departure date. Forward the old departure Form I-94 and the new arrival Form I-94 for data entry. Departure forms collected by Canadian immigration or deposited in collection boxes should be reviewed to insure departure information is endorsed on the back and regularly forwarded for data entry. [See Chapter 22.7 for I-92/I-94 forwarding instructions.]

Occasionally, you may be asked to personally verify departure of an alien. This situation may be a result of a need for verification of a voluntary departure, compliance with the terms of a bond, or other reasons. In such instances, verify the identity of the alien and properly endorse and forward forms being presented. In some instances it may be necessary to take a fingerprint of the departing alien.

(d) Special procedures for Canadian loggers. Special procedures are in effect for admission of Canadian loggers entering as H-2B workers within the USCIS Portland, ME district. An I-129 petition for the woodsmen is filed with the USCIS District Director in Portland, based on a labor certification for loggers, skidder operators, cooks, or mechanics. The I-129 is accompanied by the labor certification specifying the number of woodsmen, the jobs they will hold, and the proposed port-of-entry.

The Portland office creates a petition number, adjudicates the petition and notifies the appropriate port of the action taken, number of beneficiaries, petition number and validity dates. The beneficiaries apply for admission at the specified port, which issues and maintains control over the single or multiple entry I-94s and insures the number of admissions on each petition does not exceed the approved total. The I-94 forms for such aliens do not get entered into the NIS database.

(e) Disposition of Forms I-94. [reserved]

(IN98-16)

21.8 Commuters.

(a) General. Commuters are lawful permanent resident aliens who work in the United States but reside in contiguous territory. Commutation may be daily or seasonal but must be, on the whole, regular or stable. Commuter aliens may "commence or continue to reside in foreign contiguous territory." See 8 CFR 211.5(a). It is not necessary for commuter aliens to establish a residence in the U.S. and then return to either Canada or Mexico to assume commuter status. An alien may present for initial

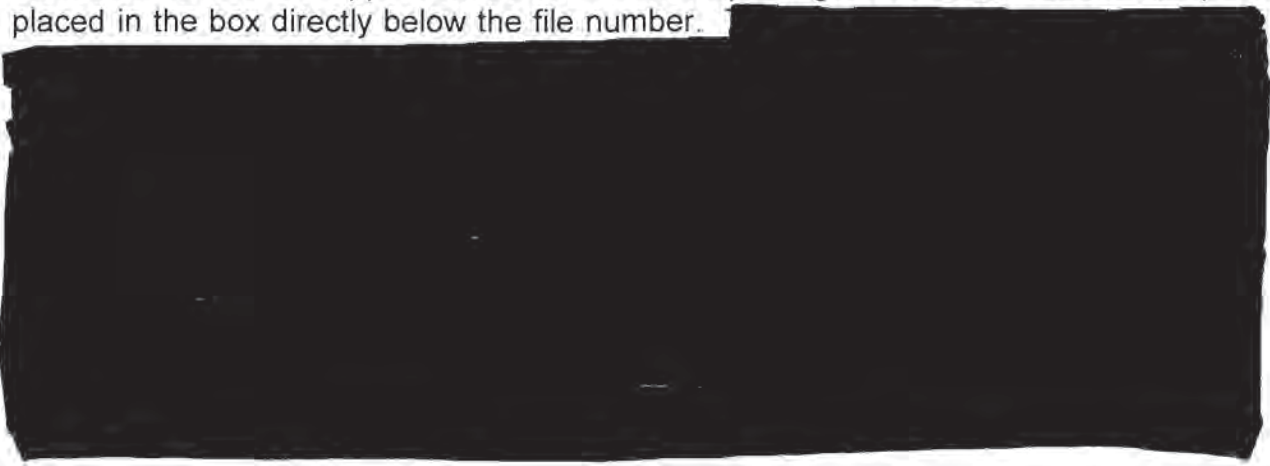
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entry a valid, unexpired immigrant visa at a port of entry that shows an address in a foreign contiguous country. As long as the alien is otherwise admissible and makes an entry into the U.S. subsequent to the processing of his/her visa at the port of entry, the alien may begin his/her lawfully admitted resident alien status as a commuter. There are two types of commuters, those who commute regularly, normally entering at least twice a week, and those who enter to perform seasonal work for extended periods, but whose annual stay in the United States is for less than six months. The latter are referred to as "seasonal commuters", also known as seasonal workers. Resident aliens physically present in the United States for more than six months in the aggregate each year are not considered commuters.

(b) Inspectional Procedures.

(1) Initial Admission. When an alien presents an immigrant visa for initial admission as a lawful permanent resident, the inspector should check the accuracy of all information given on the face of the immigrant visa. All necessary corrections should be made directly on the visa. After opening the visa packet, check for necessary documentation required by the assigned immigrant classification. The alien should be questioned to ascertain if he/she is still eligible for the classification. If not, the alien should be set up for removal. If the alien is admissible, then the immigrant visa should be routinely processed.

(2) Conversion to Commuter Status. Once a permanent resident has been identified as a commuter alien, the alien should file Form I-90 for a replacement card indicating the new status of commuter. This will require a completed I-89 also showing the proper status. The alien's incorrect Form I-551 should be lifted and a temporary I-551 issued to the alien along with a properly executed Form I-178. Form I-178 is used to ensure that an alien commuter remains eligible for that status by not having been out of employment in the United States for more than six months, except for circumstances beyond his or her control. Form I-178 is endorsed with the alien registration number of the commuter in the upper left corner. The inspecting officer's admission stamp is placed in the box directly below the file number.



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ceased to exist.

(3) Reinspection: Every time an alien presents a primary inspector with Form I-551, the inspector should personally handle the card. In the course of such examination, the reverse of the card should be checked to see what the transmittal code of the card is. A transmittal code of "2" indicates that the card belongs to a commuter alien who is required to present Form I-178 along with his/her Form I-551 at the time of application for admission. The inspector should request to see Form I-178 if not presented with the Form I-551. Should a commuter alien not be in possession of Form I-178, he/she should be referred to secondary where the reason should be ascertained for not having Form I-178. If the alien is in possession of proof of current employment, Form I-178 should be issued at that time. If not, then the alien should be deferred for presentation of the required proof or issued Form I-176 and required to reappear at the port-of-entry with such proof, whichever is more practical.

(4) Identifying Commuters. Identifying lawfully admitted permanent residents who are, in fact, commuter aliens is a challenge. While some commuter aliens enter through airports, the vast majority apply for entry at the land borders. The hallmark of commuter aliens who commute daily or weekly to work in the United States is the application for entry made at regular recurring intervals, often on the same day of the week and/or at the same time of day. This is often hard to spot since a given inspector rarely will have a primary inspection schedule that matches that of any given commuter alien. However, over time, an inspector can identify patterns of border crossing that will indicate the possibility that a specific resident alien is, in fact, a commuter. When such a possible identification is made, the primary inspector should refer the alien to secondary at which time a deferred inspection, on Form I-546, back to the port of entry should be made and the I-551 temporarily lifted pending completion of the deferred inspection. The alien should be required to bring documentary proof of his/her current employment and residence. This proof may be in the form of rent/mortgage receipts, utility bill receipts, paycheck stubs, or other types of documentation.

Inspectors should remember that residence documentation may be in the name of a spouse or parent. This is one aspect that makes the identification of commuter aliens difficult.

(5) Loss of Commuter Status. In addition to loss of employment, commuter status is lost when a commuter alien begins to reside in the U.S. When the commuter alien takes up residence in the U.S. he/she may immediately file Form I-90 to change his/her status. It is not necessary for the alien to wait six months after having established such residency. However, sufficient proof must be presented to the inspecting officer to convince the inspector that the residence is bona fide and not frivolously established solely to facilitate the receipt of other benefits and entitlements.

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At the time of the filing of Form I-90, the previously issued Form I-551 shall be lifted and temporary evidence of permanent residency shall be issued to the alien. The Form I-89 shall be filled out to indicate that the alien is now resident within the United States and is no longer a commuter.

It should also be noted that under 8 CFR 211.5(b) there is an exception to the general rule that an alien commuter who has been out of regular employment in the United States for 6 months is out of status. That proviso states in part that 8 CFR 211.5(a) does not apply if " ... the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States."

A commuter whose status is in question is not subject to expedited removal under section 235(b)(1) of the Act. He/she should be referred for proceedings under section 240 of the Act.

Note: Inspectors should be aware that commuter aliens who have lost employment or been out of work because of an illness or injury, whether eligible for workman compensation or not, are rarely ordered removed by an immigration judge. Care should be taken when deciding whether to set up such an alien for removal. Consultation with a supervisor or district official may be beneficial. Family members of commuter aliens present additional problems. Such family members living in foreign contiguous territory with the commuter alien may be U.S. citizens, B1/B2 nonimmigrants, or other lawful permanent residents. When unemployed immediate family members are also lawful permanent residents, inspection of such family members becomes complicated. It is recommended that a supervisor or other port of entry or district official be consulted should an inspector desire to set up for removal a lawful permanent resident immediate family member of a commuter alien based solely on that alien's lack of employment in the U.S.

(6) Statistical Reporting. See Statistics Handbook, paragraph 31101(a)(3), Inspections Activity Workload Reports, Specific Line and Column Definitions, Primary Inspection Operations Report Line #3, and Enforcement Activity Report, Line #46.

(IN98-16)

21.9 Northern Border Inspection Systems (NORBIS).

(a) General. The INS and the United States Customs Service (USCS) have developed NorBIS to enhance security, enforcement, and service along the northern border of the United States. Designed to use the latest in automation and video technology, NorBIS improves the current primary inspection process in place for many small, rural, border communities.

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(b) Remote Video Inspection System (RVIS). The INS and USCS have initiated a program called the Remote Video Inspection System along the northern border. RVIS has been placed at low-volume, small, remote POEs that were only open for limited hours to extend their hours of operation. Now, INS and Customs inspectors from larger 24 hour POEs are able to remotely inspect travelers at the RVIS POE using interactive video, surveillance and control equipment, and a validation system for PortPASS (See Chapter 31.3 *Introduction to Service Automated Systems*) holders. The *enrolled* traveler must swipe his/her PortPASS card through a card reader. If the card is valid and there are no alerts, the system instructs the traveler to proceed into the United States. If the card is invalid or expired, or if there are any alerts, the system prompts the inspector to continue the inspection manually. The infrequent (not enrolled) traveler after remote manual inspection by the inspector may either be instructed to cross the border, referred to a staffed POE for a secondary inspection, or instructed to return to Canada.

(c) Outlying Area Reporting Station (OARS). The *enrolled* traveler (arriving by small boat or snow mobile for entry into the U.S. or Canada) swiped his/her Port PASS card through the card reader. Once identified and validated, the system displays a message on the text display, instructing the traveler to proceed into the U.S. The non-enrolled traveler simply pushes a button on OARS that corresponds to the country being entered and is connected to a U.S. inspector or a Canadian inspector.

(d) Videophone Inspection System. Videophones are located in marinas and docks that are accessible to the public. The boater simply opens the door and lifts the handset. The boater is automatically connected to an officer and the inspection begins.

(e) License Plate Readers (LPRs). License plate readers use optical character recognition to read the license plates displayed on a vehicle as it enters a land border Port of Entry. The LPR automatically enters the information into the Interagency Border Information System (IBIS) for use by the inspecting officer or for later historical use.

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21.10 Secure Electronic Network for Traveler's Rapid Inspection (SENTRI)

While similar to the initiatives on the northern border, the SENTRI program is not subsumed under NorBIS. SENTRI is an electronic, dedicated commuter lane that enhances the flow of low risk frequent border crossers through a port of entry while maintaining the security and integrity of our borders. SENTRI uses a pre-enrollment process and the PortPASS card coupled with a vehicle-mounted electronic transponder to improve the inspection process and provide a predictable wait time for entry into the United States. An inspector reviews the information that appears on the computer monitor, and if no lookout information appears, the vehicle and driver are allowed to proceed. (IN98-16)

21.11 Facilities Inspections.

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Bridge owners or operators may, pursuant to section 271 of the Act, and 8 CFR 271.1 request inspection of their facility to insure it is properly constructed to prevent illegal entry of aliens. If a facility has been certified by the district director as adequate, the owner or operator is not liable for a fine under section 271(a). The certification may be revoked, at any time. If the operator or owner believes the district director's requirements are too stringent, he/she may request review by the regional director. All requests, findings, certifications and revocations shall be prepared formally, in writing and served by routine service as prescribed in 8 CFR 103.5a . (IN98-16)

21.12 Emergency Procedures during Canadian Air Traffic Controller Strikes.

See Chapter 22.9(a)(1).

21.13 Entry of Commercial Truck Drivers. (Revised 8/2/05; CBP 10-05)

(a) General. The immigration regulations and policies have long held that alien truck drivers may qualify for admission as B-1 visitors for business. Two BIA precedent decisions, Matter of Cote, 17 I&N Dec. 336, (BIA 1980) and Matter of Camilleri, 17 I&N Dec. 441, (BIA 1980), support the entry of commercial truck drivers as B-1 visitors to pick up or deliver cargo traveling in the stream of international commerce. These decisions provide that certain other activities that are "necessary incidents" of international commerce are also permissible under the B-1 classification. Drivers must meet all general entry requirements for the B-1 classification, including any applicable documentary and admissibility requirements.

(b) DHS Regulations and NAFTA. The regulations at 8 CFR 214.2(b)(4) codify the Distribution provisions found in Appendix 1603.A of the NAFTA with respect to the admission of Canadian and Mexican citizens as B-1 business visitors. The NAFTA Distribution provision is based on applicable U.S. law, precedent decisions, and experience with the B-1 classification at the time the trade agreement was negotiated. The contiguous nature of the United States with Canada and Mexico and the importance of cross-border transportation prompted the need to develop explicit provisions regarding distribution of goods and passengers. Acceptable activities for B-1 nonimmigrants under the NAFTA are the same as those allowed for other B-1 nonimmigrants under current DHS regulations, such as delivering or transporting products. The intent of the Distribution provision of the NAFTA Business Visitor category is to set forth transparent criteria for the admission of alien drivers transporting goods or passengers across the border, an activity that is international in scope – it is not to facilitate access to the domestic labor market. 8 CFR 214.2(b)(4)(i)(E)(1) defines the distribution activity as:

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Transportation operators transporting goods or passengers to the United States from the territory of another Party or loading and transporting goods or passengers from the United States to the territory of another Party, with no unloading in the United States, to the territory of another Party. (These operators may make deliveries in the United States if all goods or passengers to be delivered were loaded in the territory of another Party. Furthermore, they may load from locations in the United States if all goods or passengers to be loaded will be delivered in the territory of another Party. Purely domestic service or solicitation, in competition with United States operators, is not permitted).

(c) Key Principles Relating to Cabotage. Several General Counsel opinions have addressed certain aspects related to trucking. However, as the transportation industry grows and evolves, officers are faced with new and unique situations that did not previously exist and may not have been considered or addressed. Cabotage (carrying goods picked up at one point in the United States and dropping them off at another point in the United States), sometimes referred to as point-to-point hauling, is not a "necessary incident" of international commerce. Although this guidance cannot address every situation, there are several general principles to keep in mind when determining whether a trucking movement is a permissible B-1 activity versus an activity constituting cabotage or unlawful employment in the United States:

(1) The goods must be leaving or entering, and remain, in the stream of international commerce.

(2) Cargo that has its origin and final destination within the United States generally moves in the stream of domestic, rather than international commerce. The mere fact that goods originate from a foreign source does not make such goods "foreign" for purposes of the immigration laws. The goods must remain in the international stream of commerce – once they have come to rest, they assume a domestic character, including foreign goods that undergo a change, alteration, processing, or remanufacturing upon arrival in the United States.

(3) A driver bringing goods from Canada or Mexico may transport those goods to one or several locations in the United States, and may pick up goods from one or several U.S. locations for delivery to Canada or Mexico, but the driver may not load, haul, or deliver a cargo that has its origin and its final destination within the United States.

(4) The regulation focuses on the transportation of goods from one location to another and not the place where the goods are manufactured, processed or packaged. While the origin of the goods may be U. S. or foreign, the driver may not both pick up a shipment from one location and deliver that shipment to another location within the United States. Further, a driver may pick up goods in Canada or Mexico, regardless of

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whether they are foreign or U.S. made, and deliver them to a location in the United States.

(5) The entry of the driver must be for the purpose of an international movement of goods.

(6) Drivers may not engage in any activity that qualifies as local labor for hire.

(7) As with the application for admission of any nonimmigrant visitor, the burden of proof remains with the driver to establish eligibility for entry.

(d) Permissible Activities. In addition to the basic international deliveries and pick-ups discussed above, following are some other permitted movements and activities. These activities are not all-inclusive, but generally follow the same principles involving international commerce.

(1) Deadheading trailers. While delivering goods from Canada or Mexico to the United States, or picking up goods in the United States for delivery to Canada or Mexico, drivers may deadhead (pull empty) a trailer from one location to another within the United States, PROVIDED the deadhead trailer is either the one the driver came in with or the one he or she is departing with. The driver may not haul an empty trailer from one location to another within the United States (known as trailer spotting or repositioning) if the driver did not either bring that trailer in or take it out of the United States. Hauling an empty trailer that the driver does not either enter with or depart with is considered local labor for hire and alien drivers require employment authorization for this type of movement.

(2) Driving an empty tractor. Drivers may enter with an empty tractor to pick up a trailer for delivery to Canada or Mexico. They may drop a loaded trailer from Canada or Mexico at one location in the United States and then drive the empty tractor to another location in the United States to pick up a loaded trailer destined to Canada or Mexico. Drivers may also enter with an empty tractor to pick up a loaded trailer or goods previously brought from either Canada or Mexico and left at the port-of-entry or a customs warehouse or lot for government inspection or entry processing, and deliver that loaded trailer or goods to another point in the United States. The driver must present documentation or provide verification that the trailer or goods are under government control and that they originated outside the United States. Since it is the government itself that is hindering the driver from completing a continuous international move, this limited exception to the prohibition on both loading and unloading goods within the United States is permitted. For example, if further agriculture clearance is required before goods are delivered further within the United States, then the holding of the goods is part of the entry procedure and analogous to holding the goods for inspection at the port-of-entry. The goods remain in the international stream of

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commerce. An alien driver may be admitted to pick up the goods at the port-of-entry or agriculture hold lot and deliver the goods to another point in the United States, even if that driver did not originally bring those goods to the United States. However, if clearance by the government agency is not required before the goods are delivered further within the United States, the holding of the goods is not part of the entry procedure. In this scenario, use of an alien driver to deliver the goods from a holding lot to another point in the United States is cabotage and deemed an impermissible B-1 activity.

(3) Back-Up and Relay Drivers. To promote highway safety or address emergency situations only, CBP allows certain limited movements that would otherwise be considered domestic or point-to-point hauling. Back-up or relay drivers employed by the same company may be admitted as B-1 nonimmigrants in order for drivers to comply with Federal regulations regarding the number of consecutive hours an individual is permitted to drive. These relay drivers may drive entirely domestic segments of an international delivery, provided the domestic portion of the trip is a necessary incident to the international nature of the trip. They need not enter with the vehicle, but must enter within a reasonable period of time before or after the vehicle enters the United States. Drivers entering as relay drivers are considered to be entering for the purpose of an international movement.

(4) Tractor Replacements. For emergency or safety reasons, an alien driver may enter the United States with an empty tractor (bobtail) to replace a tractor already in the United States, such as when the tractor in the United States has broken down, or when the original driver needs to return to either Canada or Mexico for a medical or other emergency.

(5) Yard Moves. An alien driver may "spot" or "shunt" an empty trailer (other than the one he came in with) within a yard or lot only if moving the trailer from one location in the yard to another is a necessary incident to that driver's international commerce, i.e. the driver must move the empty trailer out of the way in order to complete an international delivery to that warehouse door or loading dock.

(6) Trailer Switches. An alien driver delivering goods from Canada or Mexico to a point in the United States (or traveling in the opposite direction) may meet at a drop yard or other location and switch trailers with another driver also delivering goods from Canada or Mexico to a different point in the United States (or traveling in the opposite direction), so that, for instance, the drivers may make their deliveries closer to their home in Canada or Mexico, or so that one driver can meet a tighter delivery schedule. Both drivers must continue in an international move. On the other hand, a driver coming from Canada or Mexico may not switch trailers with a Canadian or Mexican driver coming from a point within the United States, when the driver coming from within the United States will only be returning to another point in the United States. In other

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words, both drivers must either enter or depart the United States with a load.

(7) Necessary Incidents. Drivers may perform activities that are "necessary incidents" of international commerce, or a necessary function of delivery, such as loading or unloading international cargo. In addition to loading and unloading, the driver may participate in activities to safeguard the cargo, as needed. For instance, an alien driver delivering a portable dwelling (i.e. modular home) or prefabricated parts (i.e. modules) may unload the dwelling or prefabricated parts and any required supporting or temporary foundation, including temporary stanchions, shipped with the dwelling to its delivery point in the United States. However, the alien driver, and any other personnel admitted as a B-1 visitor who is involved in the delivery, may not engage in building, construction, or other activities, such as clearing or leveling the site, sealing seams, installing steps, hooking up utilities, attaching the portable dwelling or prefabricated parts to the foundation or slab, assembling of the various parts of the portable dwelling or prefabricated parts, and/or securing them to one another. Drivers may not return to U.S. job sites to unload, move or affix previously delivered parts of a building.

(8) Alien Drivers Paid by U.S. Carriers. U.S. carriers may hire an alien truck driver to engage in cross-border trucking activity into and out of the United States. These drivers may be paid by the U.S. carrier, provided that the alien driver is engaged solely in the international delivery of goods and cargo to or from the United States. Regardless of the terms of the hiring or any contract between the U.S. company and the driver, the alien driver may not engage in domestic carriage of goods without specific DHS employment authorization. The alien driver must have an established foreign residence and must affirm that he or she does not plan to immigrate to the United States or abandon his or her foreign residence. Prior to entry, the driver must obtain any applicable entry documents.

(e) Activities Not Permitted. In addition to certain prohibitions discussed above:

(1) Drivers may not pick up goods at one U.S. location and deliver those goods to another U.S. location, except as discussed above. In addition, on January 11, 1999, the INS issued a memorandum entitled Leasing Agreements Between U.S. and Mexican Carriers that included paragraphs relating to picking up goods stored in a U.S. facility pending distribution in the United States. DHS and the courts have since determined that picking up goods at a storage facility in the United States and delivering them to another location in the United States, even if those goods entered the United States pursuant to a pre-existing delivery contract, is contrary to the Distribution provisions of the NAFTA and the regulations at 8 CFR 214.2(b)(4). Such activity would constitute cabotage. This chapter supersedes that memorandum.

(2) Drivers may not reposition an empty trailer between two points in the United States when the driver did not either enter with or depart with that trailer.

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(3) Drivers may not "top up" an international shipment with U.S. domestic shipments.

(4) Drivers may not pick up goods at one location in the United States and travel through Canada or Mexico to deliver those goods to another location in the United States, i.e. a driver may not pick up goods in Washington State and then drive those goods through British Columbia to deliver them in Alaska. That is essentially the same as a driver picking up goods in Washington State and driving through Oregon to deliver the goods in California. The determining factor is the action of the driver picking up goods in one location in the United States and delivering the same goods to another location in the United States.

(5) Drivers may not directly solicit shipments for deliveries while in the United States.

(f) Disparity with Customs Regulations. In February 1999, the U.S. Customs Service revised its regulations to permit certain foreign-based commercial vehicles to engage in transportation of goods between points in the United States, when such transportation is either immediately prior to, or subsequent to, an international move. While DHS recognizes the disparity between what is now permitted under customs regulations for the entry of equipment and goods and what is permitted for the driver under current immigration regulations, it is important to note that the NAFTA provisions and the immigration statutes governing the entry of drivers are more restrictive than those governing customs activities, and do not allow as much flexibility in the regulatory and policy process. Both the NAFTA provisions and precedent decisions interpreting the visitor for business statute expressly forbid point-to-point hauling within the United States by alien drivers. The fact that foreign equipment may be permitted under Department of Transportation or customs regulations to operate within the United States in domestic service does not permit the employment of foreign drivers who are not authorized by DHS to accept employment in the United States. A U.S. carrier that employs an alien truck driver without appropriate employment authorization to transport goods that move within the stream of domestic commerce may be subject to civil and/or criminal penalties under section 274A of the INA.

Chapter 22: Airport Procedures.

- 22.1 General
- 22.2 Inspection Systems
- 22.3 Primary Inspection Procedures
- 22.4 Secondary Referrals
- 22.5 Inspection of Air Crewmembers
- 22.6 Processing Arrival Manifests and Flight Logs
- 22.7 Departure Manifest Procedures

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- 22.8 Progressive Clearance
- 22.9 Emergency Procedures during Canadian Air Traffic Controller Strikes
- 22.10 Inspection of International-to-International (ITI) Transit Passengers (Heading changed 11/17/98; IN99-04)

References:

INA: Sections 212, 231, 232, 233, 234, 235, 251, 252.

Regulations: 8 CFR 212, 231, 232, 233, 234, 235, 251, 252.

22.1 General.

Aircraft arriving from foreign territory are inspected at ports-of-entry designated in 8 CFR 100.4(c)(3) under authority contained in section 234 of the Act. Although the total volume of passengers is small by comparison to the that of land borders, the inspection process is considerably more complex, reflecting the diverse nature of the persons seeking admission to the United States. Personnel assigned to airport inspectional duties are generally funded by the Inspections User Fee Account, from revenue generated by a \$6.00 per-person charge paid by each arriving passenger through a surcharge to their airline ticket price.

Congress, in enacting the User Fee statute, also mandated that the agency improve the level of inspectional service by reducing waiting times at international airports. In order to insure full compliance with the intent of Congress, the Service has established inspector-to-passenger ratios as a guide to help insure waiting time for arriving passengers does not exceed 45 minutes. [See section 286(g) of the Act.] The normal staffing levels are: one inspector per 45 passengers on flights which are all aliens, one inspector per 100 passengers on flights which are all U.S. citizens and returning residents and one inspector per 60 passengers on mixed flights. Of course, in many locations multiple flights arrive for inspectional area during the same time period. Inspectors who are on duty should not be withheld from primary inspection simply because of these ratios.

A complete list of ports-of-entry for arriving international aircraft is included in 8 CFR 100.4(c)(3). Ports-of-entry are designated by the Secretary of Treasury. Ports-of -entry for the arrival of aliens by air are designated by the Commissioner of INS. [See section 234 of the Act and 8 CFR 234.4.] Pursuant to 8 CFR 234.2, unless permission is granted by the Office of Field Operations, aircraft arriving from Cuba must arrive at one of these three locations in the United States:

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- Los Angeles International Airport, Los Angeles, California
- Miami International Airport, Miami, Florida

22.2 Inspection Systems.

In years past, inspection of arriving air passengers was separately conducted by various inspectional agencies: Public Health, Immigration, Customs and Agriculture. Over time, several interagency agreements have resulted in a variety of consolidated inspectional procedures. The variations among airport Federal Inspectional Services (FIS) work areas at different airports reflect this evolution. As a result of these physical FIS differences, there are some differences in local inspectional procedures, although the inspectional requirements of the Service remain essentially unchanged.

The current inspectional process, used at all new facilities, includes an INS-staffed primary inspectional area with Interagency Border Inspection System (IBIS) terminals, located in front of the baggage claim area. The immigration officer completes a primary inspection, including IBIS query, for all agencies and refers to each agency any secondary cases, according to agreed-upon criteria. A Memorandum of Understanding between INS and Customs which was signed on October 17, 1990, and serves as a guideline for interagency cooperation and procedures at airports, is reproduced as Appendix 22-1.

There are a number of special programs in place which will result in variations in the inspectional procedures. Each of these programs is designed to facilitate the inspection process or improve its effectiveness. Although some may be referenced in this chapter, they will be discussed in more detail in Chapter 26.

22.3 Primary Inspection Procedures.

(a) An airport primary inspector performs a series of procedures to quickly complete the admission of readily admissible persons and the detection and referral to secondary of those needing further questioning or more involved processing. The primary immigration inspector conducts an inspection for immigration purposes, including a lookout query for all agencies in the Interagency Border Inspection System (IBIS).

(b) A primary officer determines identity, examines the applicant's travel documents, and completes immigration primary inspection of various categories of aliens and citizens, including execution of Arrival/Departure Record, Form I-94, for admissible nonimmigrants. Detailed procedures for completing inspection of U.S. citizens and each category of nonimmigrant and immigrant are discussed in Chapters 11-16.

(c) (1) During the primary inspection, the inspecting officer shall ensure that the passport number for each applicant for admission who presents a passport (with the exception of a returning resident alien in possession of an Form I-551 or temporary evidence of such, Re-Entry Permit or Refugee Travel Document) is queried in

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IBIS/Advance Passenger Information System (APIS) as part of the primary query.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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passport numbers contained in the TECS record have been reviewed.

(d) (1) In cases where no APIS record relating to the applicant has been transmitted, the primary IBIS query shall consist of the Applicant's Last Name(s), First Name(s), Date of Birth, and passport number, or A-number (entered into the document # field). In cases where an APIS record relating to the applicant has been transmitted, but the record does not contain document number information, the APIS record must be modified to include the applicant's correct passport number, or A-number (entered in the document # field after the record is selected for modification).

(2) Regardless of whether an APIS record relating to the applicant has been transmitted, when either the biographical page of a machine readable passport or a machine readable nonimmigrant visa is scanned on primary, the system automatically incorporates the passport number into the primary query, and modifies the corresponding APIS record, if necessary. When an I-551 or temporary evidence of such, Re-Entry Permit or a Refugee Travel Document is scanned, the system automatically incorporates the A-number into the primary query, and modifies the corresponding APIS record, if necessary.

(3) When manually entering the passport number on primary, if the passport has a perforated number, inspectors shall enter this number into the document # field on primary. If the document does not have a perforated number, the individual booklet number that is preprinted at time of production (as opposed to the number added at the time of issuance) shall be entered. If the document has neither a perforated number nor a pre-printed booklet number, the inspecting officer shall enter the number found in the passport/document number field on the biographical/photograph page of the passport. In the latter case, the "passport number" is typically located in the Machine-Readable Zone (MRZ) and is also the number transmitted to IBIS via the APIS.

(4) When APIS provides passenger information, the inspecting officer must confirm that the data contained on the biographical page of the passport and the APIS data, including the passport number, are the same. The inspector must modify any missing, partial, or incorrect information and perform another IBIS query. Where APIS provides a passport number, or the passport number is queried by scanning the MRZ through a document reader, inspectors need not perform a second query. This is the only exception to the above mandate.

(5) For all IBIS queries, officers must enter, at a minimum, the first and last name; date of birth; passport number and issuing country. Officers may omit the passport number and passport-issuing country where a passport is not required of an applicant for admission. However, where an applicant for admission is not required to present a passport, but does so voluntarily, officers must query the document

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using the criteria provided above.

(6) There are several, different IBIS screens commonly used for conducting IBIS primary queries, including:



(7) There may be other screens used to perform queries during primary inspection or in secondary inspection offices. The above examples are intended to highlight the fact that the location where the passport number is queried may appear differently on various screens, but nevertheless, it must be queried.

(e) (1) For those locations that do not currently have access to IBIS (i.e., seaports, ferry landings, private aircraft and vessel landings, and other remote locations), the Director, Field Operations (DFO) must make arrangements for IBIS to be available in those locations.

(2) One way to make IBIS available in these remote locations is by phone-in queries. Regional, district and port of entry managers will compile a list of phone contacts within the region, district, and area port jurisdiction, where queries can be phoned-in from these remote sites on a 24 hours, 7 days per week basis (24x7). Field managers must provide the contact list to officers performing inspection duties at remote locations to facilitate phone-in queries. The contact lists should give the officer multiple contact options and must include back-up contact numbers as well to ensure that 24x7 coverage is established and maintained. Optional contact locations might include:

- A secondary inspection office at any 24x7 port of entry;
- Existing regional or district-command or operations centers with IBIS access;
- or,
- Ports of entry where officers perform 24x7 port security duties.

(3) Field managers will provide a means for officers receiving phone-in queries to establish that they are speaking with an officer performing inspections and will ensure expeditious processing for all phoned-in queries, bearing in mind that the

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officer at the remote site is performing a primary inspection. Some ways to verify the identity of the caller include (but are not limited to): alerting the receiving office prior to the inspection that a call will be coming, the calling officer should provide their port-code and stamp number, and the name and duty location of the calling officer can be confirmed via cc:mail.

(f) (1) In emergent circumstances, where locally developed primary or back-up phone contacts are unavailable to run a query, the [REDACTED]

[REDACTED] Field managers must ensure that officers conducting inspections at these remote sites have access to suitable communications devices, at all times, to enable officers to phone-in the IBIS query and that they are in good working order.

(2) Officers processing passengers at these remote locations should search IBIS, in the Inspection Operation Passenger Information screen, for APIS data submitted by private, ferry and cargo carriers. Where APIS is provided, the inspecting officer would need to ensure that APIS data is accurate and complete at the time of inspection. The inspecting officer would only need to phone-in queries for missing or incorrect APIS data.

(3) The use of the phone-in query procedure will remain in effect until portable IBIS devices are distributed, and officers have these devices available for use during primary inspection. In cases where there is an IBIS system outage, or it is otherwise unavailable, officers will continue to resort to the Portable Automated Lookout System (PALS). Because PALS does not contain lists of all lost or stolen blank passports, it should be used only in the absence of access to IBIS, including phoned-in IBIS queries.

(g) (1) Procedures for Computer System Failures. The following clarifies and documents the standard operating procedures to be followed in circumstances where the primary system, IBIS, becomes unavailable at ports of entry. All officers performing inspectional duties are required to be proficient with IBIS, to include the APIS, and all other systems available, e.g., National Automated Immigration Lookout System (NAILS) and PALS, which support the inspectional process. These procedures must be followed in sequential order when access to the IBIS database is unavailable. All system problems and outages must be reported to the CBP Help Desk at (703) 921-6000.

(6) Local ports of entry are encouraged to establish their own system of backup contacts to process IBIS, NAILS, and PALS queries. These plans should be forwarded to Field Office for consolidation.

22.4 Secondary Referrals.

The inspector must quickly identify passengers who may not be admissible or whose inspection will require additional time. The primary inspector must communicate with the secondary officer

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via IBIS, concerning the basis for referrals. Local procedures for referral to the secondary areas for each inspectional agency may vary. Generally, each of the procedures discussed in Chapter 17 would be conducted in the secondary area. In addition, most paroles, new immigrant, and refugee admissions are handled as secondary functions because of special stamps required.

22.5 Inspection of Air Crewmembers.

(a) General. At most airport facilities a separate booth is designated solely for inspection of crew members. In some locations, this function may be conducted by a secondary officer. The inspector handling the crew will usually also be designated to receive Forms I-92, Aircraft/Vessel Report and the crew list on either an International Civil Aviation Organization General Declaration or Customs Form 7507, and often has responsibility for closing out the flight paperwork, as discussed below. The paperwork is normally presented by an airline ground agent or a member of the crew. Before the agent or crewmember leaves the area, the inspector should review the paperwork to insure that necessary information, such as total number of passengers and crew and flight arrival or block time, has been provided. The separate alien and citizen numbers are not required until after the flight is closed out and Forms I-94 are tallied. If there is missing information, such as a missing crewmember's name, the inspector should advise the ground agent or purser to make the necessary changes to the declaration.

Although air crewmen are subject to the same conditions which apply to crewmen arriving on vessels, there is a lesser enforcement problem relating to air crewmen.

At air ports-of-entry it is the general practice to expedite the admission of arriving crewmen. There is no objection to this practice so long as inspection of arriving passengers is not delayed simply to expedite crewmen. Waiting passengers should not be asked to step aside so that crewmen can be inspected. The crewmen must wait until the inspection of passengers already in the booth is completed. Under no circumstances should the arriving passengers be left with the impression that crewmen come first.

(b) Passport, Visa and Form I-95 Requirements for Nonimmigrant Air Crew. Each arriving alien crewmember must present a completed Crew Customs Declaration, a valid passport with a "D" visa (except as discussed below) and Form I-95. Exceptions:

- (1) Crewmembers who are Canadian citizens are exempt a "D" visa, but require a Form I-95;
- (2) Mexican crewmembers on the Mexican National Airline, Mexicana, are exempt both a passport and a "D" visa if they present a Mexican "Aeronautical Card"; and
- (3) Crewmembers in possession of Form I-184 do not require a Form I-95.

(c) U.S. Citizen and Resident Alien Crew. U.S. citizen crewmembers must have a valid passport only if arriving after travel outside the western hemisphere. Resident alien

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crewmembers may travel on Form I-551. Resident alien crew ordinarily would not be employed on the same flights as "D" crewmembers. Do not stamp passports of U.S. citizens or returning resident crewmembers unless asked to do so.

(d) INSPASS and crewmembers. The INSPASS inspection process is also available to air crew. This means that some crew will not be inspected in the regular crew booth. Verify through Customs that crew members who were not inspected in the crew booth submitted a Crew Customs Declaration at the crew Customs booth.

(e) "Deadheading" Crew. "Deadhead" crewmembers are air crew members who enter as passengers or non-working crew on board a regular flight or "positioning" aircraft. They are generally entering solely for the purpose of joining the working crew of an outbound flight. Although ordinarily a C-1 visa is appropriate in such circumstances, a B-1 visa is also permitted. At some ports, such crewmembers may be added to the general declaration and admitted as D-1. In all other circumstances, working crewmembers may be classified only as D-1 or D-2.

(f) Clearance of Certain Air Cargo Crewmembers. (1) A clearance may be granted for certain air cargo crewmembers to an onward port-of-entry when the initial stop in the United States is a refueling/technical stop. However, the clearance must have the approval of the local Federal Inspection Service (FIS) agencies.

(2) If the FIS Agencies' approval is granted, the air cargo crewmembers will be inspected at the onward U.S. port-of-entry in accordance with FIS regulations and procedures. The INS port director or his or her representative granting approval is responsible for telephonically contacting the onward port-of-entry to confirm the FIS agencies' clearance approval at the onward port-of-entry.

(3) This clearance for certain air cargo crewmembers does not apply to flights arriving from or transit through the following countries: Afganistan, Egypt, Malaysia, Pakistan, Phillippines, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen. Crewmembers on flights arriving from or transit through these countries must be presented to INS and Customs for full inspection at the first port-of-entry.

22.6 Processing Arrival Manifests and Flight Logs.

(a) Forms I-92 & I-94. Once the last passenger from the flight has been cleared, complete the citizen/alien counts on the Form I-92. The alien count will be the tally of all Forms I-94 collected for the flight. The citizen count includes U.S. citizens and any others who do not require a Form I-94. The Form I-92 should also contain the number of U.S. citizen and alien crew inspected. After the flight count has been finalized, re-sort Forms I-94, segregating those for F-1, M-1, TWOV, VWP and departure. Bundle remaining I-94 forms with the form I-92 for the flight.

Forward all Forms I-94 and I-92 for data entry as described in Chapter 22.7.

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(b) **I-577.** Every INS airport inspectional facility is required to maintain a Daily Air Passenger Inspection Log, Form I-577, containing key information about each arriving aircraft. Most often, this is maintained in the crew booth or secondary area by the crew inspector, secondary inspector or supervisor. The log contains key information concerning the passenger load, arrival and inspection times, and number of inspectors assigned. [See airline codes in Appendix 22-2.] A complete, accurate log is necessary, since the Service is often required to respond to inquiries regarding flight delays and manpower on duty. Frequently, you will be required to process more than one flight simultaneously, somewhat complicating obtaining the flight opening and closing times. Enter flights on the log in order of arrival, to the extent possible. Ports with multiple terminals or separate cargo facilities may maintain multiple daily logs. Flights are generally expected to be cleared in less than 45 minutes. Mark the flight log, in the left hand margin, "DLY" whenever passenger inspection exceeds 45 minutes. In addition, follow local procedures for adherence to the national policy for reporting such delays or other unusual situations affecting the inspection. Do not include clearance times for large groups of TWOV passengers or refugee groups in the passenger processing time for a flight. Note that the first passenger time (FIRST PAX) time on Form I-577 should be the time that the first passenger enters the inspection room and not when the flight paperwork is presented to the crew inspector. If the passengers are detained on the aircraft due to congestion in the inspection area, add to the inspection time the minutes elapsed between blocking and the actual commencement of inspection. (Strictly speaking, this does not allow for the time it took for the passengers to proceed from the aircraft to the FIS area, normally counted as time between block time and first passenger.) The last passenger time (LAST PAX) is the time when the last passenger from the flight clears primary inspection. This may be an estimated time if there are multiple flights in the inspectional area at the same time. The flight closing time is the time when the last passenger has cleared both primary and secondary.

(c) **APIS flights.** When entering the number of primary inspectors on duty for an APIS flight, include only those assigned to "Blue Lanes," or actually engaged in inspecting the APIS flight. When completing the I-577 for an APIS flight, mark an "A" in the right hand margin of the flight log next to the flight. If a flight is ordinarily an APIS flight, but was not processed using APIS, note the right hand margin "NA" and explain the reasons for not using APIS on the reverse side of the log.

(d) **Overtime billable flights.** Flights arriving between 5:00 p.m and 8:00 a.m and:

- (1) are not scheduled (do not appear on the INS flight schedule), or
- (2) flights which arrive one hour or more off schedule

are billable for overtime charges **only** if there are INS officers working overtime during the time of inspection. Identify billable flights on the I-577 by circling the block time for the flight in red.

(e) **Manifests for Precleared Flights.** Enter all Precleared flights on the I-577, listing passenger and crew counts as "0", unless inspection of either is required.

22.7 Departure Manifest Procedures.

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(a) General. Air carriers are required to submit departure manifests, ordinarily within 2 working days of departure, as specified in 8 CFR 231.2. The port-of-entry is responsible for reviewing and sorting the departure forms and forwarding them for data entry. In addition, ports must obtain departure flight schedules and insure manifests are received for all scheduled departing flights. Unlike arrival forms, departure I-94 forms do not have to be separated, except for TWOV forms (I-94T). Promptly (not to exceed 3 days from receipt at airports with permanent staff, 7 days at other locations) forward all forms I-92 and I-94 in accordance with Appendix 15-8

(b) Special TWOV I-94 Handling Requirements. Form I-94T is the primary document used to determine if a TWOV violation has occurred. Although the TWOV carrier has responsibility for submission of a complete and accurate form for each passenger, Service officers must monitor performance to ensure compliance and for completing the shaded blocks on the form.

Some carriers will ask for INS port officials to sign a receipt for departure I-94T forms, separately turned in from other departure forms. When signing such a receipt, advise the carrier, orally or in writing, that such a receipt does not relieve the carrier from responsibility for proper completion of the departure information. The receipt is merely an acknowledgment that the forms were submitted. Improperly completed departure forms should be sent to the contractor for data entry. The contractor will identify forms with missing departure information and notify the National Fines Office of the possible violation of section 231 of the Act. Port officials should not recommend fines in such situations.

Date stamp each departure Form I-94T directly below the admission number with the Service date of receipt. Forms I-94T should be sent for data entry via overnight express, to avoid needless notices of intent to assess liquidated damages. Forward in accordance with Appendix 15-8.

(c) Issuance of a Receipt for I-94 Forms Received from Carrier. When submitting I-94 departure records, some carriers may request that a receipt be signed or stamped to acknowledge the submission. If the Service later alleges that a particular departure record was not submitted, the carrier may be able to prove otherwise and avoid a fine under Section 231(b) by providing a copy of the Service-endorsed receipt. Therefore, ports of entry should be sensitive to the requests of carriers with regard to receipts for I-94 departure records.

When endorsing a receipt for Forms I-94, the receiving officer should draw a diagonal line through any unused spaces on the receipt. The receiving officer should then make a copy of the receipt for retention in a local office log (using the same retention schedule as for other Service correspondence). This important step protects the carrier from any potential questions regarding possible additions subsequent to endorsement, as well as protecting the Service from potentially fraudulent receipts.

If you have questions regarding these receipts, please contact Senior Fines Officer

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Michael D Jones at 202-305-7018 or via ccMail.

22.8 Progressive Clearance.

Some flights have been approved to deplane some passengers and crew at one port-of-entry and the remainder at an onward port. In such instances, the agent will deliver two Forms I-92 to the first port of entry. If you are at the first port, record on the flight log and one copy of the I-92 only the number of passengers and crew cleared at your port. Indicate on the second I-92 the number of passengers and crew which remained on board. Stamp the second I-92 with your admission stamp and return it to the agent, to be turned in at the second port. At the onward port, the agent will deliver the I-92 stamped by the first port, indicating the number of passengers and crewmembers which should be inspected. Complete the inspection, I-92 and flight log, including only those persons inspected at your port. Occasionally, there may be domestic passengers who boarded at the first port, but who are not subject to inspection at the onward port. Such passengers should be airline employees, "deadheading" crewmembers or their families. Such persons are not to be included in the flight log or I-92. [See 8 CFR 231.1(c) for authority and conditions of progressive clearance and Chapter 42.8 discussion of progressive clearance approval.]

22.9 Emergency Procedures during Canadian Air Traffic Controller Strikes.

(a) The following guidelines and emergency procedures will be placed in force at the direction of Headquarters in the event of an air controller work stoppage in Canada.

(1) Passengers destined to the United States from Canada will be accorded inspection at preclearance locations in Canada and bused to the United States. They will be accompanied by an airline representative or guard together with a memo from the INS supervisor in Canada stating the number of passengers inspected and boarded on the bus. In this situation, no inspection will take place at the port-of-entry.

(2) Passengers destined overseas from Canada will be transported on buses from the Canadian airport to an airport in the United States. On arrival at a land port-of-entry, the airline representative accompanying the passengers will provide a list containing the names of all persons on the bus to the INS or Customs officer. The bus then may be allowed to proceed to the United States airport of embarkation where the airline representative will provide the list (second copy) of the names of all persons aboard the bus. An INS or Customs officer will observe the boarding of the flight and make a head count for comparison with the listed names. In the alternative, when the airport is close to the port-of-entry, an INS or Customs officer may escort the bus to the airport and observe the boarding. No inspection will be accorded at the port-of-entry or the airport in this situation.

(3) Passengers arriving at a United States airport on a Canada-bound flight will be accorded full inspection if destined to the United States and inspection is requested. All other

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passengers will not be inspected, but will be transported on buses and escorted to Canada by airline representatives. These flights will be met at the U.S. port of departure by an INS or Customs officer who will then proceed to Canada. In some jurisdictions, the passengers will be inspected by Canadian officials at the border and in others, at Canadian airports of destination. In either case, Canadian officials should furnish a list (second copy) of the names of persons inspected to his United States counterpart at the port or at the airport in Canada (preclearance post).

(4) Passengers traveling from one point in Canada to another point in Canada via a flight entirely within the United States will be bused to U.S. airports through ports-of-entry. The airline representative accompanying the passengers will furnish the port-of-entry with a list of names of all passengers and the port-of-entry will make a head count and furnish this information to the U.S. airport of embarkation. An INS or Customs officer will observe the boarding of the flight and take a head count. The inspector will then furnish the head count and other flight information to the United States airport of debarkation. Each flight will be met at the U.S. airport of debarkation by an INS or Customs officer who again will observe the boarding of buses and make a head count. The buses will then proceed to Canada where airline representatives will furnish Canadian officials with a list of the names of all persons (second copy of the list provided the port-of-entry) transported.

(b) All carriers transporting passengers to and from U.S. airports for flights that usually originate or terminate in Canada under the provisions of guidelines 2 through 4, must be signatory to a Form I-426 agreement. Carriers not signatory to a Form I-426 agreement should be given a reasonable opportunity to enter into an agreement with the Service. If no agreement is entered into, those carriers not signatory shall be precluded from transporting passengers in the manner prescribed in paragraphs 2, 3, and 4 of these guidelines. Every carrier must be reminded that under the provisions of the Form I-426 agreement, liquidated damages may be assessed for each passenger transported who fails to depart in accordance with the provisions of these guidelines.

(c) Employees of carriers whose flights normally operate from Canadian airports are not authorized to be stationed at U.S. airports to conduct routine duties or to perform routine maintenance and aircraft servicing functions. A limited number of supervisory employees may be admitted in B-1 status for the purpose of advising and observing operations of personnel under contract to handle maintenance, janitorial services, ticketing, and reservation services. Mechanics and maintenance personnel may be admitted in B-1 classification to perform emergency mechanical services. They should not be admitted to be stationed at U.S. airports in anticipation of a need for their services. The admission of airline personnel under B-1 classification should be controlled by issuance of Form I-94. The airline employee should be instructed to surrender the original copy of Form I-94 to a United States immigration officers at the time of departure from the United States.

(d) It is anticipated that specific problems not covered in these guidelines will present themselves. As such problems present themselves, the Regional Office concerned should coordinate with Headquarters to resolve them.

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(e) These guidelines are established to apply to air carriers who regularly provide air service to and from Canadian airports and are precluded from doing so due to a work stoppage. The guidelines are not meant to apply to new routes or supplemental service being inaugurated after a work stoppage has commenced.

22.10 Inspection of International-to-International (ITI) Transit Passengers (Heading changed 11/17/98; IN99-04)

(a) General. Changes to the Act as effected by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) require the inspection of all international-to-international (ITI) passengers (formerly known as in-transit lounge (ITL) passengers). Section 235(a)(3) now reads that "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers"

(b) Procedures.

(1) International-to-international passengers shall be inspected but not admitted to the United States. This inspection should be conducted at the In-Transit Lounge (ITL). If this is not feasible, the port director or district office manager shall contact the appropriate deputy assistant regional director for inspections to provide justification for not using the ITL and to make alternative arrangements in keeping with the overall goal of facilitation of the ITI operation.

(2) The transit passenger inspection (TPI) shall consist of a visual examination of ITI passengers during the transfer process at the port-of-entry. This does not require an examination of each passenger and their travel documents. Questioning of ITI passengers and examination of travel documents shall be done selectively and on a random basis but should not interfere with the overall facilitation of the ITI operation.

(3) The POE's shall dedicate sufficient resources at the ITI inspection locations to maximize facilitation and law enforcement while ensuring inspector safety and security without adversely affecting the inspection of passengers seeking admission to the United States.

(4) Carriers are not required to present for inspection ITI passengers or crewmembers who remain on board the aircraft.

(5) Ports-of-entry shall report to the Office of Programs, through channels, any significant implementation problems, including adverse effects on the 45 minute inspection requirement and/or on resources, with any of the above inspection requirements.

(6) Ports-of-entry need to obtain and record accurate ITI passenger counts. Carrier representatives should be questioned regarding ITI passengers counts upon presentation of the Aircraft/Vessel Report, Form I-92. This refers to passenger counts only and not to

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biographical data. The figures reported on the G-22.1 are for planning purposes and for use in discussions with the carriers.

(c) Carrier Responsibilities. Carriers signatory to Immediate and Continuous Transit Agreements (with provisions for control of uninspected passengers and In-Transit Lounge Use), also known as ITL agreements, will be allowed continued transit privileges of ITI passengers until further notice. [See also Chapter 42.2.] Management officials at each port-of-entry with a transit lounge should work closely with air carriers using the transit facilities to ensure the Service receives sufficient advance information about transit passengers who will use ITI facilities. Such information includes date and time of arrival, flight number and an estimate of the number of ITI passengers.

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Chapter 23: Seaport Inspection.

- 23.1 General
- 23.2 Exceptions to Inspection Requirements
- 23.3 Inspecting Cargo Vessels
- 23.4 Inspecting Cruise Ships
- 23.5 Payoff and Discharge of Crewmembers
- 23.6 Refusals
- 23.7 Deserters and Abscondee
- 23.8 Stowaways
- 23.9 Mustering
- 23.10 Revocation of Landing Permits
- 23.11 Performance of Longshore Work by Crewmembers
- 23.12 Parole of Alien Crewmembers
- 23.13 Vessels Remaining beyond 29 Days
- 23.14 Ship Intelligence Cards
- 23.15 Departure Manifests
- 23.16 United States-Based Fishing Vessels
- 23.17 Vessels Serving on the Outer Continental Shelf (OCS)
- 23.18 Asylum Claims by Vessel Crewmembers or Stowaways
- 23.19 Special Interest Vessels/Non-Entrant Countries

References:

INA: Sections 212, 235, 251, 252, 253, 254, 255, 256, 257, 258, 273.

Regulations: 8 CFR 212, 235, 251, 252, 253, 258; 22 CFR 41.41, 41.42.

23.1 General.

(a) (1) Inspection of passengers and crewmembers in a seaport environment differs significantly from airport or land border inspection. Many of the procedures have been only slightly modified from inspectional procedures developed many years ago, before the advent of commercial airlines. Most vessels inspected nowadays are cargo vessels, with only crewmembers on board. Passenger vessels are predominantly cruise ships, with most passengers beginning and ending their trips in the United States. Cruise ship inspection, involving a large volume of U.S. citizen passengers and crewmembers who may have made several entries in just a few weeks, is handled either upon arrival or en route, using a relatively small inspection staff. Cargo vessels are inspected in port or "in-stream," based on arrangements made by the vessel's agent.

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(b) A list of ports of entry for arrival of international vessels is included in 8 CFR 100.4(c)(2). The Commissioner of U.S. Customs and Border Protection designates and approves the inspection of aliens at such ports of entry for international arrival.

(c) Primary sea inspection procedures. See Chapter 23.3 of the IFM for primary inspection procedures.



(g) In-stream boardings. In-stream boardings can be more hazardous and time-consuming, and are typically used when a ship will be at anchor for a prolonged period prior to docking or will proceed to a docking facility which is distant from the major port area. Such boardings are generally arranged to accommodate the needs of the vessel's operator, at the convenience of the government. A boarding party, consisting of CBP officers and the ship's agent, meet the ship at a prearranged anchorage, using a tug, launch, or helicopter, as arranged by the agent. The inspecting officer must exercise judgment in deciding whether the boarding conditions are safe or whether the inspection should be delayed until docking.

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(h) Dockside inspections. Dockside inspection of vessels is arranged by the shipping agent. Inspection must be complete before any other activities commence, such as cargo off loading, conducting business with ship chandlers, etc. Ordinarily, the CBP inspectors are at the dock when the ship's gangway is lowered and are the first to board. Others waiting to do business should be directed to refrain from such activities until the inspection is substantially completed, to avoid interference with the clearance process. Ships are usually in port for a limited time, incurring substantial charges for stevedores and other related activities. It is critical that the Federal inspection procedures are promptly and efficiently handled to avoid needless delays and increases to these costs.

(i) En route inspections. (1) General. Because of the large volume of passengers and crew on many cruise vessels and the rapid turnaround time required for off loading passengers from one cruise and loading for the next, cruise lines may request that CBP conduct the immigration inspection while the ship is en route from the last foreign port back to the United States. This type of inspection, while both cost-effective and customer-service oriented, is subject to scrutiny by the media as well as internally, since the prolonged presence of the inspector on a cruise vessel can easily give the outward appearance of being improper acceptance of a gift by a government employee. Because of this risk, policy on the conduct of en route inspections has been strictly laid out and must be followed in every detail. Following 9/11, en route inspections were suspended. Directors of field operations may authorize en route inspections on a case-by-case basis after an assessment of local security and risk factors.

(2) Carrier requests for en route inspectional services. All requests for en route inspection service must be submitted by the carrier or agent to the director of field operations having jurisdiction over the first port of arrival. Requests must be in writing; they must be prospective in nature; and they must specify the circumstances requiring an en route inspection. Under no circumstances may a request be initiated by a CBP field office. Each request must specify the detailed reasons why an en route inspection is being requested and contain sufficient details to enable the director to determine if an en route inspection is the best and most cost-effective inspectional procedure.

(3) Criteria for providing en route inspectional services. In situations involving long cruises (defined as any cruise where one or more inspectors perform official duties on board a cruise ship and away from their official duty station for more than 24 hours), directors shall consider en route inspections on a case-by-case basis (each sailing of a cruise ship on a specific date). The use of a consolidated request is not appropriate in such cases. Consolidated requests are limited to one-day cruises and may be submitted monthly, to coincide with the calendar month. Such consolidated requests shall list the days of the month on which the cruise ship is scheduled to operate.

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The director of field operations shall review the request and base his or her decision on one or more of three factors:

- Availability of on-duty personnel
- Availability of adequate dockside inspectional facilities
- Minimization of overtime expenses

En route inspections shall not be conducted if reasonable and cost effective alternatives exist for conducting the inspection dockside. Scheduling of CBP inspectors performing en route inspections shall be done in a manner which maximizes their use during duty hours.

If, due to unique circumstances, a director of field operations believes that an en route inspection is warranted notwithstanding the fact that it does not satisfy one of the requisite factors, he or she may seek an exception by submitting a written request to Headquarters Office of Field Operations. Such request shall contain an in-depth justification which shall be considered and evaluated by Headquarters.

Delegation of authority for approval of en route inspections shall not be below the level of port director.

(4) Documentation of en route inspection. Approval of en route inspection requests must be documented. A separate Form I-856, the En Route Cruise Inspection Report, must be prepared for and completed by each officer conducting such inspection. The authorizing section of the form must be completed in advance and signed by the official who approves and authorizes the en route inspection. The remaining portions of the I-856 are to be completed by the inspecting officer. Each I-856 must be reviewed by the official who authorizes the inspection to ensure the inspection was conducted in a manner consistent with the managerial objectives discussed above.

Officers conducting en route inspections are also required to have travel orders. In item 5 of the G-250, indicate the minimum amount of time necessary to complete the en route inspection. In item 6, indicate: "en route inspection" followed by the name of the cruise ship, shipping line and ship's agent. In item 7, transportation, reflect the means of transportation most cost-effective for the government. This means that the transportation should provide the maximum number of working hours for assigned personnel to complete the inspection. Down time, overtime and actual transportation costs to the foreign port where the inspector boards the vessel should be minimized. Employees are prohibited from sailing out on assigned ships when less costly means of arriving at the foreign port are available. Also note item 7: "See item 12." In item 8, the itinerary shall clearly state the location in the U.S. from which travel begins, the means of transportation to be used for departure from the U.S., the foreign port to which the employee is destined, the last foreign port from which the vessel will depart for the U.S. and the means of transportation to be used in returning to the U.S. (normally the assigned cruise ship). In item 12, include

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the following language: "All transportation, travel, lodging, meals and incidental expenses necessary for completion of this assignment are the responsibility of the cruise ship line and/or its designated agents." In item 13, indicate: "Appropriated funds not authorized."

(5) Record keeping requirements. Documentation relating to approved en route inspections shall be maintained in a subject file at the field office. Documents within the file shall be maintained on a fiscal year basis and shall contain, at a minimum, all approved en route inspection requests, all Forms I-856 and all discrepancy memoranda. Such files shall be maintained for a five-year period and shall be readily available at any time during this period of audits which may be conducted. Travel authorizations (Forms G-250) for en route inspections shall be separately maintained in chronological order. The suffix "(E)" shall be included in the authorization number, for example: "97-MIA-(E)-001."

Unusual delays or other discrepancies in the performance of an en route inspection shall be documented in writing in memorandum form to the appropriate regional office. Any corrective actions proposed or taken by managerial personnel shall also be referenced by memorandum.

(6) Commencement of en route inspection. Officers are prohibited from commencement of the inspection until the vessel is actually en route, i.e., free from moorings and under its own power

(7) Program monitoring. Directors shall institute local procedures for monitoring the conduct of en route inspections. Officers conducting such inspections shall be given periodic refresher training on the ethical standards which employees must uphold in the performance of their official duties. Instruction on the standard schedule of disciplinary offenses and penalties for employees shall be included in this refresher training. The importance of the role which local supervisors and managers play in the maintenance of ethical standards, both their own and that of their subordinates, shall also be emphasized. Local procedures shall be established to closely monitor en route inspection activity. These procedures shall be designed to facilitate early detection of procedural improprieties and prohibited practices. Procedures used to achieve these goals include the initiation of locally designed monitoring activities and procedures as well as information-sharing liaison activities between CBP officials and cruise ship line representatives. A positive public relations posture regarding these issues is a responsibility of all local supervisors and managers.

First-line supervisors play a vital role in assuring that en route inspections are conducted in a cost effective manner. Information relating to assigned work schedules, actual hours worked, the numbers of passengers and crew inspected and the most cost efficient use of salary and overtime resources should be retained by each field office and provided to Headquarters officials upon request. This information should also be considered when making en route assignments and monitoring such activities.

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Inquiries shall be conducted in all instances in which management personnel become aware of noncompliance with en route inspection policies and procedures. Such inquiries shall be conducted by one or more management officials who are at least one managerial level above the managerial official who authorized the inspection. Written inquiry results shall be forwarded, through channels, to the director of field operations. In situations where such inquiry reveals that CBP policy has been violated, directors of field operations shall institute appropriate corrective action, including disciplinary action, if warranted.

Headquarters shall promptly be notified of all instances of noncompliance and apprised of corrective or disciplinary actions proposed or taken with respect to such incidents. Unusual circumstances affecting the conduct of en route inspections, such as those which would attract media attention or congressional interest should be reported promptly.

(8) Presence of family members on en route inspections. It is prohibited, pursuant to 18 U.S.C. 201(c)(1)(B), for accompanying family member or friends of CBP officers conducting en route inspections to travel with the employee either for free or at a substantially discounted fare not available to the general public. Such fares constitute benefits of value, which would not be received, were it not for the position and authority of the officer to inspect passengers and crew. Further, 5 CFR 2635.202(a)(2) states that employees shall not, directly or indirectly, solicit or accept a gift because of the employees official position. Also, 5 CFR 2635.502(a) prohibits employees of the federal government from participating in a matter which would cause a reasonable person to question such employees' impartiality.

23.2 Exceptions to Inspection Requirements.

(a) General. Statute requires the inspection of every arriving passenger and crewmember upon arrival in the United States. See section 235 of the Act and 8 CFR 235.1. Service policy interpretation provides some clarification regarding persons whose comings to the U.S. are not treated as "arrivals," thereby not requiring inspection. Service policy excludes the following from the ordinary inspectional procedures:

(1) Any person, including an alien crewman, passing through the Panama Canal on board a vessel which enters and clears at the Canal port only to transit, refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage;

(2) Any person, including an alien crewman, on board a vessel which after arrival at a U.S. port-of-entry passes the Great Lakes seaway en route to another U.S. port and which enters and clears at points in Canada only to transit the seaway, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage;

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(3) Any person seeking to enter the U.S., including an alien crewman, on board a vessel en route from one U.S. port to another U.S. port shall not be regarded as coming from a foreign port solely by reason of the vessel's stop at Freeport, Bahamas, for bunkering only;

(4) Any person, including an alien crewman on board a vessel en route to the U.S. solely for bunkering purposes or an aircraft en route to the U.S. solely for refueling purposes, who does not seek to enter the U.S., shall be regarded as not arriving for purposes of immigration; and,

(5) Any crewmember previously inspected and permitted to land, continuing to serve as a crewmember on board a cruise vessel which has been inspected within the preceding 90 days and who has not spent an aggregate of more than 29 days in the U.S. since his or her last inspection, unless the master or agent requests such reinspection or unless, in the discretion of the district director, more frequent inspection is warranted.

(b) Limited Inspection of Great Lakes Vessels. Inspection of certain vessels of U.S., British, or Canadian registry plying the Great Lakes is limited. Refer to 8 CFR 251.1 concerning manifest requirements and 8 CFR 252.3 concerning inspectional requirements.

(c) Vessels Traveling to International Waters. Under interpretation of current INS and Department of State regulations, sailing from a United States port into international or foreign waters, without a call at a foreign port, does not satisfy the foreign departure requirement. Therefore, alien crewmembers onboard lightering vessels, certain fishing vessels, cruises to nowhere, or any vessel that sails from a United States port and returns without calling a foreign port or place, has not departed the United States. Crewmen onboard vessels that sail from a United States port into international waters, return to the United States, and have not touched a foreign place within 29-days of the vessel's initial arrival (in the United States from a foreign place), have remained beyond their authorized period of stay.

This provision does not apply to fishing vessels in Guam that sail to international waters. Pursuant to Public Law 99-505, such a vessel is considered to have departed the United States.

The inspecting officer's authorities regarding coastwise vessels, including (but not limited to): performing musters, revoking shore-passes or granting 29-day vessel extensions, remain unchanged. These topics are addressed in Chapter 23.9, Chapter 23.10 and Chapter 23.13, respectively, of this field manual.

23.3 Inspecting Cargo Vessels.

Following are the general steps which you must take to complete inspection of a cargo vessel.

(a) I-418 Review. The master, agent, or other official will have prepared, in advance, Form

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I-418, Passenger List-Crew List, with the names and biographic data for each member of the crew. A separate I-418 is required for any passengers and stowaways. The master is required to make a notation on the crew list indicating whether or not members of the crew will be performing any longshore work and the exceptions under which any such longshore work will be performed. [See 8 CFR 251.1 for exceptions and proper notations.] Often, the list will have a "D" visa placed on it by an American Consulate, unless individual members of the crew have their own visas. Each crewmember's name should be checked in the Portable Automated Lookout System (PALS), or IBIS (if it is available). As each crewmember enters for inspection, use the "Inspection Status" column to enter the action taken during inspection: "ARC" or "R/P" for returning residents, "USC" for citizens, the appropriate visa symbol for each nonimmigrant (D-1 or D-2), "Refused" for persons detained on board, or "Parole" for aliens paroled. Also indicate any "A" number obtained during inspection. Place a line stamp or the written notation 'Above crew inspected at arrival' on the first available blank line following the last listed crewman.

(b) Visa and Passport Waivers. If a visa is required, and neither individual nor crew list visas are presented, consider eligibility for a visa waiver. See visa requirements in Chapter 15.3. Often, crew list visas cannot be obtained because the ship received orders to sail for the U.S. while at sea or because the ship sailed from a port where there was no U.S. consulate. If there is a valid reason for failing to obtain the necessary visa, execute a waiver on Form I-193, Application for Waiver of Visa and/or Passport, collecting one fee for the entire crew list [See procedures described in Chapter 17.5.]. If there is no valid reason for failure to obtain a visa, detain the crew, following procedures described in Chapter 23.7. No fine proceeding is appropriate in either instance. The Department of State does not need to be advised, either in advance or after the fact, concerning crew list visa or individual passport waivers for crewmembers, since a blanket concurrence agreement between INS and DOS already exists for this situation.

(c) Inspection of Admissible Crewmembers. Each individual crewmember must appear for inspection, with every nonimmigrant presenting a passport or seaman's book, if required, and Form I-95, Crewman's Landing Permit or Form I-184, Crewman's Landing Permit and Identification Card (laminated card issued prior to 1976) [See nonimmigrant passport requirements in Chapter 15.2.]. Once you are satisfied of the admissibility of a crewmember, line stamp (date, port, and inspector number) the reverse of a previously issued I-95 (make sure it is for the same vessel), or execute the admission block on a new I-95, using a D-1 stamp and line stamp for each new crewmember or returning crewmember whose prior I-95 is damaged or has no endorsement space remaining on the reverse. If the crewmember has been granted a waiver of inadmissibility, note the grounds of inadmissibility in the admission block of the I-95. United States citizen merchant seamen will normally carry a "Z-card" (Merchant Mariner's Document), an identity card issued by the Coast Guard, in lieu of a passport. A lawful permanent resident alien may also be issued a Z-card with his/her "A" number on the reverse of the card; however, a lawful permanent resident alien must also present a Form I-551 or reentry permit. Verify the continuing lawful resident status before admitting a returning resident. Return the I-184, Z-card, I-551 or endorsed I-95 as you inspect each crewmember, but retain the travel document of any D crewmember for the ship's master. Note the block on the I-418 indicating action taken, as described in paragraph (a) above.

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(d) Family Members of Crew Included on Crew List. You may encounter persons listed on the I-418, even a visaed I-418, who are not bona fide crewmembers. These are often spouses or children of ship's officers and may be listed as "supernumeraries," "stewardesses" or other such occupations, but are not essential to the operation of the ship. Unless such persons are regular, paid crewmembers they cannot be admitted as such, regardless of the fact that a consular official may have visaed a crew list including their names [See Matter of M/T Rajendra Prasad, 16 I&N Dec. 705 (BIA 1979)]. Such persons are to be separately manifested, inspected as passengers and admitted or paroled following the procedures for inspection of other vessel passengers and as described in Chapters 11 through 16. They may be granted a visa waiver on a discretionary basis if they do not hold a valid nonimmigrant visa or are improperly included on the crewlist visa. Inadmissible passengers are handled in accordance with procedures in Chapter 17. Consider section 273(b) fine proceedings, described in Chapter 43.

(e) Passengers on Cargo Vessels. On occasion, you will encounter passengers on board a cargo vessel. Follow inspectional procedures for passengers on cruise vessels, described below in Chapter 23.4. Note that although cargo vessels are not generally signatory to the Visa Waiver Program, since they are not typically engaged in the transportation of passengers, inspectors should check the current list of carriers signatory to the VWP. If the carrier is not signatory, then passengers, even those from VWP countries must possess appropriate valid visas. (Revised IN99-09)

(f) Receipt for Crew List. Complete the "RECEIPT FOR CREW LIST" area of Form I-418 by assigning a unique I-418 Receipt Number in the appropriate block. This receipt number will aid in later matching the updated departure copy of the I-418 to the arrival copy. The format for an I-418 Receipt Number, as outlined above the block, consists of: the 3-letter port code; the current date [YYMMDD]; the inspecting officer's stamp number and; the current time in military format.

I-418 Receipt Number Example: A vessel arrives at the port of New York (NYC) on March 12, 2002, and the inspection is completed at 9:45 PM by an inspector with stamp number 565. The Receipt Number would be: **NYC-020312-565-2145.**

Advise the master of his obligation to notify the nearest INS office of proposed crew changes, desertions, illegal landings, or suspicious crew activities which may indicate a planned desertion. Provide a copy of the I-418 to the master or agent. Review the I-418 to insure that all crewmembers have been inspected and the manifest properly noted. Collect arrival Forms I-95, and other documents submitted with the manifest or prepared during your inspection. Return all crewmembers' travel documents to the master with a copy of the I-418. This copy will remain on the vessel and serve as a "traveling manifest," to be updated as appropriate until the vessel departs the United States, at which time the updated copy will serve as the vessel's departure manifest.

23.4 Inspecting Cruise Ships.

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(a) Crewmembers. Procedures for inspecting the crew of a cruise ship are essentially the same as those for cargo vessel crews, although the crews are considerably larger. Because of the frequency of admission and the size of the crews, Service policy provides for a relaxation of the ordinary inspection procedures for returning crewmembers on such vessels. See Chapter 23.2(a)(5), above. A separate manifest or addendum to the manifest will be provided by the master, containing the names of crew who must be inspected. Once crew inspection has been completed, issue Form I-410 in the same manner as for a cargo vessel.

A member of the crew of a vessel may not be admitted in any other capacity, even if he or she holds another type of visa. However, a "deadhead" crewmember, one who is not listed in the ship's articles and did not perform duties as a member of the crew during the vessel's voyage to the U.S., may be inspected and admitted as a passenger.

(b) Passenger Inspection. Except where an en route inspection has been arranged, passengers will be inspected after docking. Some port facilities have a passenger terminal, with inspection booths provided similar to those at airports. In either case, there are often a large number of passengers requiring inspection in a relatively short time span. The master or purser of the vessel will provide a manifest, usually on Form I-418, of all passengers. A lookout query is required of all passengers, either at the time of arrival or in advance, using APIS. To minimize inspection time, U.S. citizen passengers who departed on the same cruise vessel are not required to report for inspection, but should be briefly examined upon disembarkation. An oral declaration of citizenship is usually sufficient, unless further inquiry appears warranted. All other passengers must appear for inspection by an immigration officer, at an appropriate location on the ship provided by the master, with any required passport, visa, or Form I-94. As each passenger appears, note the manifest with the action taken, as described in Chapter 23.3(a), executing Forms I-94 as necessary. Once all required passengers have appeared and been inspected, coordinate with Customs to authorize departure from the ship. Inadmissible passengers are processed as prescribed in Chapter 17. Prepare Form I-92, Aircraft/Vessel Report and bundle it with the I-94s collected during the inspection. Forward these for data entry. Passenger lists on Form I-418 are no longer retained after inspection [See Chapter 22.7 for I-92/I-94 forwarding instructions.].

23.5 Payoff and Discharge of Crewmembers.

(a) General. Crewmembers who are leaving a vessel to return home or to join another vessel may be permitted to land as D-2, if required information is available at the time of inspection, or they may be granted a change to D-2 status later, after being permitted to land as D-1. In the latter instance, ordinarily the ship's agent will bring the alien and required documentation to the INS office for processing. Local policies may restrict hours and other conditions for processing D-2 requests. Application is made in accordance with the requirements stated in 8 CFR 252.1 and the instructions on Form I-408. When reviewing the documentation, ensure that the alien has a confirmed transportation ticket to leave the U.S. or a written notification of acceptance by the master of the vessel which he or she will join. Upon approval, endorse a new I-95 and collect the previously issued D-1 Form I-95 (do not collect Form I-184). Ensure that the separation date for the crewmember is reflected in the "Date Separated" column of the vessel's copy of I-418. Return the first and third copies of the I-408 to the master or agent, one to be

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filed with the vessel's departure manifest, the other to be retained by the master or agent. Route the second copy to the port of arrival address on the I-418. If there is reason to believe that a crewmember will not comply with the terms for departure indicated in the D-2 request, deny the request and revoke the conditional landing permit, following the procedures described in Chapter 23.10.

(b) Exception for Certain Crewmembers Rejoining a Vessel. Ordinarily, a D-1 crewmember serving on a vessel is expected to depart with the same vessel from each U.S. port, unless he or she obtains D-2 status. However, with permission from the ship's master, a crewmember can depart the ship and rejoin it at another U.S. port, without obtaining D-2 status, if neither the vessel nor the crewmember will depart the U.S. and the crewmember will rejoin the vessel within his or her initial period of D-1 permission to land.

23.6 Refusals.

A decision to refuse a crewmember is not reviewable; your decision as the inspecting officer is, for all practical purposes, final. Occasionally, the master or other ship's officer may advise you of crewmembers whom they suspect are likely to abscond. Consider this information carefully when making your decision whether to permit landing or to detain the crewmember. Although local policy in some offices is to detain "first-trippers" new crewmembers on cargo vessels, as high-risk applicants, this is not Service policy. A decision to detain should be based on clear, articulable facts. If you refuse a landing permit for any reason, endorse the I-95 (Conditional Landing Permit) with the "Refused" stamp and the code "P" for invalid passport, "V" for invalid visa, "M" for malafide crewmember, or the appropriate subsection of section 212 of the Act for inadmissible aliens. Return a copy to the master or agent. Enter the alien's name on Form I-418 (Arrival Manifest) and void the alien's I-184 (Alien Crewman Landing Permit and Identification Card), unless the refusal is solely based on passport or visa validity. Note the action taken on the I-418. Prepare and serve the master or agent with Form I-259 (Notice to Detain, Remove, or Present Aliens). Retain one copy of the I-259 to be included with the other paperwork for the vessel. In all cases where any of the crew have been refused a landing permit and ordered detained on board the vessel, notification shall be sent to the onward port. Notification shall be sent to the onward port as soon as possible after completion of the ship inspection by faxing the Form I-418. The Form I-418 shall be faxed prior to the vessel's estimated time of arrival at the onward port. Also, fax all pertinent information on issues related to the vessel or the crew of which the onward port should be aware.

23.7 Deserters and Abscondees.

(a) An "abscondee" is a crewmember that has been refused a landing permit and ordered detained on board, and who departs the vessel without permission.

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(b) A "deserter" is a crewmember who has been granted D-1 or D-2 status and a landing permit, and who does not depart when required.

(c) Immediately upon being notified that a crewman has deserted or absconded, relay the information relating to the deserter or abscondee to the appropriate local law enforcement personnel (including City Police, Harbor Police, State Police), the appropriate ICE office responsible for recovering the crewman, the local Border Patrol Office, U.S. Coast Guard and to the Federal Bureau of Investigation (FBI) at the port where the desertion took place. Prepare a Report of Deserting Crewman, Form I-409 for every deserter or abscondee. Appropriately annotate the Form I-418 (Arrival Manifest), Form I-419 (Ship Intelligence Card) indicating that the crewman absconded or deserted.

Open an "A" file, and place all pertinent information in the "A" file. Make copies of documents necessary to support a fine recommendation, if applicable. Initiate fine recommendations utilizing Form I-849 (Report to National Fines Officer of Possible Violation of the INA), as appropriate.

(1) In the event the vessel has not departed, collect the deserter's or abscondee's travel documents from the master of the vessel, including Form I-95 (crewman landing permit). Obtain a sworn statement containing the facts surrounding the incident from the master of the vessel, the vessel agent and/or any other persons who have information regarding the incident, and conduct a search of the abscondee's or deserter's cabin.

(2) In the event the vessel has sailed coastwise prior to the discovery or the report that a crewman has deserted or absconded, immediately contact the CBP office at the next port of call, advise them of all information related to the abscondee or deserter. The office at the next port of call shall obtain a sworn statement from the appropriate crewmembers and conduct a search of the abscondee's or deserter's cabin, and collect the deserter's or abscondee's travel documents, and forward the information to the agencies (ICE and Border Patrol) having jurisdiction over recovering the abscondees or deserters, as well as reporting all of the information to the local law enforcement (including City Police, Harbor Police, State Police), U.S. Coast Guard and to the FBI in their area.

(3) In the event the vessel has sailed foreign prior to the discovery or the report that a crewman has deserted or absconded, collect the deserter's or abscondee's travel documents from the local shipping agent, if available, and obtain a statement from the local shipping agent and any other individuals that may have information related to the desertion and forward to the agencies having jurisdiction over recovering the aliens.

(d) In all cases where any of the crew have been refused a landing permit and ordered detained on board the vessel, notification shall be sent to the onward port. Notification shall be sent to the onward port by faxing the Form I-410 (Receipt for Crew List). The Form I-410 shall be faxed prior to the vessel's estimated time of arrival at the onward port. Also, all pertinent information or issues related to the vessel or the crew that the onward port should be aware of shall be

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faxed.

A Significant Incident Report (SIR) will be prepared on every case where a crewmember has deserted or absconded.

(e) Initiation of Security Procedures. In a concerted effort to ensure that crew detained aboard vessels do not abscond and pose a possible threat to the security of the port, the Service will work jointly with the U.S. Coast Guard at the sea ports-of-entry to insure that proper security exists to "reduce potential opportunities" (see paragraph (a) of this chapter) for deserters and abscondee. The Service will follow the procedures below to coordinate its security efforts with the local U.S. Coast Guard Captain of the Port (COTP).

After CBP (local PAU and/or NTC) has received and processed crew lists through the law enforcement databases and is fully satisfied that crewmembers do not pose any security risks to the United States, the U.S. Coast Guard will be advised that CBP does not have any information that raises initial security concerns about that vessel, in terms of the Coast Guard approving the vessel to enter or dock at the port. When making a determination whether a *crewman* may pose a "security risk" the following factors should be considered:

- [REDACTED]
- [REDACTED]
- [REDACTED]

If the CBP identifies security concerns, CBP will withhold the inspection of the entire crew until such time that the CBP receives written notification from the agent, owner, or master of the vessel stating that sufficient security services have been arranged to ensure the security of the vessel during its entire stay in port. (The cost for this security is to be borne by the agent, owner, or master of the vessel.) At that time the CBP will advise the U.S. Coast Guard that it is prepared to inspect the crew.

If sufficient security cannot be provided, CBP will notify the COTP. The Service will request that the COTP forward a letter to the owner, agent, or master requiring that the vessel remain outside the port area. In those instances where a vessel is permitted to proceed to port and, upon CBP inspection or any time during the vessel's stay in port, it is determined that certain crew pose a security risk to the United States, the COTP may be asked to exercise its authority in the issuance of a letter requiring immediate departure of the vessel, unless acceptable security measures have been promptly provided to ensure that all detained individuals remain on board the ship.

(f) Standard Operating Procedures for Detained Crew Coastwise Vessels. When Forms I-259, Notice to Detain, Remove, or Present Alien; I-410, Receipt of Crew List; or, I-418, Passenger

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List and Crew List, are received from a previous port indicating that a vessel will arrive coastwise with detained crew on board, a copy of both forms should be faxed to the Coast Guard's Marine Safety Officer (MSO). In addition, onward port officials (CBP, ICE and USCG) should be notified when enhanced security has been required at a prior port.

Upon receipt of these forms, CBP may request written notification from the agent, owner, or master of the vessel stating that sufficient security services have been arranged to ensure the security of the vessel during its entire stay in port. If sufficient security cannot be provided, CBP will notify the COTP. CBP will request that the COTP forward a letter to the agent, owner, or master requiring that the vessel remain outside the port area.

When the COTP letter is received, a copy of the letter and a copy of the *Standard Operating Procedures Security Services for Detained Crew* (see paragraph (g) below) should be faxed to the agent of the vessel. The agent for the vessel is then required to notify CBP when guard service has been arranged.

When notification has been received from the agent and a determination is made that the arranged security is acceptable, CBP will forward by fax and/or e-mail a letter to the MSO notifying him that the vessel will be in compliance of the COTP letter when the ship arrives. A copy of the letter from CBP will also be forwarded to the vessel's agent for his information. Each port-of-entry should maintain a folder for each vessel for which Forms I-259, I-410, or I-418 are received.

(g) Guidelines. A copy of the following guidelines should be made available to the contracted security company. All relevant points-of-contact and phone numbers should also be provided.

Contracted security assigned to provide security services are to ensure that only those crewmembers authorized to disembark are allowed to do so. CBP will identify to the security services each alien crewman who must be detained on board. Contracted security assigned to provide security services at vessels on which CBP has detained crewmembers are to ensure that:

- Any attempt to disembark a vessel by crewmembers not authorized to land shall be reported immediately to local security services (facility guard posts, facility managers), the CBP, ICE the United States Coast Guard, the Federal Bureau of Investigation, local police department(s), and the vessel's agent.
- Questions related to whether a particular crewmember is allowed to disembark shall be forwarded to the ship's agent and, if necessary, CBP.

Non-crew may, with proper identification, leave the vessel. This may include vendors and service providers contracted to the ship (i.e., stevedores, agents). A visitor's log shall be maintained of all persons leaving or joining the ship.

The CBP and/or the U.S.Coast Guard shall conduct random checks of security services and inadequate security services may result in initiation of administrative penalties against the agent

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and/or the vessel and may result in a determination that the contracted security service cannot be used for future crew detention.

(h) Sample letter to U.S. Coast Guard.

The following sample format may be used as notification to the U.S. Coast Guard:

Pursuant to your Captain of the Port Order dated _____, 2003, to the vessel _____, the vessel's agent, _____, has made adequate security arrangements to ensure the security of the vessel and its crew while in _____. The agent shall ensure security at the vessel and shall contact U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement, the United States Coast Guard (USCG), the Federal Bureau of Investigation, and the _____ Police Department in the event of any attempt by unauthorized crew to disembark. CBP has notified the agent that the disembarkation of unauthorized crew shall result in the initiation of fines against the vessel and/or its agent by CBP and notification to the USCG for initiation of administrative and/or criminal penalties as appropriate.

If additional information is required, please contact [INSERT OFFICER'S NAME], CBP officer, at [INSERT PHONE NUMBER]. Thank you in advance for your assistance in this matter. We look forward to working closely with you to address national security issues.

Sincerely,

Port Director

[INSERT NAME OF PORT]

23.8 Stowaways.

(a) General. An alien stowaway is inadmissible to the United States and is not entitled to a hearing or review of an order to remove. [See section 235(a)(2) of the Act and 8 CFR 235.1(d)(4).]

An alien stowaway may be ordered removed on the vessel or aircraft of arrival, or the master may request that the stowaway be removed from the vessel and repatriated by other means of transportation. Often, this is requested for reasons of great importance to the carrier, including, but not limited to:

- The health of the stowaway;
- Maintaining insurance coverage (often if several stowaways are on board, a vessel may exceed capacity and be considered by insurers to be unseaworthy, and so would lose insurance coverage);

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- Maintaining the safety and welfare of the crew (especially if the number of stowaways exceeds the number of crew);
- Sanitary conditions cannot be maintained for the stowaway;
- The vessel's departure is delayed for repairs or the vessel goes into dry-dock;
- The stowaway is a minor or female;
- The vessel is discharging cargo and going off charter and cannot obtain a new charter because the new charterer will not assume a vessel with stowaways aboard;
- The vessel is of U.S. registry and is not departing the United States;
- The vessel will not be returning in the near future to the port where the stowaway boarded the vessel.

Removal of the stowaway by other means should be favorably considered when the removal may be accomplished expeditiously and the carrier has made, or will make, the necessary transportation arrangements, including obtaining any necessary travel documents. Although the statute places responsibility for obtaining travel documents with the carrier, when necessary, the Service may assist the carrier in obtaining travel documents. See 8 CFR 241.11.

An "A" file must be prepared for all stowaways encountered. If an "A" file does not exist, one shall be opened. To determine if an "A" file exists, a query of the Central Index System (CIS) should be made. If there is an existing "A" file, all documentation shall be placed in a temporary "A" file. Prepare Form I-213, Record of Deportable/Inadmissible Alien, and take a photograph of the stowaway. Fingerprint the alien using three sets of criminal cards (FD-249). Forward the first set of fingerprints to the FBI Identification Division. Forward the second set of prints to the Biometric Support Center in accordance with the procedures set forth in Chapter 18.9. Retain the third set of fingerprints and copies of all documents for inclusion with the other paperwork in the "A" file. Post a lookout in the National Automated Immigration Lookout System (NAIIS).

If the stowaway is to be removed on the vessel of arrival, detain him or her on board using Form I-259. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the stowaway will depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the stowaway does depart the United States. Prepare an I-94 endorsed "Stowaway--refused, detained on board."

If the stowaway cannot be removed immediately, any detention pending removal, other than that incidental to the actual removal, must be in Service custody, at the expense of the owner of the vessel or aircraft of arrival. If extended detention is required pending removal, be sure to ascertain that detention space is available before granting permission to remove by alternate means. Serve Form I-259 on the master or agent of the vessel or aircraft. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the stowaway will

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depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the stowaway does depart the United States. Complete Form I-94 endorsed "Stowaway--refused, detained by INS pending removal". If the stowaway requests asylum, follow procedures described in Chapter 23.18 and 8 CFR 253.1.

(b) Absconded stowaways. The master or agent is required to report the escape of a stowaway. Immediately upon being notified that a stowaway has absconded, relay the information relating to the abscondee to the appropriate local law enforcement personnel (including City Police, Harbor Police, State Police), the appropriate INS office responsible for recovering the stowaway, and to the Federal Bureau of Investigation (FBI). Appropriately annotate the Form I-419 (Ship Intelligence Card) indicating that the stowaway absconded. Take a sworn statement as described in Chapter 43.3 and institute fine proceedings under section 243(c) utilizing Form I-849 (Report to National Fines Officer of Possible Violation of the INA), as appropriate. A Significant Incident Report (SIR) will be prepared on every case involving a stowaway.

23.9 Mustering.

Service officers may re-board a vessel at any time after the initial inspection to insure that detained crewmembers remain on board or that a vessel preparing to depart has all crewmembers present. Inspections personnel should coordinate with other local INS enforcement personnel for this activity. Ordinarily, departure mustering of crew is conducted only on vessels that have a history of immigration violations or where there are multiple crewmembers detained on board the vessel.

A crew muster is recommended for all coastwise vessels. A crew muster is required on all coastwise vessels when there is detained crew onboard. Local INS (Border Patrol, Criminal Investigations, and Inspections) shall take a coordinated approach for mustering crew. When a vessel's crew is mustered at an onward port, and it is discovered that crewmembers are missing, follow current guidance on deserters and abscondees in Chapter 23.7 of the Inspectors Field Manual (IFM). Initiate fine recommendations utilizing Form I-849 (Report to National Fines Officer of Possible Violation of the INA), as appropriate.

23.10 Revocation of Landing Permits.

Inspectors should be familiar with the procedures for revocation of landing permits provided in 8 CFR 252.2 and perform or assist with this function, as necessary. Prepare and serve Form I-99 on the alien, collect the previously issued I-95, advise the master or agent of the action taken and advise him/her of his/her responsibility for detaining the revoked crewmember on the vessel. Revoke any valid I-184. Prepare and serve Form I- 259 on the master or agent. The I-259 will normally require departure on the vessel of arrival, but circumstances may warrant departure by other means of transportation. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the crewman will depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the crewmen do depart the United States. If an "A" file does not exist, one shall be opened. To determine if an "A" file exists, a query of the Central Index System (CIS) should be made. If there is an existing "A" file, all

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documentation shall be placed in a temporary "A" file. Prepare Form I-213, Record of Deportable/Inadmissible Alien, and take a photograph of the violator. Fingerprint the alien using three sets of criminal cards (FD-249). Forward the first set of fingerprints to the FBI Identification Division. Forward the second set of prints to the Biometric Support Center in accordance with the procedures set forth in Chapter 18.9. Retain the third set of fingerprints and copies of all documents for inclusion with the other paperwork in the "A" file. A lookout shall be posted in the National Automated Immigration Lookout System (NAIIS). A Significant Incident Report (SIR) will be prepared on every crewmember that has their landing permit revoked.

In the event the vessel will be sailing coastwise, contact the INS office at the next port of call, and advise them of all information related to the revocation. Follow procedures described in Chapter 23.7.

23.11 Performance of Longshore Work by Crewmembers.

Section 258 of the Act, added in 1990, limited, but did not completely prohibit, longshore activities by crewmembers of vessels. These restrictions are specified in the Act and in 8 CFR 258. Obligations of the master or agent, including reporting requirements are detailed in 8 CFR 251.1. At the conclusion of the inspection, note on the Form I-418 whether or not nonimmigrant crewmen will perform longshore work in the United States, and if so:

- under which exception in section 258 of the Act it will be performed (See 22 CFR 89 for countries eligible for reciprocity exception); and,
- what type of documentation accompanied the manifest to support the exception invoked.

Sign the I-418 and indicate the date of the inspection following the last entry on the form. (**Note:** If new crewmembers subsequently join the vessel while it is in the United States, the master or agent should add them to next available space from this point on the I-418 and record the appropriate date(s) in the "Date Joined" column.)

23.12 Parole of Alien Crewmembers.

(a) Initial Parole. Parole and revocation of parole of crewmembers are discussed in 8 CFR 253.1. Parole is generally appropriate for handling sick or injured crewmembers and shipwreck survivors, among others. Parole for a limited number of ship's personnel to conduct essential business is also appropriate in situations where a crew is detained on board due to lack of a visa. When a parole is granted for other than medical reasons or to conduct essential ship's business, prepare Form I-160 for inclusion with the manifest. Collect the parole fee provided in 8 CFR 103.7 for each paroled crewmember. Generally, requests for such paroles should be accompanied by documentation supporting the request. Prepare an I-94, endorsed as prescribed in Chapter 16, for each paroled crewmember. Update the vessel's copy of Form I-418 by checking the box in the "Inspection Status" column of the form that pertains to the

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crewmember being paroled. Prepare Form I-510, Guarantee of Payment, in duplicate, for crewmembers paroled for medical treatment. Give one copy of the I-510 to the master or agent, retain the other with the manifest and other documents collected during the inspection. Prepare an I-259, endorsed to require the alien's departure (if the alien is to depart within the period of parole) or presentation at an INS office (if the alien is likely to require reparole for additional time). Serve the I-259 on the master or agent.

(b) Reparole. Parole of crewmembers is generally limited to less than 30 days. If additional time is needed, rep parole in increments of 30 days is appropriate, upon presentation of documentation such as medical evidence.

23.13 Vessels Remaining beyond 29 Days.

(a) The landing period for D-1 crewmembers is limited to 29 days, and cannot be extended. However, there will be instances where a vessel and its crew will remain in the U.S. for a longer period of time. In such instances, the master or agent will present the vessel's copy of I-418 and the I-95s for each crewmember. Prepare Form I-253, Letter to Master or Agent of Vessel, in duplicate and endorse each Form I-95 with the voluntary departure period. Return the I-418 and original I-253 to the master or agent, along with the I-95 forms. Promptly route the I-418 copy and the duplicate I-253 to the arrival port for attachment to the I-418 copy from the vessel's arrival. No docket control is required, but include a count of such crewmembers on the G-23.18 and G-23.20.

(b) Vessels Traveling to International Waters. Under interpretation of current INS and Department of State regulations, sailing from a United States port into international or foreign waters, without a call at a foreign port, does not satisfy the foreign departure requirement. Therefore, alien crewmembers onboard lightering vessels, certain fishing vessels, cruises to nowhere, or any vessel that sails from a United States port and returns without calling a foreign port or place, has not departed the United States. Crewmen onboard vessels that sail from a United States port into international waters, return to the United States, and have not touched a foreign place within 29-days of the vessel's initial arrival (in the United States from a foreign place), have remained beyond their authorized period of stay. Such a vessel must request a 29-day extension, pursuant to part (a) of this section, prior to the expiration of the expiration of their authorized period of stay.

This provision does not apply to fishing vessels in Guam that sail to international waters. Pursuant to Public Law 99-505, such a vessel is considered to have departed the United States.

The inspecting officer's authorities regarding coastwise vessels, including (but not limited to): performing musters, revoking shore-passes or granting 29-day vessel

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extensions, remain unchanged. These topics are addressed in the Chapter 23.9, Chapter 23.10 and Chapter 23.13, respectively, of this field manual.

23.14 Ship Intelligence Cards.

Service offices with seaport operations maintain Ship Intelligence Cards, Form I-419, for each vessel arriving at the port. Pertinent information, such as previous detentions, desertions, or stowaways is included on the cards. Consult the cards prior to boarding and add information to the cards when you complete inspection of the vessel.

23.15 Departure Manifests.

Arrival manifests for crew are maintained at the port-of-entry for 6 months. If no "departure manifest" (an updated copy of the original I-418 showing crewmember separations and additions) is received within 60-90 days of the vessel's arrival, contact the Service Inspections Unit at the last scheduled U.S. port (from the I-418) or the vessel's agent to determine the reasons. It is important that manifests be processed timely and accurately to avoid improper institution of fine proceedings when a carrier has complied with the requirements for submission. If you receive a departure manifest from an agent for a vessel that was not inspected at your port, immediately forward it to the Service office which conducted the inspection. Upon receipt of a departure manifest for a vessel which was inspected at your port, use the I-418 Receipt Number to match it with the arrival manifest to insure accountability for all crewmembers. After 6 months, forward the manifests in accordance with Appendix 15-8.

Forward Forms I-95 on a regular basis in accordance with Appendix 15-8

Prepare Form I-92 and bundle it with Forms I-94 and forward for data entry in the same manner as aircraft departure forms [See Chapter 22.7 for I-92/I-94 forwarding instructions.].

If there are missing or incomplete manifests or if there are crewmembers whose departure cannot be verified, consider institution of fine proceedings.

23.16 United States-Based Fishing Vessels.

Nonresident aliens may not be employed aboard any U.S.-based fishing vessel as "D" crewmembers. An alien seeking permission to land as a D crewmember should be detained on board, unless parole is warranted. In rare instances other nonimmigrant categories which include employment, such as H-1B, H-2B or L-1, may be possible.

23.17 Vessels Serving on the Outer Continental Shelf (OCS).

Crewmembers for vessels working on the Outer Continental Shelf commonly enter the U.S. as B-1 nonimmigrants to join the vessel. The B-1 visas of such nonimmigrants will ordinarily

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contain the consular notation "OCS". Vessels coming from the OCS are not subject to immigration inspection unless they have landed in foreign territory since last arriving in the United States. Similarly, a departure solely to the OCS is not a departure from the U.S. for immigration purposes. This can cause technical problems for a vessel with a D-1 crew which leaves a U.S. port, spends time on the OCS and returns to a U.S. port without touching foreign territory. Such a vessel would not be reinspected but frequently would require processing as described in Chapter 23.13, since its crew would almost certainly remain beyond the 29-day admission limit for alien crew.

The Service has held that the INA does not apply on the OCS, and the Department of Labor will not issue a labor certification for work on the OCS beyond the three-mile limit. Regulations for work on the OCS are administered by the Coast Guard.

23.18 Asylum Claims by Vessel Crewmembers or Stowaways.

If a crewmember or stowaway requests asylum, remove the alien from the vessel or aircraft and place him or her in INS custody. Provide an alien crewmember claiming asylum with the appropriate application forms. The crewmember has 10 days in which to file the application with the district director, during which time the Service will not remove the alien. If the crewmember files a timely asylum application, the district director will refer the alien to the immigration judge using Form I-863, Notice of Referral to Immigration Judge. In this case, the officer executing the I-863 will check Box #2 and the appropriate box indicating the status of the crewmember when he or she made the asylum claim.

A stowaway who seeks asylum will be detained in Service custody and referred to an asylum officer for an interview to determine whether the stowaway has a credible fear of persecution under section 235(b)(1)(B). Although stowaways are not covered under the entire section 235(b)(1) of the Act (expedited removal provisions), if it is deemed necessary to take a sworn statement from the stowaway claiming asylum or a fear of persecution, Form I-867A&B may be used. Indicate at the top of the Form I-867A that this is a stowaway case, rather than a 235(b)(1) case. Arrange for detention of the stowaway and notify the appropriate asylum office that the stowaway requires a credible fear interview. If the asylum officer finds that the stowaway has a credible fear of persecution, he or she will refer the stowaway to the immigration judge using Form I-863, checking Box # 3 and the box indicating "Stowaway: credible fear determination attached". If the asylum officer determines that the stowaway does not have a credible fear of persecution, and the stowaway requests a review of that determination, the asylum officer will refer the stowaway to the immigration judge using Form I-863, checking Box #2. If an adverse determination is made on the asylum claim by the immigration judge, the alien will be returned to the custody of the carrier for removal. [8 CFR 241.11]

Detention and parole policy regarding asylum applicants who are crew members or stowaways is discussed in 8 CFR 208.5(b). While parole of a stowaway claiming asylum is within the discretion of the district director, it should not normally be considered until after the stowaway has been determined to have a credible fear of persecution, unless parole is required for a

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medical emergency or is necessary to further a legitimate law enforcement objective.

23.19 Special Interest Vessels/non-Entrant Countries. (Chapter 23.19 revised 11-1-05; CBP 12-06)

Non-entrant countries are those countries designated by the Department of State as having been found to have provided support for acts of terrorism or against whom diplomatic sanctions have been imposed. Vessels registered to, owned or operated by, or chartered by such countries are prohibited from entering United States waters or ports. The United States Coast Guard (USCG) has jurisdiction to grant access to United States ports to vessels of restricted or non-entrant countries. Authority for this is found in the Magnuson Act, Title 50, United States Code, Section 191, 1950.

The current list of non-entrant countries includes: Cuba, Iran, Iraq, Libya, People's Republic of Korea (North Korea), Syria and Sudan. There are no blanket restrictions placed on nationals of non-entrant countries arriving on free-flag vessels. Such crewmen may be issued a landing permit, in the discretion of the inspecting officer, if in possession of a valid passport and visa, and if otherwise admissible.

Ports of entry, or other programs responsible for seaport duties, should contact the local USCG Port Captain to discuss the respective responsibilities and communication system between the agencies.

23.20 Seaport database queries.

Officers performing primary inspection duties at sea ports-of-entry (POE) must query all applicants for admission to the United States using the Interagency Border Inspection System (IBIS) This applies to all persons over the age of fourteen, without a maximum age limit. See IFM section 22.3 (Primary Inspection Procedures).

Current Threat Level One (TL1) guidance can be found in the memorandums, "Inspection of Crew Arriving to Board Merchant and Cruise Vessels," dated September 30, 2001, and "Threat Level One Clarification on Conducting Seaport Inspections," dated April 3, 2002.



- **PALS Failure at Sea (cruise or non-cruise) POEs:** If PALS becomes unavailable, first I-LINK

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- **System Failure of IBIS and INS Systems to include Electrical Outages:** In the event of a system failure of IBIS and NAILS, all air and sea POEs and land border secondary offices must query applicants for admission in the PALS system, made accessible per the aforementioned procedure. If IBIS, NAILS, and PALS are not accessible in these locations and the National Lookout Unit is unable to provide previously obtained APIS passenger manifests, no person shall be admitted to the United States without prior consent of the Assistant Commissioner for Inspections.

Regions, districts and local POEs are encouraged to establish their own system of backup contacts to process IBIS, NAILS and PALS queries. These plans should be forwarded to the National Lookout Unit for consolidation. Any questions or concerns regarding these operating procedures should be directed to National Lookout Unit at (202) 514-4034.