

In addition, the paper Form I-418 is currently used when vessels arrive in the United States and continue coastwise to other ports within the United States (for example, from Baltimore, Maryland to Newark, New Jersey to Boston, Massachusetts). The paper Form I-418 is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States. Therefore, an electronic manifest is required when a commercial carrier arrives in and departs from the United States, but an electronic manifest is not required when vessels are traveling between the ports-of-entry in the United States. The Service currently is assessing the continued value of the paper Form I-418. Carriers, however, will have to continue to submit this form, when required under 8 CFR 251.1(a), until such time that the technical infrastructure is in place between ports-of-entry.

#### **Are There Any Penalties for Submitting an Incomplete or Inaccurate Electronic Arrival or Departure Manifest?**

Yes. Section 231(g) of the Act, as amended, provides that if any public or private carrier, or the agent of any transportation line, has refused or failed to provide manifest information as required, or the manifest information provided is not accurate and full, such carrier, or agent shall pay the Commissioner the sum of \$1,000 for each person with respect to whom accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed. Fines for violations of section 231 and 251 of the Act may be imposed and collected in accordance with 8 CFR part 280. However, the Service, as a matter of discretion, does not intend to impose fines against carriers for violations of section 231 of the Act until a final regulation is published.

#### **Are Ferries Required To Submit Electronic Arrival and Departure Manifests?**

No. This proposed rule adds a definition of the term "ferry" based on the existing USCG maritime safety regulations at 46 CFR 70.10-15. The determination of whether a particular service is "ferry" service is a case-by-case determination in which, should the question arise, the Service will refer to the USCG classification of the vessel or vessels providing the service.

The Service will also refer to other relevant definitions from the USCG regulations that are applicable to the

definition of "ferry." In particular, the USCG regulations define "coastwise" service as navigation in the ocean or Gulf of Mexico 20 nautical miles or less offshore (46 CFR 70.10-13), and "ocean" service as navigation in the ocean or the Gulf of Mexico more than 20 nautical miles offshore (46 CFR 70.10-31). Vessels in ocean or coastwise service are not ferries and, therefore, the Service proposes that sea carriers must submit electronic arrival and departure manifests for those vessels. This includes all vessels that travel between the United States and foreign adjacent islands.

However, otherwise qualifying services in "lakes, bays, and sounds" such as Puget Sound or the Great Lakes will be considered ferries (see 46 CFR 70.10-23) and therefore are not required to submit electronic arrival and departure manifests.

In order to qualify as a ferry, a vessel's service must be over the most direct water route and only make provisions for deck passengers and vehicles. The Service is aware that some vessels may offer extended dining services, even overnight accommodations or gambling, that are commonly associated with the operation of a cruise ship rather than a ferry. The Service will not extend this exemption to such vessels.

#### **Regulatory Flexibility Act**

The Service drafted this rule in consideration of the need to minimize its impact on small businesses. Based upon preliminary information available, the Service is unable to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described at 5 U.S.C. 605. Accordingly, the Service has prepared the following Regulatory Flexibility Act (RFA) analysis in accordance with 5 U.S.C. 603.

##### *A. Need for and Objectives of This Proposed Rule*

This proposed rule will implement section 231 of the Act as amended by section 402 of Public Law 107-73. Section 231 of the Act provides, among other things, that commercial vessels or aircraft transporting passengers to and from the United States must electronically transmit to the appropriate immigration officer not later than January 1, 2003, arrival and departure manifests containing such information and delivered in such a manner and timeframe as may be prescribed in accordance with section 231.

The enactment of section 402 of Public Law 107-173 reflects Congress' desire to ensure that commercial air and

sea carriers submit to immigration officials passenger and crewmember information within a timeframe and in a particular format in order to maximize the Government's efforts to (1) identify persons being transported to and from the United States, (2) enforce the immigration laws, and (3) protect public safety and national security.

##### *B. Description and Estimates of the Number of Small Entities Affected By This Proposed Rule*

A "small business" is defined by the RFA to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. 632. Under the SBA, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. It will be the duty of the appropriate officer of any commercial aircraft or vessel regardless of ownership, size or dominance in the field to provide the information prescribed in the proposed rule in the timeframe and format proposed therein.

Based upon the information available to the Service, there appear to be two distinct groups of businesses that will be affected by this proposed rule: (1) Larger commercial air and sea carriers, and (2) smaller commercial air and sea carriers (e.g., air carriers that employ not more than 1,500 employees and sea carriers that employ not more than 500 employees) as defined by the United States Small Business Administration.

The Service estimates that there are approximately 108 large commercial carriers. Data provided by the United States Small Business Administration suggests that at least 446 small carriers will be affected by this rule. In addition, data provided by the USCG suggests that as many as 14,000 small commercial carriers potentially could be affected. Although the Service consulted with a number of the affected entities, including ATA, IATA, and the International Council of Cruise Lines (ICCL), the Service realizes that not all interested persons and entities may have been fully represented prior to the publication of this proposal. Therefore, the Service is requesting that comments be submitted to help ensure that the concerns of all interested parties are considered. Commenters may wish to identify the type of industry; including the number of companies/individuals involved and the annual income conducted; how the proposed regulatory requirements would impact that industry; and any suggestions on how the final regulations might be better tailored to the industry without