

small entities by this rule will be minimal.

The ongoing costs to small carriers of submitting this information to the Service is difficult for the Service to quantify. The Service believes that the number of passengers that small commercial carriers transport in a given year may vary greatly. The IATA, however, estimates this rule will cost large commercial carriers approximately \$1 per transaction per passenger for additional time costs. The Service believes that this estimate also may be applicable to small commercial carriers.

The Service is requesting comment on the impact that this proposed rule would have on small commercial carriers. The Service is particularly interested in comments concerning the number of these smaller entities transporting passengers, the number of passengers they transport each year, the ongoing costs this rule would impose (including any incremental cost per passenger), and their estimates on the economic impact of this rule.

C. Recordkeeping and Reporting Requirements

The purpose of this rule is to implement an ongoing reporting requirement for carriers. All small entities that transport passengers and crew to any seaport or airport of the United States from outside the United States will be required to comply with the arrival and departure manifest requirements. The submission of the required data elements will not require any unusual professional skills. The data that must be collected are basic and its submission should not be difficult. For purposes of complying with its Paperwork Reduction Act, the Service has estimated that 600 respondents will spend approximately 10 minutes a day in order to provide the required data. The Service based its estimate of 10 minutes on its experience in connection with the transmission of data elements under the Visa Waiver Program. See 67 FR 63246 (October 11, 2002).

D. Other Federal Regulations

This proposed rule does not duplicate, overlap, or conflict with other federal regulations. The rule was drafted after consultation with the USCS and the USCG and designed to work in coordination with their regulations. The Service, USCG, and USCS are currently coordinating their efforts to develop an electronic arrival and departure manifest system that meets the requirements of all three agencies. Submitting APIS meets the requirements of both the Service and USCS. The marine industry will have to

continue to forward a separate Notice of Arrival (NOA) submission to the USCG, until such time that the technical infrastructure is in place to ensure that the USCG can obtain electronic data from APIS and import this data into a Coast Guard database.

As discussed above, the Service will require the continued submission of the paper Form I-94 in order to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The paper Form I-418 also 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.

E. Issues Raised and Alternatives Suggested

The Service has little discretion regarding the scope of this rule and its impact on small entities because of explicit requirements in section 402 of Public Law 107-173. While consulting with ATA, IATA, and ICCL, a number of issues were raised concerning the impact on passenger check-in times resulting from the collection of the data required by this proposed rule. These requirements are, with only one exception (PNR locator or unique number), statutorily required. The Service considered the need for the inclusion of the PNR, and determined that it was necessary to simplify the data submission process. The use of a unique identifier is a standard data processing tool and is extremely useful both to the Service and to commercial carriers. Its elimination would only serve to make the submission and tracking of manifests more difficult.

The Service also considered different electronic data submission requirements. The Service could not continue with the US EDIFACT standard because it will not support the data elements called for by section 402 of Public Law 107-173. The UN EDIFACT standard was selected because it will be the dominant standard throughout the world and its use will simplify the data submission process for commercial carriers. The use of another standard would only serve to balkanize the data submission process.

The Service, however, has decided to allow commercial carriers to utilize alternative methods for the electronic submission of the manifests, as long as they are approved by the Service. For example, small carriers may use a USCS e-mail system. In addition, the USCS also is in the process of developing a Web-based APIS specifically for small entities which can be used for data

submission when it is available. The purpose of these options is to reduce the possible economic impact the manifest reporting requirements will have on small commercial carriers. The use of these alternatives will benefit small commercial carriers who may not have access to the resources available to large carriers. The Web-based APIS and e-mail options eliminate the need for small commercial carriers to adopt data submission processes similar to those utilized by large commercial carriers.

Large commercial carriers also may utilize these options, but because of the volume of passengers whose arrival and departure data they may be submitting, the Service does not anticipate that these options will be used frequently by large carriers. The Service continues to entertain carrier proposals for pilot projects involving the collection of the required information electronically.

F. Conclusion

The Service believes that, given the statutory mandate in section 231 of the Act requiring that manifests containing certain prescribed data elements be electronically transmitted to the Service no later than January 1, 2003, this proposed rule meets the stated objectives while reducing as much as possible the burden imposed on affected transportation providers. The Service consulted with the air and sea carrier industries in developing this rule. The Service took into account their concerns in drafting the proposed rule. The Service intends to maintain an on-going dialogue with the affected industries.

The Service welcomes comments on its analysis under the RFA.

Unfunded Mandates Reform Act of 1995

This rule may result in approximately \$124 million in operational costs and one-time programming costs of approximately \$42 million on the private sector. Therefore, under the Unfunded Mandates Reform Act of 1995, this is a private sector mandate. Accordingly, the Service has conducted a cost/benefit assessment which is set forth in the Executive Order 12866 section below. This discussion assesses the costs and benefits resulting from the implementation of section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173). This rule, however, will not result in the expenditure by state, local and tribal governments, in the aggregate, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. The Service is requesting that comments be submitted