

the comment period until May 28, 2002 (67 FR 34414).

The Service received a total of 36 comments on the proposed rule. Comments were received from a broad spectrum of individuals and organizations, including 7 ferry and cruise ship companies, 3 transportation advocacy groups, 5 city and county groups, 3 elected officials, 2 port authorities, 1 tourism board, and 15 interested individuals. All the comments were carefully considered before preparing this final rule. The following is a discussion of these comments and the Service's response.

1. Applicability to Ferries

The primary concerns expressed in the comments received all related to international ferry operations in the Pacific Northwest. All comments received on this subject were similar and made three main arguments: (1) There is no justification for imposing this fee on ferries of the Pacific Northwest while excluding the Great Lakes ferries; (2) the \$3 fee represents a disproportionately high percentage of the cost of using a ferry in the State of Washington; and (3) the \$3 fee will have a negative economic impact on the international ferry operators in the Pacific Northwest and on related businesses in the tourism industry. One commenter, the Airports Council International—North America, strongly supported implementation of the \$3 fee for commercial vessel passengers.

The justification for excluding Great Lakes ferries and other Great Lakes vessels in the proposed rule was simple: Congress itself made special provisions for the Great Lakes by specifically exempting Great Lakes vessels from the authorization in section 286(e)(3) of the Act. Furthermore, the recent amendment to section 286(e)(3) of the Act removes whatever discretion the Service might have had to make exceptions for commercial vessel passengers other than the Great Lakes exception, including on the basis of economic impact. Because the amendment in the 2002 Supplemental Appropriations Act provides that the Attorney General "shall" charge this fee, the Service is required to adhere to the terms of the statutory language, which limited exceptions to the Great Lakes vessels and ferries. Therefore, the final rule applies to any commercial vessel (as defined in the Service's existing regulations at 8 CFR 286.1(d) to include "any civilian vessel being used to transport persons or property for compensation or hire") other than the Great Lakes vessels.

One commenter requested the Service make this rule effective for ferries sometime beyond the 30 days after date of publication effective date for other vessels in order to give ferry operators additional time to comply. The Service considered this comment but declined to make a special exception for ferries regarding the effective date of this rule.

2. Collection of the Fee

In addition to the ferry-specific concerns about the impact discussed above, there were other concerns expressed in the comments about the effective date when the \$3 fee would be collected, and the amount of the fee collected.

In order to clarify the fee collection requirement, the Service has amended § 286.2(b) to make clear that the \$3 fee will be assessed based on bookings or reservations made on or after February 27, 2003. By using the booking date, the cruise line or other commercial vessel operator can accurately communicate to passengers both the cost of the passage and the applicable fees for which they are responsible. This provides clear guidance on when fee collections are due and results in an ease of administration for operators whose passengers will be subject to the \$3 fee.

Regarding the amount of the fee, the Service notes that it has been set by law, and the FY 2002 Supplemental Appropriation Act requires the collection of the \$3 fee for certain commercial vessel passengers who were previously exempt, except for the Great Lakes exception provided by Congress.

3. Other Changes

Finally, the Service has made minor stylistic corrections to the proposed rule's changes to 8 CFR 286.3(a).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Immigration user fees are already being collected by commercial vessel carriers and/or their ticketing agents in connection with voyages originating in areas already covered by the fee. Since the passengers rather than the carriers ultimately pay the immigration inspection user fee, these passengers are not considered small entities as that term is defined in 5 U.S.C. 601(6), and this rule does not have a significant economic impact

upon a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

1. Impact of the \$3 fee on cruise ships generally. The Service estimates that approximately 8 million cruise ship passengers per year who were previously statutorily exempt from paying the Immigration User Fee will now be required to pay this fee. The Service therefore estimates that the Immigration User Fund will receive \$24 million in additional revenue per year from the fees paid by these passengers. The imposition of the \$3 statutory fee is not anticipated to result in an economic burden for the cruise ship industry. When compared to the price of the average cruise, the \$3 fee is very small and is not expected to affect cruise booking decisions.

2. Impact of the \$3 fee on ferries. The \$3 immigration inspection fee imposed by this rule is likely to impose a greater proportionate burden on the service provided by ferry operators (in areas other than the statutorily-exempted Great Lakes areas) because the \$3 fee is larger in relation to the cost of a ferry ticket as compared to a cruise ship