

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY

US-VISIT
AIR-SEA BIOMETRIC EXIT NOTICE PF
PROPOSED RULEMAKING (NPRM)

at

Hyatt Regency Crystal City
2799 Jefferson Davis Highway
Arlington, VA 22202

Friday,
June 13, 2008

9:30 a.m. to 4:00 p.m.

HEARING OFFICIALS:

STEVE YONKERS, Co-Moderator,
Acting Deputy Assistant Director of
Business, Policy and Planning

MATT COUGHLIN, Co-Moderator,
Office of Communications and Public Liaison

MICHAEL HARDIN, Office of Business, Policy and
Planning

HELEN deTHOMAS, Office of Business, Policy and
Planning

ALSO PRESENT:

BOB MOCNY, Director, US-VISIT

PUBLIC SPEAKERS:

JAMES CASEY, Air Transport Association

KEN DUNLAP, International Air Transport
Association

LEO SCHEFER, Washington Airports Task Force

ROGER COHEN, Regional Airline Association

CLYDE WRIGHT, Aviation Assembly

CHARLES DIORIO, World Shipping Council

EDMUND WELCH, Passenger Vessel Association

J. MICHAEL CRYE, Cruise Lines International
Association

P R O C E E D I N G S

(9:30 a.m.)

1
2
3 MR. YONKERS: Good morning, everyone. My
4 name is Steve Yonkers. I'm the Acting Deputy
5 Assistant Director of Business, Policy and Planning
6 for the US-VISIT Program, and just as a common
7 courtesy, I'd first like to ask everyone to please
8 turn off your cell phones, pagers or anything else
9 that rings or makes music.

10 I'd like to welcome everyone to this public
11 hearing on the Department of Homeland Security's
12 Notice of Proposed Rulemaking that establishes
13 biometric exit procedures for non-U.S. citizens as
14 they depart the United States from airports and
15 seaports.

16 And, I'd like to begin by first introducing
17 the Director of US-VISIT, Bob Mocny, who will
18 provide some opening remarks. Thank you.

19 MR. MOCNY: Good morning, everybody. I
20 don't have anything really to, you know, -- I just
21 wanted to welcome you -- bring old friends together.
22 So we've been working many, many years --

23 So we're gathered here today to discuss a
24 rather serious item, a rather important topic, and
25 that is creating an exit program for people -- we

1 have a proposal out there containing several
2 different scenarios, one -- at this point, but we
3 also have -- we have other scenarios at the gate,
4 some -- and really the purpose of this, and the
5 purpose of any proposed rule, is to get your ideas.
6 It really will help us understand better what we're
7 proposing -- and we just have a whole volume
8 evidence about what those -- we want to know what
9 the impact on operations is going to be. So this is
10 a public forum to get some comments -- but this is a
11 little bit more of a -- way of doing it by having
12 you come in here and listen to your -- about the
13 program and about what it means to the public and to
14 the industries. So we're here together to listen to
15 you -- and I do want to hear your comments and all
16 of our folks up here who have worked very, very hard
17 on the program -- later. Steve will give you some
18 ground rules. It's not a dialogue. We have to just
19 listen to you -- to clarify some issues -- but
20 basically it's a way for you to come up to the
21 microphone. We have a Court Reporter back there who
22 is recording everything -- and everything else.

23 So I hope we get lots of comments from
24 anybody who wants to make comments, and I hope this
25 will elicit what we want, to have a strong, you

1 know, message from you to us so that we can, when we
2 do the final rule, and Helen takes all the comments
3 in and -- to the rule that we produce a final rule
4 that has the best and most -- piece of information.
5 So again, I hope to have lots of people
6 participating. I guess this will be all day long?

7 MR. YONKERS: Yes, until 4:00 p.m.

8 MR. MOCNY: There will -- during the day
9 but with that, Steve, I'll give it back to you for
10 the grounds rules and such and again thanks for
11 coming -- interest and concern. So good luck --

12 MR. YONKERS: Thank you, Bob. Thank you.
13 And as Bob noted, we definitely appreciate your
14 participation today and the opportunity to hear your
15 comments. We're very interested in getting your
16 feedback about how to achieve this goal in the most
17 effective and efficient fashion in the air and sea
18 environments. And, of course, we look forward to
19 hearing about the specific parts of the rule that
20 you liked and didn't like, and anything that you
21 want to comment on.

22 At this time, I'd like to introduce my
23 fellow panelist and fellow moderator. First, I'll
24 introduce Matt Coughlin to my right. He's with the
25 Office of Communications and the Public Liaison, and

1 he'll be my co-moderator today. We'll probably
2 switch off about every other -- every hour or so.
3 And then on his right is Helen deThomas. She's with
4 Business, Policy and Planning. She'll be one of the
5 lead writers of the final rule, and then to her
6 right, Mike Hardin, also with Business, Policy and
7 Planning Branch, and also a lead writer on the rule
8 itself.

9 Please note that the purpose of this
10 hearing is to solicit public comments on the NPRM.
11 While the panelists are available here to answer
12 procedural questions, or to clarify any confusion on
13 the NPRM, the panelists will not be speaking on DHS'
14 plans for deployment of the final rule or any
15 underlying policy decisions or legal analysis. So
16 that's the big clarification for us.

17 And just to summarize the topic of today's
18 hearing, DHS is proposing to establish an exit
19 program at all air and seaports of departure in the
20 country. The proposed rule would require aliens who
21 are subject to US-VISIT biometric requirements upon
22 entering the country to provide biometric
23 information to commercial, air and vessel carriers
24 before departing from the United States at the air
25 and seaports of entry.

1 This rule proposes a performance standard
2 for commercial air and vessel carriers to collect
3 the biometric information and to submit it to DHS no
4 later than 24 hours after air carrier staff secure
5 the air carrier doors on international departure or
6 for sea travel, no later than 24 hours after the
7 vessel's departure from U.S. port.

8 DHS does not propose to apply these
9 requirements to persons departing the country on
10 certain defined private carriers or small carriers.

11 Now let me review the format for today's
12 hearing which is outlined on a one-page handout that
13 you hopefully received when you came in.

14 For those of you who are pre-registered,
15 please check in at the registration desk if you've
16 not done so yet so that we'll know you are here and
17 you can be called on to speak. And if you'd like to
18 speak and did not pre-register, we ask that you
19 check in now at the registration desk or sometime
20 today so that you can be added to the list of
21 speakers.

22 If you have a written copy of your remarks
23 or presentation that you'd like to be included in
24 the record, and you have not already provided us
25 with such a copy, you may do so at the registration

1 desk.

2 Speakers will be called to the microphone
3 in the order in which they've registered with
4 priority given to those who have registered in
5 advance of today's hearing as specified in the
6 Federal Register hearing notice.

7 When you are called, please come to the
8 standing microphone at the center of the room and
9 you'll have 15 minutes to speak. A yellow card will
10 be held up by the timekeeper to let you know when
11 you have two minutes left to speak. And when your
12 time has expired, a red card will come up letting
13 you know that. And then every 15 minutes we'll call
14 the next speaker to the microphone.

15 As today's hearing falls within the Air-Sea
16 Biometric NPRM public comment period, all of your
17 oral comments will be transcribed and submitted as
18 comments for the public record. And just a reminder
19 that today's public hearing is just one of several
20 ways interested parties and individuals can submit
21 comments on the proposed rule.

22 After today's hearing, if you wish to make
23 additional comments, you may do so by accessing the
24 federal rulemaking portal on the Internet at
25 www.regulations.gov or you can mail written comments

1 to US-VISIT, and I believe the address has also been
2 provided in the one-page handout. Please note that
3 the deadline for submitting comments is June 23rd.

4 Again, I want to thank you for
5 participating today and at this time, I'd like to
6 welcome our first speaker, which will be James Casey
7 from the Air Transport Association.

8 MR. CASEY: Good morning. Thank you for
9 this opportunity. My name is Jim Casey. I'm the
10 Vice President for Industry Services and Deputy
11 General Counsel of the Air Transport Association.

12 In our view, this rulemaking proceeding is
13 unjustifiable and will produce an unlawful rule. It
14 should be terminated.

15 The air exit proposal would require
16 airlines to collect the fingerprints of foreign air
17 travelers departing the United States. That is a
18 Border Patrol function that is an inherently
19 sovereign responsibility. Congress has repeatedly
20 instructed the Department to perform that
21 responsibility. The various laws dating back to
22 1996, that the Department cites in the NPRM
23 conspicuously omit any instruction that carriers
24 collect biometric information. In fact, one
25 specifically prohibits it. DHS unmistakably

1 recognized that fact in its U.S. Exit Pilot Program.
2 Carrier collection of biometric information was not
3 part of that three year effort.

4 Furthermore, the Department's regulatory
5 impact analysis starkly reveals that the cost of the
6 proposal would be vastly greater than the identified
7 benefits, \$3.5 billion in costs versus \$1.09 billion
8 in benefits over the next 10 years.

9 Not only is that benefit cost ratio grossly
10 disproportionate, and consequently unacceptable,
11 worse than 1 to 3 as a ratio, the extraordinary
12 amount of projected cost imposed on airlines is
13 indefensible. The Department proposes that the
14 airline industry bear the burden of well over \$3
15 billion in additional expenses in the next decade
16 for a program that Congress has not mandated that
17 they perform, and which is presently configured,
18 merely audits after the fact, the departure of
19 foreign travelers. That would be unjustifiable in
20 any circumstances but particularly now for the
21 financially battered U.S. airline industry, which
22 some analysts estimate may experience operating
23 losses exceeding \$7 billion in 2008.

24 Despite these overwhelming considerations,
25 which should have been decisive, the Department

1 seeks to transfer to the private sector the immense
2 expense and predictable operational disruptions of
3 complying with the program that Congress has
4 repeatedly directed the Department and its
5 predecessor, the Immigration and Naturalization
6 Service, to carry out.

7 This proposal is a cost avoidance decision
8 on the part of the Government. It's as simple as
9 that. There is no justification for that in statute
10 or in administrative law principles.

11 This is the second decade of the
12 Congressional mandate to the Executive Branch to
13 develop a system to record the entry and exit of
14 foreign visitors. Congress has repeatedly signified
15 in half a dozen laws since 1996 that the system is
16 to be a Governmental responsibility.

17 Indeed, only until a little more than a
18 year ago, Department of Homeland Security has acted
19 accordingly. The indications of that Congressional
20 intent have been unmistakable. US-VISIT entry/exit
21 which was implemented early in 2004, is entirely a
22 Governmental effort. Implicitly, but clearly
23 recognizing the Congressional intent, DHS conducted
24 the US-VISIT Exit Program as an exclusively
25 Governmental undertake.

1 DHS and the airlines closely collaborated
2 in developing both the US-VISIT Entry Program and
3 the US-VISIT Exit Pilot Program. We repeatedly
4 offered to work with DHS to develop a permanent US-
5 VISIT Exit Program. We were assured that that would
6 occur, and that we would have the opportunity to
7 continue our collaboration with the Department. We
8 looked forward to that.

9 Those pledges, however, have not been
10 fulfilled. DHS informed us in the spring of 2007,
11 that it had decided regrettably without prior
12 consultation, to require airways to collect the
13 biometric information for US-VISIT exit. The result
14 of that disappointed decision is this unwarranted
15 rulemaking proceeding.

16 The Department's recently released report
17 evaluating the pilot program underscores how
18 unwarranted this proceeding is. The pilot program,
19 like this proposal revealed critical cost,
20 operational, passenger processing, data transmission
21 and privacy issues. The Department didn't resolve
22 them in the NPRM. Instead, it proposes assigning
23 the airlines the task to resolve it.

24 The NPRM is very bad news for airline
25 customers and will get worse for them in the future.

1 Airlines are increasingly offering their customers
2 the opportunity to check in before they get to the
3 airport through online and other communications
4 technology. Customers appreciate the ease of pre-
5 airport check in, and consequently airlines are
6 working to minimize airport-based transactions.
7 This is a 21st Century customer service, more
8 precisely, customer-demanded service.

9 DHS, in contrast, envisions a system of
10 continued airline physical interaction with every
11 customer at the airport who is departing the United
12 States. This is not where the airline industry is
13 headed. In the gulf between the capabilities of
14 emerging technology and the retarding effect of this
15 proposal will only widen over time. The industry
16 should not be forced to abandon its broadening
17 efforts to harness technology that promises to ease
18 the air travelers' experience.

19 It's also very bad news for all cargo
20 airlines that will be required to process personnel
21 flying on their aircraft in facilities not designed
22 for that purpose.

23 Finally, the airline industry is once again
24 confronted with the DHS regulatory initiative that
25 will impose substantial IT resource demands on it

1 without resolving the fundamental, longstanding
2 issue of how to economically coordinate the
3 Department's passenger data requirements. Those
4 programs are well known. Secure flight, AQQ, ESTA
5 and, of course, Air Exit. We badly need
6 harmonization of those data intensive programs to
7 reduce the enormous expenses that they are
8 generating for us.

9 The bill for jet fuel this year for U.S.
10 Airlines is expected to be \$20 billion higher than
11 last year. In these circumstances, our industry
12 cannot afford to be saddled with unnecessary
13 Government imposed costs.

14 In conclusion, ATA's members have supported
15 the Department in its efforts to create and
16 implement US-VISIT. We have consistently stated,
17 however, that airlines should not be involved in the
18 collection of biometric data for the exit element of
19 the program. That position is faithful to the 12-
20 year Congressional design that the Government be
21 responsible for both exit and entry information
22 collection.

23 The proposal to require airlines to collect
24 the fingerprints of departing foreign air travelers
25 cannot be justified either legally or operationally.

1 The proposal represents an effort to transfer an
2 enormous cost to the private sector which Congress
3 has never countenanced. The NPRM should be
4 withdrawn. Thank you for your time.

5 MR. YONKERS: Thank you for your comments,
6 Mr. Casey.

7 Our next speaker will be Ken Dunlap from
8 the International Air Transport Association.

9 MR. DUNLAP: Thank you and good morning.
10 My name is Ken Dunlap. I'm IATA's Director of
11 Security for North America.

12 The International Air Transport
13 Association, on behalf of our 230 member airlines,
14 78 of which fly into the United States, is pleased
15 to talk to you about US Exit today. Since 2001,
16 globally airlines and their passengers have had
17 billions of dollars of expenses imposed upon them
18 for security measures that are often duplicative and
19 inefficient. Now DHS is attempting to outsource
20 border control and immigration to the industry.
21 There are no other examples in the world where
22 fingerprinting border control purposes has been
23 outsourced by a regulator to industry. IATA
24 estimates that US Exit will cost the industry
25 billions of dollars more than the highest estimate

1 contained in the NPRM.

2 In airports, hours of check-in time will be
3 added for passengers on international flights.
4 International passengers do have a choice, and they
5 can choose to not visit the United States if travel
6 is perceived as more of a hassle than what it's
7 worth.

8 We condemn this abrupt policy change in
9 this exorbitantly priced program. We urge DHS to
10 withdraw this proposal and bring all the separate
11 passenger information programs being pursued by DHS
12 together in a coherent fashion.

13 I'd like to spend the balance of my time
14 discussing the operational and technical impacts of
15 this NPRM on the industry and finish with a
16 discussion of the cost and legal issues associated
17 with it.

18 First, the operational impacts. US Exit
19 will not work at check-in counters. IATA believes
20 it will take an additional one to two minutes
21 processing time per passenger which will
22 collectively lead to an estimated 3 to 5 hours per
23 flight of additional check-in time. Further, most
24 airline departure control systems do not allow
25 parallel activities such as entry of passenger API

1 data concurrently with other processes such as
2 biometric collection.

3 US Exit will not work at airport boarding
4 gates. Gates are designed to cater to passengers
5 who are already fully checked in and can board
6 without the need for additional processing. For
7 these reasons, a gate-based exit system will result
8 in unacceptable lines and departure delays and
9 missed connections.

10 US Exit will not work with airline business
11 model of the future. The requirement to collect
12 fingerprints at the check-in desk will negate any
13 benefits gained through planned automation.

14 Now a little bit about the technical
15 impacts of Exit on the airlines. We believe that
16 this NPRM completely ignores the existing IT
17 infrastructure of the industry. As proposed in the
18 NPRM, in the privacy impact analysis, the data
19 transmission requirements under this program would
20 increase required network bandwidth for each
21 outbound international flight by a factor of 350.
22 Airlines do not presently have that bandwidth.
23 Existing internal and external messaging formats are
24 not designed for or capable of the transmission of
25 image data nor is the APIS (ph.) transmission model.

1 Further, no industry standard XML scheme that exists
2 today to support transmission API data with attached
3 fingerprints.

4 Now a little bit about the costs. IATA
5 believes that insufficient consideration is being
6 given to data transmission costs, enhancements that
7 will be required to existing airline data systems
8 and the development of entirely new and standalone
9 secure systems as recommended by the DHS privacy
10 impact analysis.

11 As proposed, DHS estimates the cost of
12 carriers collecting and transmitting biometric data
13 will be between 3.6 and \$6.4 billion over a 10-year
14 period for only 73 airports. IATA believes that US
15 Exit will need to be deployed to more than the 73
16 airports proposed by DHS. Currently, international
17 passengers may check in at over 400 United States
18 airports. If the industry has to offer fewer
19 international check-in opportunities, service
20 disruptions will increase. Combine this with the
21 increased check-in times, and we have a disaster in
22 the making at United States airports.

23 And now finally, I'd like to have a
24 discussion on the legal considerations regarding
25 this NPRM. The NPRM certainly offers an exhausted

1 list of Congressional enactments. However, IATA is
2 not aware of a single provision in any of these laws
3 that indicates or suggests that the commercial
4 airline industry should be required to design,
5 implement, maintain and pay for an exit system.
6 Instead, the language makes it quite clear that the
7 U.S. Congress intended for DHS to be responsible for
8 all aspects of this Exit Program.

9 Now over the years, the United States has
10 entered into more than 190 air service agreement or
11 what we call bilaterals, with foreign countries in
12 the field of international air transport, and each
13 of these generally contains aviation security
14 provisions. It seems at best contradictory that the
15 United States has on one hand internationally
16 committed to a number of aviation security
17 obligations while on the other hand transfers a
18 major part of such responsibility to the private
19 sector.

20 In conclusion, for all these reasons, IATA
21 urges DHS to withdraw this proposal and consult with
22 industry on how best to accomplish the underlying
23 security objectives. Thank you.

24 MR. YONKERS: Thank you. Thank you,
25 Mr. Dunlap, for your comments.

1 Our next speaker is Leo Schefer from the
2 Washington Airports Task Force.

3 MR. SCHEFER: Thank you for an opportunity
4 to comment on your NPRM.

5 I find myself in a strange position today
6 because when I testified at a public hearing, a
7 Federal one, I normally find myself in the past
8 supporting improvements to air traffic control which
9 are badly needed or supporting open skies policies
10 which free air travel. I'm very happy to do that.
11 Unfortunately, I fear I'm the bearer of bad news for
12 you today which I rather regret but it needs to be
13 said.

14 This NPRM is bad public policy, and let me
15 try and explain why. Appreciate that it comes from
16 a Congressional mandate back in 2004, and that you
17 want to move forward with automating I think it's
18 called ESTA, the Visa Waiver Program, and we
19 certainly need the Visa Waiver Program expanded but
20 I really think you need to go back to Congress, ask
21 them to decouple those two so that you can move
22 forward with the Visa Waiver expansion, and explain
23 to Congress that this mandate on exit requirements
24 just is not feasible, it's not justifiable in terms
25 of security, and it duplicates your existing

1 systems.

2 As far as we can see, reading the NPRM, DHS
3 has worked diligently for nearly four years to try
4 and find an effective way to meet the Congressional
5 mandate. You've been unable to do that. You've
6 offered various sort of options in the NPRM as you
7 noted, but placing it with the airlines as far as we
8 can see is just not on. I won't go into all the
9 legal arguments but Congress has clearly after 9/11,
10 they do not want the airlines handling security, and
11 therefore this clearly isn't a security issue, this
12 exit requirement, or you would never have proposed
13 an NPRM which would place the burden on them.
14 So it's a security -- it has no security merits as
15 far as we can see.

16 Further, you've got two systems already in
17 place which compare entry and exit data for foreign
18 visitors. The first is the I-94. It's a paper
19 program, a signature is a biometric identifier, and
20 what happens to the piece that comes out of the
21 passport when the visitor leaves, whether it ever is
22 matched up with the piece you took on their arrival
23 or what happens to all of that, I frankly don't
24 know, and I suspect it would not give you the 24-
25 hour information you desire, but nevertheless, you

1 have a system in place to identify departing
2 passengers that you can marry up with the arrival
3 record.

4 The second and much more robust system you
5 have, which is a core part of our security as a
6 nation as I understand it, is the AFIS system. The
7 airlines provide CBP with the manifest which is run
8 against the watch list before travelers board an
9 aircraft, either on incoming flights or outgoing
10 flights, and you tell them if there's passengers you
11 don't want aboard. So you've got an electronic
12 system, a robust one, which is part of our core
13 security to enable you to see promptly within
14 minutes, near real time, if a foreign visitor has
15 overstayed their welcome. So it's not perhaps a
16 biometric system, but it's part of our core
17 security. So it presumably has to be effective.

18 The second area that is AFIS, from reading
19 the results of your trials, AFIS probably is a lot
20 more accurate than the 97 percent you want to
21 achieve with your Biometric Exit Program. So again
22 one wonders why aren't you turning to the AFIS
23 system to achieve this.

24 The next thing is that, and I'm not a
25 policeman or a security officer, I'm a layman, but

1 when you are going to apply this to major carriers,
2 sea and air, but leave the land borders, to leave
3 charters, small carriers, private vessels, private
4 aircraft, not part of the program, you've got an
5 incredibly porous program, that if somebody wanted
6 to defeat it, they obviously very easily could.
7 Again, it sort of makes a nonsense of that
8 expenditure.

9 And what is the cost? We worked it out.
10 Based on the figures you published in the NPRM, this
11 program which would have no security benefit, would
12 cost each and every taxpaying American \$30 and for
13 what?

14 Now that's a tiny part of the cost. As you
15 know, the well-meaning actions which were taken
16 after 9/11 turned us in the eyes of many world
17 visitors into Fortress America. And our foreign
18 visitors dropped. We now have a model port program,
19 which you instigated, as DHS, which is just
20 beginning to produce some really good results, and
21 just as it looks as though we're about to get
22 security with a smile and be able to attract foreign
23 visitors back again, we launch this NPRM which could
24 begin to undo a lot of the good that the model port
25 and the associated programs around it are beginning

1 to bring in.

2 The visitor industry is just one of the
3 pieces of harm done, and we have lost -- the cost of
4 the visitor industry alone is the equivalent of
5 200,000 lost jobs.

6 Now our universities have suffered. We
7 have a very good university system, best in the
8 world, in part because funding comes from foreign
9 students. When we make it difficult for those
10 foreign students to enroll in our universities, we
11 do two things. We hurt our universities because we
12 chop off a bit, the high end of their market.
13 Secondly, those students are probably the future
14 leaders of their country's industry and society, and
15 they're out being educated somewhere else. That
16 will hurt us in years to come in terms of commerce.

17 And lastly, we hurt our commerce because
18 people now are more reluctant to come here to buy
19 things, certain countries in particular. So they go
20 buy elsewhere. Now all of those things hurt our
21 economy. We're not addressing that with the model
22 port, but when we hurt our economy, we're really
23 doing the terrorists' job for them because as I
24 understand it, they want to kill our people, they
25 want to hurt our economy, they want to undermine our

1 way of life and our society. So when we, you know,
2 do something like this fingerprinting proposal,
3 we're shooting ourselves in the foot. I would say
4 it's very similar to the good intent but mistaken
5 closure of National Airport after 9/11.
6 Fortunately, the White House realized just how
7 harmful that was, that it was doing the terrorist
8 job for them. So they rectified that mistake very
9 rapidly before any real harm was done, and I and my
10 members would ask you to withdraw this NPRM and work
11 with Congress so that you can get the visa waiver
12 without this exit requirement before any real harm
13 is done.

14 So I'm sorry to be the bearer of bad news.
15 I'm happy to work with you as I'm part of the model
16 ports initiative, to sort of meet your security
17 requirement, but I don't see how this NPRM is going
18 to help our security. It's just going to waste a
19 lot of money, be a lot of bureaucratic hassle and
20 turn foreign visitors away at a time when we're
21 making real progress to address that situation.

22 Now if there is some hidden security which
23 hasn't been explained, then surely you need to hold
24 off this until you've got a system which works in a
25 user friendly manner at all the borders and all the

1 exit points of the United States. But until then,
2 I'd dump it.

3 The other thing is a very wise cabinet
4 member a few years back, Bill Coleman, when he was
5 Secretary of Transportation, said that a decision
6 that cannot be explained is probably arbitrary, and
7 he went onto explain in detail all the controversial
8 decisions he made. I would urge DHS to follow his
9 example. Thank you.

10 MR. YONKERS: Thank you for your comments.

11 Our next speaker is going to be Roger Cohen
12 from the Regional Airline Association.

13 MR. COHEN: Good morning and thank you.
14 I'm Roger Cohen. I'm President of the Regional
15 Airline Association. Our 40 member airlines across
16 the United States, Mexico and Canada appreciate this
17 opportunity to appear here today.

18 Let me just start by giving you a little
19 bit of a picture of the regional airlines today, and
20 give you four numbers. Right now, 23 percent,
21 almost 1 out of every 4 passengers in this country
22 is on a regional airline. Forty percent of the
23 airplanes in the fleet are regional aircraft. Fifty
24 percent of the flights in this country, fifty
25 percent, one-half, are on regional airlines. And

1 here's the most important statistic, that across
2 this country, 70 percent of the communities with air
3 service are served exclusively by regional airlines.

4 One needs only pick up a newspaper in the
5 lobby here today to see what the situation we're in,
6 with oil at \$150 a barrel, air carriers are cutting
7 back service, 100 communities will have lost
8 service, it's expected by the end of the year.
9 Eight airlines have gone belly up. Others are in
10 Chapter 11. Everyone's bleeding red ink, and most
11 importantly, thousands of real Americans have lost
12 their jobs.

13 The DHS proposal, as the other speakers
14 have pointed out, would be the wrong approach at
15 anytime. At this point in time, we believe it's
16 unconscionable. It's piling on of the worst sort,
17 during the industry's worst hour, up to and perhaps
18 even including the days following 9/11.

19 This is clearly a poor interpretation of
20 what Congress intended. Congress never intended for
21 airlines, particularly small regional airlines, many
22 of whom, most of whom don't even conduct their own
23 passenger handling or reservations to do this kind
24 of screening.

25 More importantly, millions of passengers

1 and hundreds of communities that operate airports
2 are going to be adversely affected. We honestly
3 believe that by denying the extension to the comment
4 period, DHS is making it clear and sending us a
5 signal, that they're simply checking a box to meet a
6 deadline rather than making sound public policy that
7 provides for the safety and security and convenience
8 of the traveling public and all Americans.
9 Protecting and safeguarding our borders has always
10 been and should always be a function of the U.S.
11 Customs and Border Patrol, not airline ticket
12 agents. And it just defies common sense, that if
13 DHS is conducting this collection of information for
14 people coming in, that they should do it for people,
15 those same people, going out.

16 By requiring, for example, biometric
17 readers at ticket counters and gates at all these
18 airports, you're going to be increasing delays for
19 all passengers, U.S., everybody is going to get
20 delayed by this. And just last year, one year ago,
21 less than a year ago, President Bush made it a point
22 to talk about airline delays being a major national
23 issue. People at the Department of Transportation
24 and FAA have devoted countless hours, man hours,
25 millions of dollars, trying to reduce those delays

1 to make it easier for passengers and here another
2 function of the same Government is trying to do just
3 the opposite.

4 Of course, we'd ask why is it focused only
5 on people flying in and out of the United States as
6 opposed to the millions of people who cross the
7 border every day, maybe even on the Greyhound bus.

8 Let me give you one real world example.
9 Let's say there's a businessman in Toronto going to
10 go down to Greenville, Mississippi. There's a big
11 M&M Mars manufacturing plant in Greenville. His
12 itinerary has him going, Toronto to Memphis to
13 Greenville. Goes back the same itinerary. He comes
14 in, he gets fingerprinted and all that stuff,
15 documented on his inbound flight, does his business
16 in Greenville, is in the Holiday Inn, goes on the
17 computer, checks in online, he's got a carry on bag,
18 one bag, carry on bag, he checks in, gets his
19 boarding pass all the way back through, goes to the
20 airport in Greenville, one carrier, Greenville, a
21 city of 50,000 people, the entire metropolitan area,
22 bypasses check in, goes straight through security.
23 The person never comes in contact with an airline
24 ticket agent until he gets to that gate, until it
25 gets collected. Are you going to require this kind

1 of thing at all 635 airports with commercial service
2 in this country?

3 We recognize that DHS is facing a
4 Congressionally mandated timeframe for this.
5 However, by denying the extension of the comment
6 period with this hearing, as its sole substitute,
7 tells us that DHS doesn't either understand how the
8 airline business works, what passengers need and
9 what passengers want, what our national economy
10 needs. It may also indicate that they really don't
11 care about working with the stakeholders to come up
12 with a policy and a practice that works in the real
13 world.

14 We respectfully request that the DHS
15 reconsider the rule as proposed, go back to the
16 drawing board. We and all the other stakeholders
17 here will be more than willing to work up and come
18 up with a plan that we believe can work to the
19 benefit of the traveling public. Thank you, and
20 I'll be glad to answer any questions.

21 MR. YONKERS: Thank you for your comments,
22 Mr. Cohen.

23 Our next speaker will be Clyde Wright with
24 the Aviation Assembly from the UK.

25 MR. WRIGHT: Thank you and good morning.

1 My name is Clyde Wright. I'm the Chairman of the
2 Aviation Assembly.

3 The Aviation Assembly is an informal
4 association of aviation attaches drawn from 34
5 foreign embassies here in D.C. plus a delegation of
6 European Commission. So the comments we have this
7 morning have been agreed by the governments
8 represented in the Assembly by those embassies.

9 First off, we recognize that the Department
10 of Homeland Security is acting on a mandate from
11 Congress and unfunded one at that which requires an
12 exit procedure to be put in place. It's not for the
13 Assembly to question that mandate. However, we are
14 seriously concerned that its execution may be
15 delegated to commercial airlines. We believe that
16 border controls or checks on entry and exit are more
17 properly a function of government.

18 Several of the governments represented by
19 members of the Assembly have reintroduced border
20 controls on exit but they have required the relevant
21 government agency to provide for and run this
22 function. We also recognize that airlines and many
23 airports around the world already provide some
24 support to governments, for example, in checking the
25 validity of travel documents.

1 But, the proposal here, as we understand
2 it, will be far more detailed and resource intense
3 than anything that is currently handled by airlines
4 on immigration issues.

5 Now, in common with U.S. carriers, the
6 airlines based on the territory of Aviation Assembly
7 members have business models that introduce
8 significant reductions in ground staff located at
9 check-in desks and jet ways, with airlines relying
10 instead on technology to assist passengers in an
11 increasingly self-serve environment.

12 So requiring these carriers to reverse that
13 model and to do so without any financial, technical
14 or political support would be, we believe, place a
15 significant burden on the industry. There are
16 potential complications involving privacy and
17 liability issues with commercial organizations
18 security, holding and transmitting to government
19 agencies sensitive biometric data. We believe these
20 need to be looked at again carefully to avoid
21 exposing airlines to unnecessary risks.

22 However, our overall conclusion is that the
23 implications of imposing an expensive government
24 function on an industry already facing severe
25 financial constraints and clearly looking to further

1 downsize to avoid collapse, are so severe that they
2 require further consultation, reflection and
3 possible reworking. Thank you very much.

4 MR. YONKERS: Thank you for your comments,
5 Mr. Wright.

6 Our next speaker will be Charles Diorio
7 from the World Shipping Council.

8 MR. DIORIO: Good morning. My name is
9 Chuck Diorio, and I'm with the World Shipping
10 Council. I'd like to turn the focus for a moment
11 here to the maritime industry from the aviation
12 industry.

13 We are a trade association that represents
14 international lining shipping companies and by that
15 I mean the container operators and car carriers. We
16 service roughly 95 percent of the container carrying
17 capacity and almost all of the car carrying capacity
18 to and from the United States. On an average day,
19 70 ships of our members call on the United States.
20 There's a fleet of roughly 1500 container ships. We
21 make roughly 26,000 port calls a year here in the
22 United States.

23 I have two general comments on the US-VISIT
24 Notice Proposed Rulemaking that I'd like to touch
25 upon. First is the applicability to cargo vessels,

1 and second would be a concern we have over the
2 impact on this regulation over vessel crew changes
3 here in the United States.

4 As the NPRM clearly focuses on the exit
5 biometrics only required for those who provide it on
6 the way in, we are fairly confident in our
7 interpretation of the rule, that this would not
8 apply to cargo vessels as our vessels do not call at
9 designated US-VISIT ports. However, if that
10 interpretation is wrong, and this is intended to be
11 ruled out broader to include cargo vessels, we would
12 ask that the Government further study this issue.
13 It's clear in the NPRM that this is only focused on
14 passenger vessels, and in particular, cruise ships
15 when it mentioned the fact that there were only nine
16 vessel operators calling at I think at 33 ports in
17 the United States. Clearly, you're focusing on the
18 cruise line industry as opposed to the larger cargo
19 vessel operating universe.

20 There are several hundred ports here in the
21 United States that serve as international trade.
22 All of those could be impacted under this regulation
23 if it is indeed expanded to include cargo vessels.
24 And while we're talking about ticket gates and check
25 points and things like that, those things that exist

1 in the air environment simply do not exist in a
2 cargo vessel environment, and this will be very
3 difficult to enforce on cargo vessel crews.

4 Turning to cargo vessel crews, there's one
5 particular issue we have with crew changes here in
6 the United States and how this exit requirement may
7 impact on those crews. By that, I mean we have
8 situations here in the United States where a crewman
9 will either leave or depart his ship by airplane.
10 For example, a crewman may fly into the United
11 States, join a ship here in the United States and
12 then depart by vessel. The question we have here is
13 how that crewman would comply with these exit
14 biometrics. For example, you have a crewman
15 arriving in Los Angeles into LAX. He's
16 fingerprinted on his way in. He then departs on a
17 cargo ship out of Long Beach going back to Asia, and
18 therefore in that situation he is now technically in
19 violation of the regulation. The current
20 regulations read that he would be held in violation
21 and could actually be ineligible for a future visa
22 if he should apply in the future. We would like the
23 Government obviously to address that loophole and
24 how it affects cargo vessel crews. We will submit
25 these comments in writing by next week for your

1 review. Thank you very much.

2 MR. YONKERS: Thank you very much,
3 Mr. Diorio.

4 Our next speaker is Edmund Welch from the
5 Passenger Vessel Association.

6 MR. WELCH: Good morning. Thank you. I am
7 Ed Welch. I'm Legislative Director for the
8 Passenger Vessel Association. We're the national
9 trade association representing owners and operators
10 of U.S. flag passenger vessels of all types,
11 including ferries, and as one might expect, our
12 interest here is the collection of biometric data at
13 seaports. Specifically we represent operators of
14 ferry vessels that travel between the U.S. and
15 Canadian destinations. We have six members in that
16 category within PVA. They're all located within the
17 Pacific Northwest. Two are governmental entities,
18 the Washington State Ferries and the Alaska Marine
19 Highway. There are four private companies that
20 operate in that area. They provide service from
21 Seattle or Port Angeles or Bellingham, Washington,
22 to points in British Columbia. I've listed their
23 names in our written testimony.

24 We also know of three other companies
25 around the U.S. that are not members of PVA that

1 provide some type of passenger service, ferry
2 service or tour boat service between Canada and the
3 U.S. that presumably will be affected by this
4 rulemaking.

5 There are several general characteristics
6 about this ferry transportation between the U.S. and
7 Canada that we hope you will consider. You need to
8 understand that ferry transportation across the
9 border is primarily an alternative to land
10 transportation. In other words, the competitors for
11 the ferries are roads and cars, and anything that
12 places travel by ferry at a competitive disadvantage
13 to the land-based transportation is going to serve
14 to push customers from the ferries to land
15 transportation. And when I say competitive
16 disadvantage, that can be a price disadvantage, it
17 can be a time disadvantage, it can be a hassle
18 disadvantage. We've made this point to the
19 Department in previous rulemakings where you were
20 considering the appropriate level of user fees for
21 customers of ferries. These are the land crossings.
22 And it's equally a valid observation when it comes
23 to collection of biometric data for aliens that are
24 departing the U.S. on a ferry to impose a mandate on
25 the ferry operators when there's no comparable

1 collection of biometric data for our competing land
2 mode, is going to push passengers likely from the
3 ferries to the land modes.

4 Also you need to understand that while
5 there are some ferry operators who depend on, in
6 some portion, on advanced reservations of their
7 customers, as do cruise ships and as do airlines,
8 for all ferry operators there's considerable walk up
9 traffic, and for some operators, that's their
10 primary traffic. Their customers simply show up a
11 little bit before the scheduled departures, buy a
12 ticket and off they go.

13 As discussed in the Federal Register, the
14 Department assumes that an operator is simply going
15 to incorporate, at least a significant portion of
16 the collection of the biometric data process, into
17 their previously existing advanced reservation
18 system. To the extent our people don't have those
19 or to the extent that they don't have much of such
20 of a system, your assumption is just simply
21 inapplicable to the ferry operator.

22 Finally, the terminals and documents from
23 which the ferries operate are not easily configured
24 to impose some kind of a separate between the U.S.
25 citizens who don't need to have this biometric data

1 collected and the alien departees who do. In fact,
2 it's quite likely that the ferry operator may
3 neither own nor control the land side facility.

4 We encourage some U.S. Representatives to
5 come see these ferry terminals. You'll see what we
6 mean. You'll see that there's no excess space in
7 which to squeeze whatever required infrastructure is
8 needed. You'll see that there are no excess ferry
9 personnel standing around without any duties that
10 could be diverted to assisting folks that need to
11 collect the biometric data.

12 In fact, you will see that the ferry
13 operators are very busy implementing the Department
14 of Homeland Security required vessel and terminal
15 security plans. You'll see that their personnel for
16 the large part had been and are using your
17 Government imposed transportation worker
18 identification credentials. In other words, what
19 I'm saying is ferry operators are contending with a
20 host of security requirements that the Department of
21 Homeland Security, primarily the Coast Guard, has
22 already imposed on them. So it's not as if we
23 aren't aware of security but here comes another
24 Government mandate, not funded by the Government.

25 We do like in Section 2314(c) of your

1 proposed Title 8, the section that says limitation
2 on air and vessel carriers affected. It has an
3 exemption for small entities, as the SBA defines
4 small entities, and we support this. We suggest
5 that there needs to be some clarification. You've
6 used the wrong code for designating the ferry
7 operators. There is a 500 employee threshold. We
8 think that would take care of the private operators.
9 We not sure if it takes care of the two Governmental
10 entities. Does a small business entity exemption
11 apply to a Governmental entity? We're not sure.
12 Also these Governmental entities have more than 500
13 employees, although not devoted to these particular
14 international routes. We would suggest that there
15 needs to be some clarification of your exemption to
16 deal with the Governmental entities as well as the
17 private companies.

18 So thank you very much for this ability to
19 appear. Our individual companies will be submitting
20 additional written comments as will the Passenger
21 Vessel Association.

22 Mr. YONKERS: Thank you, Mr. Welch, for
23 your comments.

24 Do we have any more of our registered
25 speakers? Richard, do we have anyone else?

1 If anyone else wishes to speak, please
2 register at the desk so we can call you up by name
3 and organization.

4 At this time, I'll let everyone know that
5 this hearing will remain open until 4:00 p.m. today.
6 So anyone who wishes to speak, we invite you to
7 register and come up for a 15-minute presentation.
8 Thank you.

9 (Pause.)

10 MR. YONKERS: Again, if I can have your
11 attention please. The next registered speaker is J.
12 Michael Crye for Cruise Lines International
13 Association.

14 MR. CRYE: Good morning, and I apologize
15 for my tardiness here this morning. I had a lot
16 going on with things on Capitol Hill. Thank you for
17 taking my request to speak at the last minute.

18 I'm here speaking on behalf of the 24
19 largest cruise operators that operator throughout
20 the world. We operate approximately 175 ships, and
21 there are approximately 250,000 vacationers on board
22 our ships on any day. The great majority of those
23 are operating to and from United States ports.
24 During the summer months, approximately 30 percent
25 of our ships are operating in Europe.

1 We have well over 100,000 crew members that
2 are on board these vessels also, and the vast
3 majority of those crew members are not United States
4 citizens. They are foreign nationals. The crew
5 members all go through the process of obtaining
6 United States visas as well as seafarer credentials
7 in order to operate on ships, operating to and from
8 the United States. And the process as you may know,
9 of obtaining the U.S. visas involves a
10 fingerprinting process and background check as well
11 as vetting in their home countries. These crew
12 members also are -- some of them are from --
13 countries where they are subject to additional
14 scrutiny and routine fingerprinting and
15 photographing upon their entry and exit from the
16 United States.

17 The passengers on cruise ships are by and
18 large United States citizens, but depending upon the
19 itinerary and depending upon the time, the season,
20 there can be up to 60 or 70 percent of the voyage
21 could be foreign nationals, mostly from visa waiver
22 countries. These passengers are also subject to
23 very significant screening through the advanced
24 passenger information, electronic manifest
25 submission. Crew members are also included on our

1 electronic manifests that are submitted to DHS. We
2 have, prior to departure, from U.S. ports, we have
3 electronic submissions and up to 48 hours prior to
4 arrival in the United States.

5 The vast majority of cruises that operate
6 to and from the United States are roundtrip cruises.
7 The people depart this country for a five to seven
8 day cruise and return to the same place. We have
9 extensive security procedures on board the vessels
10 which include an examination of the traveling
11 documents, an issuance of a card that has a
12 photograph captured within the computer system.
13 That card is used for all of the passengers'
14 identification while they're exiting and getting on
15 the ship as well as their purchases while on board,
16 and is also used as the card that gets them into and
17 out of their cabins.

18 So these verification processes throughout
19 the voyage allow us to be able to continuously
20 maintain who the people are that are on board the
21 vessels.

22 The crew members also use photographic
23 identification cards and they too are used for
24 various security entry and exits from various
25 locations around the vessel.

1 So we do, in fact, throughout the course of
2 the voyage have control over who is on board, who is
3 not on board and verify that the people who are
4 there are indeed the same people who embarked the
5 ship at the beginning of the voyage. They are duly
6 reported through our electronic manifest to the
7 Department of Homeland Security.

8 In the cruise industry, we value what it is
9 that you're attempting to do. We value the
10 processes and procedures that make our country
11 safer. What we also think needs to be balanced is
12 the cost of additional security versus the benefits
13 of the additional security. When there is little
14 additional security provided through additional
15 layers of requirements for reporting and
16 verification, then we believe that the cost benefit
17 tilts in favor of making some concessions.

18 Number one, we believe that there is little
19 added security for you to require the fingerprinting
20 of foreign seafarers who already are accounted for
21 in various ways, and unless and until they are
22 finally departing the United States to return to
23 their home country. We also believe that there is
24 little added security value to you for
25 fingerprinting foreign citizens on roundtrip cruises

1 that are coming back to the United States. We
2 believe that your added security, if at all, is when
3 they finally depart the United States.

4 We also recognize that Congress has placed
5 various requirements on the Department of Homeland
6 Security and all of the chickens are coming home to
7 roost today for you as it relates to advanced
8 passenger information systems, automatic quick
9 query, safe, secure travel, just a plethora of
10 different requirements.

11 We believe that it's very important for you
12 to take a look at all of these requirements within
13 the Department, take a look at all of these things
14 that have been placed as burdens on the Department
15 of Homeland Security and sit down with industry in
16 order to be able to consolidate and make these
17 different security systems integrated and make it
18 done in a more cost efficient manner where we don't
19 just have a continuous layer upon layer of different
20 requirements placed upon the traveling public and
21 indeed the industry. Should I -- do you have
22 questions or --

23 MR. YONKERS: You have more time if you
24 wish to take it.

25 MR. CRYE: Well, I think I've -- I think

1 those are my comments. Thank you.

2 MR. YONKERS: Thank you very much. Thank
3 you for your comments.

4 And at this time, it looks like we do not
5 have any additional registered speakers. Again,
6 this public hearing will remain open until 4:00 p.m.
7 Thank you.

8 (Pause.)

9 (Whereupon, at 4:00 p.m., the public
10 hearing was adjourned.)

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C E R T I F I C A T E

This is to certify that the attached proceedings before the U.S Department of Homeland Security in the matter of Air-Sea Biometric Exit Notice PF Proposed Rulemaking (NPRM) at Arlington, VA, on June 13, 2008 were held according to the record, and that this is the original, complete and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibits files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.


Timothy J. Atkinson, Jr.
Official Reporter


Kathryn A. Mirfin
Transcriber