

BEFORE THE  
DEPARTMENT OF HOMELAND SECURITY  
ARLINGTON, VA

Collection of Alien Biometric Data  
Upon Exit from the United States at  
Air and Sea Ports of Departure;  
United States Visitor and Immigrant  
Status Indicator Technology Program  
("US-VISIT")

Docket No. DHS-2008-0039

COMMENTS OF QATAR AIRWAYS

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Qatar Airways submits these comments in opposition to the notice of proposed rulemaking ("NRPM" or "Proposed Rule") published by the Department of Homeland Security ("DHS") on April 24, 2008.<sup>1</sup> The NPRM seeks to require airlines to develop, implement, and pay for an exit system that will work with DHS's existing United States Visitor and Immigrant Status Indicator Technology ("US-VISIT") program. The proposed exit system would involve using airline personnel to collect biometric information (*i.e.*, fingerprints) from departing foreign passengers and to transmit this information to DHS.

As will be explained below in greater detail, the NPRM is deeply flawed on a number of fronts. As a threshold matter, there is the questionable propriety of having a non-U.S. carrier perform security functions that currently are being carried out by the U.S. Government and that should not be "outsourced" to any private party. The NPRM also would impose very heavy technological, financial, and operational burdens on

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<sup>1</sup> COLLECTION OF ALIEN BIOMETRIC DATA UPON EXIT FROM THE UNITED STATES AT AIR AND SEA PORTS OF DEPARTURE; UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM ("US-VISIT"), Notice of Proposed Rulemaking, 73 Fed. Reg. 22,065 (Apr. 24, 2008).

airlines, with very little apparent justification and no direct benefit to the airlines that would be required to pay for the system.

Qatar Airways, the flag carrier of the State of Qatar, would feel the burdens imposed by the NPRM quite acutely. Although the company is growing quite rapidly, operating at 82 worldwide airports, the company has only a small presence in the United States at this time. For a company with a lean organization supporting its two U.S. stations—Newark, New Jersey and Washington, DC—the massive demands contained in the NPRM are particularly onerous. Setting aside the cost and burden associated with developing the IT programs to support the demands created by the NPRM, the Proposed Rule fails to take into account the large demands on personnel and airport infrastructure imposed by the new requirements. Accordingly, Qatar Airways strongly objects to the NPRM and calls for DHS to withdraw the proposal immediately.

**A. Security and Immigration/Border Control Functions May Not Be Outsourced.**

At this time, Government officers from the U.S. Customs and Border Protection and the U.S. Department of State, acting under the existing US-VISIT entry system, collect biometric information from foreign passengers seeking to enter the United States. DHS uses the biometric information to determine whether a passenger is admissible and to identify suspected terrorists, known criminals, and individuals who have violated U.S. immigration laws. These are security and immigration/border control activities, and the performance of these activities is an inherently governmental function. As such, they are properly carried out by public officers rather than airline employees.

The NPRM, in stark contrast, proposes an exit system that would have Qatar Airways' employees take fingerprints from foreign passengers, which the airline would be

required to transmit using an IT system that the airline (rather than the U.S. Government) would develop and maintain. In some cases, the fingerprinting would be performed by third-party contract workers, as many foreign airlines with limited U.S. operations do not have direct employees in the United States. Plainly, however, the collection of biometric information for the exit program—like the collection of biometric information for the entry program<sup>2</sup>—is an inherently governmental activity. While Qatar Airways understands the U.S. Government's desire to promote aviation security (and to police its borders and enforce its immigration policies), Qatar Airways respectfully suggests that the NPRM is off the mark and imposes obligations on private parties that are both unlawful and unduly burdensome. The collection and transmission of sensitive biometric data from passengers is an activity that is inherently governmental and cannot be outsourced, let alone imposed upon industry. The NPRM clearly calls for private industry to perform activities that must be carried out by the Government itself. For that reason alone, the NPRM is unlawful and should be withdrawn.

**B. The Proposed Rule Is Economically Unjustified and Imposes Unreasonable and Unnecessary Costs on the Private Sector.**

DHS estimates that the NPRM would shift costs of a staggering \$7.5 billion onto the airline industry over the next twenty years, which would be a crippling burden even if fuel prices were not at record-high levels. Plainly, this is cost-avoidance on the part of the Government, and it directly undermines the desperate efforts undertaken by the industry to reduce and control costs. Incredibly, DHS moved forward with proposing this

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<sup>2</sup> Qatar Airways also fails to see any meaningful difference between the activities proposed in the NPRM and aviation security screening, which the U.S. Government decided many years ago had to be carried out by persons directly employed by the Government.

rule even though the projected benefits for the NPRM amount to only \$2.9 billion. A benefit-to-cost ratio of significantly less than 1:3 hardly justifies the NPRM.

DHS may adopt an alternative, other than the least costly, most cost-effective, or least burdensome option, but it must publish an explanation for that decision. Here, DHS has failed to explain how its selection of the alternative included in the NPRM would be superior in any way to a system administered by the Government. In fact, it appears that the NPRM is a no more than a poor attempt to transfer the responsibility and associated costs for the exit system away from DHS. Moreover, the costs of this proposal are in addition to several, other DHS mandates that, together, have cost the airline industry billions of dollars. These include, for example, the multiple mandates relating to the Advance Passenger Information System ("APIS"), including the extensive, complex, and expensive programming necessary for APIS Quick Query ("AQQ"), the Electronic System for Travel Authorizations ("ESTA"), and Secure Flight.

These mandates, which appear not to have been coordinated among DHS's many program offices, are often duplicative, inefficient, and unnecessarily wasteful. They have stretched the industry's IT systems beyond their present capabilities and have required the commitment of valuable IT resources for planning, designing, building, testing, and deploying solutions. In addition, the Regulatory Impact Analysis ("RIA") fails to take into account the cumulative burdens these various mandates impose. To mandate these new, costly, and complex obligations on the industry is unreasonable and unjust. The airline industry is particularly sensitive about avoidable costs, especially given the difficult business conditions (which are not limited solely to record-high fuel prices).

**C. The Proposed Rule Would Impose Significant Travel Delays.**

Finally, the NPRM would avoidably and unnecessarily increase passenger processing times. As mentioned before, Qatar Airways operates only a small number of flights from the United States, but it uses large aircraft for its long-haul services. While the overall number of passengers traveling out of the United States on Qatar Airways is relatively small (so that the per-passenger cost of developing and maintaining the system is unreasonably high), the proportion of foreign passengers (who would be required to provide fingerprints) on its departing flights is large. Collecting biometric data from each of the foreign passengers boarding a flight will slow the check-in process significantly, cause longer queue times, and lead to flight delays.

DHS has estimated that the NPRM would require approximately 13 seconds of additional processing time per foreign traveler, result in an increased queue time of nearly one minute for every traveler checking in, and cause nearly one hour of delay per flight.<sup>3</sup> Collectively, these disruptions and delays will inconvenience air travelers and airlines and result in costs that will far exceed DHS's estimates. (The RIA projects that the disruption and delays costs alone will exceed \$1 billion.)

**D. The Proposed Rule Imposes Unreasonable And Unnecessary Privacy Risks.**

Furthermore, the NPRM unnecessarily puts passenger privacy at risk and may be inconsistent with privacy protections provided by foreign law. DHS has asserted that, despite the fact that the NPRM calls (unlawfully) for the private sector to carry out the Government's immigration/border control and law enforcement functions, it will provide sufficient oversight to ensure that the exit system is highly secure and reliable. In the

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<sup>3</sup> See Regulatory Impact Analysis, AIR/SEA BIOMETRIC EXIT PROJECT, at 58 (Apr. 17, 2008).

NPRM, however, DHS revealed that any IT system developed, operated, and maintained by airlines rather than the Government is more vulnerable to security compromises that could reduce the integrity of the system and data contained therein.<sup>4</sup> In the NPRM, DHS also acknowledged that a system that requires airlines to collect personally identifiable information ("PII") from passengers is less favorable from a privacy protection standpoint than a system where DHS maintains custody of the PII.<sup>5</sup> Among other things, these conclusions reinforce the fact that the NPRM would impose responsibilities that should be performed by government officials.

Moreover, the NPRM unrealistically assumes that airlines will be able to prevent unintentional violations of privacy protection laws, which could include unauthorized use, disclosure and retention of PII; collection of PII from air travelers not covered by the Proposed Rule; misrepresentation by airline employees (or contract workers) of the reasons for the collection of biometric information; and identity theft. As a practical matter, however, no IT system is 100% secure. Moreover, as a matter of fundamental fairness, DHS should not force airlines to be responsible for securing PII collected for the Government's use. No matter how diligently Qatar Airways acts to protect this information, data breaches could occur. In the event that the data is misused in some way, Qatar Airways may be liable for additional costs, including fines, which DHS has not taken into account in the NPRM.

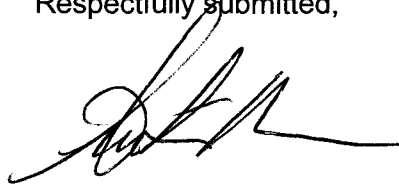
For the reasons stated in these comments, Qatar Airways calls for DHS to withdraw the NPRM.

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<sup>4</sup> See 73 Fed. Reg. at 22,075.

<sup>5</sup> See 73 Fed. Reg. at 22,076.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AM', written over a horizontal line.

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