

**BEFORE THE
DEPARTMENT OF HOMELAND SECURITY
WASHINGTON, D.C.**

In the Matter of)	
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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 DHS-2008-0039
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8 C.F.R. Parts 215, 217, 231, and 235 19 C.F.R. Parts 4 and 122)	
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**COMMENTS OF DELTA AIR LINES, INC. ON
NOTICE OF PROPOSED RULEMAKING AMENDING
8 CFR PARTS 215, 217, 231 AND 235 AND 19 CFR PARTS 4 AND 122**

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**COMMENTS OF DELTA AIR LINES, INC. ON
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Delta Air Lines, Inc. (“Delta”) hereby respectfully submits the following comments in reference to the Notice of Proposed Rulemaking amending 8 C.F.R. Parts 215, 217, 231, and 235 and 19 C.F.R. Parts 4 and 122 published in the Federal Register on April 24, 2008. Delta fully supports and incorporates by reference the comments submitted by the Airline Transport Association of America (ATA) in response to this NPRM, and files these separate comments to emphasize, individually its substantial concerns with the regulatory requirements being proposed in this NPRM.

This US-VISIT NPRM proposes to require aliens who are subject to United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) biometric requirements upon entering the United States to provide biometric information to commercial air and vessel carriers before departing from the United States at air and sea

ports of entry. In short, the Department of Homeland Security (DHS) proposes to require that commercial air and vessel carriers collect the fingerprints of any passengers departing the US who are subject to the requirements of US-VISIT. For Delta specifically, this means DHS intends to require that we take the fingerprints of certain international passengers and transmit those prints to DHS. The NPRM appears to indicate that the purpose of this requirement is to provide DHS with a means to more readily identify non-immigrant aliens who overstay their visas. In other words, air carriers like Delta will be required to function as border control agents. As the ATA has clearly and correctly pointed out in its comments to this NPRM, Congress has repeatedly instructed DHS to perform this responsibility and has granted DHS no authority to delegate responsibility for this border control function. Delta therefore strongly objects to this proposed rulemaking on the basis that DHS lacks Congressional authority to mandate the collection by air carriers of biometric data for the purpose of immigration control.

Notwithstanding this objection, Delta further challenges the determination by DHS that air carriers are best suited to collect biometric data from outbound international passengers. For the better part of a decade air carriers have been investing substantial capital resources into making air travel more convenient and efficient for our customers. The introduction of kiosk check-in has greatly reduced the time spent in airport lobbies and has provided passengers with more personal control. Electronic devices (“Gate Readers”) have been installed at all Delta gates to make the boarding process more efficient. In recent years the ability to check-in from one’s home or office through the internet has further reduced wait times and enhanced personal control over the travel

experience. The requirements of this proposed rulemaking threaten to reverse these gains in customer convenience and efficiency by mandating new and unnecessary interaction between passengers and air carrier personnel. This is not something air carriers or the traveling public either desire or can afford.

There is no question that placing the burden of collecting biometric data on air carriers will reduce the efficiency with which air carriers can check passengers in and board them on our aircraft. While this rulemaking does allow carriers the ability to choose how and where they collect biometric data, DHS fails to recognize that no matter what method air carriers use passenger processing time will increase significantly.

If Delta were to elect to collect biometric data during the check-in process, barring enormous capital expenditures, we would be forced to drive all passengers subject to the requirements of US-VISIT to the ticket counter and a live agent. This is absolutely not an option for Delta. In support of this rulemaking, DHS makes the erroneous assumption that the majority of international passengers are already required to interact with airline personnel when they check-in. This assumption is wrong. In May of this year, approximately 30% of Delta's outbound international passengers checking in for flights at Hartsfield-Jackson International Airport in Atlanta did so through kiosks or over the internet and thus were not required to have any interaction with air carrier personnel prior to boarding the aircraft. These passengers were able to avoid the wait times generally associated with lines at the ticket counter, and our hope and expectation is that the number of passengers who will be able to check in this way will only increase.

The only other location Delta can consider for collecting biometric data is at the gate. This option impacts passenger convenience on multiple fronts. First, the boarding

process will necessarily take longer if air carrier agents must collect fingerprints from certain passengers. Second, and more significantly, again barring enormous capital expenditures, mandating the collection of biometric data at the gate will limit the number of gates available to handle outbound international flights. Delta is not in a position financially to install the necessary equipment and infrastructure for collection of the data at all its gates. Thus, installation would be limited to select gates which are regularly used to handle international departures. While this may not present a problem during normal operations, it could create an enormous problem during irregular operations when flexibility in gate utilization is a must to avoid stranding passengers onboard aircraft for extended periods of time. In short, the risk of significant passenger inconvenience is too great to warrant the selection of gates as the collection point for biometric data.

In the NPRM DHS identifies three possible locations within the airport process where biometric data might reasonably be collected: (1) the check-in/ticket counter, (2) the security checkpoint where passengers submit themselves for document verification and TSA screening, or (3) the gate. For the reasons just discussed, Delta offers that neither the ticket counter nor the gate constitute the best option, or even a reasonably viable option. This leaves the security checkpoint. Apparently DHS has rejected this location, though the reasoning it offers in the NPRM suggest only superficial consideration was given to this option.

If DHS intends to move forward with instituting a process to collect biometric data from departing international passengers subject to the requirements US-VISIT, Delta recommends, rather, it insists that DHS reconsider its proposed mandate that the collection be performed at airports by air carriers. The most logical and efficient location

for the collection of this data is at the security checkpoint. It is a natural choke point at every airport through which every passenger must pass before boarding a commercial flight. As previously noted, not all outbound international passengers are required to go to the ticket counter. While all passengers must pass through a boarding gate, the infrastructure burden associated with collecting biometrics at the gate is far greater than at the security checkpoint. At Hartsfield-Jackson International Airport in Atlanta alone, there is one security checkpoint and Delta has over 100 gates available for international departures. It makes absolutely no sense to install collection equipment at 100+ gates when a single choke point already exists at the security checkpoint in Atlanta with federal staff already deployed at that choke point.

In the NPRM DHS appears to reject the security checkpoint as a viable location for biometric data collection based on the fact that “[b]iometric collection at the screening checkpoint could cause delays.” DHS further argues that collection at the security checkpoint is “unfavorable, as the processes at the security screening checkpoint are primarily concerned with the screening of individuals and luggage for prohibited items.” Delta offers that this apparent “analysis” by DHS is woefully lacking in detail and misses an obvious and reasonable collection option.

The Transportation Security Administration (TSA), a division of DHS, currently operates security checkpoints at every commercial airport in the United States. At many of these airports, TSA also performs the document verification function (matching boarding pass information with government issued identification) required by its own regulations for every passenger before they submit themselves for physical screening of their person and luggage. It is during this document verification process that biometric

data can easily and efficiently be collected. As DHS notes in the NPRM, through the APIS program each passenger is assigned a unique identifier that is linked to that passenger's APIS biographic data. This APIS biographic data contains all the necessary information to determine whether a given passenger is subject to collection of biometric data under US-VISIT, and technology exists to allow this data to be read with a simple device by the agent responsible for the document verification process. If a specific passenger's biographic data indicates collection of biometric data is required under US-VISIT, a device installed at the security checkpoint could be used to collect that passenger's fingerprint. This biometric data could then be linked to the same unique identifier used to link the APIS biographic data to the passenger. Our technology experts estimate this entire process could take less than 30 seconds -- about the time it takes for the average passenger to remove his or her shoes. The effect on the efficiency of the security screening process would be practically imperceptible

DHS attempts to further discourage the use of the security checkpoint to collect biometric data by arguing that the "confidence of departure" is greater when the data is collected at the departure gate. While this may be true, Delta offers that there will always be a question whether an individual who has provided his biometric information has actually boarded an aircraft and left the country, regardless of where the biometric data is collected. Actual departure will thus be just as reliably confirmed for a passenger submitting biometric data at the security checkpoint by matching the unique identifier captured at the gate as part of the current APIS data transmission process with the identifier linked to the fingerprint collected at the checkpoint.

Not only will this data collection approach minimize disruption of current airport and air carrier operations, it is likely to be the least expensive alternative. As noted previously, driving all international passengers subject to US-VISIT to the ticket counter is an unacceptable option given the impact on passenger check-in wait times. Thus, to collect biometric data at check-in would require enormous capital expenditures to incorporate this function into kiosks. Collection of biometrics at the gate, as previously noted, would impose a huge cost burden on air carriers due to the number of gates requiring the installation of data collection hardware and communication infrastructure. Alternatively, collection at security checkpoints minimizes hardware and infrastructure requirements. At many airports like Hartsfield-Jackson in Atlanta, installation of hardware and communication infrastructure would be required in just one location, rather than at hundreds of kiosks or numerous gates used for international departures.

Not only does the collection of biometric data present the lowest cost alternative, it places the cost burden where it correctly and reasonably belongs, with the federal government. Notwithstanding the fact that DHS is without Congressional authority to delegate the responsibility for collecting biometric data under US-VISIT to non-governmental entities, placing the cost burden solely on the backs of commercial air and vessel carriers is completely unjustified in the current economic environment. The problems facing air carriers with skyrocketing fuel costs and those faced by consumers affected by the housing and mortgage crisis and overall slumping economy will only be exacerbated by shifting the cost burden of this program to air carriers and indirectly to consumers through increased transportation costs.

Finally, the collection of data as personal as one's fingerprint justifies concern over the security and privacy implications associated with non-governmental entities collecting, storing and transmitting this information. DHS is clearly in the best position as the end user of this information to collect and store the data. Delta sees no benefit and, in fact, only risk in placing responsibility for collection, storage and transmission of this information into the hands of multiple private entities of varying size, residence and future stability.

Conclusion

Again, Delta would like to thank the Department of Homeland Security for providing the opportunity to comment on the proposed revisions to 8 C.F.R. Parts 215, 217, 231, and 235 and 19 C.F.R. Parts 4 and 122. Delta respectfully requests that the Department give serious consideration to the comments provided herein, as well as those submitted by the Air Transport Association of America, Inc. addressing this rulemaking.

Respectfully submitted,

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