



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

In the matter of)
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Notice of Proposed Rulemaking Concerning)
Collection of Alien Biometric Data Upon)
Exit From the United States at Air and Sea) **Docket DHS-2008-0039**
Ports of Departure: United States Visitor and)
Immigrant Status Indicator Technology)
Program (“US-VISIT”))
_____)

**COMMENTS OF
AIRPORTS COUNCIL INTERNATIONAL – NORTH AMERICA (ACI-NA)**

Airports Council International-North America (ACI-NA) welcomes this opportunity to comment on the Department of Homeland Security’s (DHS) Notice of Proposed Rulemaking (NPRM) Concerning 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”), DHS Docket DHS-2008-0039.

ACI-NA’s members are the state, local, and regional government entities that own and operate commercial service airports in the United States and Canada. ACI-NA member airports enplane more than 95 percent of the domestic scheduled air passenger and cargo traffic and virtually all scheduled international air traffic in North America. Nearly 400 aviation related businesses are also members of ACI-NA.

General ACI-NA Position

ACI-NA supports the goals of various US statutes, including the Intelligence Reform and Terrorism Prevention Act of 2004 and the Implementing Recommendations of the 9/11 Commission Act of 2007, which seek to ensure that the United States knows whom it is welcoming and whether or not they have overstayed their welcome. However, we also strongly maintain that US-VISIT Exit must be implemented with great care to avoid degrading the travel experience of visitors to the United States to the detriment of the US aviation industry, local and national economies, and the public image of the United States.

ACI-NA opposes the NPRM's proposed requirement that airlines collect the biometrics of most foreign visitors as they are departing the United States and assume the substantial financial burden of implementing and running the system. Rather, ACI-NA maintains that DHS should collect the biometrics, run the system, and fund all of the associated costs¹.

The implementation of US-VISIT Exit at US airports is a serious challenge as US airports were not designed or constructed to accommodate a departure process for foreign visitors. Unfortunately, there are simply no easy or good solutions to capturing the fingerprints of departing foreign visitors. However, ACI-NA believes that the best approach would be to collect the passengers' biometrics in the area beyond the security checkpoint (sterile area) at the last airport of departure from the United States using mobile kiosks and/or other mobile devices. We were unable to take the DHS Exit Pilot Evaluation Report into account in our consideration of the NPRM since DHS unfortunately did not post the lengthy document in the NPRM docket until mid-June 2008.

DHS should consult with airports, airlines, and other interested parties on an urgent basis to implement US-VISIT Exit, rather than impose the proposed requirements without any meaningful consultation with affected parties. The US aviation industry has a vested interest in seeing US-VISIT Exit implemented in an efficient, effective, and timely manner.

US-VISIT Exit is a Government Function and Should Be Funded as Such

US-VISIT Exit is an immigration-enforcement program which would serve to confirm, based on biometric information, that foreign visitors to the United States depart in accordance with their visas or other authorizations for being in the United States. The DHS proposal would require air carriers to execute this function by collecting the fingerprints of departing visitors at a location of their choosing at US airports.

Immigration and border controls are an inherently governmental function. The numerous statutes cited by DHS in the NPRM as constituting the legal basis for an entry-exit system in actuality direct the Attorney General or the Secretary of Homeland Security to establish and fund such programs. DHS has not demonstrated that Congress ever envisaged that carriers would be required to collect biometric exit data or to pay the associated costs. Furthermore, DHS has not provided any compelling reason for mandating that carriers instead of the US Government perform and pay for the function. Additionally, the US-VISIT Exit program could evolve into a more general law-enforcement tool where DHS may seek to use real-time reporting of biometric data to apprehend suspected criminals or terrorists as they attempt to depart the country. This would place airline staff in an untenable position of being perceived as part of the process leading to their customers' arrest and detention.

Legal Issues

It seems very likely that foreign visitors may question the authority and the appropriateness of airlines taking their fingerprints, particularly when US Customs and Border Protection (CBP) officers capture their fingerprints and digital photos upon entry to the United States. In the case of those with visas, biometric information is also captured by US consular officers. As DHS acknowledges in the NPRM, foreign visitors are apt to believe that an airline collection process would be more likely to compromise the integrity and privacy of

¹ DHS could also establish a program where the fingerprints were collected by personnel from a qualified private contractor working under Federal oversight, similar to the Screening Partnership Program authorized under the Aviation and Transportation Security Act of 2001. Under this program, the Transportation Security Administration ensures that a qualified contractor is fully trained on equipment purchased and maintained by DHS, and that screening is conducted under federal supervision to ensure that all security standards are met and maintained.

their biometric data than a DHS system. This could create enormous problems for airline staff dealing with foreign visitors and possible court challenges against airlines.

Financial Issues

Because of its immigration and national security role, US-VISIT Exit should be funded through the General Fund of the United States Treasury. By all accounts, US-VISIT Exit will be an extremely expensive program to implement. DHS estimates that US-VISIT could cost airlines and cruise lines between \$3.5 billion-\$6.8 billion over ten years. Airlines, which are already or will be contending with costs imposed by the US Government through the Advanced Passenger Information System, Passenger Name Record, and Secure Flight programs, should not be subjected to yet another unfunded mandate.

ACI-NA is very concerned about the impact of a costly US-VISIT Exit mandate on airlines and their domestic and international services, particularly at the same time they are facing the daunting challenges of rising fuel prices and slowing economies. We believe this ever-growing burden of US Government security measures could negatively affect the viability of domestic and international air services which provide significant economic benefits to airports and their communities and the US economy as a whole.

ACI-NA Alternative Recommendation

The Report of the Secure Borders and Open Doors Advisory Committee (SBODAC), January 2008, recommended that "US VISIT Exit should be integrated into the passenger's normal departure process, be implemented in full consultation with industry stakeholders, and be funded and performed by the U.S. Government." Any system must take into account existing infrastructure and passenger flows at each airport. ACI-NA recommends an alternative proposal we believe will provide the most effective and efficient approach and will conform to the SBODAC recommendation.

DHS Should Fund, Staff and Operate the Program

As has been stated above, the US-VISIT Exit program serves immigration and national security interests which are inherently governmental functions. It should therefore be operated and staffed by DHS or in a contractual program similar to the Transportation Security Administration Screening Partnership Program (SPP), discussed in footnote 1. As in the case of SPP, all costs associated with procurement, implementation, operation, maintenance, and staffing of the program must be borne by the federal government, reflecting the national interest in the program.

ACI-NA urges DHS to secure additional staffing and funding resources to implement the US-VISIT Exit process and not to divert Transportation Security Administration (TSA) or US Customs and Border Protection (CBP) officers from their current duties at US airports to carry out this function. Both TSA checkpoints and CBP arrival inspections already suffer from understaffing, congestion and often unacceptable wait times. Shifting personnel from these functions to US-VISIT Exit will place an unacceptable additional strain on an already stressed system.

Biometric Collection Location and Equipment

The collection of biometrics from departing foreign visitors should take place at the airport where the traveler is ultimately departing the United States (i.e., the last US airport of departure to an international destination). This would reduce the costs of the program by only requiring DHS to place biometric collection equipment and staff at those airports with non-stop international service. This approach would decrease the number of smaller carriers and airports that would be affected by the exit process. Streamlining and consistency in the process will help eliminate confusion for those visitors who must go through the exit process.

ACI-NA also believes that the most efficient and effective approach to collecting the required information would be through the use of mobile kiosks or other mobile devices in the sterile area of an airport. Passengers are generally under less stress at this point in the departure process and thus more able to focus on complying with US-VISIT Exit. Passengers typically have some dwell time waiting to board their flight to perform the exit process and thus the process normally would not add time to the total duration of the passengers' trip. Conducting the exit process in the sterile area also decreases the impact on those passengers who are not subject to US-VISIT Exit rules in contrast to conducting the exit process at check-in counters and TSA checkpoints at the airport where all passengers would be negatively impacted and where airport facilities are likely to be more congested.

The devices used to collect fingerprints should be mobile and should not be "hard-wired," permitting their quick and easy relocation should airport or airline operations necessitate a change of gate. Many gates are used for both international and domestic departures depending on the carrier and time of day. Furthermore, carriers often make many changes to their schedules in response to market conditions. DHS could download the biometric data later at convenient times to meet the 24 hour deadline given in the NPRM. Such mobile devices would reduce costs and increase efficiency, as well as minimize the impact on airport facilities. Once US-VISIT Exit is implemented, it seems likely that changes will have to be made based on lessons learned. Therefore, DHS should not take an approach which will require structural changes.

The Process

Thus, ACI-NA envisions a process whereby travelers required to participate in the US-VISIT Exit process would approach one of several mobile kiosks or other mobile devices located in the sterile area of the terminal with the best location probably being at or near the departure gates. The deployment in the sterile area should be based on consultations among DHS, the appropriate airport proprietor and airlines. In addition, it would be helpful if the airlines and airports could make periodic announcements regarding the US-VISIT Exit requirement. (DHS may need to conclude contracts with airports for storage space for the mobile devices.)

The mobile kiosk or other mobile device would collect the required information from the traveler and produce a receipt or note on the boarding pass, which would have been previously coded to indicate the need for exit screening, to confirm the individual's compliance. As appropriate, DHS staff or contractors may be strategically located to assist travelers and to approach passengers who may be unsure as to whether they need to go through the process. The US-VISIT Office has indicated that during the US-VISIT Exit pilot, the stationary kiosks worked well in collecting data when passengers complied with the exit process.

This receipt should be checked by the airline agent at the gate, so that the airline agent may direct the passenger to go through the US-VISIT Exit process if he has not already done so. If airlines are willing to do such checks, it will help decrease the possibility that passengers accidentally board without going through the exit process and then encounter a problem when they try to visit the United States again. The electronic manifests (Advanced Passenger Information System) should also be cross-checked and reconciled against the list of those who completed the exit process to ensure that those who complete the US-VISIT Exit process actually boarded their flight. During a transition period, ACI-NA also strongly urges that the reconciliation of the arrival and departure APIS data be used to assist passengers who may have inadvertently not checked out through the US-VISIT Exit process.

ACI-NA believes that its recommended approach will have the least negative impact on all passengers, airlines, and airport facilities, while ensuring that compliance with US-VISIT Exit is high. It will also provide the best chance of success for the US-VISIT Exit program and the related benefits associated with the expansion of the Visa Waiver Program (VWP). By law², the expansion of the VWP is contingent on a biometric exit system being in place by June 2009.

Potential Problems for Visitors Exiting Via U.S. Land Borders

DHS has stated that there are no current plans to implement an equivalent biometric exit system at US land borders. This will create a problem for visitors who arrive in the United States by air but depart via the land border to Canada or Mexico. For example a foreign visitor may arrive in the United States by air, travel to Canada by car, and then return to their home country by air from Canada. As currently constructed, that visitor would likely be flagged as not having properly “checked-out” if they return to the United States on a subsequent trip.

DHS has not explained how this or similar cases would be handled. Before an exit system is implemented, DHS must establish a protocol for how visitors in such circumstances could demonstrate their compliance with US-VISIT Exit procedures. Without a clear protocol, foreign visitors may face delays, confusion, or be denied entry into the United States through no fault of their own.

Consultation with Industry Stakeholders

While there was good communication between the US-VISIT Program Office and the aviation industry during the rollout of the US-VISIT Exit pilot program, there has not been much substantive consultation in the last couple of years. DHS did not share its June 14, 2005 Evaluation of the US-VISIT Exit pilots as we had repeatedly urged until this month. We urge DHS to resume meaningful discussions with industry as soon as possible. In addition to the broad objectives of the program, the US aviation industry also has an interest in the success and timely implementation of US-VISIT Exit in order to support the expansion of the VWP.

DHS must keep industry informed of future developments in the program, including passenger compliance once US-VISIT Exit is implemented, and consult with industry to resolve any problems that arise.

Public Outreach

ACI-NA strongly urges that DHS be prepared to launch an extensive public education campaign about the new exit requirements upon the final rule being issued. DHS should coordinate with the Departments of State, Commerce, and Transportation to publicize the exit requirement and deadline. It will not be enough to place information on government websites. Public outreach should involve all forms of media including television and print to disseminate the message in foreign countries about the US-VISIT Exit requirement.

Conclusion

ACI-NA maintains:

- The implementation of US-VISIT Exit is a DHS responsibility;
- US-VISIT Exit must be federally funded;
- Fingerprints should be collected at the passenger’s last US airport of departure;
- Collection should occur in the sterile area of an airport;

² Implementing Recommendations of the 9/11 Commission Act of 2007.

- Mobile kiosks or other mobile devices, rather than hard-wired infrastructure, should be used to collect fingerprints; and
- The deployment of the mobile devices should be based on consultation with airport proprietors and airlines.

ACI-NA and our member airports hope to work closely with DHS to ensure that US-VISIT Exit is an efficient and effective system. The US-VISIT Exit process should be quick and easy as it will be the last impression foreign visitors will have of the United States.

Respectfully submitted,



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