



VIA MESSENGER

February 4, 2004

Ms. Patricia Ward,
Chief Inspector, Air and Sea Exit Manager – US-VISIT
Border and Transportation Security Directorate
Department of Homeland Security
1616 North Fort Myer Drive, 5th Floor
Arlington, VA 22209

Ref: Interim Final Rule Concerning Implementation of the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT)

Dear Ms. Ward,

The International Air Transport Association, representing more than 277 of the world's international airlines and most scheduled carriers serving the U.S. market, appreciates this opportunity to provide comments in respect of the interim final rule (the rule) associated with the implementation of the US-VISIT program. We have been following events concerning this program closely and appreciate the work and consultation that preceded the smooth implementation and operation to date.

After carefully evaluating the detailed information contained in the rule, and the industry's first month's experience with the new program, IATA would like to offer a range of comments and/or requests for clarification that we feel will be essential to consider as US-VISIT expands beyond this initial limited application.

General Observations:

Reports from Member airlines since the program's implementation indicate that the US-VISIT registration and associated biometric data capture have not resulted in significant operational impact at most air ports of entry, nor in unreasonably long queue dwell times upon arrival. The program's success in most cases is attributed by Member airlines to a level of staffing at primary inspection desks that is far higher than usual. In addition, Member airlines noted that the installation of new, more efficient hardware, proper training and a generally supportive attitude within the inspection team have been important factors in the program's success during its initial phase.

Given the fact that passenger traffic to and from the United States is beginning to increase after more than two years at reduced levels and that the Department of Homeland Security will add significantly to the number of visitors who will be subject to US-VISIT registration through 2005, it is essential that the Bureau of Customs and Border Protection (CBP) commits to full and ongoing support for the process. Since much of the travel to the US is discretionary and represents a high percentage of first-time visitors, we will not be able to depend on an increasing percentage of passengers familiar with the system and its requirements.

We must realistically expect to be faced with the situation in which a continuous learning curve and the associated need for inspectors to provide verbal explanations will lead to longer individual processing times. AS IATA Member airlines have witnessed, the processing of passengers who do not speak English takes considerably longer than the 15-second average anticipated by CBP. Accordingly, it is essential that CBP commit – as per Section 403(b) of Public Law 107-173 - to maintaining staffing levels at all air ports of entry that are sufficient to meet the needs of the traveling public.

Airlines remain concerned about the disparity between inbound registrations at airports of arrival and automated departure registration capability at airports, seaports and land border crossing points. The industry fears that until the system is fully operational at all ports of departure – regardless of the mode of transport – it will be extremely difficult for the traveling public to adequately comply with the program’s requirements. This disparity in process could conceivably lead to an increased number of legitimate visitors who find themselves barred from entry into the United States on subsequent visits, and the associated liability for carriers who provide them inbound transportation.

CBP should issue a detailed clarification as to what its policy shall be with respect to those who, through lack of knowledge and/or unavailability of automated systems at various departure points, do not comply with outbound reporting requirements. Further, except where specific individuals have been cited for frequent non-compliance with the instruction to report departure at exit-registration enabled ports, CBP should not seek to identify these individuals as inadmissible due to such non-compliance – particularly prior to full implementation of automated systems at all departure points.

Specific Comments

Failure to provide biometrics: The rule amends 8 CFR 235.1(d)(ii) to read that “failure by an alien to provide the requested biometrics necessary to verify his or her identity and to authenticate travel documents may result in a determination that the alien is inadmissible under section 212(a)(7) of the Immigration & Nationality Act (INA) for lack of proper documents, or other relevant grounds in section 212 of the Act.” Since this is the provision under which airlines are frequently fined for transporting passengers not in possession of required travel documentation, a literal interpretation of this language could hold carriers liable for violation of the Act under this provision and therefore subject to penalty - based on a passenger’s refusal to cooperate rather than on the carrier’s own infringement.

We ask that CBP issue a policy statement indicating that the inbound carrier will not be held liable to penalty under section 212 of the Act in instances where a passenger refuses to provide the necessary biometric or to cooperate with the authorities during his or her inspection.

Continuation of Form I-94: The rule also amends 8 CFR 235.1(f) to stipulate that all persons subject to US-VISIT must present a completed Form I-94 upon arrival and then surrender the I-94's departure report when they leave the US. This requirement contradicts not only the process described in the Passenger Manifest Notice of Proposed Rulemaking issued in January 2003 leading to the ultimate elimination of the form, but also years of commitment by the former legacy-INS to delete the requirement for a paper form in exchange for provision of electronically submitted and government-validated data. The industry will soon be obligated by law to provide all data currently found on the I-94 form to CBP in advance of arrival via Advance Passenger Information (API) messaging. Accordingly, we question the value of continuing to require the presentation of duplicated information in a paper format that has, for years, proven to be unreliable and costly to control and administer for both the government and the airline industry.

Further, where an alien's departure has been reported via an outbound API message or through an outbound US-VISIT departure registration, CBP should eliminate any penalty that could be imposed under Sections 231 or 238 (should the Transit Without Visa program be reinstated) of the INA.

Fingerprint Capture: In its initial phase, and based on the size of the existing database, CBP indicates that two fingerprint images will be sufficient for the purposes of identifying possible "hits" on the system. However, CBP has previously indicated that as the database increases in size, it will likely become necessary to increase fingerprint capture to a full set of ten (10) images in the not-too-distant future. While capturing two individual fingerprint images is conceivable under the stated timeframes, capturing 10 individual prints using a single print scanning device will rapidly overwhelm the inspection process through a measurable increase in processing times for individual registrations at primary.

We request that CBP provide clarification on how it envisages responding to any requirement expanding biometric capture well in advance of its implementation, and further request that the industry be allowed to participate in discussions to ensure that such implementations can be supported without unduly impacting airport operations.

Automated Departure Reporting: In the Rule, CBP indicates that it will initiate pilot testing of different approaches to automated capture of outbound reports at limited airports of departure in an ongoing effort to identify the most efficient solution. During this period, most visitors registered under US-VISIT will be unable to satisfy the outbound reporting obligation, and others may be faced with differing systems at various ports that will certainly lead to confusion.

As previously stated, CBP should issue a detailed clarification on its plans for adequate departure reporting in the period between now and the date on which an automated departure reporting system becomes fully operational at all ports of departure from the US.

Scope of US-VISIT: In its initial phase, US-VISIT registration is being applied to a manageable, "known" segment of the alien population seeking to enter into or depart from the United States. That limited population and the relatively small existing database against which all entries must be vetted are principal factors allowing CBP to meet its 15 second per transaction goal and its commitment not to impact on overall clearance times for arriving flights. We are concerned that as additional categories of alien visitors or additional biometric

capture requirements are added, CBP will be unable to achieve its stated objective concerning clearance times – leaving the traveling public to suffer the resulting negative consequences.

The US-VISIT program will expand, in time, as required by law. However, that expansion should be considered only in conjunction with the application of technologies required to ensure that the process can meet its security goals while staying within the desired operational parameters. Rapid expansion, in either population or program data capture requirements, that is not accompanied by an enhanced throughput capability will result in many of the difficulties that the industry had previously feared, but which CBP has successfully avoided so far.

Impact on Air Crewmembers: Key provisions contained in the International Civil Aviation Organization’s (ICAO) Annex 9 to the Chicago Convention have long directed States to ensure that processes are put into place to expedite clearance of working crewmembers. The United States previously agreed with most of these provisions and had implemented a range of measures designed to facilitate crewmember clearance at ports of entry – recognizing that delays in clearance can have direct impact on subsequent flight operations.

Crewmembers on flights to and from the US are now reported in advance of arrival and departure through API messaging, as well as on aircraft General Declarations. In December, the Transportation Security Administration (TSA) imposed an Emergency Amendment on non-US carriers and a Security Directive on US-flag carriers that requires all airlines to provide a significant amount of information on crewmembers on flights well in advance of departure to and arrival into US airspace. Beyond all of these measures, each working crewmember that is not a US citizen or landed permanent resident is also required to complete a detailed application form in order to obtain a valid US visa. Accordingly, significant information concerning these individuals is already held by and known to the US authorities.

Any additional inspection process – such as repeated US-VISIT registrations - imposed against working crewmembers carries with it the risk of disruptions to scheduled air services. Accordingly, and in light of the detailed information already available to the various border control agencies about each of these individuals, we do not believe it unreasonable to request that DHS waive the requirement that each alien crewmember be required to registered through the US-VISIT system on arrival and subsequent departure - beyond their initial entry into the US.

Conclusions

DHS, through CBP and the Border and Transportation Security Directorate, successfully launched a complicated new program on January 5th and averted potentially “customer-unfriendly” consequences. Much of that success is due to extensive research and planning by the US-VISIT team during the last two years, and its commitment to bring the various stakeholders into the process during the early days of development. While the initial program has generally proven itself to be a relatively non-intrusive part of the overall arrival clearance process, a simple change in CBP staffing patterns at airports of entry or any modification in the program’s scope could result in immediate and negative impacts on all persons seeking to enter the US.

IATA and its Member airlines that serve the United States are interested in ensuring that the program continues to perform at the levels generally experienced since its

implementation. To that end, we are committed to working with CBP, airlines and airport operators to ensure its continued success

Sincerely,

A handwritten signature in blue ink that reads "Robert A. Davidson". The signature is written in a cursive style with a prominent initial "R" and a long horizontal stroke at the end.

Robert A. Davidson
Assistant Director, Facilitation Services
International Air Transport Association
800 Place Victoria
Montreal, Quebec H4Z 1M1
Canada

Ph: +1 514 390 6778
Fax: +1 514 874 2662