

BEFORE THE
U.S. DEPARTMENT OF HOMELAND SECURITY
WASHINGTON, D.C.

In the Matter of)	Department of Homeland Security
)	
COLLECTION OF ALIEN BIOMETRIC DATA)	1616 North Fort Myer Drive,
UPON EXIT FROM THE UNITED STATES)	18 th Floor, Arlington,
AT AIR AND SEA PORTS OF DEPARTURE;)	VA 22209
UNITED STATES VISITOR AND)	
IMMIGRATION STATUS INDICATOR)	
TECHNOLOGY PROGRAM (“US-VISIT”))	8 CFR Parts 215, 217, 231, & 235
)	19 CFR Parts 4 & 122
NOTICE OF PROPOSED RULEMAKING)	RIN 1601-AA34
)	[DHS-2008-0039]

**COMMENTS OF
THE ASSOCIATION OF ASIA PACIFIC AIRLINES**

The Association of Asia Pacific Airlines (AAPA) files these comments regarding the Notice of Proposed Rulemaking on the requirement for carriers to collect biometric data of certain foreign citizens upon exit from United States airports (US Exit).

I. THE ASSOCIATION OF ASIA PACIFIC AIRLINES

AAPA is the trade association of 17 major international airlines based in the Asia Pacific region. Its members are Air New Zealand, All Nippon Airways, Asiana Airlines, Cathay Pacific Airways, China Airlines, Dragonair, EVA Air, Garuda Indonesia, Japan Airlines, Korean Air, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, Thai Airways International and Vietnam Airlines. 13 AAPA member airlines operate more than 500 flights per week to the United States.

II. INTRODUCTION

AAPA appreciates the opportunity to comment on the proposed rulemaking.

AAPA acknowledges the desire of the Department of Homeland Security (DHS) to enhance United States border control procedures.

III. GOVERNMENT RESPONSIBILITY FOR BORDER CONTROL FUNCTIONS

The NPRM proposes that airlines be held responsible for the collection and submission to DHS of biometric information of foreign nationals upon their departure by air from the US. In proposing this rule, DHS is apparently seeking to relieve itself of a core governmental responsibility.

Border control, including exit immigration, is clearly a state function and a government responsibility. Private industry should not be asked to take over such a function, which should rightfully be performed by border control and immigration officers.

Airline employees are not trained government or law enforcement agents. It is wholly inappropriate for airline employees to be required to collect biometric data including fingerprints from passengers during the normal airport check-in/departure process. In our view, the DHS proposal to transfer these responsibilities, and related costs, to airlines is both unreasonable and irresponsible.

AAPA notes that the government-run process of collecting biometrics under the US-VISIT programme, for aliens entering the US, appears to have been implemented smoothly. Similarly, we cannot see why the US Government feels unable to implement a similar border control programme for aliens exiting the US. To the best of our knowledge, no other foreign government has outsourced the responsibility for the collection of biometrics for border control purposes to industry.

Furthermore, the proposed rule is just one of several data collection schemes that the DHS has imposed or is proposing to impose on carriers, including but not limited to the collection of Advance Passenger Information (API), APIS Quick Query (AQQ), Secure Flight and Electronic System for Travel Authorisation (ESTA). AAPA submits that this clearly shows a failure on the part of the DHS to harmonise its data collection programmes to minimise the impact on carriers and the travelling public, despite claims to this effect in the NPRM.

IV. LESSONS FROM DHS PILOT PROGRAMME

We note that DHS has had over a decade to work on some form of US Exit programme. After conducting a limited number of pilot programmes over a period of more than three years, DHS apparently concluded that this challenge was so difficult that it should instead attempt to outsource this responsibility to industry. DHS notes that the pilots revealed various constraints including lack of suitable space and facilities, as well as the need for a concentrated and potentially expensive enforcement presence to assure compliance with exit requirements. However, the DHS appears to want to ignore the fact that airlines would face the same constraints and challenges in implementing the proposed rule.

If a government agency in full possession of the necessary resources, powers and expertise fails to implement such a programme with an acceptable compliance level, it is unreasonable to expect private industry to be held responsible for overcoming such challenges and also bear the entire cost of such efforts.

In particular, it is unreasonable for the DHS to now seek to transfer these responsibilities to carriers based on a wholly unrealistic timetable involving a 60-day response deadline to the NPRM, coupled with a refusal to grant an extension, followed by a 32-day implementation deadline on industry.

By its own admission, DHS achieved only a low compliance rate in its pilot programme. The NPRM also notes that Congress wants to capture biometrics for at least 97% of foreign passengers departing by air. In comparison, DHS noted that the pilot programme only captured around 25% of the departing passengers at the trial airports, due to the lack of enforcement. Even for those passengers who provided biometrics, only 94.7% were accurately matched against government records. DHS asserts that the use of four fingerprint capture could increase the accuracy to a much higher figure, perhaps up to 99.73%, although no supporting evidence is provided. However, even this level of accuracy would still result in a high level of false positives. Comparable DHS data for the inbound US-VISIT programme indicate that of the 113 million visitors screened by the programme in 2004-2007, adverse action was taken against only 3,039 visitors during the same period. This represents a detection rate of 0.003%. With such low detection rates, even a 99.73% accuracy for testing would result in a hundred times

more false positives than the expected number of true positives in the US Exit screening process. DHS has failed to take such factors into account in framing the proposed rule, including procedures to handle the large proportion of innocent passengers who would trigger false alerts in terms of non-matching records.

More broadly, AAPA also questions the rationale and effectiveness of a proposed programme that addresses departures by air and sea, whilst apparently ignoring the much higher numbers of visitors who cross US borders by land without being subject to similar inspections or requirements to submit equivalent biometric data. To state the obvious, an effective border control programme is only as strong as its weakest links. Capturing detailed biometric data for passengers departing by air and sea, whilst ignoring the four out of five visitors who enter or leave the US using ground transport, completely undermines the arguments that US Exit can be justified in terms of any absolute security benefit.

V. IMPACT ON AIRLINE/AIRPORT OPERATIONS AND ASSOCIATED COSTS

AAPA and its member airlines also submit that the DHS has grossly underestimated the potential impact of the proposed rule on airline and airport operations, including the associated costs imposed on industry. The proposed rule also fails to address a number of important operational issues that commonly arise in normal airline operations, including the handling of transit and connecting passengers, as well as inter-modal passengers.

AAPA fully supports the submission of the International Air Transport Association (IATA), especially its detailed assessment of the overall operational and cost impact of the proposed rule on industry.

VI. CONCLUSIONS

AAPA submits that the DHS proposal in this NPRM to pass on the responsibility of this border control function to industry is fundamentally flawed for the following reasons:

- a) The border control function is a government responsibility that cannot reasonably be delegated to private industry.

- b) DHS has failed to demonstrate the feasibility of the proposed scheme to be implemented by carriers. Nor has it demonstrated that the benefits of doing so would exceed the costs of implementation.
- c) DHS has failed to demonstrate that the proposed scheme would meet its stated objectives.
- d) The proposed implementation date of July 2009 is not feasible given the need for significant systems development and infrastructure investments envisaged by the rule.

We strongly urge the DHS to withdraw this ill conceived proposal, to fully accept its border control responsibilities and to work with Congress and industry stakeholders on practical implementation of more appropriate measures in relation to such border control processes, with a government-operated, and publicly funded, scheme being the preferred approach.

Respectfully submitted
by



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Association of Asia Pacific Airlines