

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

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<b>COLLECTION OF ALIEN</b>	)	
<b>BIOMETRIC DATA UPON EXIT</b>	)	
<b>FROM THE UNITED STATES</b>	)	
<b>AT AIR AND SEA</b>	)	<b>Docket No. DHS-2008-0039</b>
<b>PORTS OF DEPARTURE</b>	)	
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**COMMENTS OF THE  
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.**

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and cruise lines to acquire, operate, and maintain costly new technology—the costs of which would ultimately be borne by the traveling public. ASTA believes generally, and certainly in this case, that the best security policy is to have security operations conducted by government personnel. This will not only yield better security results, but it spreads the cost of additional security measures throughout the population that benefits from a safe air travel system.

## **I. AN UNWARRANTED SHIFT IN LAW ENFORCEMENT DUTIES**

The US Exit Rule would appear at first glance to be a mere expansion of existing data collection requirements. In reality, the proposed rule would entail an unprecedented shift of law enforcement duties from their current place—properly trained federal agents employed by CBP, TSA, US Customs, and other agencies—to the private sector. This is neither practicable nor reasonable.

Requiring air carriers and cruise lines to collect and transmit biometric data may well “provide DHS with additional security benefits...” (73 Fed. Reg. 22073), but doing so would expose the travel industry to tremendous risk. As the proposed rule makes plain, the accidental failure to create and transmit a biometric departure record for even a single alien may result in enforcement action against a carrier, up to and including termination of that carrier’s authorization to transport aliens under the Visa Waiver Program (73 Fed.Reg. 22074). Beyond the obvious risks of these civil penalties, carriers would face the additional risk of suit by any aggrieved passengers whose privacy may

inadvertently be compromised during the collection and transmission process. The attendant insurance costs would be borne by the traveling public.

While we do not discount the importance of collecting and maintaining accurate and complete departure records, to deputize *en masse* air carrier and cruise personnel who have never before been tasked with carrying out law enforcement duties is the wrong solution. It is no more appropriate to task private-sector airline and cruise ship personnel with law enforcement duties than it is to expect federal law-enforcement agents to rebook customers on alternate flights or to explain on-board amenities to cruise ship passengers.

## **II. DRASTIC PASSENGER DELAYS**

The proposed rule would significantly increase wait times for airline and cruise ship passengers. While the proposed exit system is intended to screen aliens departing the United States, the process of collecting the required biometric data required by the rule would affect all passengers—alien and non-alien alike. The International Air Transport Association (IATA) estimates that the proposed US Exit system would increase processing time by 25-50% for an average of 45% of passengers aboard flights leaving the United States. This amounts to an estimated *additional* processing time of 3-5 hours per flight, not including misreads and failures. An air travel system already burdened with long lines and significant delays is hardly in a position to absorb these additional disruptions.

Were the proposed rule to be enacted, travel agents would shoulder the responsibility of explaining this new reality to their customers. Providing accurate,

timely advice concerning flight connections and assisting with the rebookings made necessary by the inevitable delays and cancellations caused by the US Exit system's effects would in itself amount to a full-time job. Travel agents would have no choice but to increase their fees simply to keep pace with this additional burden. Costs that cannot be passed on due to already fee-overloaded passengers (facing unprecedented fuel surcharges, baggage fees and other add-ons yet-to-come) will have to be absorbed by thin-margin agencies facing significant downturns in business due to the recession and upward spiraling fuel prices.

### **III. A MULTI-BILLION DOLLAR UNFUNDED MANDATE**

The proposed rule would impose a staggering array of new costs on an industry already beset by rising fuel costs and operational challenges. The Department of Homeland Security estimates that the new biometric collection process would cost the industry between \$3.5 billion and \$6.4 billion. The expectation that private industry would absorb these costs is startling—particularly in light of the woefully inadequate notice in advance of the proposed enactment.

The DHS cost estimate does not take into full account the costs of the approximately 6,000 airport-based US EXIT collection lanes that would be required in order to gather the required biometric data. At a projected cost of \$1.74 million per lane, these costs are estimated by IATA to total an additional \$10.4 billion over DHS estimates. Moreover, the DHS cost estimate fails to consider the costs of upgrading network technology to handle the vastly increased bandwidth necessary for handling image files containing

biometric data. According to IATA estimates, these upgrades would cost an additional \$1.7 billion.

Beyond these acquisition and installation costs, the proposed rule would force private industry to hire and train additional personnel in order to satisfy the increased data collection and transmission requirements. Given the steep civil penalties for noncompliance, the industry would also need to make a considerable, long-term financial commitment to retain a skilled workforce and to provide technical support and maintenance for the newly-acquired systems.

Finally, the proposed rule fails to make a full account of the impact of these new requirements on small businesses. Citing the Regulatory Flexibility Act (5 U.S.C. 604, as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996), the proposed rule discusses smaller airports, seaports, and “small entity” air carriers—those employing fewer than 1,500 employees—at length. However, travel agents, who book half of all airline tickets and fully 80% of all cruises, are inexplicably omitted from consideration. These are small businesses by any reasonable measure: over 82% of ASTA member travel agents operate with between one and five employees, and over 84% reported less than \$5 million in sales in 2007. As noted above, travel agents will be forced to absorb a considerable portion of the compliance costs of the proposed rule, and any final rule on this issue should take this impact into account.

### **CONCLUSION**

Satisfying the demands of an unfunded mandate of this scope would be crushingly difficult under the best of circumstances. Compliance during this time of unprecedented industry challenges is simply impossible.

ASTA strongly urges DHS to withdraw this proposed rule and to work with affected industry groups and their representatives in Congress to create a workable solution that does not require the mass deputizing of private-sector employees; that does not result in additional passenger delays; and that does not saddle an already financially-challenged industry with unaffordable demands.