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U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program

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U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program

Summary

Congress first mandated that the former Immigration and Naturalization Service (INS) implement an automated entry and exit data system that would track the arrival and departure of every alien in §110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The objective was, in part, to develop a mechanism that would be able to track nonimmigrants who overstayed their visas as part of a broader emphasis on immigration control. Following the September 11, 2001 terrorist attacks there was a shift in priority for implementing the system. While the tracking of nonimmigrants who overstayed their visas remained an important goal, border security has become the paramount concern.

Legislation enacted from 1997 to 2000 changed the scope and delayed implementation of §110 of IIRIRA. For example, the INS Data Management Improvement Act rewrote §110 to require the development of a system using data currently collected with no new documentary requirements. The Visa Waiver Permanent Program Act of 2000 required the development and implementation of a "fully automated entry and exit control system" covering all aliens who enter the United States under the Visa Waiver Program (VWP) at airports and seaports.

On October 6, 2004, the Senate passed the National Intelligence Reform Act of 2004 (S. 2845). Several related provisions in the 9/11 Commission Report Implementation Act of 2004 (S. 2774) were adopted (S.Amdt. 3807) during floor debate. On October 8, 2004, the House passed an amended version of the bill (S. 2845, Engrossed Amendment House/EAH). The bill would implement the 9/11 Commission recommendations, including those recommendations that pertain to the integrated entry and exit data system and biometric identifiers in travel documents.

Tracking the entry and exit of most foreign nationals at U.S. ports of entry is not a small undertaking. In FY2003 there were over 427 million inspections conducted at U.S. ports of entry, of which 62% were foreign nationals from other countries. Moreover, implementing the requirements of an automated entry and exit data system is not without controversy. Some observers fear that the full implementation of US-VISIT will cause massive delays at U.S. ports of entry, primarily at land ports of entry. Some believe that the cost of implementing such a system would outweigh the benefits. Others express concern about the inadequacy of current infrastructure, and the lack of consensus with respect to the type of biometric technology that should be used in travel documents. Many continue to question the purpose of such a system. Some argue that resources should be directed at immigration interior enforcement, rather than on an expensive system whose capability is not fully known.

The automated entry and exit data system was administratively renamed the United States Visitor and Immigrant Status Indicator Technology (US-VISIT). It is reportedly going to be implemented in phases over the next several years. While the 9/11 Commission generally endorsed the US-VISIT Program, it recommended accelerated implementation, as well as several enhancements to the program. This report will be updated to reflect new developments.

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Current Developments

In July 2004, the National Commission on Terrorist Attacks on the United States (hereinafter referred to as the 9/11 Commission) released its report, which called for the expeditious implementation of the US-VISIT program, among other things. The commission also recommended the consolidation of the various border screening systems with the US-VISIT system.

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Introduction

Congress first mandated that the former Immigration and Naturalization Service (INS) implement an automated entry and exit data system that would track the arrival and departure of every alien in §110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208).[1] The objective for an automated entry and exit data system was, in part, to develop a mechanism that would be able to track nonimmigrants who overstayed their visas as part of a broader emphasis on immigration control. Following the September 11, 2001 terrorist attacks there was a marked shift in priority for implementing an automated entry and exit data system. While the tracking of nonimmigrants who overstayed their visas remained an important goal of the system, border security has become the paramount concern with respect to implementing the system.

This report provides a summary of the statutory history of the automated entry and exit data system, which was recently renamed the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program by the Bush Administration.[2] It

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[1] §110 of IIRIRA is located in Division C of the Omnibus Consolidated Appropriations Act of FY1997.

[2] An October 2003 Department of Homeland Security Press Release refers to the program (continued...)

also discusses other laws that affect the implementation of the system and provides an analysis of the documentary requirements under current law. The report also discusses efforts to implement the program and selected issues associated with its development and implementation. This report will not discuss two related programs– National Security Entry-Exit Registration System (NSEERS) program[3] and the Student and Exchange Visitor Information System (SEVIS) program,[4] — which reportedly will be incorporated into the automated entry and exit data system.

Volume of Entries

Tracking the entry and exit of most foreign nationals at U.S. ports of entry is not a small undertaking. In FY2003 there were over 427 million inspections conducted at U.S. ports of entry, of which 62% were foreign nationals from other countries. Most observers contend that implementing an automated entry and exit data system at the nation's air ports of entry would pose the least number of problems when compared to land or sea ports of entry because the capacity to record alien arrivals and departures at land and sea ports of entry is not as fully developed.[5] Nonetheless, air ports of entry pose unique challenges that could hamper the full implementation of such a system.

U.S. Ports of Entry

There are over 300 air, land and sea ports of entry in the United States. The majority of travelers enter the United States at a land port of entry. In FY2003, 79% of all travelers seeking entry into the United States entered at a land port of entry. Land borders are unique because traffic at these crossings could consist in varying combinations of cars, pedestrians, bicycles, trucks, buses, and rail. Moreover, land ports of entry pose various challenges to the creation of an automated alien tracking system due to their location, infrastructure, geography and traffic volume, which can vary extensively among ports of entry.

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[2] (...continued)
as the United States Visitor and Immigrant Status Indicator Technology. In May 2003, Asa Hutchinson, Under Secretary of the Border and Transportation Security Division in the Department of Homeland Security had announced the Administration's intent to rename the automated entry and exit data system the U.S. Visitor and Immigrant Status Indication Technology Program or US-VISIT. See U.S. Department of State, "Ridge Announces New U.S. Entry-Exit System," press release, Apr. 29, 2003, at [http://usinfo.state.gov/regional/nea/sasia/ins/texts.htm]. The terms US-VISIT program and automated entry and exit data system will be used interchangeably throughout this report.

[3] For additional information on NSEERS, see CRS Report RL31570, *Immigration Alien Registration*, by Andorra Bruno.

[4] For additional information on SEVIS, see CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System*, by Alison Siskin.

[5] As discussed in the next section, air ports of entry have a long history of collecting the Arrival/Departure Record (Form I-94) from foreign nationals.

Air and sea ports are faced with some of the same challenges present at land ports. However, the impact is not as intense as it is at land ports of entry. While land ports of entry have heavy traffic volume that could make implementing such a program difficult, some air port officials and observers express concern that implementing the system could also disrupt the flow of traffic at air ports of entry. Airports have tried to delay the implementation of an automated entry and exit data system (and reportedly they were effective in pushing back the implementation date of the Administration's first increment of the program to January 5, 2004), primarily due to concerns of the potential slow down in the flow of traffic at the nation's air ports of entry. In addition to possible congestion at the nation's air ports of entry, some fear that the *exit* process may not be fully developed due to inadequate space. The current exit process being used at two ports of entry (one air and one sea port of entry) requires separate space away from the inspections station.

Sea ports of entry, which account for approximately 3% of all travelers seeking entry to the United States in FY2003, also pose challenges to the implementation of an automated entry and exit data system. Similar to other ports, sea ports do not have the necessary infrastructure, particularly with respect to implementing exit controls. Moreover, some sea ports of entry are not staffed full-time with immigration or customs inspectors.

The Arrival/Departure Record, Form I-94

For many years, the former INS had recorded nonimmigrant arrivals at airports on Form I-94, the Arrival/Departure Record, which is a paper-based system that contains information that is later keyed into the Nonimmigrant Information System (NIIS).[6]

Form I-94 is a perforated numbered card and is composed of an arrival portion collected upon entry and a departure portion that is returned to the alien passenger. Upon departure, the reverse-side of the departure portion is completed by the departure carrier and submitted to the Department of Homeland Security (DHS) at the port of departure. Under current regulations, the outbound carrier has 48 hours to submit the departure Form I-94 to DHS.

Due to the cumbersome nature of this process and its unreliability, Congress required that commercial carriers transporting passengers to or from the U.S. deliver arrival and departure manifest information electronically to DHS no later than January 1, 2003. These reports are to be integrated with data systems maintained by the Department of Justice (DOJ) and the Department of State (DOS) at ports of entry or at consular offices.[7]

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[6] NIIS provides limited data on the arrivals and departures of non-immigrants admitted for short visits such as those individuals traveling for pleasure or business. NIIS interfaces with several other immigration databases.

[7] 8 U.S.C. 1365a(b).

Exit Control

The I-94 Arrival/Departure Record is routinely collected from applicable foreign nationals at air and sea ports. Reportedly, it is rarely collected from applicable foreign nationals exiting at land ports. According to many, implementing the exit process of an automated entry and exit data system at most ports of entry will entail expanding the infrastructure, which may be challenging at some ports (see discussion in Selected Issues section). The Administration is currently in the first phase of implementation of the system; and reportedly the exit process is operable at two ports of entry. The full implementation of the exit process will be one of the challenges to the successful development of an automated entry and exit data system (see discussion in Implementation of US-VISIT).

Statutory History and Other Related Laws

There are four principal laws that extend and refine §110 of IIRIRA to require the development and implementation of an integrated entry and exit data system:

- The INS Data Management Improvement Act (DMIA; P.L. 106-215);
- The Visa Waiver Permanent Program Act (VWPPA; P.L. 106-396);
- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act; P.L. 107-56); and
- The Enhanced Border Security and Visa Entry Reform Act (Border Security Act; P.L. 107-173).

Following the terrorist attacks, several provisions in the USA PATRIOT Act and the Border Security Act further required the implementation of an automated entry and exit data system and called for enhancements in its development. The provisions in both acts have several common elements:

- encouraged a more expeditious development of the automated entry and exit data system;
- required that biometric identifiers be used in all visas and other travel documents; and
- required that the system be interoperable with other law enforcement and national security databases.

Accordingly, implementation of the relevant provisions in these five laws together are intended to result in an integrated, automated entry and exit data system that now includes the use of biometric identifiers.

Mandate to Create an Automated Entry and Exit Data System

Section 110 of IIRIRA required the Attorney General to develop an automated data system that would record the entry and exit of *every alien* arriving in and departing from the United States by September 30, 1998.[8] Under this initial authorization, the Attorney General was required to develop an automated entry and exit control system not later than two years after the enactment of IIRIRA in 1996. The automated entry and exit data system would have created a record for *every alien* arriving in the U.S. and paired it with the record for the alien departing the United States. The automated entry and exit data system was also supposed to enable the Attorney General to identify, through online searching procedures, lawfully admitted nonimmigrants who remained in the United States beyond the period authorized by the Attorney General.

The act also mandated that the Attorney General report to Congress annually after the development of an automated entry and exit data system on the following:

- the number of recorded departures by country of nationality;
- the number of recorded departures matching recorded arrivals of nonimmigrants by country of nationality; and
- the number of aliens who arrived as nonimmigrants or visitors under the visa waiver program and have overstayed their visas.

Congress amended §110 of IIRIRA in P.L. 105-259 to require the implementation of the system before October 15, 1998. Congress further amended §110 in the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) by extending the deadline for the implementation of the automated entry and exit data system to March 30, 2001, for land border ports of entry and sea ports of entry (but otherwise leaving the October 15, 1998 deadline for air ports of entry); and prohibiting significant disruption of trade, tourism or other legitimate cross-border traffic once the automated entry and exit data system was in place.[9]

Significant Modifications in the Automated Entry and Exit Data System

In June of 2000, Congress substantially amended §110 of IIRIRA in the Immigration and Naturalization Service Data Management Improvement Act of 2000. This act renamed the automated entry and exit data system the "Integrated Entry and Exit Data System" and included provisions that (1) rewrote IIRIRA §110 to require the development of a system using data currently collected with no new documentary requirements; (2) set staggered deadlines for the implementation of the system at air, sea, and land border ports of entry; (3) established a task force to

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[8] P.L. 104-208, Div. C, Tit. I, §110 (formally codified at 8 U.S.C. §1221 note) (currently codified at 8 U.S.C. §1365a).

[9] P.L. 105-277, Tit. I (Dept. of Justice), §116, 112 Stat. 2681-68.

evaluate the implementation of the system and other measures to improve legitimate cross-border traffic; and (4) expressed a sense of Congress that federal departments charged with border management should consult with foreign governments to improve cooperation.

Related Provisions

While statutorily distinct from §110, the Visa Waiver Permanent Program Act of 2000 also mandated the development and implementation of a "fully automated entry and exit control system" covering all aliens who enter the United States under the Visa Waiver Program (VWP) at airports and seaports.[10] Under the VWP, nationals from certain countries are allowed to enter the U.S. as temporary visitors (nonimmigrants) for business or pleasure for up to 90 days without first obtaining a visa from a U.S. consulate abroad.

The Visa Waiver Permanent Program Act included many provisions designed to strengthen documentary and reporting requirements. Most notably, the VWPPA included a provision that mandated that by October 1, 2007, all entrants under the VWP must have machine-readable passports.[11] It has been stipulated by DHS that the VWP arrival/departure information has effectively been incorporated into the broader entry-exit system component mandated by the DMIA.[12]

In late 2001 and 2002, Congress passed two additional laws affecting the development of the automated entry and exit data system, particularly with respect to the use of use biometric identifiers: the USA PATRIOT Act (P.L. 107-56) and the Border Security Act (P.L. 107-173).

Enhancements to the Automated Entry and Exit Data System[13]

In the USA PATRIOT Act, Congress required the Attorney General and the Secretary of State to jointly develop and certify a technology standard with the capacity to verify the identity of persons applying for a U.S. visa or such persons seeking to enter the United States pursuant to a visa.[14] The USA PATRIOT Act also

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[10] P.L. 106-396, §205 (codified at 8 U.S.C. §1187).

[11] The USA Patriot Act and the Border Security Act added and modified various requirements in the Visa Waiver Permanent Program Act. For a more thorough discussion on the Visa Waiver Program, as amended, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[12] Carrier Arrival and Departure Electronic Manifest Requirements, 68 *Federal Register* 30280, 30359 (May 27, 2003); see also 69 *Federal Register* 468, 469.

[13] For additional information on immigration-related border security provisions in the USA PATRIOT Act and the Border Security Act, see CRS Report RL31727, *Border Security: Immigration Issues in the 108th Congress*, by Lisa M. Seghetti.

[14] According to the act, the Attorney General and the Secretary of State were to develop and certify a technology standard through the National Institute of Standards and Technology (continued...)

encouraged the full implementation of the integrated, automated entry and exit data system "with all deliberate speed and as expeditiously as practicable" and called for the immediate establishment of the Integrated Entry and Exit Data System Task Force, as described in §3 of the DMIA.[15] The act also directed the Attorney General and Secretary of State to focus on the utilization of biometric technology and tamper resistant documents in the development of the integrated, automated entry and exit data system.

The Border Security Act further advanced requirements set forth in IIRIRA by requiring the Attorney General to implement an integrated entry and exit data system. In developing the entry and exit data system, the act required: (1) the Attorney General and the Secretary of State to implement a technology standard in compliance with the USA PATRIOT Act[16] at U.S. ports of entry and at consular posts abroad; (2) the establishment of a database containing the arrival and departure data from machine-readable visas, passports and other alien travel documents; (3) the integration of all INS databases and data systems that process or contain information on aliens; and (4) the development and implementation of an interoperable electronic data system that provides real time access to federal law enforcement agencies and the intelligence community databases in order to obtain relevant information to make visa and admissibility determinations.[17]

Related Requirements

Machine-Readable Travel Documents. The Border Security Act required the Attorney General and the Secretary of State to issue machine-readable, tamper-resistant visas and travel documents that will utilize biometric identifiers by October 26, 2004. The act required all U.S. ports of entry to have equipment and software installed by October 26, 2004 that will allow biometric comparison and the authentication of all visas and other travel and entry documents issued to aliens. The act also required by the same date that all VWP countries have a program in place to issue tamper-resistant, machine-readable, biometric passports that comply with the biometric and document identifying standards established by the International Civil Aviation Organization (ICAO).[18] P.L. 108-299, however, extended the deadline to October 26, 2005. In essence, on or after October 26, 2005, any alien applying for admission under the VWP must present a passport that is tamper-resistant, machine-readable, and uses ICAO-compliant biometric identifiers (unless the unexpired

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[14] (...continued)
(NIST) and in consultation with the Secretary of the Treasury, federal law enforcement and intelligence agencies, and the Congress.

[15] Ibid., at §414.

[16] Section 403(c) of the USA PATRIOT Act requires the development and certification of a technology standard that can be used to verify the identity of persons (1) applying for a U.S. visa or (2) seeking entry into the United States pursuant to a visa.

[17] The interoperable data system is also known as Chimera.

[18] In May 2003, ICAO finalized standards for biometric identifiers, which asserted that facial recognition is the globally interoperable biometric for machine readable documents with respect to identifying a person.

passport was issued prior to that date). With respect to Laser Visas (previously referred to as Mexican Border Crossing Cards), the act extended until September 30, 2002, the deadline for such visas to contain a biometric identifier that matches the biometric characteristic of the card holder.[19]

As previously mentioned, the Border Security Act required the automated entry and exit data system be interoperable with other federal law enforcement agencies and the intelligence community data systems. The act required the interoperable data system to have the capacity to compensate for disparate name formats among the various databases and be able to search names that are linguistically sensitive. It required linguistically sensitive algorithms to be implemented for at least four languages designated as high priorities by the Secretary of State.[20] The act required the President to establish a commission by October 26, 2002, to oversee the development and progress of the interoperable data system.

Electronic Passenger Manifest. The Border Security Act required airline carriers to provide the Attorney General with electronic passenger manifests before arriving in or departing from the United States and repealed a provision that required airport inspections to be completed within 45 minutes of arrival.[21]

Requirement for Biometric Identifiers[22]

Congress first mandated biometrics in travel documents in IIRIRA by requiring Border Crossing Cards (BCCs, now referred to as Laser Visas) for Mexican nationals to have a biometric identifier that is machine readable. The act required that the biometric identifier match the biometric characteristic of the card holder in order for the alien to enter the United States. In addition to IIRIRA, the USA PATRIOT Act and the Border Security Act both required the use of biometrics in travel documents.

Technology Standards. The USA PATRIOT Act required the Attorney General and the Secretary of State, through the National Institute of Standards and Technology (NIST), to develop and certify a technology standard, such as fingerprints and facial photographs, that can be used to verify the identity of persons seeking a visa to enter the United States. With respect to developing and certifying

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[19] Border Crossing Cards are issued to Mexican nationals under specified conditions, see discussion below.

[20] The act also required that an additional language algorithm be implemented annually for three years following the implementation of the highest priority languages.

[21] The Aviation and Transportation Security Act (P.L. 107-71) also required the electronic transmission of passenger manifests prior to an aircraft or vessel's arrival at a U.S. port of entry.

[22] The US-VISIT program incorporates the use of biometric technology in travel documents to track foreign visitors moving through the nation's air, land, and sea points of entry. A biometric identifier is a physical characteristic or other attribute unique to an individual (such as a fingerprint, a facial photograph or an iris scan) that can be collected, stored, and used to verify the claimed identity of a person. To verify identity, a similar physical characteristic or attribute is taken from the person who presents himself and it is compared against the previously collected identifier.

a technology standard, the act also required the Attorney General and the Secretary of State to consult with the Secretary of the Treasury and other relevant federal law enforcement and intelligence agencies. The act required the technology standard to be a "cross-agency, cross-platform electronic system" that is fully integrated with other federal law enforcement and intelligence agencies' databases. It also required the technology standard to be accessible to all consular officers who are responsible for issuing visas, all federal inspection agents at U.S. ports of entry, and all law enforcement and intelligence officers who are determined by regulations to be responsible for investigating or identifying aliens admitted to the United States through a visa.

The Border Security Act, in advancing requirements set forth in IIRIRA, authorized the funding and implementation of a technology standard (e.g., biometrics). The act required the Attorney General and the Secretary of State to issue machine-readable, tamper-resistant visas and travel documents that have biometric identifiers by October 26, 2004. On January 5, 2004, DHS promulgated an interim final rule that amended portions of 8 C.F.R. §§214.1, 215.8, and 235.1 to include language for the biometric requirements of US-VISIT (see **Appendix I** for a discussion on the authority and implementation of the biometric identifier requirements).[23]

Status of US-VISIT

The US-VISIT program was established to respond to several congressional mandates that require DHS to create an integrated, automated entry and exit data system that (1) uses available data to produce reports on alien arrivals and departures; (2) deploys equipment at all ports of entry to allow for the verification of aliens' identities and the authentication of their travel documents through the comparison of biometric identifiers; and (3) records alien arrival and departure information from biometrically authenticated documents.[24] The program is reportedly going to be implemented in phases over the next several years in compliance with congressional mandates and include resources and services from a number of federal, state, local, and foreign entities to meet these requirements.[25]

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[23] The Border Security Act also requires the installation of biometric identifier readers and scanners at all ports of entry by Oct. 26, 2004. It requires that the biometric data readers and scanners be accurate according to domestic and international standards and that they be able to authenticate documents.

[24] See generally, 8 U.S.C. §§1187, 1365a and note, 1379, 1731-31.

[25] DHS currently reports the following entities to be key participants in the implementation of US-VISIT: The Departments of State, Transportation, Justice, and Commerce, the General Services Administration, the CIA, other countries, state and local law enforcement and within the DHS — the Bureau of Immigration and Customs Enforcement, the Science and Technology Directorate, the Bureau of Customs and Border Protection, the Transportation and Security Administration, the U.S. Coast Guard, the Federal Law Enforcement Training Center, the Citizenship and Immigration Service, and the Data Management Improvement Act Taskforce.

In May 2003, Asa Hutchinson, Under Secretary of the Border and Transportation Security Directorate in DHS announced the Administration's intent to rename the automated entry and exit data system the U.S. Visitor and Immigrant Status *Indication* Technology program or US-VISIT.[26] An October 2003 Department of Homeland Security Press Release, however, refers to the program as the United States Visitor and Immigrant Status *Indicator* Technology program or US-VISIT. According to DHS, US-VISIT is a comprehensive program that will replace the currently existing NSEERS program, integrate the SEVIS program, and encompass the congressional requirements of the integrated, automated entry and exit data system.

Implementation Phases

The Administration has announced plans to implement the program in four increments, with the first three increments constituting a temporary system. While details are not available, the US-VISIT Fact Sheet states the first three increments will include the interfacing, enhancement and deployment (at air, sea and land ports of entry) of existing system capabilities, which is in line with a Government Accountability Office (GAO) report. According to a GAO report, "DHS has preliminary plans showing that it intends to acquire and deploy a system that has functional and performance capabilities that satisfy the general scope of capabilities required under various laws ... [to include] the capability to (1) collect and match alien arrival and departure data electronically; (2) be accessible to the border management community ...; and (3) support machine readable, tamper-resistant documents with biometric identifiers at ports of entry."[27] GAO observed, however, that the initial plan lacks sufficient information with respect to "... what specific capabilities and benefits [that] will be delivered, by when, and at what cost ..."[28]

The first increment of the Administration's plan became effective January 5, 2004, and includes an entry process at 115 air and sea ports of entry and an exit process at one air port of entry and one sea port of entry. On August 3, 2004, DHS announced its plans to expand the "exit pilot programs" to 13 additional air or seaports.[29] While the entry process appears to be in compliance with current law at

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[26] The deadlines for implementing the US-VISIT program at high-traffic land ports of entry are Dec. 31, 2004, and for all other ports of entry, Dec. 31, 2005, see U.S. Department of State, "Ridge Announces New U.S. Entry-Exit System," press release, Apr. 29, 2003, at [http://usinfo.state.gov/regional/nea/sasia/ins/texts.htm].

[27] GAO Report GAO-03-563, "Information Technology: Homeland Security Needs to Improve Entry Exit System Expenditure Planning," June 2003.

[28] Ibid.

[29] The airports added are Baltimore/Washington International; Newark International; O'hare International; William B. Hartsfield International; Philadelphia International; Dallas/Fort Worth International; Detroit Metropolitan Wayne County; Seattle/Tacoma International Airport; Luis Munoz Marin International in San Juan, Puerto Rico; Phoenix Sky Harbor International; San Francisco International; Ft. Lauderdale/Hollywood Airport; and Denver International. The seaports added are San Pedro and Long Beach, California. See Aug. 3, 2004 *Federal Register*, vol. 69, no. 148. A CRS site visit to Philadelphia International (continued...)

selected air and sea ports of entry, the exit process is not fully developed. This may be problematic for many, since an alien who is required to provide biometrics at the time of departure may be found to have overstayed the period of his or her last admission if available evidence indicates that he or she did not leave the U.S. when required to do so.[30] DHS, however, maintains that aliens will not be penalized for failing to provide biometrics on departure where the Department has not yet implemented the departure facilities or procedures at the specific port where the alien chooses to depart.[31] Moreover, DHS intends to focus its enforcement of the departure requirements on cases where aliens "willfully and unreasonably fail to comply."[32]

Current Operations[33]

On January 5, 2004, DHS implemented an Interim Final Rule that, in essence, provides that the Secretary of Homeland Security or his delegate may require aliens to provide fingerprints, photographs or other biometric identifiers upon arrival in or departure from the U.S.[34] Initially, DHS plans to take a digital photograph and two fingerprints from each nonimmigrant alien who presents a visa at designated air or sea ports of entry. DHS reportedly chose to collect two fingerprints and a photograph of the alien's face, in part, because they are currently less intrusive than other forms of biometric collections and because of the effectiveness of such techniques. Moreover, NIST, in consultation with DOJ and DOS, has determined that two fingerprints and facial photographs are sufficient forms of biometrics for the purpose of the US-VISIT program. DHS has commented, however, that it may collect additional biometric data as the deployment of more comprehensive technologies becomes feasible.

Upon arrival at a designated air or sea port of entry, inspectors will scan two fingerprints of the foreign national with an inkless device and will take a digital photograph of the person. Initially, the biometric information collected will be entered into an existing system called Automated Biometric Fingerprint Identification System (IDENT). The alien's fingerprint and photographs are compared against the biometric information already stored in IDENT to determine whether there is any information that would indicate the alien is inadmissible.

For departures at designated air and sea ports, the foreign national traveler will go to a work station or kiosk to scan his travel documents, have his photograph compared, and provide his fingerprints on the same type of device used at entry. The departure information that a traveler provides will be verified and matched against

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[29] (...continued)
Airport on Sept. 24, 2004, revealed that the exit process was not in operation.

[30] 69 *Federal Register* 468, 473.

[31] Ibid.

[32] Ibid.

[33] For a summary of the Administration's implementation of the biometric requirements, see **Appendix I**.

[34] 69 *Federal Register* 468.

any available information that he or she provided upon inspection and that was previously stored in the systems that comprise US-VISIT. Generally, all the information collected will be used to (1) identify persons who have overstayed their authorized periods of admission; (2) compile the overstay reports required by DMIA; and, (3) help DOS and DHS make determinations as to whether the person is eligible for future visas, admission, or other discretionary immigration benefits.

Under the interim final rules implemented on January 5, 2004, 115 airports and 15 seaports require that nonimmigrants who apply for admission pursuant to a nonimmigrant visa provide biometric information at time of *arrival*.[35] Biometric information to be provided at a nonimmigrant's *departure*, on the other hand, is currently only required at 13 airports and at two seaports, as discussed above. The Secretary has the authority under current regulations to establish pilot programs at up to fifteen air or sea ports of entry through which the Secretary may require an alien admitted pursuant to a nonimmigrant visa who is *departing* from the United States to provide biometric identifiers.[36] Although the biometric requirements initially only apply to nonimmigrant visa-holders who travel through designated air and sea ports, DHS anticipates expanding the program, through separate rulemaking to include other groups of aliens and more ports, including land border ports of entry.[37]

Under DHS' initial regulations, biometric identifiers are not required for U.S. citizens, lawful permanent residents of the United States or for travelers who seek to enter the United States through the VWP. Subsequent DHS regulations, however, now require VWP participants to submit to the requirements of the US-VISIT program.[38] Additionally, foreign nationals entering the United States through land ports of entry currently do not need to provide biometric identifiers; however, they must comply with other requirements in law. With respect to Canadian citizens who enter through the designated air and sea ports of entry, biometric identifiers will be required, unless the Canadian citizen is temporarily visiting the United States and does not apply for admission pursuant to a nonimmigrant visa. Nonimmigrant Mexican visa holders must also present biometric identifiers if they enter through the designated air and sea ports of entry. The Interim Final Rule also exempts 17 other categories of individuals from providing biometric identifiers upon entry to or exit from the United States (see **Appendix III**). An inspector retains the discretion, however, to collect an alien's biometric information in order to determine the exact age of the alien and whether he or she is exempt from the biometric requirements.

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[35] Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System, 69 *Federal Register* 482, Jan. 5, 2004. Six ports of entry were added on Aug. 20, 2004: Albany International Airport, New York; St. Petersburg/Clearwater International Airport, Florida; Port Everglades seaport, Florida; Andrews Air Force Base, Maryland; New York City seaport, New York; and Port Canaveral, Terminal 10, Florida. See 69 *Federal Register* 51695.

[36] 8 C.F.R. §235.1(d)(1).

[37] 69 *Federal Register* 468, 470.

[38] 69 *Federal Register* 53318.

The 9/11 Commission Report. The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) was created to investigate "facts and circumstances relating to the terrorist attacks of September 11, 2001."[39] The 9/11 Commission published its report in July 2004.[40] In its report, the 9/11 Commission noted the following with respect to the US-VISIT system:

> Since September 11, the United States has built the first phase of a biometric screening program, called US VISIT... So far, however, only visitors who acquire visas to travel to the United States are covered. While visitors from "visa waiver" Countries will be added to the program, beginning this year, covered travelers will still constitute only about 12 percent of all noncitizens crossing the U.S. borders...

While the commission called for the expeditious implementation of the US-VISIT program, it noted the following with respect to biometrics: "biometrics have been introduced into an antiquated computer environment" and that "replacement of these systems and improved biometric systems will be required." The 9/11 Commission also recommended the consolidation of the various border screening systems with the US-VISIT system, including frequent traveler programs such as NEXUS and the Secure Electronic Network for Travelers' Rapid Inspections (SENTRI).[41]

Electronic Manifest Requirements

One of the basic legislative mandates of US-VISIT is that the system integrate the available alien arrival and departure data that exist in any Department of Justice (now DHS) or DOS database system. This includes the systems that incorporate carrier manifest data on passengers and crew members who are entering or leaving the United States via air or sea — generally, the Advance Passenger Information System (APIS) for arrivals and the Arrival Departure Information System (ADIS) for departures.[42]

In addition to the information captured by the electronic manifests, APIS and ADIS include information gathered from VWP aliens and information on visa applications and recipients received through the DataShare program with DOS. The information provided by the APIS and ADIS databases are run against the Interagency Border Inspection System (IBIS) which contains "lookouts" on individuals submitted by more than 20 law enforcement and intelligence agencies. According to DHS, by the time a traveler gets to an air or sea port of entry, inspectors

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[39] The Commission was established pursuant to P.L. 107-306.

[40] A staff report, titled "9/11 and Terrorist Travel" was released in August 2004

[41] See [http://www.9-11commission.gov/].

[42] Current law already requires that passenger manifests be submitted electronically prior to an aircraft or vessel's arrival at a U.S. port of entry. Section 402 of P.L. 107-173 and §115 of P.L. 107-71.

have identified the aliens that need to be scrutinized more closely or that may be inadmissible.[43]

Under current regulations, a commercial aircraft or vessel must electronically transmit arrival and departure manifests to DHS officials for each passenger not currently exempt from the manifest requirements pursuant to 8 C.F.R. §231.1 or §231.2 (see **Appendix II**). These manifests must contain the data elements specified in INA §231, as amended, for each passenger listed on the manifest. Arrival manifests must be submitted electronically to DHS *prior to the arrival* of the commercial aircraft or vessel. Electronic departure manifests, under 8 C.F.R. §231.2, must be submitted to DHS officials *within 48 hours of departure*.[44] Under current regulations, arrival and departure manifest data are not required to be submitted by U.S. citizens, a returning lawful permanent resident alien of the United States, and new immigrants to the United States or aircraft and vessels arriving in the United States directly from Canada, or departing to Canada.[45]

Visa Waiver Program

The entry-exit system must also include the arrival and departure for any visitor who transits through the air and seaports and is admitted under the Visa Waiver Program. The VWP allows nationals from 27 countries to enter the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad. The VWPPA states that no alien arriving by air or sea may be granted a visa waiver under INA §217, on or after October 1, 2002, unless the carrier is submitting passenger information electronically to the VWP entry-exit system, as required by the Secretary. Carriers must electronically transmit passenger arrival data in accordance with 8 C.F.R. §217.7 for every applicant for admission under the VWP that the carrier transports by air or sea to a U.S. port of entry. Carriers are only required to transmit departure passenger information for those departing VWP passengers who were admitted to the U.S. under the VWP after arriving at a port of entry. Travelers entering the United States pursuant to the VWP are to be enrolled in US-VISIT starting September 30, 2004.

The obligation of carriers to submit information on VWP passengers in support of the entry-exit system mandated by §217(h) of the INA appears to be currently separate from a carrier's obligation to submit arrival and departure manifests for persons transported on commercial aircraft or vessels pursuant to §231 of the INA. However, it has been proclaimed by the DHS that the requirements of the DMIA (i.e., the electronic manifest requirements) have effectively resulted in the integration of

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[43] 69 *Federal Register* 468, 471.

[44] On Jan. 3, 2003, DOJ proposed a rule that would require commercial carriers transporting any person by air to any port within the U.S. from any place outside the U.S. to submit an electronic arrival passenger manifest to federal officials no later than 15 minutes after the flight departs from the last foreign port or place and for departure manifest, no later than 15 minutes before the flight or vessel has departed the U.S. See Manifest Requirements Under Section 231 of the act, 68 *Federal Register* 292, 294 (Jan. 3, 2003).

[45] 8 C.F.R. §§231.1 (Arrival manifest for passengers) and 231.2 (Departure Manifest for passengers).

the VWP arrival/departure information into the primary entry-exit system component of the US-VISIT program.[46]

Legislation in the 108th Congress

As stated above, the 9/11 Report called for the expeditious implementation of the US-VISIT program. The 9/11 Commission called for the replacement of the "antiquated computer environment" in which biometrics have been introduced. The commission also recommended the consolidation of the various border screening systems with the US-VISIT system, including frequent traveler programs.[47] In an effort to implement the 9/11 Commission recommendations, both houses passed legislation, as discussed below.

The 9/11 Commission Report Implementation Act of 2004 (S. 2774 ES and S. 2774 EAH). Both houses passed versions of the National Intelligence Reform Act of 2004 (S. 2845 Engrossed in Senate, ES; and S. 2845 Engrossed Amendment House, EAH).

Both bills are substantially similar, however, there are some notable differences. Both bills would call for the Secretary of DHS (Secretary) to develop a plan to accelerate the full implementation of an automated biometric entry and exit data system (U.S.-VISIT) and to submit a report to Congress on the plan. Both bills would set forth a series of detailed content requirements for the plan to include the following:

- a description of the functionality of the system that includes a listing of ports of entry and exit as well as other DHS and DOS locations with biometric entry and exit data systems in use;
- a listing of data systems and databases with which the system are interoperable and a description of plans for improved or added interoperability with other databases and data systems;
- a description of deficiencies concerning the accuracy or integrity of the information contained in the system, technology associated with processing individuals through the system and of programs or policies to correct such deficiencies;
- an assessment of the effectiveness of the system in fulfilling its intended purposes and preventing terrorists from entering the country;

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[46] See 69 *Federal Register* 468,469. An Oct. 11, 2002 DOJ Interim Rule indicates that it is DOJ's goal to develop a single procedure for the electronic transmission of passenger and crew arrival and departure information that will satisfy the requirements of both sections 217 and 231 of the act. See Passenger Data Elements for the Visa Waiver Program, 67 *Federal Register* 63246, 63248, Oct. 11, 2002.

[47] Current registered traveler programs include NEXUS and the Secure Electronic Network for Travelers' Rapid Inspection (SENTRI). See CRS Report RS21335, *The Immigration and Naturalization Service's Port Passenger Accelerated Service System*, by Lisa M. Seghetti.

- a description of factors relevant to accelerating the implementation of the system, including the earliest date estimated for full implementation of the system, actions necessary to accelerate the full implementation of the system, and the resources and authorities required to meet full implementation; and
- a description of improvements needed in the information technology employed for the system.

In addition to the aforementioned list, the Senate bill would also require the Secretary to include in the report a description of the manner in which the US-VISIT program meets the goals of a comprehensive entry and exit screening system and how it fulfills its statutory obligations.

Unlike the House bill, the Senate bill would require the collection of biometric *exit* data for all categories of individuals who are required to provide biometric *entry* data, regardless of the port of entry used by the individual.

Both bills would require the Secretary to integrate the entry and exit data system with other agencies databases and data systems. The House bill, however, would only require such integration with databases and data systems maintained by the U.S. Citizenship and Immigration Service that process or contain information on aliens. The Senate bill, on the other hand, would require the integration with databases and data systems that process or contain information on aliens maintained by DHS's Bureaus of Immigration and Customs Enforcement, Customs and Border Protection, and Citizenship and Immigration Services, the Department of Justice's Executive Office for Immigration Review, and DOS' Bureau of Consular Affairs.

In addition to the integration of the entry and exit data system with other databases and data systems, both bills would require the Secretary to develop and implement a plan to expedite the processing of registered travelers through a registered traveler program that can be integrated into the broader automated biometric entry and exit data system.

Unlike the House bill, the Senate bill would also require that *both* the Secretary of DHS and the heads of agencies that have databases linked to the entry and exit system establish guidelines for collecting and removing data, rather than having merely the Secretary of DHS establish all the guidelines as the House bill mandates.

Unlike the Senate bill, the House bill appears to provide significant detail with respect to the entry and exit data system, including: (1) ensuring that the system's tracking capabilities contains relevant data components, including the use of a biometric based identity number that is tied to the foreign national's biometric algorithm that is established under the system; (2) requiring all immigration-related information on the foreign national be queried through electronic means with real-time access; (3) limiting access of the aforementioned information to personnel explicitly authorized to have such access; (4) requiring continuing education in counterterrorism tools and method for all federal personnel employed in the evaluation of immigration documents and immigration-related policies; (5) establishing goals for the system; (6) requiring the training of front line personnel with respect to the system and its goals; (7) requiring training for personnel who are

authorized to enter data into the system; (8) establishing guidelines on the accessibility of the system; (9) establishing standards on the accuracy of the information contained in the system; and (10) requiring corrective action for erroneous information in the system. The Senate bill, however, does call on the Secretary to establish guidelines on obtaining accurate information; and unlike the House bill it also calls on the Secretary to create an appeals process for data contained in the databases.

Unlike the Senate bill, the House bill would require the Secretary to submit a series of reports to Congress, including a report that details activities undertaken to develop the system; a joint report with the Secretary of State on matters such as current infrastructure and staff at the relevant sites, the plan for enhanced database review at entry, and the number of suspected terrorists and criminal intercepted utilizing the system, among other things; a report on the status of implementing the integrated databases and data systems as defined under current law; and an individual and joint (with other relevant agency heads) status report on compliance with this section. Both bills would authorize such sums as necessary for FY2005 through FY2009 for this section.

Selected Issues

Scope and Authority

While the Administration has seemingly gone to great lengths to clarify the processes involved with the US-VISIT program, many concerns have surfaced. Some have questioned the integration of US-VISIT with the VWP, while others have found the existence of too many potential exceptions problematic. Some observers have suggested that the program may not be in compliance with congressional mandates. Generally, the specific requirements and procedures that a traveler must abide by to enter the United States through the US-VISIT program are detailed in agency regulations.

Visa Waiver Program. The VWP, while statutorily distinct, is linked to US-VISIT's components and implementation in many respects. From existing regulations it appears that a comprehensive exit-entry system has the potential to draw on two sets of data requirements — one that puts forth criteria for electronic arrival and departure data manifests and is the basis of the §110 system, and a separate one that contains requirements for electronic data submissions under the VWP (see **Appendix II** for comparison). The current regulations, notwithstanding, DHS claims the VWP elements have effectively been included in the general electronic manifest requirements. Indeed, the DOJ proposed a rule on January 3, 2003, that would effectively prohibit a VWP passenger from entering the country unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 C.F.R. §231.1 for each VWP passenger being transported.[48] Still, until such time as the anticipated regulation combining

[48] 68 *Federal Register* 292, 295.

these two electronic requirements is published, there are apparently two distinct electronic reporting requirements that should be complied with.

With respect to biometrics, travelers entering the United States pursuant to the VWP will begin to be enrolled in US-VISIT starting September 30, 2004. Moreover, foreign nationals who participate in the VWP will not be admitted under the program on or after October 26, 2005, without a machine-readable, tamper-resistant passport that meets ICAO biometric standards for photographs, unless the passport has not expired and was issued prior to that date.[49]

New Documentary and Data Collection Requirements. The scope of §110 of IIRIRA as amended is much narrower than originally enacted since it does not require the development of a system that would record the entry and exit of *every alien* arriving and departing from the United States. Instead, §110 of IIRIRA as amended by the DMIA, requires that a system be developed to record alien arrivals and departures, without establishing additional documentary requirements. Nothing in the amended §110 of IIRIRA should be interpreted as requiring the Attorney General or the Secretary of State to collect new types of documents or data from aliens, particularly aliens who have had document requirements waived under §212(d)(4)(B) of the INA by the Attorney General and the Secretary of State acting jointly on the basis of reciprocity with respect to foreign contiguous territories or adjacent islands.[50]

Nonetheless, IIRIRA §110 does not "reduce or curtail any authority of the Secretary of Homeland Security or the Secretary of State under any other provision of law" to require new documentary or data collection information.[51] Thus, while §110 of IIRIRA restricts the Attorney General and the Secretary of State from imposing new documentary or data collection requirements upon aliens under §110 of IIRIRA, it does not reduce the authority of the Attorney General or the Secretary of State from developing new documentary or data collection requirements from other provisions of law.[52]

DHS claims there is no conflict between the requirement for biometric identifiers and DMIA's prohibition on new documentary or data collection requirements.[53] DHS supports its conclusion with the "no reduction in authority" clause of the DMIA, claiming the biometric requirements found in the Interim Final

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[49] 8 U.S.C. §1732(c)(2). The deadline was originally Oct. 26, 2004, but was extended a year by P.L. 108-299.

[50] In addition, §110 does not permit the Attorney General or the Secretary of State to require documents or data from aliens that are inconsistent with the North American Free Trade Agreement.

[51] 8 U.S.C. 1365a(c)(2).

[52] *Congressional Record*, daily edition, vol. 146, (May 23, 2000), pp. H3570-H3571.

[53] 69 *Federal Register* 468, 475.

Rule are supported by statutory authority "outside the four corners of DMIA."[54] For example, DHS cites §403(c) and §414 of the USA PATRIOT Act and §§ 302-303 of the Border Security Act, as laws passed after the DMIA that encourage and require DHS to develop and utilize a biometric technology for the implementation of the automated entry and exit data system. While these provisions do not appear to give the Secretary of DHS or DOS the explicit authority to promulgate new data collection or documentary requirements under §110 *per se*, the broad grant of authority in these provisions to implement an integrated entry-exit system that utilizes biometric technology, combined with the generous discretion that is often afforded agencies implementing congressionally mandated programs by courts, seemingly provides strong support for the use of biometric identifiers.

Other authority cited by DHS, includes INA §§ 214, 215 and 235. Of particular importance is INA §215 which allows the President to promulgate regulations for alien departure and arrival. The President pursuant to Executive Order 13323 delegated his authority to promulgate these regulations to the Secretary of DHS. This delegation, and its result — the Secretary's new authority to promulgate regulations for the entry and exit of aliens — would likely correct any apparent deficiency in the authority cited by DHS. Still, the fact that DHS claims that it may collect additional biometric data as the deployment of more comprehensive technologies becomes feasible may raise questions as to whether these new requirements are truly consistent with §110's mandate that no new documentary or data collection requirements be imposed.

Possible Documentary Exemptions and Exceptions.[55] Under some circumstances not all the information required by US-VISIT must be submitted. For example, visa information may be omitted in the event a passenger is traveling pursuant to the VWP (though the VWP has its own requirements). Visa and/or passport requirements may be waived upon the joint determination of the Attorney General and the Secretary of State under 22 C.F.R. §41.2. Individuals from certain countries may also be exempt from providing a passport or visa under 8 C.F.R. 212.1.

With respect to biometrics, seventeen categories of individuals are exempt from providing this kind of information. Determining an exemption may become a highly complicated task for a potentially under-manned and untrained staff. While no particular nation is completely exempted from biometrics, there may be one exception that could provide the avenue for exempting very large numbers of aliens. Under 8 C.F.R. §235.1(d)(iv)(C), the Secretary of Homeland Security and the Secretary of State may jointly determine that a "class of aliens" are exempted from the biometric requirements. Though it is unclear from the regulations how broadly a "class of aliens" may be defined, case law demonstrates that the phrase has been

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[54] Ibid.

[55] For a fuller discussion on documentary exemptions and exceptions, see CRS Congressional Distribution Memorandum, *Waiving the Documentary Requirements for Visas and Passports to Enter the United States*, by Ruth Ellen Wasem and Andorra Bruno, Oct. 27, 2003.

accepted to include all aliens from certain nations.[56] Moreover, this exception could potentially lead to a listing of persons similar to the listed individuals who are already exempted from the visa and passport requirements under 22 C.F.R §41.2 and 8 C.F.R. 212.1.

Notwithstanding US-VISIT's formal regulations and guidelines, applicants may be processed in a manner different than anticipated due to a number of reasons, some of which may include national security concerns, emergencies, and travel delays. For example, DHS reserves the right to require identifying information from any individual whom it has reason to believe may not be who he or she claims or feels is not entitled to enter.[57] In addition, certain aliens whose presence in the United States warrants monitoring for national security reasons remain subject to the NSEERS special registration procedures.[58] Mitigation strategies — to speed-up the screening process — have also been developed by DHS in the event immigration and customs processing are hampered by significant delays.[59] The mitigation strategies have caused some controversy as some believe that if used, they could be a loophole for some foreign nationals to enter the United States.

US VISIT and Canadian and Mexican Nationals.[60] The Canadian government has expressed strong opposition to implementation of an automated entry and exit data system at northern ports of entry. Notwithstanding, Canadian citizens are exempt from some of the US-VISIT program requirements. For example, Canadian nationals and some Canadian landed immigrants are not required to present a passport, and are often not required to obtain a visa.[61] Moreover, Canadian nationals are generally not required to obtain an I-94 form if they are entering the United States temporarily for business or pleasure.[62] Canadians who enter the United States for purposes other than business or pleasure (e.g., employment, trade and

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[56] *Sale v. Haitian Ctrs*., Council, 509 U.S. 155 (1993) (upholding an executive order that directed the Coast Guard to intercept vessels illegally transporting passengers from Haiti to the United States and to return those passengers to Haiti without first determining whether they may qualify as refugees, partly on 8 U.S.C. §1182, which provides the President with the authority to suspend the entry of "any class of aliens").

[57] 69 *Federal Register* 468, 472.

[58] 8 C.F.R. 264.1(f).

[59] *See* 69 *Federal Register* 468, 474; see also Paul Sperry, "New Anti-terror Program Contains Hidden Loophole," *WorldNetDaily* (Jan. 8, 2004) (describing a DHS memorandum that requires the collection of biometrics be ceased, if processing wait times exceed one hour), available at [http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=36511].

[60] For a comparison of documentary requirements for Canadian and Mexican nationals to enter into the United States, see **Appendix V**.

[61] Section 212(d)(4) of the INA permits the Attorney General and the Secretary of State acting jointly to exempt certain foreign nationals from the documentary requirements to enter the United States. *See also* 22 U.S.C. §41.2 (allowing the Secretary of State and AG to waive Canadian nationals' visa and passport requirements if they have not visited outside the Western Hemisphere).

[62] 8 C.F.R. §235.1(f)(i) (exempting aliens described in 8 C.F.R. §212.1 and 22 C.F.R. §41.33 (Canadian Border Identification Crossing Card)).

diplomatic activities, etc.) are issued an I-94 form but may be able to omit their passport number and visa information from the I-94 pursuant to 8 C.F.R. §212.1, if they have not visited outside the Western Hemisphere.[63] Upon departure, the Canadian government collects the I-94 departure records for U.S. immigration officials.

With respect to biometrics, Canadians arriving at the designated air or sea port of entry must, in general, comply with the biometric requirements. However, those Canadian citizens who travel on temporary visits to the United States and who do not apply for admission pursuant to nonimmigrant visas do not have to supply the biometric information currently required by law.[64] Finally, manifests are not required from aircraft or vessels arriving directly from Canada. Accordingly, a Canadian citizen who is exempt from the passport and visa requirements under 8 C.F.R. §212.1, has arrived in the United States on an aircraft originating in Canada (i.e., no manifest required by vessel), and intends to travel temporarily in the United States without applying for admission pursuant to nonimmigrant visas (i.e., no biometrics required) is exempted from the documentation requirements of the US-VISIT program; however, such an individual would still be subject to routine inspection by federal officials at the border. It is not clear, however, what documents would be examined to verify Canadian citizenship.[65]

The Mexican government and some observers have long complained about the difference in treatment of its nationals at the border when compared to Canadian nationals. Mexican nationals applying for admission to the United States as visitors are required to obtain a visa or hold a Mexican Border Crossing Card, now referred to as the Mexican "laser visa" (for a comparison of the Mexican Laser Visa requirements with Canadian documentary requirements see Appendix IV).[66] The

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[63] See 68 *Federal Register* 292, 293 (citing 8 C.F.R. §212.1).

[64] 69 *Federal Register* 468, 472.

[65] A Data Management Improvement Act (DMIA) Task Force report published in January 2003 lists the following as acceptable documentation for entry into the United States:

- *Canadian citizens or British subjects with residence in Bermuda or Canada*– oral declaration and identification; or proof of citizenship and residence in Bermuda or Canada;
- *Canadian landed immigrant with British common nationality* — identification and proof of landed immigrant status; and
- *Canadian landed immigrant without British common nationality* — passport with nonimmigrant visa.

See DMIA Task Force First Annual Report to Congress, Dec. 2002. Appendix C of the DMIA Report lists those nationals that are considered to have *common nationality* with citizens of Britain.

[66] Although no longer called a border crossing card (BCC), the statutory authority for the laser visa derives in part from the provision in the Immigration and Nationality Act (INA) that defines "border crossing card":

> ... a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or to an immigration officer

(continued...)

laser visa is used by citizens of Mexico to gain short-term entry (up to six months) for business or tourism into the United States. It may be used for multiple entries and is good for ten years. Mexican citizens can get a laser visa from the Department of State (DOS) Bureau of Consular Affairs if they are otherwise admissible as B-1 (business) or B-2 (tourism) nonimmigrants.[67] It will not be clear what the full impact of US-VISIT will be on Mexican nationals until it is implemented at land ports of entry.

Under existing regulations, a biometric characteristic of a bearer of a laser visa must be matched against the biometric on the laser visa before the bearer may be admitted.[68] This requirement applies at all ports of entry, including land borders. If the individual intends to go 25 miles or further inland and/or stay longer than 72 hours, they are also required to obtain a Form I-94. Upon departure, Mexican nationals who had to complete an I-94 form are to deposit them into boxes at ports of entry.

Implementation Issues

In its most basic form US-VISIT is an automated entry and exit data system that tracks the arrival and departure of most foreign nationals to and from the United States. The 2001 terrorist attacks, however, have led many to view US-VISIT as more than a tracking system. Although not formally described as the following, some have pegged US-VISIT as a travel log, a mechanism to collect data, a risk assessment tool, a mechanism to reduce document fraud, and a terrorist and criminal watch list.

Many observers have expressed concern with the implementation of US-VISIT. Observers fear that the full implementation of US-VISIT will cause massive delays at U.S. ports of entry, primarily at land ports of entry. Some believe that the cost of implementing such a system would outweigh the benefits. Others expressed concern about the inadequacy of current infrastructure, and the lack of consensus with respect to the type of biometric technology that should be used in travel documents.[69] Many

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[66] (...continued)

> for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations ... (§101(a)(6))

The other key provision is §212(a)(7)(B)(i) of INA, which declares "any nonimmigrant not in possession of a passport valid for a minimum of six months and ... is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible." This provision makes the BCC an official document on par with the nonimmigrant visa to enter the United States.

[67] From 1992 to 1998, border crossing cards were also issued to Canadian citizens. DOS and the former Immigration and Naturalization Service ceased issuing the BCC and the combination B-1/B-2 visa and BCC to Canadian citizens, British subjects who reside in Canada and landed immigrants in 1988.

[68] See 8 C.F.R. §212.1(c)(3).

[69] NIST published a Report to Congress in January 2003 that contends that two fingerprints (continued...)

continue to question the purpose of such a system. Some argue that resources should be directed at immigration interior enforcement, rather than on an expensive system whose capability is not fully known.

Infrastructure and Facility Needs at the Border. Many maintain that the successful development of an automated entry and exit data system may require the United States and quite possibly its neighbors (Canada and Mexico) to expand infrastructure at land border crossings. The current infrastructure at most U.S. ports of entry reportedly is not sufficient to accommodate the demands of an automated entry and exit data system. For example, according to some observers, at many land ports of entry additional lanes may be necessary to accommodate the number of individuals seeking entry into the United States who will need to be processed through the system. Moreover, in order to record the departure of every alien leaving the United States through a land port entry, there needs to be a "port of exit" that has sufficient lanes, staff and resources. Additionally, the sending or receiving countries (i.e., Canada and Mexico) may not have the same number of lanes or the necessary infrastructure to create additional lanes that would accommodate the amount of traffic entering and leaving the country via a United States port of entry. Some contend that this could lead to significant delays as travelers try to make their way through ports of entry. Others assert that the cost of expanding the infrastructure would be great.

With respect to air and sea ports of entry, concerns similar to those about land ports of entry have been expressed. For example, securing adequate space and facilities may prove challenging at many air and sea ports of entry, particularly for the exit process. Moreover, in many instances passengers are inspected on board vessels because of inadequate or nonexistent inspection areas at sea ports of entry.

With respect to the northern border, many businesses as well as the Canadian government fear that the implementation of such a system would clog the border.[70] There have been reports that the Canadian government may introduce a plan that would have Canadian Customs officials collect exit information on non-citizens and pass it on to United States officials. Such a plan could further aid the United States in identifying non-citizens who may enter the country. Moreover, as the United States begins to implement the US-VISIT program, the demand for improved infrastructure may be critical for its development. It is unclear if Canada will facilitate such a system by extending its infrastructure at the relevant border crossings.

Interior Enforcement. One of the purposes of the US-VISIT program is to track nonimmigrants who overstay the terms of their visas. It is not clear if the Bureau of Immigration and Customs Enforcement (ICE) will have adequate resources to track down those who overstay their visas once the US-VISIT program is

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[69] (...continued)
and facial photograph are adequate biometrics.

[70] This fear may be unwarranted because under current law and DHS regulations, Canadian nationals and legal permanent residents of Canada would be exempt from the requirements of the US-VISIT program.

implemented. Many have argued that enforcement of immigration law within the interior of the country has lacked sufficient resources. Prior to the September 11, 2001 terrorist attacks, the Immigration and Nationalization Service (INS) had less than 2,000 immigration agents to enforce immigration laws within the United States; and during a 2002 hearing, the former INS Commissioner, James Ziglar, testified that the terrorist attacks prompted the INS to reassign many investigators to work on terrorism investigations.[71] Although that number has not changed since the terrorist attacks, the merging of the interior enforcement function of the former INS and the investigative arm of the U.S. Customs Service (Customs) within the Bureau of Immigration and Customs Enforcement (ICE) under the Directorate of Border and Transportation Security in the Department of Homeland Security (DHS) has brought the number of agents to over 5,500.[72]

Although the number of interior enforcement agents has doubled since the consolidation of the former INS and Customs, many continue to express concerns that the number is insufficient to adequately enforce immigration laws. Moreover, although the consolidation increased the number of interior enforcement agents, Customs needs to continue to carry out its interior enforcement missions of stemming the flow of illicit drugs and deterring money laundering, among other things. These critics argue that if the intent of the entry and exit system is to document nonimmigrants who overstay their visas, then more resources should be directed at interior enforcement and integrating existing immigration databases rather than on developing and implementing a new system.

Privacy Issues. The US-VISIT Program's Increment I Privacy Impact Assessment was made available to the public on December 18, 2003. Many observers stress the importance of having individual's privacy rights protected due to the potential for unauthorized use of personal information. While some observers maintain that current law[73] requires a privacy impact assessment *before* developing and purchasing new technology that will collect or store personal information electronically, the Administration maintains that it is using *existing* databases during the first phase of the program's implementation. Some observers, however, view the introduction of biometrics as evidence that the Administration is using new technology. The Administration published a privacy impact assessment prior to the actual implementation of the program. And, according to the National Institutes of Standards and Technology (NIST) in its report to Congress:

> ... the biometric data that the U.S. government would collect from foreign nationals ... disclose a limited amount of personal information ... and do not raise significant privacy concerns. Specifically, the personal information disclosed by the biometric data relates to the identity.... Facial photographs do not disclose information that the person does not routinely disclose to the general public, and

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[71] Testimony of INS Commissioner James Ziglar, in U.S. House, Committee on Appropriations, Subcommittee on Commerce, Justice, State and the Judiciary, hearing on the President's FY2003 Budget Request, Mar. 7, 2002.

[72] Michael Garcia, Director of the Bureau of Immigration and Customs Enforcement, July 23, 2003 speech at the Heritage Foundation.

[73] The E-Government Act of 2002 (P.L. 107-347).

> their use to verify identity obviously raises no serious privacy concerns. Moreover, fingerprints disclose very little other information about a person other than the person's identity. Accordingly, their use as a biometric does not raise the sorts of privacy concerns that might arise from the use of other biometrics that, in addition to verifying identity, could also conceivably disclose secondary (e.g., medical, health-related) information).[74]

Information Technology Interoperability. The USA PATRIOT Act called for the automated entry and exit data system to interface with federal law enforcement databases. It also called for the integration of IDENT and the Federal Bureau of Investigation's (FBI) Integrated Automated Fingerprint Identification System (IAFIS). Additionally, the USA PATRIOT Act along with the Border Security Act required the former INS to integrate all of its databases. Several GAO studies criticized the former INS for having antiquated databases and failing to integrate its system.[75] Reportedly, the Administration is currently using the IDENT system to capture two, flat fingerprints instead of 10 fingerprints. While the two fingerprint system is sufficient for identifying a person, some contend that two fingerprints may not be sufficient to return a match from the Federal Bureau of Investigation's ten fingerprint system.

Critical to the success of border security is the ability to process information in real time quickly enough to accommodate the pace and volume of work. Without information obtained in real time, there is a potential for a backlog to occur. The issue of making real time information available to the immigration inspectors processing foreign nationals seeking entry at U.S. ports of entry is highlighted at many of the nation's sea ports of entry. As previously mentioned, many inspections of travelers seeking entry into the United States at a sea port of entry occurs on board the vessel. Immigration inspectors use the Portable Automated Lookout System (PALS), which is a laptop computer that contains a CD-ROM that is updated monthly and contains lookout information on individuals who are deemed inadmissible to the United States. Although some may view this method as problematic, primarily due to the potential for the information to be outdated, sea vessels like their air carrier counterparts, are required under law to submit passenger manifests in advance to their arrival at a U.S. port of entry. Submitting the passenger information in advance of arrival, allows the immigration inspector to query real time databases.

Databases. While some observers question the ability of US-VISIT to carry out its mission, many agree that the program's usefulness will depend, in large part, on the quality and accuracy of the various watchlists that are integrated with the immigration databases that comprise US-VISIT. It is unclear, however, how many watchlists are included in US-VISIT and whether they are integrated.

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[74] U.S. Department of Justice, U.S. Department of State and NIST Report to Congress, Jan. 2003, *Use of Technology Standards and Interoperable Databases with Machine — Readable, Tamper — Resistant Travel Documents*.

[75] See for example a series of GAO reports: U.S. General Accounting Office, *INS: Overview of Recurring Management Challenges*, GAO Report 02-168T, Oct. 17, 2001 and *Securing America's Borders: INS Faces Information Technology Planning and Implementation Challenges*, GAO Report 02-148T, Oct. 11, 2001.

In addition to the first hand knowledge immigration inspectors must have, they also must be familiar with the numerous databases. Moreover, DOS and DHS use IDENT to store the biometrics for those foreign national travelers who are subject to the US-VISIT program requirements. Some contend that the IDENT database, which contains recidivism and lookout data on foreign nationals who have previously been apprehended, should not be used to store the biometrics of admissible foreign nationals. They argue that in addition to the number of databases that are accessed through the US-VISIT program, the inclusion of biometrics on inadmissible foreign nationals with those who are admissible in IDENT may confuse the inspector.

Training Needs and Resources. Prior to the transfer of immigration and customs functions to DHS, the agencies (INS and the U.S. Customs Service) cross-trained their inspectors to perform primary inspections. Upon referral to secondary inspections, however, a more experienced inspector with the designated agency would perform the inspection (i.e., an immigration matter would be referred to an immigration inspector and a customs matter would be referred to a customs inspector). Some have expressed concern that the discretion given to immigration inspectors and the complexity of immigration law requires substantial training. Moreover, inspectors must have knowledge of the various documents and databases that are used to determine admissibility. Inspectors at U.S. ports of entry must make an immediate determination that an undocumented alien, or someone who has questionable documents, should be excluded or detained for further processing by an immigration court.

Now that DHS has implemented its "one face at the border" initiative, some have questioned the adequacy of training that is provided to the non-immigration inspectors. Observers view the US-VISIT program as one more layer of technology that must be mastered by the immigration inspector. While some contend that the first increment of the program has not introduced new technology, others contend that inspectors who may not already be familiar with current immigration databases are now expected to be competent with the US-VISIT database.

Facilitation of Travel and Commerce. Many contend that programs such as NEXUS, the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) and the Free and Secure Trade (FAST) program that facilitate the speedy passage of low risk, frequent travelers and commerce are essential. The number of travelers who took advantage of automated inspections has risen over the recent years, peaking to 2.6 million in FY2002.[76] It is not clear how these programs will be incorporated into US-VISIT; and how participants of these programs will be vetted through the system.[77]

Feasibility of Implementation and Policy Questions. Many have questioned the feasibility of implementing the US-VISIT program. While many

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[76] Congressional Research Service analysis of the former Immigration and Naturalization Service workload data.

[77] For additional information on SENTRI and NEXUS, see CRS Report RS21335, *The Immigration and Naturalization Service's Port Passenger Accelerated Service System*, by Lisa M. Seghetti.

observers question the ability of the administration to meet the congressionally mandated time line, others question the financial burden of implementing such a system. Some contend that until the limits and capabilities of US-VISIT are determined, it will be difficult to assess its progress towards its mission. Proponents, however, point to the success stories that have been reported since the implementation of US-VISIT as providing proof that the program is achieving its mission.

Appendix I: Summary of Authority for Biometric Identifiers in Travel Documents

DHS maintains that the requirement that foreign nationals provide biometric identifiers when they seek admission to the United States is apparently supported by the Department's broad authority to inspect aliens contained in the Immigration and Nationality Act (INA) §235 (Inspection by Immigration Officers).[78] DHS also claims various other provisions in the INA support the use of biometric identifiers, including §212 (grounds of inadmissibility); §217 (requirements for the VWP); §231 (the electronic passenger manifest requirements); §237 (grounds of removability); and §286(q) in combination with INA §235 and §404 of the Border Security Act (authority for alternative inspection services).

DHS also cites INA §215 as a provision that can require foreign nationals to provide biometric identifiers when they seek admission to the U.S. Section 215(a) of the INA allows the President to regulate the arrival and departure of aliens. On January 2, 2004, however, President Bush signed an Executive Order titled *Assignment of Functions Relating to Arrivals in the Departures From the United States,* delegating his authority to promulgate regulations governing the departure of aliens to the Secretary of DHS.[79] In essence, under §215 and with this new delegation of authority, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has the authority to issue new rules and regulations which may require certain aliens to provide biometric identifiers.

This delegation became increasingly significant in light of the Interim Final Rule promulgated by DHS on January 5, 2004, which allows the Secretary of DHS to require certain aliens to provide finger prints, photographs, or other biometric identifiers upon arrival in or departure from certain air and sea ports in the U.S.[80] Initially, this rule only applies to nonimmigrant visa-holders who travel through the designated air and sea ports listed in DHS Regulations.[81]

In general, the Interim Final Rule amends portions of 8 C.F.R. §§ 214.1, 215.8, and 235.1 to include language for biometric requirements. For example, §235.1(d), which provides for the scope of the examination of persons applying for admission, was amended to provide the Secretary of DHS with the authority to now require finger prints, photographs or other biometric identifiers during the inspection process from nonimmigrant aliens seeking admission pursuant to nonimmigrant visas. In addition, under amended §235.1(d), the failure of an applicant for admission to comply with the biometric requirements may result in a determination of "inadmissibility" under INA 212(a)(7). Section 235.1 was also amended to exclude a number of categories of travelers. Section §235.1(f) was amended to clarify that

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[78] See 69 *Federal Register* 468, 469.

[79] Exec. Order No. 13323; 69 *Federal Register* 241 (Jan. 2, 2004).

[80] 69 *Federal Register* 468.

[81] Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System, 69 *Federal Register* 482 (Jan. 5, 2004).

all nonimmigrant aliens will be issued the Form I-94, Arrival Departure Record, regardless of whether they come through air, sea, or land ports of entry (unless otherwise exempted).

Under amended §214.1(a), which addresses requirements for admission, extension, and maintenance of status, an alien's admission is now conditioned on compliance with the entry-exit examination process described by 8 C.F.R. §235.1, if applicable to the nonimmigrant alien. Furthermore, if the alien is required to provide biometrics and other information upon departure pursuant to 8 C.F.R. 215.8, the nonimmigrant alien's failure to comply may constitute a failure of the alien to maintain the terms of his or her immigration status.

8 C.F.R. §215.8 was created to provide the Secretary of Homeland Security the right to establish pilot programs at up to 15 air or sea ports of entry (to be designated through further notice in the *Federal Register*), through which the Secretary may require aliens who are *departing* from the United States from those ports to provide fingerprints, photographs, or other biometric identifiers. DHS published a regulation on August 3, 2004, to extend the departure capability of US-VISIT to 15 air and seaports.[82]

[82] 69 *Federal Register* 51695

Appendix II: Electronic Manifest Requirements

Contents of electronic arrival/departure manifests (INA §231(c))	Electronic data transmission requirements under the Visa Waiver Program (8 C.F.R. §217.7)
Complete name	Complete name
Date of birth	Date of birth
Citizenship	Nationality
Sex	Gender or sex
Passport number and country of issuance	Document number
Country of residence	Country of document issuance
U.S. visa number, date, and place of issuance, where applicable	Document type (passport, visa, alien registration card)
Alien registration number, where applicable	Airline International Air Transport Association (IATA) carrier code or vessel
U.S. address while in the U.S.	Contact name and number
Such other information the Secretary, in consultation with the Secretary of State and the Secretary of the Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.	
	Date and time of scheduled flight or vessel departure from the U.S.
	Port of arrival
	Port of departure
	Airline flight number, or tail number for private or corporate aircraft
	Traveler status (passenger, crewmember)

Appendix III: Visa Holders That Are Exempt from the Fingerprinting and Photographing Requirements Under DHS Interim Final Rule, January 2004[83]

Exempt category	Explanation of category
A-1	Diplomatic or Consular officers, close relatives
A-2	Other foreign government officials or Employees, close relatives
C-3[a]	In Transit-foreign government officials, close relatives
G-1	Principal recognized foreign government representative to an international organization, staff, spouse, and children
G-2	Other recognized foreign government representative to an international organization, staff and close relatives
G-3	Nonrecognized foreign government representative to an international organization, and close relatives
G-4	International organization officers or employees and close relatives
NATO-1	Principal permanent representative to NATO and staff, spouses and children
NATO-2	Other representative to NATO and staff, spouses and children
NATO-3	Official clerical staff accompanying NATO representatives, spouses and children
NATO-4	"Officials" of NATO, spouses and children
NATO-5	NATO experts, spouses and children
NATO-6[b]	NATO civilians, spouses and children
Children under the age of 14	
Persons over the age of 79	
Classes of aliens the Secretary of DHS and Secretary of State jointly determine shall be exempt	
An individual alien the Secretary of DHS, the Secretary of State, or the Director of CIA determines shall be exempt	

a. Except for attendants, servants, or personal employees of accredited officials.

b. Exemptions for categories A-1 and 2, C-3, G-1 to 4 and NATO-1 to 6, will not be provided if the Secretary of State and the Secretary of DHS jointly determine that a class of such aliens should be subject to the biometric identifier requirements.

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[83] 8 C.F.R. §235.1(d)(iv).

Appendix IV: Comparison of Current Law Deadlines and the Administration's Implementation

Provision of the law	Provision	Current law deadline	Implementation
§403(c)(1) *Technology Standard (Biometrics)* P.L. 107-56[a]; §202(a)(4) P.L. 107-173[b] §202(a)(4) and §302(a)(b)	Requires the development and certification of a technology standard that can be used to verify the identity of persons seeking a visa to enter the United States.	October 26, 2003; however, P.L. 107-173 set a January 26, 2003 deadline.	The National Institute of Science and Technology (NIST) published a Report to Congress in January 2003 that determined the types of biometrics that should be used.[c] The Administration published an Interim Final Rule that amends portions of 8C.F.R. §214.1, 215.8 and 235.1.
§403(c)(2) *Technology Standard (Biometrics)* P.L. 107-56[a]	Requires the technology standard that is developed to be a "cross-agency, cross-platform electronic system" that is fully integrated with law enforcement and intelligence information relevant to confirming the identity of persons applying for a visa to enter the U.S. or seeking entry into the country.	October 26, 2003	See above
§403(c)(4) *Technology Standard: Report*ing *Requirement (Biometrics)* P.L. 107-56[a]	Requires a report that describes the development, implementation, efficacy and privacy implications of the technology standard and database system.	April 26, 2003 (18 months after enactment of the act, thereafter every two years)	See NIST's Report to Congress, published in January 2003.[c]

Provision of the law	Provision	Current law deadline	Implementation
§414(b) *Entry/Exit Data System: Visa Requirements* P.L. 107-56[a]; §303(b)(1) P.L. 107-173[b]	With respect to developing an integrated entry/exit data system, requires the issuance of visas with biometric identifiers that are tamper-resistant.	October 26, 2004 (per P.L. 107-173)	See 69 *Federal Register* 468
§414(c) *Entry/Exit Data System* P.L. 107-56[a]	Requires the entry/exit data system interface with federal law enforcement databases.	None specified	The Administration maintains that the US-VISIT program includes the interfacing, enhancement and deployment of existing system capabilities.
§303(a) *Machine Readable Visas and Travel Documents: Reporting Requirement* P.L. 107-173[b]	Requires a report to Congress on the assessment of actions necessary to fully achieve the implementation of biometric identifiable, machine-readable, tamper-resistant visas and other travel documents, and the installation of equipment and software at all U.S. ports of entry that reads and authenticates the biometric identifiable documents by 10/26/04.	November 14, 2002 (180 days after enactment)	See NIST report referenced above
§303(b)(2) *Visa Requirements* P.L. 107-173[b]	Requires the installation of biometric data readers and scanners at all ports of entry.	October 26, 2004	Deadline has not passed.
§402(a)(e) *Electronic Passenger Manifest* P.L. 107-173[b]	Requires the transmission of an electronic arrival and departure manifest to an immigration officer for all commercial vessels or aircraft bringing passengers to or from the U.S.	January 1, 2003	8 C.F.R. §231.2

Source: CRS summary of selected provisions in P.L. 107-56 and P.L. 107-173.

a. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act OF 2001.

b. The Enhanced Border Security and Visa Entry Reform Act of 2002.

c. U.S. Department of Justice, U.S. Department of State and NIST Report to Congress, Jan. 2003, Use of Technology Standards and Interoperable Databases with Machine-Readable, Tamper -Resistant Travel Documents.

Appendix V: Comparison of the Mexican Laser Visa Requirements with Canadian Documentary Requirements

Agency	Mexican border crossing card	Canadian border crossing card
DOS	22 CFR 41.32 **Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visas** "Consular officers assigned to a consular office in Mexico ... may issue a border crossing identification card ... in combination with a B-1/B-2 nonimmigrant visitor visa (B-1/B-2 Visa/BCC), to a nonimmigrant alien who is a citizen and resident of Mexico; seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15((B) **for periods of stay not exceeding six months**; and is otherwise eligible for a B-1 or B-2 temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which waiver is valid for multiple applications for admission into the United States and for a period of at least ten years and which contains no restriction as to extensions of temporary stay or itinerary."	22 CFR 41.33 **Nonresident alien Canadian border crossing identification card (BCC)** ***No longer in effect***.
DHS	8 CFR 212.6 **Border crossing identification cards** "(a) *Application for Form DSP-150, B-1/B-2 Visa and Border Crossing Card, issued by DOS*. A citizen of Mexico, who seeks to travel temporarily to the United States for business or pleasure without a visa and passport, must apply to DOS ..."	8 CFR 212.6(b) **Border crossing identification cards** ***No longer in effect***.
DHS	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1) Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States shall be issued ... a Form I-94 as evidence of the terms of admission. A Form I-94 issued at a land border port-of-entry shall be considered issued for multiple entries unless specifically annotated for a limited number of entries ..."	No similar regulation
DHS	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1)(iii) ... Form I-94 is not required by... any Mexican national who is ... in possession of a Form DSP — 150, B-1/B-2 Visa and BCC, containing a machine-readable biometric identifier, issued by DOS and is applying for admission as a temporary visitor for business or pleasure from contiguous territory" (see CFR 212.1(c)(i)).	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1)(i) ... Form I-94 is not required by citizens of Canada" (*see 8 CFR 212.1(a)*) who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States."

Agency	Mexican border crossing card	Canadian border crossing card
DHS	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1)(iii) ... Form I-94 is not required by ... any Mexican national who is ... entering soley for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border" (see CFR 212.1(c)(ii)).	No similar regulation
DHS	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1)(iii) ... Form I-94 is not required by ... any Mexican national who is in possession of a passport and valid visa who is admitted as a nonimmigrant visitor for a period not to exceed 72 hours to visit within 25 miles of the border."	No similar regulation
DHS	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1)(iv) ... Form I-94 is not required by ... bearers of Mexican diplomatic or official passports ..."	No similar regulation
DHS	8 CFR 235.1(f) **Form I-94, Arrival Departure Record** "(1)(iii) ... Form I-94 is not required by ... any Mexican national who is exempt from a visa and passport ... or is in possession of a passport and valid visa who is admitted as a nonimmigrant visitor at the Mexican border Port of entries in the state of Arizona at Sasabe, Nogales, Mariposa, Naco, or Douglas for a period not to exceed 72 hours to visit within the state of Arizona and within 75 miles of the border."	No similar regulation

Source: CRS presentation of selected DHS regulations.