

Working Group on Expanding the Biometric Age Range

March 1, 2011



U.S. DEPARTMENT OF
HOMELAND SECURITY

Purpose of the Working Group

- This working group is to support a possible change in DHS Policy concerning the collection of biometrics from individuals entering at the U.S. ports of entry. Such a change would impact US-VISIT, CBP, and DHS Policy.
- This working group will only make such a recommendation if there is sufficient interest to do so.
- The purpose of such a change would be to ensure biometric collection at the ports of entry fully supports or compliments other existing or planned biometric uses.
- This working group does not seek to change the operations or policies of other agencies.

Known Mission Needs

Some agencies are already operating biometric collection under 14 or over 79 and could benefit from expanded collection at the ports of entry.

- At certain consular posts in Mexico, the Department of State is collecting biometrics under 14 years. *-r7 DOS has been since 1998*
- CBP is planning to collect biometrics from children under 14 for their Global Enrollment System trusted traveler program.

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Review of Authorities

(b)(6), (b)(7)c

DHS OGC/NPPD/US-VISIT



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Regulations for Biometrics Upon Entry

- **8 C.F.R. § 214.1 – Requirements for admission**
 - Admission “conditioned on compliance with any inspection requirement in § 235.1(f)”

- **8 C.F.R. § 235.1 – Scope of inspection**
 - (f)(1)(ii): DHS Secretary may require any non-exempt alien “to provide fingerprints, photograph(s) or other specified biometric identifiers” to determine admissibility
 - (f)(1)(iv)(A): “Aliens younger than 14 or older than 79 on [the] date of admission” are exempt



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Relevant Rulemaking

- **January 5, 2004 Interim final rule**
 - Aliens to submit biometrics on entry at air and sea ports
- **August 31, 2004 Interim rule**
 - Expanded to Visa Waiver Program participants
 - Expanded to certain land border ports. *SO most highly trafficked*
- **December 19, 2008 Final rule** *DHS Rule*
 - Further expanded alien populations subject to US-VISIT - *inc LPRs*



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Two Categories of Statutory Authority

- **Specific statutes requiring (biometric) entry/exit**
 - Immigration and Naturalization Service Data Management Improvement Act (DMIA) of 2000
 - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001
 - Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002
- **Other statutes regulating admission/travel of aliens**
 - INA § 214 – Admission of nonimmigrants
 - INA § 215 – Travel control of citizens and aliens
 - INA § 235 – Inspection by immigration officers



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Mandate for Entry/Exit

- **Section 2 of the DMIA of 2000** - amended IRIRA; biometrics not mentioned
 - Entry/exit system must integrate all arrival/departure data
- **Section 414 of the USA PATRIOT Act of 2001**
 - Develop and certify biometric technology standard
- **Section 302 of the EBSVERA of 2002**
 - Entry/exit system must use biometric standards certified pursuant to the USA PATRIOT Act

- IRPA?
- 9/11 rules implemented } post-dated regulations



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Regulating Admission/Travel of Aliens

- **INA § 214 – Admission of nonimmigrants**
 - Admission of aliens “under such conditions as the Attorney General may by regulations prescribe”
- **INA § 215 – Travel control of citizens and aliens**
 - Aliens must enter/depart subject to “rules, regulations and orders” prescribed by the President
 - E.O. 13323: Functions for noncitizens assigned to S1
- **INA § 235 – Inspection by immigration officers**
 - Broad authority to inspect aliens



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ina 214 - don't mandate 14-79 age range