

**Comments on the Interim Final Rule of US-VISIT Program
by the GOVERNMENT OF JAPAN**

The Government of Japan pays its respect to the Government of the United States for its efforts made in formulating the United States Visitors and Immigrants Status Indicator Technology (US-VISIT) Program, and welcomes the opportunity offered by the U.S. Government to file the following comments on the proposed Interim Final Rule on the Program upon its publication.

The Government of Japan has been exchanging views, in a variety of fora, with the U.S. Government on issues as regards effective immigration control and counterterrorism measures as well as securing smooth distribution of goods and movement of natural persons. As a result, the Government of Japan has deepened its understanding on the details and necessity of U.S. measures for the security of its territory. It also believes that the U.S. Government has understood the points made by Japan on how to let counterterrorism measures and economic efficiency coexist.

There are still some parts in the proposed Interim Final Rule whose details, policy intentions and necessity have not been articulated well. The Government of Japan is of the view that clarifying these parts will be essential to relieve foreign travelers entering the U.S. of anxiety caused by their biometric information being collected by U.S. authorities, and that such clarification will contribute to the further deepening of mutual understandings on counterterrorism measures between the two Governments. Based upon this recognition, the Government of Japan files the following comments.

1. General Comments

- (1) Following the US-VISIT Program, the U.S. Government is introducing entry visas equipped with biometric information of the holders, while the U.S. and many other countries are now considering the issuance of passports with biometric identifiers. The Government of Japan believes that strict control of personal information and minimization of visitors' mental stress are prerequisite in implementing all these new measures. The U.S. Government is therefore requested to take sufficient time to elaborate setups necessary for the protection of personal information and to publicize their details to the largest extent possible to visitors to the U.S.
- (2) Most visitors seem to doubt the necessity of the US-VISIT Program as currently only the U.S. has introduced such a rigid immigration control measure. While the Government of Japan understands that the introduction of precise and effective measures for immigration control by use of biometric information has been becoming a world trend, the U.S. should also explain the rationale behind the rigid measures to the visitors as a forerunner in this area. The U.S. Government is also requested to publicize the fact that it has implemented a series of new border control measures while holding close exchange of opinions and information with foreign countries including Japan.

- (3) The implementing guidelines of the US-VISIT Program proposed in the Interim Final Rule includes some exemptions: the Program is not applied to the visitors whose countries of nationalities are under the Visa Waiver Program (VWP), whereas the measures are waived for the holders of certain categories of visas. The Government of Japan anticipates that immigration officers become well experienced with the implementation of the Program as soon as possible to avoid its misapplication, such as the collection of biometric information from visitors who are not under or waived from the Program, without any definite reasons but only by the mistake of immigration officers.
- (4) There have been annually as many as 100,000 applications for U.S. visas in Japan. The Government of Japan requests the U.S. Government to further improve public information in Japanese by the U.S. Embassy and Consulates-General in Japan so that these many Japanese nationals visiting the U.S. with visas could obtain detailed knowledge on the US-VISIT Program before their journey to the U.S. The U.S. Embassy in Tokyo has already uploaded Japanese translations of brochures and fact sheets on the Program made by the Department of Homeland Security. In addition to this, it is also recommended to narrow such information down to the scope that is essential for the Japanese nationals. For example, it is more useful and appropriate for the interest of the Japanese nationals to be able to know more clearly that the US-VISIT Program is NOT applied to more than 90 percent of Japanese visitors to the U.S., namely short-term visitors for tourism and business who enter the U.S. under the VWP.

2. Specific Comments on the Proposed Rule

(Page and column numbers in parentheses refer to related parts of the Federal Register)

- (1) The Interim Final Rule indicates that the U.S. will eventually control immigration thoroughly by use of biometric information. It also articulates in fact that the U.S. will identify most of the foreign visitors based on biometric identifiers. The Government of Japan would like to confirm if the U.S. Government intends to collect biometric information ultimately from every visitor at port of entry.
(p470, column 2 and p471, column 1)
- (2) The Interim Final Rule states that fingerprints and facial information are “less intrusive” as biometric information to be collected by the U.S. immigration authority. The Government of Japan, however, would like to point out that a substantially large number of visitors perceive it “intrusive” to have their fingerprints collected, and request the Department of Homeland Security to take full note of this point.
(p471, column 2)
- (3) The Interim Final Rule provides that, as technology develops, the Department of Homeland Security “may collect additional biometric data.” The Government of Japan would like to confirm if there is any possibility that the development of technology allows fingerprints NOT to be collected for the purpose of identification at border control.
(p471, column 2)
- (4) The Interim Rule accommodates the possibility to identify visitors by another identifier who can not provide clear fingerprints, for example persons with disabilities. The Government of Japan

would like to specifically confirm which identifier could be accepted in such cases, or if the U.S. immigration authority uses only facial information. The U.S. Government is requested to explain and publicize to the detail on what sort of alternatives are available at ports of entry.

(p471, column 3)

- (5) The Department of Homeland Security announced on October 28, 2003 that land entry points will also be equipped with biometric-based immigration control system. The Interim Final Rule, however, provides that the US-VISIT Program does not apply to foreign visitors entering through land ports of entry. The relation between these two announcements is not clear, and therefore the Government of Japan requests the U.S. Government to specify how the immigration control at land ports of entry will be elaborated in future.

(p472, column 2)

- (6) The Interim Final Rule estimates that each visitor to whom the US-VISIT Program is applied will need an average of 15 seconds to provide biometric information, based upon the pilot implementation of the Program at Atlanta Hartsfield International Airport. The Government of Japan has been informed by its overseas establishments in the U.S. that at some airports waiting time for passport control has become longer than before the introduction of the US-VISIT Program, while this is not the case in others. It is also reported that at certain airports even the visitors entering the U.S. under the VWP should wait for a longer time than before and, as a consequence, missed connecting flights, due to the fact that both visitors who are in the scope of the Program (visa holders) and those not (VWP visitors) lined in the same lane.

The Government of Japan therefore requests the U.S. Government to improve the implementation of the US-VISIT Program so that the VWP visitors would not be obliged to wait for a longer time than before for immigration control. As the Interim Final Rule itself suggests, authorities should establish exclusive immigration lanes for the VWP visitors, particularly at the airports or operating time zones that are busy with flights from non-VWP countries. The U.S. Government is also requested to recalculate standard transfer times of individual airports in future, taking the effects of the US-VISIT Program into consideration, and publicize the results to U.S. and foreign airlines and travel agents.

(p474, column 2)

- (7) The Interim Final Rule lists the categories of those authorized to access to the US-VISIT database. The Government of Japan requests the U.S. Government to disclose specific information to the largest extent possible on how rigidly their access right is controlled and how to prevent improper use of information by them. It will be critically important to alleviate concern of the visitors whose biometric information is collected. Also, the Government of Japan requests the U.S. Government to fully provide related information to the former on these points, which will contribute to enhancing bilateral cooperation between the U.S. and Japanese Governments on counterterrorism.

(p475, columns 2 and 3)

- (8) The Department of Homeland Security states in the Interim Final Rule that it is regarded as unnecessary and against U.S. citizens' will to refrain from commencing the US-VISIT Program until the comment period on the proposed rule finishes, and thus started implementing the Program on the same day of the publication of the Interim Final Rule on the Federal Register. The

Government of Japan, however, assumes it natural that the basic framework of the Program i.e. the collection of biometric information from visa-holding visitors at major air and sea ports of entry, has been under consideration for a substantially long period of time, and the Department could have publicized and invited comments on the basic idea of the measures at a certain point of time in this course. It is regrettable that the Government of Japan has not been provided any occasion to file comments to the U.S Government on which types of biometric information should be collected from visitors under the Rule. The Government of Japan therefore requests the U.S. Government to articulate the reason why the Department was not able to publicize the proposed rule on the Federal Register on, for example, October 28, 2003 when Undersecretary of Homeland Security Mr. Hutchingson announced the framework of the US-VISIT Program.

(p476, column 3)

- (9) Besides the specific points of the Interim Final Rule, Japanese overseas establishments in the U.S. have reported to the capital that the following cases have happened since the inception of the US-VISIT Program on January 5. The Government of Japan requests the U.S. Government to take appropriate measures for these problems as well.
 - (a) Most visitors who enter the U.S. under the VWP (short-term visitors for tourism and business), including Japan, may not be familiar with the details of the US-VISIT Program, which is not applied to themselves. Due to this, some visa-holding Japanese visitors who entered the U.S. after the inception of the Program pointed out that they were curiously stared at by the VWP visitors at immigration control. The Government of Japan therefore requests the U.S. Government to take adequate measures to inform those to whom the Program is not applied as well of the contents of the Program in a concise and precise manner, so that they could know that people who are providing fingerprints at immigration control are not at all treated as suspicious people. It will not only help visa-holding visitors reduce their mental stress caused by having their fingerprints scanned in public, but also prevent their perception of the measures from being transformed negatively.
 - (b) It has been also reported that there cases in which those exempted from the US-VISIT Program were instructed to provide their biometric information at airports, namely green card holders and A-type visa holders. While such misapplication of the Program is expected to reduce in number as the immigration officers become experienced with the measures, the Government of Japan requests the Department of Homeland Security to continuously be informed of whether the Program is implemented correctly at individual ports of entry, and to improve the situations whenever and wherever necessary.
 - (c) Some Japanese visitors to whom the US-VISIT Program is applied had taken it for granted that the related measures could be simplified for respective visitors at their second or later entrance to the U.S. after January 5. The Government of Japan requests the U.S. Government to consider the possibility, in course of further expansion of immigration control by use of biometric identifiers, to collect certain biometric information from those who enter the U.S. only at the first entrance, and then to simplify the measures from the second time onwards. As a measure for the time being, on the other hand, it is appropriate to clearly publicize that those under the Program are required to provide two kinds of biometric information every time they enter the U.S.