

VISA WAIVER PROGRAM IMPROVEMENT ACT OF 2015

DECEMBER 7, 2015.—Ordered to be printed

Mr. MCCAUL, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 158]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 158) to clarify the grounds for ineligibility for travel to the United States regarding terrorism risk, to expand the criteria by which a country may be removed from the Visa Waiver Program, to require the Secretary of Homeland Security to submit a report on strengthening the Electronic System for Travel Authorization to better secure the international borders of the United States and prevent terrorists and instruments of terrorism from entering the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Visa Waiver Program Improvement Act of 2015”.

SEC. 2. GROUNDS FOR INELIGIBILITY FOR TRAVEL TO THE UNITED STATES; REPORTS ON LAW ENFORCEMENT AND SECURITY INTERESTS; CONTINUING QUALIFICATION AND DESIGNATION TERMINATIONS; REPORT ON STRENGTHENING THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION.

(a) **GROUNDS FOR INELIGIBILITY FOR TRAVEL TO THE UNITED STATES; PERIOD OF VALIDITY.**—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in subsection (a)(11), by inserting “, including terrorism risk,” after “security risk”; and

(2) in subsection (h)(3)—

(A) in subparagraph (A), by inserting “, including terrorism risk,” after “security risk”;

(B) in subparagraph (C)(i), in the second sentence, by inserting before the period at the end the following: “, or, if the Secretary determines that such is appropriate, may limit such period of eligibility”; and

(C) by adding at the end the following new subparagraph:

“(E) **ADDITIONAL REPORTS.**—

“(i) **REPORTS ON CERTAIN LIMITATIONS ON TRAVEL.**—Not later than 30 days after the date of the enactment of this subparagraph and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a report on the number of individuals, identified by their countries of citizenship or nationality, who were denied eligibility to travel under the System or whose eligibility for such travel was revoked during the previous year and the number of such individuals determined, in accordance with subsection (a)(6), to represent a threat to the security of the United States.

“(ii) **REPORTS ON CERTAIN THREAT ASSESSMENTS.**—Beginning with the first report under clause (i) of subsection (c)(5)(A) that is submitted after the date of the enactment of this subparagraph and periodically thereafter (together with subsequent reports submitted under such clause (i)), the Secretary of Homeland Security, in consultation with the Director of National Intelligence, shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a report that contains a threat assessment regarding the compliance of foreign governments with the agreements described in subparagraphs (D) and (F) of subsection (c)(2), including the sharing of information about individuals with travel patterns that may pose concern to the security of the United States and the capacity to collect such information.”

(b) **REPORTS ON LAW ENFORCEMENT AND SECURITY INTERESTS; CONTINUING QUALIFICATION AND DESIGNATION TERMINATIONS.**—Subsection (c) of section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in paragraph (2)(C)(iii)—

(A) by striking “and the Committee on International Relations” and inserting “, the Committee on Foreign Affairs, and the Committee on Homeland Security”; and

(B) by striking “and the Committee on Foreign Relations” and inserting “, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs”; and

(2) in paragraph (5)—

(A) in subparagraph (A)(i)—

(i) in subclause (III), by striking “and” at the end;

(ii) in subclause (IV), by striking the period at the end and inserting “; and”; and

(iii) by adding after subclause (IV) the following new subclause:

“(V) shall submit to Congress a report regarding the security parameters described in paragraph (9).⁵”, and

(B) in subparagraph (B), by adding at the end the following new clauses:

“(v) ADDITIONAL PROGRAM SUSPENSION AUTHORITY.—If the Secretary of Homeland Security, in consultation with the Secretary of State, determines that a country participating in the visa waiver program has failed to comply with an agreement under subparagraph (F) of paragraph (2), the Secretary of Homeland Security—

“(I) may suspend a country from the visa waiver program without prior notice;

“(II) shall notify any country suspended under subclause (I) and provide justification for the suspension; and

“(III) shall restore the suspended country’s participation in the visa waiver program upon a determination that the country is in compliance with the agreement at issue.

“(vi) NOTIFICATION TO CONGRESS.—In the case of any country being suspended as a visa waiver program country pursuant to the authority provided under clause (v), the Secretary of Homeland Security shall provide timely notification to the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Foreign Affairs of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Foreign Relations of the Senate of such suspension.”.

(c) CLERICAL AMENDMENTS.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in paragraph (11) of subsection (a)—

(A) in the heading, by striking “ELECTRONIC TRAVEL AUTHORIZATION SYSTEM” and inserting “ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION”; and

(B) by striking “electronic travel authorization system” and inserting “electronic system for travel authorization”;

(2) in subsection (c)—

(A) in subclause (IV) of paragraph (5)(A)(i), by striking “electronic travel authorization system” and inserting “electronic system for travel authorization”; and

(B) in clause (i) of paragraph (8)(A), by striking “electronic travel authorization system” each place it appears and inserting “electronic system for travel authorization”; and

(3) in paragraph (3) of subsection (h)—

(A) in the heading, by striking “ELECTRONIC TRAVEL AUTHORIZATION SYSTEM” and inserting “ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION”; and

(B) in subparagraph (A), by striking “electronic travel authorization system” and inserting “electronic system for travel authorization”.

(d) REPORT ON STRENGTHENING THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Foreign Affairs of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Foreign Relations of the Senate a report on steps to strengthen the automated electronic travel authorization system (commonly referred to as the “Electronic System for Travel Authorization”) under paragraph (3) of section 217(h) of the Immigration and Nationality Act (8 U.S.C. 1187(h)) to better secure the international borders of the United States and prevent terrorists and instruments of terrorism from entering the United States.

(e) TIME FOR REPORT.—The first report required under subclause (V) of section 217(c)(5)(A)(i) of the Immigration and Nationality Act (as added by subsection (b)(2)(A)(iii) of this section) shall be submitted at the same time the next report required under subclause (IV) of such section 217(c)(5)(A)(i) is submitted after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 158 takes steps to address potential security gaps in the Visa Waiver Program (VWP) in light of concerns raised about terrorists attempting to use visa-free travel to enter the United States. Specifically, H.R. 158 grants the Secretary of Homeland Security the authority to temporarily suspend a VWP country from the program, if such country fails to live up to its agreement to pro-

vide terrorism-related information, and requires notification to relevant congressional committees of such suspension.

The bill further requires the Department to provide the Committee with the number of individuals, identified by country, whose applications to travel under the Visa Waiver Program were denied or whose eligibility to travel was revoked, and the number whose applications were denied or revoked based on a determination that he or she was a threat to the security of the United States. The legislation also requires the Department to provide an assessment of how well VWP countries are adhering to their commitment to share Passenger Name Record data, Lost and Stolen Passport reports, and information about individuals whose travel patterns may pose a security concern to the U.S. Finally, it requires the Department to report to the Committee on steps that can be taken to improve the information provided through Electronic System Travel Authorization (ESTA) process.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 158 clarifies in statute that, in a post-9/11 world, the purpose of the VWP has evolved from a program solely for travel facilitation to a counterterrorism and national security program. In current statute, the Secretary does not have the authority to temporarily suspend a VWP country from the program if the country fails to adhere to the terms of the agreement to provide terrorism related information. The ability for the Secretary to temporarily suspend a country from the program will allow the Secretary to hold countries accountable without permanently removing them from the program. A primary national security component of the VWP is the Electronic System for Travel Authorization, or "ESTA". The ESTA is the online application that travelers from VWP countries are required to complete. Once their ESTA is approved, they may travel to the United States without a visa.

HEARINGS

No hearings were held on H.R. 158.

COMMITTEE CONSIDERATION

The Committee met on June 23, 2015, to consider H.R. 158, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MRS. MILLER of Michigan (#1); was AGREED TO, amended, by voice vote.

An amendment to the Amendment in the Nature of a Substitute offered by MR. VELA to the Amendment in the Nature of a Substitute (#1A); was AGREED TO by voice vote.

Page 4, line 2, insert before the first period the following: " , including the sharing of information about individuals with travel patterns that may pose concern to the security of the United States and the capacity to collect such information".

An en bloc amendment to the Amendment in the Nature of a Substitute offered by MRS. TORRES (#1B); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 3, line 3, strike “if such individual was” and insert “and the number of such individuals”.

Page 5, line 8, strike “clause” and insert “clauses”.

Page 6, line 5, strike the closing quotes and the second period.

Page 6, beginning line 6, insert the following new clause entitled “(vi) Notification to Congress.”

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 158.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 158, the Visa Waiver Program Improvement Act of 2015, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2015.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 158, the Visa Waiver Program Improvement Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

ROBERT A. SUNSHINE
(For Keith Hall, Director.)

Enclosure.

H.R. 158—Visa Waiver Program Improvement Act of 2015

H.R. 158 would make administrative changes to the visa waiver program, under which citizens of certain countries may visit the United States temporarily without a visa, and would require the Department of Homeland Security to prepare several reports to the

Congress on national security issues affected by the visa waiver program.

Based on the costs of similar reports, CBO estimates that implementing H.R. 158 would cost about \$1 million in 2016 and less than \$500,000 annually thereafter, assuming appropriation of the necessary funds. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.R. 158 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 158 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The general performance goals and objectives of H.R. 158 are to improve and strengthen the Visa Wavier Program to prevent terrorists from entering the United States.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 158 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 158 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 158 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that bill may be cited as the “Visa Waiver Program Improvement Act of 2015”.

Section 2. Grounds for ineligibility for travel to the United States; reports on law enforcement and security interests; continuing qualification and designation terminations; report on strengthening the electronic system for travel authorization..

Subsection (a) Grounds for Ineligibility for Travel to the United States; Period of Validity.

This subsection clarifies in statute that the purpose of the Visa Waiver Program (VWP) is primarily a counterterrorism and national security program. After 9/11, several changes were made to the law to transform what was once solely a trade and travel facilitation program into a strong national security program that plays a significant role in keeping terrorists and other inadmissible individuals out of the country.

Subsection (a) also places two reporting requirements on the Department of Homeland Security (DHS). First, DHS must provide the relevant committees with the number of individuals, identified by country, whose application to travel under the VWP was denied or whose eligibility to travel was revoked, and the number that were denied or revoked based on a determination that he or she was a threat to the security of the United States. Second, DHS must provide the relevant committees with an assessment of how well VWP countries are complying with agreements to share Passenger Name Record data, Lost and Stolen Passport reports, and information about individuals whose travel patterns may pose a security concern to the U.S.

The Committee acknowledges the importance of the VWP for travel facilitation. However, threats against our nation continue to evolve, including the threat of foreign fighters with passports from VWP nations. The Committee believes that the VWP is an essential national security program and should be revised as necessary to meet changing threats.

Subsection (b) Reports on Law Enforcement and Security Interests; Continuing Qualification and Designation Terminations.

This subsection grants the Secretary of Homeland Security the authority to suspend a VWP country from the program if that country fails to fulfill its agreement to provide terrorism-related information to the U.S. in a timely manner. It also requires the relevant Committees be notified of any such suspension.

While the Secretary currently has the authority to terminate a country's participation in the VWP, this provision would allow the Secretary to suspend a VWP country for noncompliance, should it become necessary, until compliance is achieved.

The Committee is concerned that vital terrorism data has been withheld from DHS and the intelligence community by some visa waiver nations. Recent reports indicate that in the wake of high profile terror attacks overseas, VWP nations have shared information on many individuals of concern. Several of those individuals were not known to DHS and could have posed a threat to the safety of the Homeland. The purpose of this section is to ensure that the nations being given visa waiver are sharing vital data with the U.S. intelligence community.

The Committee believes that in order for it to be a successful national security tool, the terms and agreements of the Visa Waiver Program must be enforceable. While the Secretary has the authority to terminate a nation's involvement in the program, the political and practical repercussions of termination make such a decision unlikely. The Committee believes that providing a temporary suspension authority to the Secretary will help ensure the security of the VWP and visa waiver nations who do not abide by the agreements and provide the United States with the terrorism-related information will be better held accountable.

It is the Committee's sincerest hope that this authority will be never need to be exercised.

Subsection (c) Clerical Amendments.

This subsection is a clerical amendment to Section 217 of the Immigration and Nationality Act, changing the name of the "Electronic Travel Authorization System" to the "Electronic System for Travel Authorization." This change updates the law to reflect current practice.

Subsection (d) Report on Strengthening the Electronic System for Travel Authorization.

Subsection (d) requires DHS to report to the Committee on steps that can be taken to improve the Electronic System Travel Authorization (ESTA). ESTA is the application that travelers from VWP countries are required to complete prior to travel to the U.S.

DHS recently updated the ESTA application and the Committee believes they must continually evaluate the requested information and continue to update the ESTA questionnaire as appropriate. In recent months, this need is evident due to the thousands of foreign fighters—many of them from VWP countries—traveling to Iraq and Syria. The Committee believes that as homeland security threats continue to evolve, the systems in place to address these threats must also be revised to best protect the nation.

Subsection (e) Time for Report.

This subsection requires that the report established in this Act be submitted at the same time as the next report already required under the same section in current law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

VISA WAIVER PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) ESTABLISHMENT OF PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the “program”) under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) may be waived by the Attorney General, in consultation with the Secretary of State, and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the program as a non-immigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

(2) NATIONAL OF PROGRAM COUNTRY.—The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c).

(3) MACHINE READABLE PASSPORT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) LIMITED WAIVER AUTHORITY.—For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c)), if the Secretary of State finds that the program country—

(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

(4) EXECUTES IMMIGRATION FORMS.—The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

(5) ENTRY INTO THE UNITED STATES.—If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a non-commercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e). The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) ROUND-TRIP TICKET.—The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a non-commercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) AUTOMATED SYSTEM CHECK.—The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

(10) ELECTRONIC TRANSMISSION OF IDENTIFICATION INFORMATION.—Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation con-

ducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(11) ELIGIBILITY DETERMINATION UNDER THE [ELECTRONIC TRAVEL AUTHORIZATION SYSTEM] *ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION*.—Beginning on the date on which the [electronic travel authorization system] *electronic system for travel authorization* developed under subsection (h)(3) is fully operational, each alien traveling under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk, *including terrorism risk*, in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.

(b) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the program unless the alien has waived any right—

(1) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) DESIGNATION OF PROGRAM COUNTRIES.—

(1) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

(2) QUALIFICATIONS.—Except as provided in subsection (f), a country may not be designated as a program country unless the following requirements are met:

(A) LOW NONIMMIGRANT VISA REFUSAL RATE.—Either—

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) MACHINE READABLE PASSPORT PROGRAM.—

(i) IN GENERAL.—Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) DEADLINE FOR COMPLIANCE FOR CERTAIN COUNTRIES.—In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) LAW ENFORCEMENT AND SECURITY INTERESTS.—The Attorney General, in consultation with the Secretary of State—

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary [and the Committee on International Relations], *the Committee on Foreign Affairs, and the Committee on Homeland Security* of the House of Representatives and the Committee on the Judiciary [and the Committee on Foreign Relations], *the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs* of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(D) REPORTING LOST AND STOLEN PASSPORTS.—The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports within a strict time limit and in a manner specified in the agreement.

(E) REPATRIATION OF ALIENS.—The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release.

Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(F) PASSENGER INFORMATION EXCHANGE.—The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year after the initial period—

(A) CONTINUING QUALIFICATION.—In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of—

(i) the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a program country unless the following requirements are met:

(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term “initial period” means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

(5) WRITTEN REPORTS ON CONTINUING QUALIFICATION; DESIGNATION TERMINATIONS.—

(A) PERIODIC EVALUATIONS.—

(i) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d);

(III) shall submit a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I); **[and]**

(IV) shall submit to Congress a report regarding the implementation of the **[electronic travel authorization system]** *electronic system for travel authorization* under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8)**[.]; and**

(V) shall submit to Congress a report regarding the security parameters described in paragraph (9).

(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Secretary of Homeland Security, in consultation with the Secretary of State.

(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) EMERGENCY TERMINATION.—

(i) IN GENERAL.—In the case of a program country in which an emergency occurs that the Secretary of Homeland Security, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the

interest in enforcement of the immigration laws of the United States), the Secretary of Homeland Security shall immediately terminate the designation of the country as a program country.

(ii) DEFINITION.—For purposes of clause (i), the term “emergency” means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country’s territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country’s participation in the program could contribute to that threat.

(iii) REDESIGNATION.—The Secretary of Homeland Security may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of non-immigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(iv) PROGRAM SUSPENSION AUTHORITY.—The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

(I) may suspend a country from the visa waiver program without prior notice;

(II) shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and methods, provide justification for the suspension; and

(III) shall restore the suspended country's participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.

(v) *ADDITIONAL PROGRAM SUSPENSION AUTHORITY.*—*If the Secretary of Homeland Security, in consultation with the Secretary of State, determines that a country participating in the visa waiver program has failed to comply with an agreement under subparagraph (F) of paragraph (2), the Secretary of Homeland Security—*

(I) may suspend a country from the visa waiver program without prior notice;

(II) shall notify any country suspended under subclause (I) and provide justification for the suspension; and

(III) shall restore the suspended country's participation in the visa waiver program upon a determination that the country is in compliance with the agreement at issue.

(vi) *NOTIFICATION TO CONGRESS.*—*In the case of any country being suspended as a visa waiver program country pursuant to the authority provided under clause (v), the Secretary of Homeland Security shall provide timely notification to the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Foreign Affairs of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Foreign Relations of the Senate of such suspension.*

(C) *TREATMENT OF NATIONALS AFTER TERMINATION.*—*For purposes of this paragraph—*

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) *COMPUTATION OF VISA REFUSAL RATES.*—*For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.*

(7) *VISA WAIVER INFORMATION.*—

(A) *IN GENERAL.*—*In refusing the application of nationals of a program country for United States visas, or the appli-*

cations of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) REPORTING REQUIREMENT.—On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this Act under which the visas were refused; and

(v) the number of such nationals that were refused under section 214(b) as a percentage of the visas that were issued to such nationals.

(C) CERTIFICATION.—Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) CONSIDERATION OF COUNTRIES IN THE VISA WAIVER PROGRAM.—Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

(E) DEFINITION.—In this paragraph, the term “appropriate congressional committees” means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(8) NONIMMIGRANT VISA REFUSAL RATE FLEXIBILITY.—

(A) CERTIFICATION.—

(i) IN GENERAL.—On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the [electronic travel authorization system] *electronic system for travel authorization* required under subsection (h)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit

system and [electronic travel authorization system] *electronic system for travel authorization* are in place.

(ii) NOTIFICATION TO CONGRESS.—The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i).

(iii) TEMPORARY SUSPENSION OF WAIVER AUTHORITY.—Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary's waiver authority under subparagraph (B) shall be suspended beginning on July 1, 2009, until such time as the Secretary makes such notification.

(iv) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3).

(B) WAIVER.—After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

(i) the country meets all security requirements of this section;

(ii) the Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

(iii) there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;

(iv) the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

(v)(I) the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or

(II) the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

(C) MAXIMUM VISA OVERSTAY RATE.—

(i) REQUIREMENT TO ESTABLISH.—After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B). The Secretary of Homeland Security shall certify to Congress

that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

(ii) VISA OVERSTAY RATE DEFINED.—In this paragraph the term “visa overstay rate” means, with respect to a country, the ratio of—

(I) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

(II) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

(iii) REPORT AND PUBLICATION.—The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register information relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

(9) DISCRETIONARY SECURITY-RELATED CONSIDERATIONS.—In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—

(A) airport security standards in the country;

(B) whether the country assists in the operation of an effective air marshal program;

(C) the standards of passports and travel documents issued by the country; and

(D) other security-related factors, including the country’s cooperation with the United States’ initiatives toward combating terrorism and the country’s cooperation with the United States intelligence community in sharing information regarding terrorist threats.

(10) TECHNICAL ASSISTANCE.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section. The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

(11) INDEPENDENT REVIEW.—

(A) IN GENERAL.—Prior to the admission of a new country into the program under this section, and in conjunction with the periodic evaluations required under subsection (c)(5)(A), the Director of National Intelligence shall conduct

an independent intelligence assessment of a nominated country and member of the program.

(B) REPORTING REQUIREMENT.—The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the independent intelligence assessment required under subparagraph (A).

(C) CONTENTS.—The independent intelligence assessment conducted by the Director shall include—

(i) a review of all current, credible terrorist threats of the subject country;

(ii) an evaluation of the subject country's counterterrorism efforts;

(iii) an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions;

(iv) an assessment of the risks associated with including the subject country in the program; and

(v) recommendations to mitigate the risks identified in clause (iv).

(d) AUTHORITY.—Notwithstanding any other provision of this section, the Secretary of Homeland Security, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section. The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.

(e) CARRIER AGREEMENTS.—

(1) IN GENERAL.—The agreement referred to in subsection (a)(4) is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A),

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program,

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General, and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).

(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

(3) BUSINESS AIRCRAFT REQUIREMENTS.—

(A) IN GENERAL.—For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) COLLECTIONS.—In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 286(h).

(f) DURATION AND TERMINATION OF DESIGNATION.—

(1) IN GENERAL.—

(A) DETERMINATION AND NOTIFICATION OF DISQUALIFICATION RATE.—Upon determination by the Attorney General that a program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) PROBATIONARY STATUS.—If the program country's disqualification rate is greater than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) TERMINATION OF DESIGNATION.—Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) TERMINATION OF PROBATIONARY STATUS.—

(A) IN GENERAL.—If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section (c)(2)(C), or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

(B) EFFECTIVE DATE.—A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a).

(3) NONAPPLICABILITY OF CERTAIN PROVISIONS.—Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) DEFINITION.—For purposes of this subsection, the term "disqualification rate" means the percentage which—

(A) the total number of nationals of the program country who were—

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(5) FAILURE TO REPORT PASSPORT THEFTS.—If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not reporting the theft or loss of passports, as required by subsection (c)(2)(D), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(g) VISA APPLICATION SOLE METHOD TO DISPUTE DENIAL OF WAIVER BASED ON A GROUND OF INADMISSIBILITY.—In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 212(a) that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular of-

office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) USE OF INFORMATION TECHNOLOGY SYSTEMS.—

(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM.—

(A) SYSTEM.—Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

(i) DATA COLLECTION BY CARRIERS.—Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

(ii) DATA PROVISION BY CARRIERS.—Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) CALCULATION.—The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) REPORTING.—

(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—As part of the annual report required to be submitted under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) SYSTEM EFFECTIVENESS.—Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(2) AUTOMATED DATA SHARING SYSTEM.—

(A) SYSTEM.—The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) REQUIREMENTS.—The system under subparagraph

(A) shall satisfy the following requirements:

(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS CONDUCTING INSPECTIONS AT PORTS OF ENTRY.—Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) MAINTAINING RECORDS ON APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

(3) **[ELECTRONIC TRAVEL AUTHORIZATION SYSTEM]** *ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION*.—

(A) SYSTEM.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated **[electronic travel authorization system]** *electronic system for travel authorization* (re-

ferred to in this paragraph as the “System”) to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk, *including terrorism risk*, in permitting, the alien to travel to the United States.

(B) FEES.—

(i) IN GENERAL.—No later than 6 months after the date of enactment of the Travel Promotion Act of 2009, the Secretary of Homeland Security shall establish a fee for the use of the System and begin assessment and collection of that fee. The initial fee shall be the sum of—

(I) \$10 per travel authorization; and

(II) an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary.

(ii) DISPOSITION OF AMOUNTS COLLECTED.—Amounts collected under clause (i)(I) shall be credited to the Travel Promotion Fund established by subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)). Amounts collected under clause (i)(II) shall be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer the System.

(iii) SUNSET OF TRAVEL PROMOTION FUND FEE.—The Secretary may not collect the fee authorized by clause (i)(I) for fiscal years beginning after September 30, 2020.

(C) VALIDITY.—

(i) PERIOD.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason, *or, if the Secretary determines that such is appropriate, may limit such period of eligibility.*

(ii) LIMITATION.—A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States.

(iii) NOT A DETERMINATION OF VISA ELIGIBILITY.—A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

(iv) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

(D) REPORT.—Not later than 60 days before publishing notice regarding the implementation of the System in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to—

- (i) the Committee on Homeland Security of the House of Representatives;
- (ii) the Committee on the Judiciary of the House of Representatives;
- (iii) the Committee on Foreign Affairs of the House of Representatives;
- (iv) the Permanent Select Committee on Intelligence of the House of Representatives;
- (v) the Committee on Appropriations of the House of Representatives;
- (vi) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (vii) the Committee on the Judiciary of the Senate;
- (viii) the Committee on Foreign Relations of the Senate;
- (ix) the Select Committee on Intelligence of the Senate; and
- (x) the Committee on Appropriations of the Senate.

(E) ADDITIONAL REPORTS.—

(i) *REPORTS ON CERTAIN LIMITATIONS ON TRAVEL.*—Not later than 30 days after the date of the enactment of this subparagraph and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a report on the number of individuals, identified by their countries of citizenship or nationality, who were denied eligibility to travel under the System or whose eligibility for such travel was revoked during the previous year and the number of such individuals determined, in accordance with subsection (a)(6), to represent a threat to the security of the United States.

(ii) *REPORTS ON CERTAIN THREAT ASSESSMENTS.*—Beginning with the first report under clause (i) of subsection (c)(5)(A) that is submitted after the date of the enactment of this subparagraph and periodically thereafter (together with subsequent reports submitted under such clause (i)), the Secretary of Homeland Security, in consultation with the Director of National Intelligence, shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a report that contains a threat assessment regarding the compliance of foreign governments with the agreements described in subparagraphs (D) and (F) of subsection (c)(2), includ-

ing the sharing of information about individuals with travel patterns that may pose concern to the security of the United States and the capacity to collect such information.

(i) EXIT SYSTEM.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this subsection, the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section.

(2) SYSTEM REQUIREMENTS.—The system established under paragraph (1) shall—

(A) match biometric information of the alien against relevant watch lists and immigration information; and

(B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

(3) REPORT.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall submit to Congress a report that describes—

(A) the progress made in developing and deploying the exit system established under this subsection; and

(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.

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