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Immigration: Visa Entry/Exit Control System

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ABSTRACT

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of P.L. 104-208) requires the Attorney General to establish an automated entry/exit control system to record non-citizen arrivals and departures at all ports of entry by September 30, 1998. The FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) amends Section 110 to extend the September 30, 1998 deadline to March 31, 2001 for land border and sea ports of entry, but leaves the FY1998 deadline (now October 15, 1998) in place for air ports of entry. This report provides background and analysis on Section 110 and issues related to increasing arrival/departure management at air, land border, and sea ports of entry. This report reflects final action of the 105th Congress and will not be updated.

Immigration: Visa Entry/Exit Control System

Summary

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; Division C of P.L. 104-208) mandates the development of an automated entry/exit control system to create a record for every alien departing from the United States and match it with the record for the alien arriving to the United States. Section 110 also requires that this system identify nonimmigrants who overstay the terms of their admission through online computer searching. The FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) amends Section 110 to extend the original implementation deadline of September 30, 1998 to March 31, 2001 for land border and seaports of entry, but leaves the end of FY1998 deadline in place for airports of entry. Further, P.L. 105-277 includes a clause directing that the entry/exit control system must “not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry.”

This extension occurred because implementing Section 110 has proven more difficult at land border and seaports of entry than at airports of entry, because the capacity to record alien arrivals and departures at land border and seaports is not as fully developed. The Administration had proposed eliminating the FY1998 deadline altogether for land border and seaports of entry, citing the need to conduct feasibility and cost/benefit studies. Opponents of Section 110 cited concerns about reciprocity, trade, tourism, and border congestion. Supporters of Section 110 and its implementation at all ports of entry (air, land, and sea) asserted that the need for an automated entry/exit control system had been widely recognized years before the passage of IIRIRA. They maintained further that such a system is essential to ensure the integrity of all nonimmigrant admissions and to maintain control of U.S. borders. The 105th Congress acted upon several pieces of legislation, which would have taken varying approaches to Section 110 by either extending or eliminating deadlines for certain types of ports of entry, or repealing Section 110 altogether.

P.L. 105-277 also amends another provision of IIRIRA that some observers view as instrumental in implementing Section 110 at southern land border ports of entry. This provision, Section 104, mandates the replacement of all Border Crossing Cards — the most common document presented by Mexican nationals seeking to cross the border temporarily — by September 30, 1999. The Administration and groups representing transborder communities, however, maintained that the FY1999 deadline was unfeasible for the replacement of an estimated 5.5 million Border Crossing Cards in circulation, and that forcing such a timetable would cause needless hardship and inconvenience for legitimate border crossers. Therefore, P.L. 105-277 amends Section 104 to extend this provision’s deadline to September 30, 2001. It also limits the fee to recover the cost of manufacturing the documents to \$13 for minors under 15 years of age.

Finally, report language accompanying the FY1999 INS appropriation (also included in P.L. 105-277) earmarks an increase of \$20 million to continue the development of a Section 110 system.

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Introduction

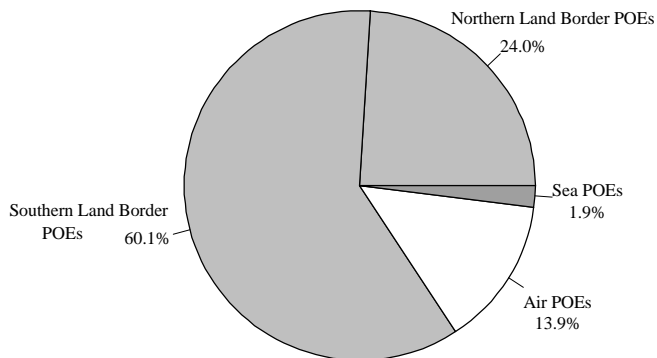
The Department of Justice's Immigration and Naturalization Service (INS) Inspections program and the Department of the Treasury's U.S. Customs Service share jurisdiction over international ports of entry. The Customs Service is responsible for clearing the entry of goods and merchandise into the country; INS is responsible for managing the admission of both citizens and foreign nationals. At many ports of entry, INS and Customs inspectors are cross-designated to enforce one another's respective areas of the law.¹ Therefore, both INS and Customs inspectors clear persons for entry into the United States. In FY1997, these agencies conducted approximately one-half billion inspections. As illustrated in **Figure 1**, more than 416 million inspections are conducted at land border ports.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (Division C of P.L. 104-208; IIRIRA) requires the Attorney General to develop an automated entry/exit control system to create a record for every alien departing from the United States and match it with the alien's record of arrival. Section 110 also requires that this system identify nonimmigrants who overstay the terms of

their admission through online computer searching. The goal of Section 110 is greater immigration enforcement and border security through better record keeping of the arrival and departure of non-citizens. Section 110, as originally included in IIRIRA, required further that this system be established at all international ports of entry by September 30, 1998. Implementing Section 110, however, has proven more difficult at land border and seaports of entry than at airports of entry, because the capacity to record alien arrivals and departures at land border and seaports is not as fully developed. Consequently, the FY1999 Omnibus Consolidated and Emergency

**Figure 1. FY1997 INS Inspections
Land, Air & Sea Ports of Entry**

(499 million inspections)



CRS presentation of data provided by INS.

¹ This is the case generally at most land border and sea ports of entry; however, at most major air ports of entry, INS and Customs inspections are conducted separately.

Supplemental Appropriations Act (P.L. 105-277) amends Section 110 to extend the September 30, 1998 deadline to March 31, 2001 for land border and sea ports of entry, but leaves the end of FY1998 deadline in place for air ports of entry (now October 15, 1998).

Implementing Section 110 has proven difficult because INS has not tracked arrivals and departures for immigrants (non-citizens admitted for permanent residence) and has had only limited success in tracking arrivals and departures for nonimmigrants (non-citizens admitted on a temporary basis). An automated entry/exit control system, when fully developed and implemented, would provide a method by which to identify nonimmigrant overstays (those who violate the period of their temporary admission). It would also provide an objective criterion by which to extend visa waivers to other countries under the Visa Waiver Pilot Program.² In addition, Section 110 requires that the system capture the arrival and departure of all aliens, including those admitted for permanent residence (immigrants). Such information could be used to determine whether immigrants have abandoned their U.S. residency. In some cases, those immigrants who have not maintained their U.S. residency may be in jeopardy of losing their permanent resident alien card. Such a system, if effectively linked to law enforcement databases, would also serve as a means of screening aliens who may be subject to removal or exclusion from the United States.

In November 1997, before the Senate Judiciary's Immigration Subcommittee, INS outlined five strategic considerations that the agency viewed as essential to the development of an automated entry/exit control.

- One, the system should be operational in all settings and would record alien arrivals and departures into an online database (such a database does not currently exist).
- Two, the system should not unduly increase the amount of time a person spends in the inspection process.
- Three, INS must take full advantage of modern information management technologies.
- Four, to minimize costs, the system should be grafted upon already existent procedures and systems.
- And, five, because many parties, both public and private, have an interest in facilitating international travel, stakeholder involvement is essential in crafting a system that would provide "equal or better" service to "the traveling public, trade and transportation interests, and the American people."

The agency cited as a particular concern, "the logistics and costs of modifying and rebuilding land and seaports of entry to accommodate an automated departure management system." For these reasons, INS also conveyed the Administration's

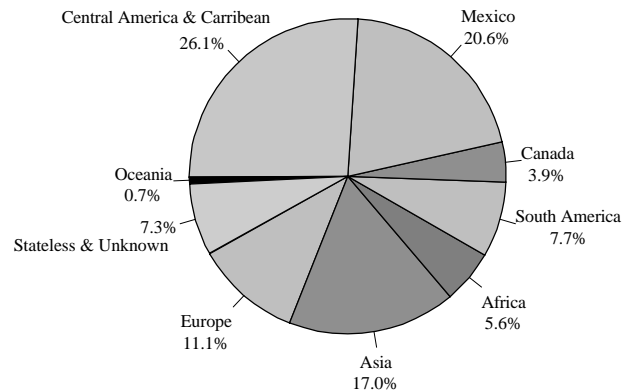
² The Visa Waiver Pilot Program (VWPP) authorizes the Attorney General to waive the visa documentary requirements for aliens traveling from certain designated countries as temporary visitors for business or pleasure (tourists). Nationals from participating countries simply complete an admission form before their arrival and are admitted for up to 90 days. For further information, see CRS Report 97-309, *Immigration: Visa Waiver Pilot Program*.

proposal that the FY1998 deadline for an automated entry/exit control system at land border and seaports of entry be eliminated. In July 1998, these concerns were reiterated by INS in a hearing before the House Judiciary's Immigration and Claims Subcommittee.³

Arrival/Departure Management and Nonimmigrant Overstays

A principal focus of Section 110 is the enumeration and identification of nonimmigrant overstays, i.e., those persons who are admitted legally to the United States on a temporary basis and subsequently overstay the terms of their admission. In February 1997, INS estimated the resident illegal alien population at 5 million persons as of October 1996. That population was roughly divided between illegal aliens who had entered without inspection (59%) and those who had overstayed the terms

Figure 2. Estimated Nonimmigrant Overstay Population (2.1 million as of October 1996)



CRS presentation of estimates provided by INS Office of Policy and Planning.

of their temporary admission (41%). As illustrated in **Figure 2**, over half of the estimated 2.1 million nonimmigrant overstays are from this hemisphere. Some observers have been critical of INS enforcement efforts for being too heavily weighted towards stopping illegal aliens who enter without inspection over those who overstay the terms of their nonimmigrant admission.

INS currently tracks nonimmigrant arrivals and departures through the Form I-94, the Arrival/Departure Record: the arrival portion of Form I-94 is collected upon entry and the departure portion is collected upon exit. Arrivals and departures are then keyed manually into the Nonimmigrant Information System—the current system for managing approximately 25 million nonimmigrant files. For matched I-94s, INS assumes the nonimmigrant departed; for unmatched I-94s, the agency assumes they did not. Although nearly all nonimmigrants entering the United States at airports and seaports (other than alien crewmembers) are required to fill out I-94s, nonimmigrants entering the United States at land border ports are required to fill out I-94s much less frequently. There have also been difficulties in collecting departure forms from departing aliens. INS has been criticized, moreover, for not producing timely and accurate data on nonimmigrant overstays from what data it does collect.

³ The subject of this hearing was alternative technologies for the implementation of Section 110. Other witnesses, notably from industries involved in developing these technologies, were much more optimistic about the logistics of an automated system.

As a remedy, Section 110 requires an annual report to Congress that is to include (1) the number of departure records collected, including the nationalities of the departing aliens; (2) the number of departure records successfully matched with prior arrival records, including the aliens' nationalities and immigrant or nonimmigrant classifications; and (3) the number, nationalities, and dates of arrival of nonimmigrants who arrived in the United States under the Visa Waiver Pilot Program, for whom no corresponding departure record has been entered into the system and matched with a corresponding arrival record, indicating that they have overstayed the terms of their admission. Furthermore, Section 110 requires that nonimmigrant overstay information gained through this system be incorporated into INS and State Department immigration-related databases. INS currently captures the greatest amount of arrival/departure data for nonimmigrants at airports.

Arrival/Departure Management at Airports

There are nearly 133 international airports of entry and 15 preinspection stations on foreign territory. In FY1997, INS and USCS inspectors conducted nearly 69 million inspections (almost 14% of total inspections, as **Figure 1** illustrates) at airports of entry. At airports of entry, inspectors enter the names of all persons, citizen and non-citizen, into the InterAgency Border Inspection System (IBIS)⁴ to clear them for entry into the United States. In addition, air carriers are required by law to present properly completed I-94s to an immigration officer for all nonimmigrants arriving and departing the country.

For nonimmigrants, INS has recently conducted a pilot program with USAirways on the Munich, Germany to Philadelphia, Pennsylvania flight in which I-94 arrival/departure records were captured electronically and uploaded into the Nonimmigrant Information System. So far, the results of this pilot program have been favorable. INS testified that based on the Philadelphia pilot program and other available technologies, a preliminary entry/exit control system could be established at major airports of entry by the end of FY1998, but such a system would still be in a developmental stage. According to INS, entry/exit records would be captured by scanning machine readable passports, reentry permits, legal permanent resident cards, and other immigration-related documentation. Indeed, machine readable documents, whether I-94s, passports, permanent resident cards (green cards), or border crossing cards, are an integral component of an automated entry/exit control system.

Arrival/Departure Management at Seaports

In FY1997, INS and Customs inspectors conducted approximately 10 million inspections at 70 seaports of entry (2% of total FY1997 inspections), but this number does not accurately reflect the total number of non-citizens entering the United States on an annual basis through seaports of entry. For example, alien crewmembers are often only inspected once every 90 days under current law as their vessels travel along coastlines or criss-cross international waterways. Passengers on cruise lines, moreover, may debark and embark many times onto U.S. territory, but generally are

⁴ IBIS is a multi-agency centralized lookout database that is linked to a number of immigration and law enforcement databases.

only inspected at the outset and end of a cruise. Whether alien crewmembers and cruise line passengers make up a large enough component of the undocumented immigrant population to warrant the additional inspections and an entry/exit control system at seaports remains a question.

Arrival/Departure Management at Land Border Ports

Many people who cross the land border frequently reside in the region. Therefore, in the past, documenting inspections at land border ports have not been conducted with the same level of intensity as at airports. At land border ports, inspectors visually screen applicants for admission in the primary inspection lanes. As the vehicle approaches the inspections booth, the inspector usually enters the automobile license plate number into IBIS to check whether there is a lookout record on it. If there is a record, the vehicle is detoured into secondary inspection for further examination. In addition, the inspector queries the vehicle's occupants for documentation, intended destination, and length of stay. If in the inspector's judgement no further examination is warranted, the vehicle and its occupants are waved through.

In FY1997, INS and Customs inspectors conducted nearly 416 million land border inspections: 297 million inspections on our southern land border and nearly 119 million on our northern land border (see **Figure 1**). There are 107 land border ports of entry on the 4,780 mile long border between Canada and the lower 48 states. There are 37 land border ports of entry on the 1,952 mile long border between Mexico and the United States. On both borders, the ratio of citizens to non-citizens inspected is estimated at roughly 1:2.

Northern Land Border. The Canadian government has expressed strong opposition to the implementation of Section 110 on the northern land border, as have some northern border congressional delegations. Canadians who enter the United States through land border ports are not required to present a passport, and are often not required to obtain a visa.⁵ In addition, Canadian citizens and British subjects residing in Canada are generally not required to obtain an I-94 form, if they are entering the United States temporarily for business or pleasure. Canadians entering the United States for purposes other than business or pleasure, e.g., employment, trade, and diplomatic activities, etc., are issued an I-94. Upon departure, the Canadian government collects I-94 departure records for the INS. Canadians, however, are not exempted from Section 110. Legislation has been introduced that would exempt Canadians from the requirements of Section 110. Nevertheless, even if Canadian nationals were exempted, this would not obviate the need for an entry/exit control system for non-Canadian nationals entering the United States through northern land border ports.

Southern Land Border. The Mexican government has long complained about the difference in treatment of its nationals at the border as compared to Canadian

⁵ Section 212(d)(4)(B) of the INA gives the Secretary of State and the Attorney General the discretionary authority to waive documentary requirements for admission. And, these requirements are often waived on a basis of reciprocity.

nationals. Mexican nationals applying for admission to the United States as visitors are required to obtain a visa or hold a Border Crossing Card, either of which can be inconvenient to obtain. Border Crossing Cards are issued to Mexican nationals who are frequent border crossers and who can demonstrate that they are unlikely to abandon their Mexican residence. If they intend to go 25 miles or further inland and/or stay longer than 72 hours, they are also required to obtain an I-94.⁶ Upon departure, I-94s are to be deposited into boxes at ports of entry; however, this act is completely voluntary. Some Members of Congress have also questioned this difference in treatment.

However, current policy on the southern land border has been justified primarily because inadmissible applicants for admission are interdicted at ports of entry in greater frequency on the southern land border than on the northern land border. For example, in FY1997, for every one inadmissible alien interdicted on the northern border, 28 were interdicted on the southern border.⁷ In addition, in recent years, the Border Patrol has apprehended over a million Mexican nationals annually attempting to enter the United States without inspection between ports of entry. Moreover, federal law enforcement agencies have estimated that a very large percentage of illegal narcotics entering the United States are smuggled across the southern land border, both between and through ports of entry. On the other hand, as it does on the northern land border, a very large volume of legitimate commercial and private traffic flows across the southern land border.

A related provision of the Illegal Immigration Reform and Immigrant Responsibility Act, Section 104, requires that a biometric identifier be developed and incorporated into all new Border Crossing Cards by April 1, 1998; and that only the new card will be accepted after September 30, 1999. Section 104 requires further that aliens presenting the new document not be allowed to cross the border unless that biometric identifier matches the alien document holder's characteristics. The Border Crossing Card is by far the most common document presented by Mexican nationals seeking to enter the United States temporarily at land border ports.⁸ As such, some observers view the replacement of the Border Crossing Card with a more secure/machine readable document as instrumental in implementing Section 110 on the southern land border.

The document required by Section 104 has been designated by INS and the Department of State as the "laser visa." On April 1, 1998, the Department of State began replacing the Border Crossing Cards with the "laser visa," which combines the functions of the Border Crossing Card and the B-1/B-2 nonimmigrant temporary visa for business or pleasure. Unlike in the past, however, the Administration decided that INS will not process claims for "laser visas" as they did for Border Crossing Cards

⁶ Prior to April 1997, Mexican nationals with Border Crossing Card's were issued I-444s, instead of I-94s.

⁷ Inadmissible aliens interdicted include those aliens reported by INS as having either presented fraudulent documents, made false claims to U.S. citizenship, or made other false claims to inspectors at ports of entry.

⁸ Border Crossing Cards are also issued to Canadians, but much less frequently, and INS intends to phase their use out for Canadians in the near future.

at ports of entry; rather, the Department of State will be entirely responsible for adjudicating all such claims at the U.S. Embassy in Mexico City and at U.S. consulates within Mexico. Moreover, there is a \$45 fee attached to the "laser visa;" whereas, the Border Crossing Card only cost \$26. Critics point out that attaining a "laser visa" is more inconvenient and costly today than attaining a Border Crossing Card was previously. To facilitate the replacement of the estimated 5.5 million Border Crossing Cards currently in circulation, the Department of State has approached the Mexican government about opening several temporary offices in Mexican border cities.

The FY1999 Omnibus Appropriations Act (P.L. 105-277) included a provision that amends Section 104 to extend the deadline for the replacement of the old Border Crossing Cards with "laser visas" from September 30, 1999 to September 30, 2001. Additionally, P.L. 105-277 limits the fee for minors under 15 years of age to \$13 so as to recover the cost of manufacturing the documents. This provision also requires the Secretary of State to process such claims in the Mexican border cities of Nogales, Nuevo Laredo, Ciudad Acuna, Piedras Negras, Agua Prieta, and Reynosa through the end of FY2001.

Land Border Automated Entry/Exit Control System. At land border ports of entry, there is currently no procedure or system in place upon which to build an automated entry/exit control system. INS is likely to build upon recent technological initiatives, like dedicated commuter lanes and other expedited inspection processes (based upon machine readable documents, biometrics, and radio frequency tags), but there is currently no comprehensive technological solution that will allow the agency to rapidly implement Section 110 at land border ports. It is also probable that intensifying the inspections process at land border ports will necessitate more inspection lanes, booths, and staff. Furthermore, capturing departure records essentially means that INS will create some sort of departure process to collect information where none exists today. This may mean duplicating, at least to some degree, the inspections process for returning traffic. Where possible, this may also require segmenting vehicular traffic; for example, commercial trucks would be inspected in designated lanes, as would citizens, frequent border crossers, and all others.

Meanwhile, many contend that if Section 110 is implemented without a clear assessment of system requirements, it will cause gridlock at land border ports, disrupting trade, commerce, tourism, and other legitimate cross-border traffic. Others argue further that there is no need for the creation of a record of arrival and departure for all aliens every time they cross the border; i.e., the costs of Section 110 will outweigh its benefits. Some have proposed that a risk analysis approach would be more efficient, that by increasing inspections staff and the number of random inspections, border security could be increased with greater efficiency and less cost. Such arguments lead others to propose postponing the Section 110 deadline indefinitely until feasibility and cost/benefit studies can be conducted.

Proponents of Section 110 maintain that they have lost patience with INS, asserting that the need for an automated entry/exit control system was recognized long before the passage of the Illegal Immigration Reform and Immigrant Responsibility Act. They argue that such a system is essential to ensure the integrity

of nonimmigrant admissions as well as the control of U.S. borders. Some further assert that an entry/exit control system would eliminate or reduce the practice of profiling persons of “foreign appearance or accent,” and, as a benefit, U.S. citizens and legal permanent residents who might fit these “foreign” profiles would not be subjected to secondary inspections as frequently.

Legislation Related to Section 110 Acted on in the 105th Congress

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY1999 (P.L. 105-277) amends Section 110 to extend the deadline for the implementation of an entry/exit control system for land border and sea ports of entry from September 30, 1998 to March 31, 2001, but leaves the end of FY1998 deadline in place for airports of entry (now October 15, 1998). This amendment also includes a clause directing that the entry/exit control system must “not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry.” The Section 110 amendment included in P.L. 105-277 represents a compromise between several pieces of legislation acted upon by the 105th Congress that would have taken varying approaches to Section 110, by extending or eliminating the deadline for system implementation at certain types of ports of entry, or by repealing Section 110 altogether.

The House passed H.R. 2920 on November 10, 1997: this bill would have extended the FY1998 deadline to FY1999 for land border ports, but would have left the FY1998 deadline in place for air and seaports of entry. The Senate Judiciary Committee, in turn, reported S. 1360 (S.Rept. 105-197) on April 23, 1998: this bill would have exempted land border ports and seaports from Section 110's requirements, but would have required that such a system be implemented at all airports of entry by 2 years of enactment.

In the meantime, the Senate passed the FY1999 Commerce, Justice, State and the Judiciary (CJS) appropriations bill (S. 2260) on July 23, 1998, which included a provision to repeal Section 110 in its entirety. Then, on July 30, 1998, the Senate considered the House-passed H.R. 2920, amended it in the nature of a substitute with a slightly revised version of S. 1360, and passed the measure. To give negotiators additional time to work out a compromise, the House and Senate passed stop-gap legislation (H.R. 4658/S. 2540) on October 1, 1998 to extend the Section 110 deadline to October 15, 1998. Neither measure was presented to the President; however, the 15-day extension on the deadline for airports of entry was included in P.L. 105-277.

Concerning Border Crossing Cards, both S. 2260 and S. 1360 included provisions to amend Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act (Division C of P.L. 104-208). The provision included in P.L. 105-277 that amends Section 104 is a variation of these provisions. P.L. 105-277 amends Section 104 to extend the deadline for the replacement of the old border crossing cards with the laser visa from September 30, 1999 to September 30, 2001. Additionally, P.L. 105-277 amended Section 104 to limit the fee to recover the cost of manufacturing the documents to \$13 for minors under 15 years of age. This provision also requires the Secretary of State to process claims for the new Border Crossing Card (the “laser” visa) in the Mexican border cities of Nogales, Nuevo

Laredo, Ciudad Acuna, Piedras Negras, Agua Prieta, and Reynosa through the end of FY2001

Regarding funding for the development of an automated entry/exit control system, conference report language accompanying the FY1999 CJS appropriations (also included in P.L. 105-277) earmarks \$20 million to continue the development of a Section 110 system, matching the House-passed CJS Appropriations Act (H.R. 4276) and the Administration's request. The Senate-passed FY1999 CJS Appropriations Act (S. 2260) had included no similar earmark, since this bill included a provision to repeal Section 110. For FY1998, P.L. 105-119 provided INS with \$13 million for the continued development of an Section 110 system