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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS No. 2256-03]

RIN 1115-AG94

Automated Inspection Services— Extension of Enrollment Period

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Automated Inspection Services (AIS) programs, such as the INS Passenger Accelerated Service System (INSPASS) and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), are automated systems designed to identify pre-registered, low-risk travelers and permit them to enter the United States within a predictable wait time by reducing the interaction of the traveler with the inspector at the time of entry. The extension of the enrollment period for AIS programs will benefit both the Immigration and Naturalization Service (Service), and the applicants of the INSPASS and SENTRI programs.

The Service regulations currently limit the period of approval to the program to 1 year, thereby requiring applicants to resubmit a new application and fee each year. This is a very burdensome process for both the traveling public and the Federal agencies administering the programs. This rule amends the Service's regulations to extend the current enrollment period for the AIS programs from 1 year to 2 years. The Service has determined that it can effectively maintain the integrity of the program and the security of the border without requiring applicants to undergo an annual application renewal.

DATES: *Effective date:* This interim rule is effective February 28, 2003.

Comment date: Written comments must be submitted on or before April 29, 2003.

ADDRESSES: Please submit written comments, to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling please reference INS number 2256-03 on your correspondence. You may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, you must include INS number 2256-03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas C. Campbell, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 305-9246.

SUPPLEMENTARY INFORMATION:

What Is an Automated Inspection Service (AIS)?

The AIS, also known as PORTPASS programs, are automated systems designed to identify pre-registered, low-risk travelers using various technologies, and permit them to enter the United States within a predictable wait time by reducing the interaction of the traveler with the inspector at the time of entry. The Service currently operates several AIS systems, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) dedicated commuter lanes along the southern border, and Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS), at several airport locations. The AIS programs incorporate a pre-registration of participants that includes an interview, various agency law enforcement database and criminal record checks, capturing of biometrics, and inspection of the vehicle, if appropriate. Upon entry to the United States, the traveler is identified using various technologies, such as transponders, proximity cards, or other means of biometric verification. In dedicated commuter lanes, the

participant's photograph and other information displays on the screen to the inspector in designated vehicle lanes, who can verify the identity of the traveler. For INSPASS, travelers approach a kiosk and submit to a biometric (hand geometry) verification and database check upon entry. These programs benefit both the traveling public and the government by providing advance information about persons entering the United States, thereby allowing minimal inspection of low-risk, known travelers, while permitting border inspectors to focus attention and resources on unknown, or higher-risk travelers.

What is INSPASS?

- INSPASS is an AIS Program currently operational at international airports at: Los Angeles, Miami, Newark, New York (JFK), San Francisco, Washington-Dulles, and the U.S. preclearance sites at Vancouver, and Toronto in Canada. Citizens of the United States, Canada, Bermuda, and Visa Waiver Pilot Program (VWPP) countries who travel to the U.S. on business three or more times a year, or who are diplomats, representatives of international organizations, or airline crews from the VWPP nations may voluntarily enroll in the INSPASS Program.

- Enrollment into INSPASS is not available to anyone with a criminal record or to aliens who require a waiver of inadmissibility to enter the U.S.

- Arriving at a Port-of-Entry, the traveler proceeds to an INSPASS inspection queue. There, the person inserts a card issued to them at enrollment to an INSPASS kiosk, similar to automated bank teller devices. Responding to messages on the kiosk's touch-screen display, the traveler is prompted to enter their flight number and to place their hand in a hand geometry reader. Screen prompts are used to achieve correct alignment of the hand, with the hand reader. The kiosk software automatically compares the live scan of the traveler's hand geometry biometric to the image captured at enrollment. If the traveler's identity is validated by this comparison, an I-94 (if required) or receipt of his inspection is printed by the Kiosk that directs the traveler to proceed to U.S. Customs Inspection. If this check is not successful, a screen Message refers the

traveler to an Immigration Inspector in a nearby inspection booth.

What is SENTRI?

- SENTRI is an AIS Program that enables enrolled travelers to rapidly enter the United States through a dedicated commuter lane (DCL) at specific Land Border Ports-of-Entry.

- To be eligible to use SENTRI, you must be able to lawfully enter the United States and pass a three-part comprehensive background check. These record checks are conducted for all applicants (18 years of age and older) by the U.S. Immigration and Naturalization Service, U.S. Customs Service, and Federal Bureau of Investigation.

- When an enrolled automobile approaches the inspection booth in the SENTRI lane, a radio frequency transponder that is affixed to the automobile emits radio signals that are picked up by receivers located at the port of entry. Each transponder has a unique number that retrieves a specific record in the SENTRI enrollment database. Within moments, this record, which contains a photograph and detailed information about the vehicle and its occupants, appears on a color monitor screen in front of the inspector. Next, each auto occupant swipes an identification card through a magnetic reader located at the inspection booth, (a process similar to using an ATM card). The inspector verifies that the vehicle's occupants are enrolled in the SENTRI system and authorizes the vehicle and its occupants to enter the United States. As at other ports of entry, the inspector may refer vehicles for a more thorough inspection. In addition, a small percentage of travelers are randomly chosen by computer and referred for a secondary inspection to ensure compliance with the rules and regulations of the SENTRI system.

Are Security Checks Conducted in the AIS Programs?

Yes. The Service requires that all AIS Programs perform various agency law enforcement database and criminal record checks. AIS travelers may also undergo additional random referrals and compliance checks to ensure that the participants remain in compliance with the program guidelines and the laws and regulations that govern entry in the United States.

How Does This Rule Amend the Regulations?

This rule extends the period of enrollment in the AIS programs from 1 year to 2 years. This change will significantly reduce the paperwork

burden on the general public and the inspection services while causing no reduction in the security of the automated inspection systems or the international border. The Service will continue to perform regular queries of the law enforcement databases on the enrolled travelers as well as requesting updates of information from enrolled travelers through periodic mailings. The Service will also continue to perform regular queries of the law enforcement databases on the enrolled travelers, as well as requesting updates of information from enrolled travelers through periodic mailings, if necessary. The Service will also continue to conduct random referrals and compliance checks to ensure that participants remain in compliance with the programs guidelines and the laws and regulations that govern entry into the United States.

Why Is the Service Changing the Length of the Enrollment Period?

With the growing popularity of the AIS programs particularly along the southern border, the large number of applicants has placed a strain on the ability of the enrollment centers to process all applications in a timely manner, resulting in extensive backlogs of applicants waiting to be processed. The annual renewal requirement further exacerbates this workload. Because the data provided at the time of enrollment by the traveler typically remains the same from year to year, the Service has determined that it does not require the re-submission of this data on an annual basis. However, the Service will continue to evaluate this and other aspects of the AIS programs to determine whether additional changes should be made at a later date.

How Will the Service Measure Its Performance on Enrollments?

An extension of the enrollment from 1 year to 2 years would aid the Service in its goal to reduce the enrollment backlog to 60 days by July 1, 2003. Thousands of applicants each year will no longer be required to visit the enrollment center, re-enroll or pay an additional application fee. By eliminating an extra enrollment fee, a reduction in cost for program participation is returned to the traveler. Fewer visitors to the enrollment centers decrease the strenuous workload for the Service. Attention could then be focused on the reduction of the thousands of applicants backlogged instead of processing yearly re-applications.

If I am Already Enrolled in an AIS Program, Will My Enrollment Period Be Automatically Extended to 2 Years?

Yes, the Service will consider your enrollment period to be valid 2 years from the date of your last enrollment approval. You will not have to pay an additional enrollment fee for the extension.

What if My Visa or Immigration Status Is Valid for Less Than 2 Years When I Submit my Application?

The actual authorization of any AIS participation is determined by the individual's underlying immigration status. The individual's immigration status must be valid at all times to participate in the program and they must be in possession of all appropriate immigration and identity documents at the time of each entry. The initial period of approval will be limited in accordance with the underlying immigration status, but can be extended, without application or fee, for the full 2-year period once the participant establishes the appropriate visa or immigration status validity.

Has the Service Consulted With Other Entities in Developing This New Rule?

The Service has consulted with numerous stakeholders and received positive feedback on this change from all entities. These stakeholders include the Border Trade Alliances, individual travelers, business and trade associations, congressional officials, and the other federal inspection service agencies involved in the affected programs.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(1). The reason for immediate implementation is as follows: This rule is intended to benefit both the traveling public and the Service by decreasing the workload at the enrollment centers and alleviating the backlog of pending applications. In addition, this rule relieves the burden on the program participant of having to file an application annually and will also reduce the cost to the participant since the participant will not have to pay the additional enrollment fee for the second year. As previously stated, having as much advance information about as many travelers to the United States as possible promotes greater security of the border and the United States. In addition, since the events of September 11, 2001, ports-of-entry have operated

under a higher threat level. This has often resulted in a dramatic increase in the time persons must wait to enter the United States at a land port-of-entry. The increased wait times result in increased release of emissions from vehicles into the communities surrounding the ports and impact the economy as the amount of trade and travel between the United States and its neighbors is decreased. The heightened security measures have required the inspection services to stretch scarce resources. AIS programs alleviate these harms by allowing quicker passage through the port and by allowing the government to focus inspection resources on higher risk travelers. Accordingly, the Service finds that it is impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553. This rule will be effective immediately upon publication under 5 U.S.C. 553(d)(1) because the rule relieves the burden on the program participant of having to file an application and pay a fee on a yearly basis. This benefits both the traveling public and the government by decreasing the workload at the enrollment center and alleviating the backlog of pending applications. In addition the good cause exception at 5 U.S.C. 553(d)(3) also permits the rule to become effective immediately for the reasons stated above.

Regulatory Flexibility Act

Although some of the enrollees in the AIS programs may be considered small entities, the majority of the travelers participating in the AIS programs are individuals who cross the border frequently for a variety of reasons, both business and personal. The intent of this rule is to reduce the burden on all of the participants in the AIS programs by eliminating the requirement of having to file an application annually and by reducing the cost to the participant. Accordingly, the Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one-year, and it will not significantly or uniquely affect small

governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

The Service has assessed both the costs and benefits of this rule required by section 1(b)(6) of Executive Order 12866 and has made a reasonable determination that as previously stated in the "Good Cause Exception" that the intent of this rule is to reduce the burden on all of the participants in the AIS programs by eliminating the requirement of having to file an application annually and by reducing the cost to the participant. This will also reduce the strenuous workload of the Service in having to re-enroll thousands of applicants each year.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The Form I-823, Application—Alternative Inspection Services, is used for enrolling applicants in the AIS programs. This form has previously been approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115-0174.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

§ 235.7 [Amended]

2. Section 235.7(a)(4)(xi) is amended in the first sentence by revising the phrase "1 year" to read: "2 years".

Dated: January 29, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03-5189 Filed 2-28-03; 3:03 pm]

BILLING CODE 4410-10-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA-2003-14578]

Aviation Safety and Health Partnership Program

AGENCY: Federal Aviation Administration

ACTION: Notice of program establishment and request for comments.

SUMMARY: By this notice, the Federal Aviation Administration (FAA) announces the creation of the air carrier Aviation Safety and Health Partnership Program (ASHPP). The FAA intends to enter into partnership agreements with participating air carriers, which will provide, at minimum, air carrier employee injury and illness data to the FAA for collection and analysis. The FAA will establish an Aviation Safety and Health Program (ASHP) Aviation Rulemaking Committee to provide advice and recommendations to:

- a. Develop the scope and core elements of the partnership program agreement,