



International Civil Aviation Organization

WORKING PAPER

A39-WP/410
EX/154
9/9/16
(Information Paper)
English only

ASSEMBLY — 39TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 31: Other high-level policy issues to be considered by the Executive Committee

COMPLIANCE WITH ANNEX 9, CHAPTER 5, STANDARDS 5.26 THROUGH 5.29

(Presented by United States of America)

EXECUTIVE SUMMARY	
This paper gives information on Annex 9, Chapter 5, Standards 5.26 through 5.29.	
<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective C — <i>Security and Facilitation</i>
<i>Financial implications:</i>	Not applicable
<i>References:</i>	Annex 9 – <i>Facilitation</i> , Chapter 5, Standards 5.26 through 5.29

1. INTRODUCTION

1.1 Standards and recommended practices on Facilitation were first adopted by the Council on March 25, 1949, pursuant to Article 37 of the Convention. Article 37 provides, *inter alia*, that the “International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with ... customs and immigration procedures ... and such other matters concerned with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate.” In addition, Article 23 of the Convention expresses the undertaking of each Contracting State “so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to this Convention.” Contracting States have an obligation under Article 38 of the Convention to immediately notify the Organization of any differences between their national regulations and practices and the standards adopted by the Organization.

2. ANNEX 9 PROCUREMENT OF REPLACEMENT TRAVEL DOCUMENTS

2.1 Chapter 5 of the Annex provides standards and recommended practices regarding inadmissible persons and deportees. In particular, pursuant to Standard 5.26, a “Contracting State shall, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time and not more than 30 days after such a request was made either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals.”

2.2 In addition, Standard 5.27 provides that a “Contracting State shall not make the signing by the person concerned of an application for a travel document a prerequisite for the issuance of that document.” Further, Standard 5.28 provides that when “a Contracting State has determined that a person for whom a travel document has been requested is one of its nationals but cannot issue a passport within 30 days of the request, the State shall issue an emergency travel document that attests to the nationality of the person concerned and that is valid for readmission to that State.” Finally, Standard 5.29 provides that a “Contracting State shall not refuse to issue a travel document to or otherwise thwart the return of one of its nationals by rendering that person stateless.”

3. IMPORTANCE OF COMPLIANCE WITH ANNEX 9 CHAPTER 5, STANDARDS 5.26 THROUGH 5.29

3.1 In order to facilitate removal of inadmissible and removable persons, the United States routinely invokes the standards contained in Chapter 5 of Annex 9 to the Convention in requesting that Contracting States issue replacement travel documents. Failure by other Contracting States to comply with these standards has a serious impact on the United States’ ability to remove such persons. Over the last seven years, in accordance with domestic law, the United States has been forced to release into the general public without removal from the United States over 25,000 foreign nationals with criminal convictions as a result of the fact that the United States has been unable to procure travel documents for such persons.

3.2 The United States is not alone in the challenges resulting from noncompliance with relevant standards in Annex 9. Such noncompliance may lead to longer periods of detention for those individuals and may impose additional financial burdens on the removing State.

4. CONCLUSION

4.1 Compliance with Annex 9, Chapter 5, Standards 5.26 through 5.29 results in reduced detention time for those subject to removal, reduces the cost for the Member State effecting the removal, and creates a safer environment for Member States who would otherwise be required to release foreign nationals with criminal convictions who have been ordered removed. Member States are encouraged to review Annex 9, Standards 5.26 through 5.29, and comply with those standards to ensure the timely issuance of travel documents for individuals who have been ordered removed from other Member States. The United States looks forward to working with the ICAO Council to increase Member States' compliance with ICAO standards.

— END —