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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs And Border Protection**

Test to Collect Biometric Information at the Otay Mesa Port-of-Entry

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) intends to conduct a test to collect biometric information at the Otay Mesa, California land border port-of-entry from certain aliens entering and departing the United States. During this test, CBP will also collect biographic data from all travelers departing the United States at the Otay Mesa port-of-entry. This notice describes the scope of the test, its purpose, how it will be implemented, the persons covered, the duration of the test, and privacy considerations.

DATES: This test will begin no earlier than December 7, 2015 and will end on or before June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Edward Fluhr, Assistant Director, Entry/Exit Transformation Office, U.S. Customs and Border Protection, by phone at (202) 344-2377 or via e-mail at edward.fluhr@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION

BACKGROUND

The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program in accordance with several

federal statutory mandates requiring DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens; compares the biometric data of aliens to verify their identity; and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. Under US-VISIT, certain aliens, as described below, may be required to provide certain biometric information (digital fingerprint scans, photographs, facial and iris images, or other biometric identifiers¹) when attempting to enter or depart the United States.

The federal statutes requiring DHS to create a biometric entry and exit system to record the arrival and departure of aliens include, but are not limited to:

- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215, 114 Stat. 337 (2000);
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106-396, 114 Stat. 1637, 1641 (2000);
- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56, 115 Stat. 272, 353 (2001);
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107-173, 116 Stat. 543, 552 (2002);
- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, 118 Stat. 3638, 3817 (2004); and

¹ As used in this notice, a “biometric identifier” is a physical characteristic or other physical attribute unique to a person that can be collected, stored, and used to verify the identity of a person who presents himself or herself to a CBP officer at the border. To verify a person’s identity, a similar physical characteristic or attribute is collected and compared against the previously collected identifier.

- Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-52, 121 Stat. 266 (2007).

Section 7208 of IRTPA, as codified in 8 U.S.C. 1365b, requires specifically that DHS' entry and exit data system collects biometric exit data for all categories of individuals who are required to provide biometric entry data.

On January 5, 2004, DHS published an interim final rule in the **Federal Register** (69 FR 468) implementing the first phase of US-VISIT at certain U.S. air and sea ports-of-entry. The interim final rule amended 8 CFR 235.1 to authorize DHS to require certain aliens who arrive at designated U.S. air and sea ports-of-entry to provide biometric data to CBP during the inspection process. The air and sea ports-of-entry where such collection of biometric information occurs were designated by notice in the **Federal Register**. See 69 FR 482 (January 5, 2004). Since that time, aliens who are required by law to submit biometric information have been submitting fingerprints and photographs upon entry to the United States at designated air and sea ports-of-entry. This DHS biometric entry program is currently operational at 115 airports and 15 seaports across the United States.

The second phase of US-VISIT was implemented on August 31, 2004 when DHS published an interim final rule in the **Federal Register** (69 FR 53318) expanding the program to the 50 most highly trafficked land border ports-of-entry in the United States as required in 8 U.S.C. 1365a(d)(2).² This interim final rule amended 8 CFR 215.8, which provides that the Secretary, or his designee, may establish pilot programs to collect biometric information from certain aliens departing the United States at land border ports-of-entry, and

² Section 1365a(d)(2) provides in pertinent part: "Not later than December 31, 2004, the Attorney General [now Secretary of Homeland Security] shall implement the integrated entry and exit data system . . . at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens."

up to fifteen air or sea ports of entry, designated through notice in the **Federal Register**. See 8 CFR 215.8(a)(1). The interim final rule also authorized DHS to identify the specific land border ports-of-entry in a separate notice published in the **Federal Register**.³

On November 9, 2004, DHS published a notice in the **Federal Register** (69 FR 64964) identifying the fifty most trafficked land border ports-of-entry where biometric data would be collected from certain aliens upon arrival. Today, DHS collects fingerprint biometric data to verify the identity of certain aliens seeking admission at all land border ports-of-entry. This notice also specified that DHS would announce, through a future **Federal Register** notice, the piloting of a future biometric collection program at a limited number of sites as part of DHS' efforts to process aliens upon departure from the United States.

On March 16, 2013, US-VISIT's entry and exit operations, including deployment of a biometric exit system, were transferred to U.S. Customs and Border Protection (CBP). See Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113-6 (2013). The Act also transferred US-VISIT's overstay analysis function to U.S. Immigration and Customs Enforcement (ICE) and its biometric identity management services to the Office of Biometric Identity Management (OBIM), a newly-created office within the National Protection and Programs Directorate. CBP assumed the biometric entry and exit operations on April 1, 2013.

The purpose of this notice is to inform the public that CBP will be conducting a test on the collection of biometric exit information at the Otay Mesa, California land border port-

³ On December 19, 2008, DHS published a final rule in the **Federal Register** (73 FR 77473) finalizing this interim final rule without change.

of-entry. This notice describes the scope of the test, its purpose, how it will be implemented, the persons covered, the duration of the test, and privacy considerations.

Otay Mesa Land Border Port-of Entry Pedestrian Exit Test

The Otay Mesa Land Border Port-of Entry Pedestrian Exit Test is a short-term biometric data collection that will help CBP determine the viability of capturing biometric data from certain departing aliens in various environmental conditions. This test is one of CBP's key steps in developing the capability to fulfill DHS' mandate to collect biometric information from arriving and departing aliens.

Scope, Purpose and Implementation

Currently, aliens who seek admission at the Otay Mesa, California land border port-of-entry may be required to provide fingerprint biometric data for CBP to verify their identity. (Certain aliens, including individuals traveling on A or G visas and others as specified in 8 CFR 215.8(a)(2), are exempt from this requirement). During this test, facial and iris images of these non-exempt aliens will be captured, either via a biometric kiosk or freestanding facial and iris cameras, upon arrival and departure of the alien if they cross the border at the Otay Mesa land border port-of-entry. The captured biometric exit data will be stored in a secure, standalone database and analyzed for off-line matching against facial and iris images previously captured upon arrival and associated with biometric data already on file. No biometric data will be distributed from the standalone database, except for analysis and reporting purposes on the results of the test. Biometric information will not be collected from U.S. citizens under this test.

CBP will also collect biographic data from all travelers exiting the United States at the Otay Mesa port-of-entry, including U.S. citizens. Biographic data consists of the

traveler's identifying information provided on his or her travel documents, such as full name, date of birth, gender, and country of citizenship, and does not involve biometric identifiers such as fingerprints and facial or iris images. The traveler's travel documents will be read upon exit via a Radio-Frequency Identification (RFID) technology reader, a kiosk, or a hand-held device.

Pursuant to various authorities under Titles 8 and 19 of the U.S. Code, and other authorities CBP enforces on behalf of third party agencies at the border, CBP routinely collects biographic data from travelers entering and departing the United States. See, e.g., 8 U.S.C. §§ 1181, 1185, 1221; and 19 U.S.C. § 1433. During the test at the Otay Mesa port-of-entry, this same data will be collected from all departing travelers. This will enable CBP to evaluate the viability of using biographic or biometric data or a combination of the two to provide a high level of confidence in validating the traveler's identity upon exit.

CBP will use the results of the test to assess the operational feasibility of biometric information collection for potential deployment across the U.S. southwest border. Once the biometric data is captured, CBP will analyze and evaluate the test based on a number of criteria, including the speed and quality of the data capture, the ability to match biometric data captured upon arrival and departure, the concurrent and independent capability of facial and iris biometrics, and the feasibility and accuracy of capturing biometrics from a distance. With regard to biographic data, CBP will use such data to identify travelers who are known or suspected of being terrorists, have affiliations to terrorist organizations, have active warrants for criminal activity, are inadmissible, have overstayed their visas, or have been otherwise identified as potential security risks or are the subject of law enforcement

concerns. A successful test will enhance DHS security efforts at our Nation's border while expediting the movement of legitimate travelers.

Persons Covered

For the duration of the test, all aliens shall provide the biometric information described above at the time of arrival to and departure from the United States to the extent they cross through the Otay Mesa land port-of-entry, except for aliens who, at the time of such arrival or departure, are exempt pursuant to 8 CFR 235.1(f)(1)(iv) and 8 CFR 215.8(a)(2). Exempted aliens include:

- (1) Canadian citizens who under section 101(a)(15)(B) of the INA who are not otherwise required to present a visa or have been issued Form I-94 (see § 1.4) or Form I-95 upon arrival at the United States;
- (2) Aliens admitted on A-1, A-2, C-3 (except for attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visas, and certain Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas who are maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to this notice;
- (3) Children under the age of 14;
- (4) Persons over the age of 79;
- (5) Classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt; or

- (6) An individual alien whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt.

As a part of this test, CBP will also collect biographic information from all persons exiting the Otay Mesa port-of-entry.

Duration of Test

Beginning no earlier than December 7, 2015, CBP will collect facial and iris biometric data from non-exempt aliens subject to this notice upon arrival at the Otay Mesa land border port-of-entry.

Beginning no earlier than February 1, 2016, CBP will collect facial and iris biometric data from these non-exempt aliens when they exit the United States through the Otay Mesa land border port-of-entry.

Beginning no earlier than February 1, 2016, CBP will collect biographic information from all persons exiting the Otay Mesa port-of-entry.

This test will end on or before June 30, 2016.

For purposes of analysis, CBP will retain data collected from this test for approximately one year from the date of collection.

Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this test. Additionally, CBP will be issuing a Privacy Impact Assessment (PIA), which will outline how CBP will ensure compliance with Privacy Act protections. The PIA will examine the privacy impact of the Otay Mesa Land Border Port-of Entry Pedestrian Exit Test as it relates to DHS' Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS' mission to preserve, protect and secure the United States. The PIA will address issues such as the security, integrity, and sharing of data, use limitation and transparency. Once issued, the PIA will be made publicly available at:

<http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>. CBP has also issued an update to the DHS/CBP-007 Border Crossing Information (BCI) System of Records, which fully encompasses all the data that is being collected at the Otay Mesa land border port-of-entry for purposes of this test. The system of records notice (SORN) was published in the Federal Register on May 11, 2015 (80 FR 26937).

Paperwork Reduction Act

CBP requires aliens subject to this notice to provide biometric and biographic data at the Otay Mesa port-of-entry in the circumstances described above. This requirement is considered an information collection requirement under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). The Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB control number for this collection is 1651-0138.

Dated: November 9, 2015.

R. Gil Kerlikowske,
Commissioner.

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