



DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 215, 217, 231, and 235

19 CFR Parts 4 and 122

Docket No. DHS-2008-0039

RIN 1601-AA34

Collection of Alien Biometric Data Upon Exit from the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (“US-VISIT”)

AGENCY: Department of Homeland Security.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice announces that DHS is withdrawing a notice of proposed rulemaking published in the *Federal Register* on April 24, 2008 which proposed to require commercial air and vessel carriers to collect biometric information from certain aliens departing the United States and submit this information to the Department of Homeland Security (DHS) within a certain timeframe.

DATES: The notice of proposed rulemaking is withdrawn on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Director, Entry/Exit Policy and Planning, Office of Field Operations, U.S. Customs and Border Protection, by phone at (202) 325-1053 or via e-mail at michael.hardin@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2008, DHS published a notice of proposed of rulemaking (2008 NPRM) in the *Federal Register* (73 FR 22065) proposing a biometric exit program at air and sea ports that would require commercial air and vessel carriers to collect biometric data from aliens and submit this information to DHS within a certain timeframe. The proposed rule set out certain technical requirements and a substantive performance standard for the transmission of biometric data, but provided the carriers with some discretion in the manner of collection and submission of biometric data, including latitude in determining the location of the biometric data collection within the port of entry.

DHS received 118 comments from the public in response to the 2008 NPRM. Most of the comments opposed the adoption of the proposed rule due to issues of cost and feasibility. Among other things, commenters suggested that biometric collection should be a purely governmental function, that requiring air carriers to collect biometrics was not feasible and would unfairly burden air carriers and airports, and that the highly competitive air industry could not support a major new process of biometric collection on behalf of the government.

After consideration of these comments and the results of various biometric exit pilots conducted in 2009,¹ DHS concluded that the process described in the 2008 NPRM was not feasible for implementing a biometric exit program at air and sea ports. After the 2008 NPRM was published, DHS developed a new approach for implementing a biometric exit program based on a facial recognition system that is efficient, accurate, and unobtrusive. Concurrently with this notice, DHS is publishing an NPRM (“2020 NPRM”) that proposes to amend the regulations to enable the implementation of a biometric entry-exit system based on the new approach described in further detail in the 2020 NPRM. Based on the comments received in response to the 2008 NPRM and DHS’s new approach to implementing a

¹ For more information on the biometric exit pilots conducted in 2009, see Section III.D.2 of the NPRM referenced later in this paragraph.

biometric entry-exit system as set forth in the 2020 NPRM, DHS has decided to withdraw the 2008 NPRM.

Executive Order 13771

The withdrawal of the 2008 NPRM qualifies as a deregulatory action under Executive Order 13771. *See* OMB's Memorandum titled "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017).

Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the *Federal Register*.

Conclusion

Accordingly, DHS withdraws the notice of proposed rulemaking published in the *Federal Register* (73 FR 22065) on April 24, 2008.

Chad R. Mizelle,
Senior Official Performing the Duties of
the General Counsel.
U.S. Department of Homeland Security.