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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 235

[CBP Dec. No. 23-09]

Interpretation of the Term Kiosk for Global Entry

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

ACTION: Interpretive rule.

SUMMARY: This interpretive rule provides guidance to the public on U.S. Customs and Border Protection's interpretation of the term "kiosk" as used in the Global Entry regulations.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION:

I. Background

U.S. Customs and Border Protection (CBP) operates the Global Entry program, a voluntary international trusted traveler program, at designated airports to provide certain pre-approved travelers dedicated processing into the United States. Members of Global Entry are vetted travelers who have voluntarily applied for membership, have paid a required application fee, and have provided certain personal data to CBP. Travelers with active membership in Global Entry are considered to be a low risk, because CBP conducts vetting both when the participant applies to the Global Entry program and on an ongoing basis after the participant becomes a Global Entry member.

Upon arrival at a designated airport, Global Entry members can use a self-service process to report their arrival and facilitate their inspection. The Global Entry arrival procedures are set forth in section 235.12(g) of title 8 of the Code of Federal Regulations (8 CFR 235.12(g)). That regulation requires that an arriving passenger utilize a Global Entry kiosk, follow the on-screen instructions, and declare all articles brought into the United States. The term “kiosk” is not defined in the regulations; however, the kiosks used by CBP until now have been machines that are permanently installed in airports and that print paper receipts for verification of the traveler’s arrival (“legacy kiosks”). Participants must physically go to the legacy kiosk in order to be processed using the Global Entry program.

To facilitate their inspection, Global Entry members utilize the legacy kiosks to have their photographs and fingerprints taken, submit identifying information, and answer several automated questions about items that they are bringing into the United States. When using the legacy kiosks, participants are required to declare all articles that they are bringing into the United States, pursuant to 19 CFR 148.11.

CBP is in the process of transitioning from the legacy kiosks to Global Entry portals and the Global Entry Mobile application. CBP expects all the legacy kiosks to be retired at the end of calendar year 2023. The portals are already being used in some locations and are essentially mobile processing units, similar to a tablet, with screens and cameras. The portals are enabled with Wi-Fi to allow CBP the flexibility to position the portals anywhere inside an airport Federal Inspection Station (FIS) to optimize traveler processing. Global Entry participants physically approach the portals for processing in a manner similar to the legacy kiosks. However, instead of issuing a paper receipt to travelers, the portals will transmit an electronic file to the CBP officers at egress for review and verification of the traveler’s arrival. In addition to the portals, advancing technology will now allow CBP to perform the same processing for Global Entry members through use of the Global Entry Mobile application. The Global Entry Mobile application will be deployed at 5 airport locations across the United States (Los Angeles, Miami,

Houston, Fort Lauderdale, and Washington Dulles) starting in the summer of 2023. The portal or the mobile application will take the traveler’s facial image and match it with the existing image from the application process. With these new processes, travelers will now make a verbal declaration to a CBP officer instead of responding to on screen questions that were previously asked during processing at the legacy kiosk. All of the technologies that will now be included in CBP’s interpretation of “kiosk” assign a class of admission and provide a paper or electronic record that is given to a CBP officer stationed within the Federal Inspection Service area for verification that the traveler was processed for admission into the United States.

For this reason, the Department of Homeland Security (DHS) is issuing this interpretive rule to clarify its interpretation of the undefined term “kiosk” to include the currently available technology as well as future advances in processing technology for Global Entry participants to be processed by CBP for entry into the United States.

DHS is issuing this interpretive rule as an interim measure prior to publication of a final rule that will remove the term “kiosk” from the Global Entry regulations entirely. On September 9, 2020, DHS published a notice of proposed rulemaking (85 FR 55597) in the *Federal Register* entitled “Harmonization of the Fees and Application Procedures for the Global Entry and SENTRI Programs and Other Changes” (the NPRM). In the NPRM, DHS proposed to remove references to “kiosk” from the regulations. As noted above, “kiosk” is not a defined term in the regulations, and DHS proposed to remove that term in order to make the regulations more inclusive of developing technologies. The final rule promulgating the proposed change is expected to publish in 2024.

II. Interpretation of “Kiosk”

For the purposes of 8 CFR 235.12, CBP interprets the term “kiosk” to include the following¹:

¹ All of the technologies included in the CBP’s interpretation of “kiosk” assign a class of admission and provide a paper or electronic record that is given to a CBP officer stationed within the Federal Inspection Service area for verification that the traveler was processed for admission into the United States.

1. Legacy kiosks (machines that are permanently installed in airports and that print a paper receipt);
2. Receipt-less Facial Kiosks (RFK) (modified legacy kiosks that send an electronic record to a CBP officer);
3. Global Entry Portals (Wi-Fi enabled mobile processing units with a screen and camera); and
4. the Global Entry Mobile application or any successor technology for processing Global Entry members at ports of entry.

III. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.² Therefore, this rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the same date that it is published in the **Federal Register**.

Regulatory Analysis

Executive Orders 12866, 13563, and 14094 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

This rule merely explains to the public how CBP interprets a certain term used in an existing regulation, 8 CFR 235.12. This rule imposes no new requirements on the public and simply clarifies its interpretation of a kiosk to include other forms of technology, broadening the public’s processing options. As such, there are no costs to this interpretive rule. To the extent

² 5 U.S.C. 553(d).

that this rule results in processing time savings for the public, there may be some unquantified benefits to this interpretive change.

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.³ Because no notice of proposed rulemaking is required, analysis under the Regulatory Flexibility Act is not required.⁴

An agency may not conduct or sponsor, and an individual is not required to respond to a collection of information unless it displays a valid OMB control number. This collection of information has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651-0121.

Alejandro N. Mayorkas,
Secretary of Homeland Security.

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³ 5 U.S.C. 553(b).

⁴ 5 U.S.C. 603(a), 604(a).