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Dated: February 10, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Facial Comparison for APIS Compliance Test

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) plans to conduct a voluntary test in which participating commercial airlines and vessels use CBP's Traveler Verification Service (TVS) facial comparison service to comply with certain regulatory requirements regarding the Advance Passenger Information System (APIS). CBP regulations currently require an appropriate official of commercial aircraft and commercial vessels (collectively "carriers") to submit electronic manifests to CBP listing crew, non-crew, and passenger (collectively "travelers") information upon arrival and departure of aircraft and vessels. The carrier is required to compare the travel documents presented by the travelers with the information the carrier submits to CBP to, among other things, ensure that the information is correct and that each traveler is the person to whom the travel document was issued. Additionally, the carrier is required to ensure that the travel document presented is valid for travel to the United States. Participation in this pilot does not remove this requirement for carriers. During this test, participating carriers will use the existing TVS facial comparison service

to ensure the manifest information transmitted to CBP is correct and to perform the required identity verification. The use of TVS technology for APIS verification purposes has the potential to speed up the departure process for both carriers and travelers, as it enables travelers to be matched more efficiently to their travel documents. This notice provides a description of the test, sets forth requirements for participation, and invites public comment on any aspect of the test.

DATES: The test will begin no earlier than February 16, 2023 and will run for at most two years. CBP is accepting applications from carriers to participate in the test on a rolling basis throughout the two-year testing period. CBP will announce any modifications by notice in the **Federal Register**.

ADDRESSES: Applications to participate in the Facial Comparison for APIS Compliance Test must be submitted via email to simplifytravel@cbp.dhs.gov. Written comments concerning program, policy, and technical issues may also be submitted via email to simplifytravel@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Natascha A. Guterthuth, Program Manager, Admissibility and Passenger Programs, Office of Field Operations, natascha.a.guterthuth@cbp.dhs.gov or (202) 417-0096.

SUPPLEMENTARY INFORMATION:

Background

APIS Requirements

The Advance Passenger Information System (APIS) is an electronic data system that allows carriers to transmit traveler data to CBP. Under the relevant statutes and CBP regulations, an appropriate official¹ of each carrier arriving in or departing from the United States must transmit an electronic manifest to CBP's APIS system for all travelers within a specified timeframe (generally before the vessel or aircraft departs, though the exact timeframe varies, depending on the circumstances of the trip and type of carrier). See 8 U.S.C. 1221, 19 U.S.C. 1433, and 49 U.S.C. 44909; 19 CFR 4.7b(b), 4.64(b), 122.49a(b), 122.49b(b), 122.49c, 122.75a(b), and 122.75b(b). The electronic manifest must include the travelers' biographic information

¹ An "appropriate official" is defined as the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel; this term and the term "carrier" are sometimes used interchangeably within the regulations. See title 19 of the Code of Federal Regulations parts 4 and 122 (19 CFR parts 4 and 122).

including name, age, gender, date of birth, citizenship, passport number if relevant, and numerous other biographic data elements depending upon the type of traveler (e.g., crew or passenger), as well as such other information as determined necessary by the Secretary of the Department of Homeland Security (DHS),² in consultation with the Secretary of State, for flights and vessels arriving in and departing from the United States, or as determined necessary by the Administrator of the Transportation Security Administration (TSA), in consultation with the Commissioner of CBP, for flights arriving in the United States. See 8 U.S.C. 1221; 49 U.S.C. 44909. Among other things, the carrier must compare the travel document presented by the traveler with the information the carrier is transmitting to CBP on the electronic manifest in order to (1) verify that the manifest information transmitted to CBP is correct and (2) verify that the traveler is the person to whom the travel document was issued. These two requirements will be referred to in this document as the "APIS verification requirements". See 19 CFR 4.7b(d), 4.64(d), 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d).

The Facial Comparison for APIS Compliance Test

Description and Purpose

CBP plans to conduct a voluntary test (the "Facial Comparison for APIS Compliance Test" or the "APIS test") in which participating commercial airlines and vessels use CBP's Traveler Verification Service (TVS) facial comparison service to comply with the APIS verification requirements referenced in the background section of this document. CBP's TVS facial comparison service is part of an information technology system that provides facial matching for photos to verify the identity of travelers entering and leaving the United States pursuant to 8 CFR 215.8 and 235.1.³ The purpose

² Upon the creation of the Department of Homeland Security (DHS), through the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2140 (2002), and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, the functions of the Immigration and Naturalization Service (INS) of the Department of Justice, and all authorities with respect to those functions were transferred to DHS on March 1, 2003.

³ TVS is used at participating ports of entry and with participating carriers to biometrically confirm the identity of noncitizens who are subject to biometric facial comparison when entering and exiting the United States pursuant to 8 CFR 215.8 and 235.1. Additionally, TVS is used for other travelers who submit their facial images voluntarily to participating carriers or at participating ports of

Continued

of the APIS test is to determine the feasibility of allowing carriers to use CBP's TVS facial comparison service to comply with the carrier's APIS verification requirements. The APIS TVS procedures are discussed in greater detail in the Procedures Section below.

Procedures

The APIS test is voluntary for carriers and travelers. Eligible carriers may participate in this test by following the procedures outlined below in the Eligibility and Participation Requirements Section.

Carriers who voluntarily participate in this test will collect facial images (photographs) of certain travelers at the gate or other identity check points. The carriers will then submit those facial images to CBP's TVS facial comparison service.⁴ Carriers must submit photos at the time of boarding. Carriers may also submit photos at passenger check-in if the carriers elect to take photos at that identity check point. The submitted photographs will be compared to biometric templates⁵ generated from pre-existing photographs that CBP already maintains, known as a "gallery." When CBP receives a passenger manifest, CBP will build a gallery of photographs for the individuals identified on the manifest. These images may include photographs captured by CBP during previous entry inspections, photographs from U.S. passports and U.S. visas, and photographs from other DHS encounters.

If the TVS matches the traveler's facial image to a photograph in the gallery and the manifest information transmitted to CBP is correct, the carrier's APIS verification requirements will be considered fulfilled and the carrier will not need to perform any additional identity or passenger manifest verification.⁶ If the traveler's

facial image does not result in a match from TVS for any reason, the carrier will be required to verify the traveler's identity through a manual review of the traveler's travel documents pursuant to the existing APIS regulatory requirements. If a carrier identifies a traveler who has been incorrectly matched by the TVS to another passenger (referred to as a "false positive"), the carrier will manually review the travel documents of any such false positives pursuant to current APIS requirements.⁷

The APIS test procedures described above involve the use of TVS facial comparison service, which depends on the traveler being photographed at the time of boarding or other identity checkpoints. If an individual traveler does not want to be photographed, the traveler can opt out of this procedure by notifying the carrier. CBP will require carriers to post clear and visible signs notifying travelers of their ability to opt out. Additionally, carriers may choose to give a verbal announcement during the boarding process and pass out tear sheets provided by CBP with additional information about CBP's use of facial comparison technology. If a traveler opts out of the APIS test procedures, the carrier must perform a manual review of the travel documents to ensure the manifest information sent to CBP is correct and verify the traveler's identity as required by the APIS regulations. CBP requires carriers to provide an electronic manifest listing all travelers pursuant to APIS regulations, regardless of the verification process used by the carrier.

Eligibility and Participation Requirements

Any commercial air or commercial sea carrier may apply to participate in the APIS test. In order to participate, a carrier must submit a request to participate in this test and must meet CBP requirements including those listed in the Business Requirements Document⁸ and the Technical Reference Guides provided by CBP to the carriers. Upon request, CBP will provide the carrier with the full list of requirements for participation, which vary depending

upon the specific circumstances of the carrier. Carriers must agree that they will not store or retain any photos taken while using TVS facial comparison services. They also must provide a method agreeable to CBP by which CBP is able to audit compliance with this requirement. Any system log files associated with a TVS enabled system must be approved by CBP to ensure compliance with DHS and CBP privacy and security policies and all applicable privacy statutes and regulations.

The carrier must also sign and return the Business Requirements Document agreement to CBP in order to participate in the APIS test. The Business Requirements Document is an acknowledgement by the carrier that it agrees to all CBP terms and technical specifications as well as any other requirements as determined by CBP.

Any carrier that wishes to participate in the APIS test may contact CBP via email at simplifytravel@cbp.dhs.gov to request the detailed technical requirements for participation from CBP, as well as to obtain a copy of the Business Requirements Document to be signed by the carrier. If the carrier wishes to participate in the test, they can return the signed Business Requirements document and CBP will coordinate with the carrier to ensure that the carrier's systems meet the technical and privacy requirements as determined by CBP.

It is within CBP's sole discretion to refuse test participation for any carrier.

Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which allows the Commissioner of CBP to impose requirements different from those specified in the CBP regulations for conducting a test program or procedure designed to evaluate the effectiveness of new technology or operation procedures regarding the processing of passengers, vessels, or merchandise. This test is authorized pursuant to this regulation as it is designed to evaluate whether the use of CBP's TVS technology is a feasible way for carriers to meet their APIS verification requirements.

Waiver of Certain Regulatory Requirements

Under this test, the requirement that carriers manually review travel documents to confirm that the electronic manifest information the carrier is transmitting to CBP is correct as well as the identity of the traveler prior to submission of the manifest data to CBP will be waived if CBP's TVS returns a match of the traveler's facial

entry. For additional information on CBP's TVS see the TVS Privacy Impact Assessment (PIA), available at: <https://www.dhs.gov/publication/dhscbp pia-056-traveler-verification-service-0>.

⁴ As noted in further detail below, individual travelers may opt out of the APIS test procedures if they do not wish to provide their facial image.

⁵ A biometric template is a digital representation of a biometric trait of an individual generated from a biometric image and processed by an algorithm. The template is usually represented as a sequence of characters and numbers. For the TVS, templates cannot be reverse engineered to recreate a biometric image. The templates generated for the TVS are proprietary to a specific vendor's algorithm and cannot be used with another vendor's algorithms.

⁶ Carriers still need to ensure that each traveler has a valid passport or authorized travel document in his or her possession. This separate check for a valid passport or authorized travel document fulfills the passenger manifest requirements for the United States, but there may be additional requirements from destination or transit countries.

⁷ In the unlikely event that a false positive results in the creation of an incorrect travel record, the traveler affected by the incorrect travel record can seek redress through the DHS Traveler Redress Inquiry Program (DHS TRIP) at <https://www.dhs.gov/dhs-trip> or the CBP redress process, which can be found at <https://www.cbp.gov/travel/international-visitors/i-94/traveler-compliance>.

⁸ Business Requirement Documents available at: <https://www.cbp.gov/document/specifications/exit-business-requirements-document> and <https://www.cbp.gov/document/specifications/exit-business-requirements-document>.

image to a photograph in the gallery.⁹ For carriers participating in this test, when TVS returns a match of a traveler's facial image, the carrier's APIS verification requirements under 19 CFR 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d) will be considered fulfilled without the carrier further inspecting the traveler's travel documents.¹⁰

As noted above, if CBP's TVS does not return a match of the traveler's facial image, the carrier will still be required to perform the manual document check to fulfill the carrier's APIS verification requirements.

Costs

CBP will give carriers access to its TVS facial comparison service, and the carriers will choose and purchase the equipment that best fits their needs. The cost of the equipment will vary by carrier and may depend on how the equipment is used. CBP believes costs will range from \$5,000 to \$20,000 per departure gate, based on its experience procuring equipment for previous CBP facial comparison pilots. It is also possible that costs will go down substantially over time as carriers develop more efficient and inexpensive equipment. For example, the Washington Metropolitan Airports Authority has begun using modified iPads for its facial comparison pilot.¹¹ If this equipment is successful and is adopted more broadly, the cost to carriers could drop substantially.

Benefits

The goal of the APIS test procedure is to enable carriers to satisfy the APIS verification requirements more accurately and efficiently by eliminating the manual data and identity verification process in most cases. As noted in the Evaluation section below, CBP will evaluate whether the test procedure is more accurate than the current regulatory procedure. Performing biometric identity verification can help CBP and partner stakeholders reconcile any errors or incomplete data in a traveler's biographic data. CBP anticipates that having a more accurate verification will result in more accurate border crossing

records of travelers. By having more accurate border crossing records of travelers, CBP can more effectively identify overstays and noncitizens who are, or were, present in the United States without having been admitted or paroled and prevent their unlawful reentry into the United States. It will also make it more difficult for imposters to utilize other travelers' credentials. Ultimately, this provides CBP with more reliable information to verify identity and to strengthen its ability to identify criminals and known or suspected terrorists.

The use of TVS technology for APIS verification purposes has the potential to speed up the departure process for both carriers and travelers, as it enables travelers to be matched more efficiently to their travel documents. Various airlines have already partnered with CBP to test facial comparison in other contexts pursuant to regulations in Title 8 of the Code of Federal Regulations. These other programs are unrelated to APIS compliance, and participants have reported that facial comparison tests speed up the boarding process substantially.¹²

Duration of Test

This test will run for at most two years from February 16, 2023. While the test is ongoing, CBP will evaluate the results and determine whether the test should be extended or otherwise modified. CBP reserves the right to discontinue this test at any time at CBP's sole discretion. CBP will announce any modifications by notice in the **Federal Register**.

Evaluation of APIS Test

CBP will use the results of this test to assess the operational feasibility of using TVS facial comparison service for the purposes of compliance with the APIS verification requirements. CBP will evaluate this test based on a number of criteria, including:

- the percentage of travelers for whom CBP had a gallery photo available for matching purposes; and

- the ability of the technology to correctly match the facial images captured to the correct individuals' facial image(s) on file, including continued tracking of any differences in matching performance based on measurable demographic factors.

CBP's operational data continues to show there is no measurable differential performance in matching based on demographic factors. CBP continually monitors algorithm performance and technology enhancements to ensure we are deploying the most accurate and effective algorithm. CBP continues to partner with the National Institute of Standards and Technology (NIST) and use NIST research to ensure the continued optimal performance.¹³ CBP will continue its review of matches and no-matches to determine the reason for such a match, including whether the match was based on a demographic factor (age, gender, citizenship). CBP will continue to work both internally and with partners to identify and remediate disparate impacts and other forms of bias and discrimination, if any.¹⁴

Misconduct Under the Test

If a carrier participating in the test fails to abide by the rules, procedures, or terms and conditions of this test, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction under APIS regulations.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the

⁹ However, in the event of a "false positive" as discussed above, the carrier will still be required to manually review the travel documents in accordance with the requirements of 19 CFR 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d).

¹⁰ As noted above, carriers still need to ensure each traveler has a valid passport or authorized travel document in his or her possession.

¹¹ Source: https://www.washingtonpost.com/transportation/2018/09/06/officials-unveil-new-facial-recognition-system-dulles-international-airport/?noredirect=on&utm_term=.ae3fdefbd1a6. Accessed June 4, 2020.

¹² In one test, an airline partner has been able to board an Airbus A-380 with 350 travelers in only 20 minutes. (<https://www.cntraveler.com/story/orlando-airport-first-in-the-us-to-scan-faces-of-all-international-passengers>. Accessed June 4, 2020.) Another airline partner has reported to CBP that their baseline loading time for an A-380 is 45 minutes. In the test of the integrated facial comparison service used at the Orlando Airport, travelers have experienced a 15-minute time savings. According to one news article, this is down from 30 minutes for a 240-passenger plane. (<https://www.forbes.com/sites/grantmartin/2018/06/24/orlando-airport-deploys-biometric-scanners-at-all-international-gates/#2a4a588118f9>. Accessed June 4, 2020.) In both tests, boarding times are reduced by approximately 50 percent.

¹³ In July 2021, NIST published its Face Recognition Vendor Test (FRVT) Part 7: Identification for Paperless Travel and Immigration, available at: <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8381.pdf>. The report demonstrates that the current biometric facial recognition technology passes the threshold for use in CBP's Biometric Exit Program, based on computer-focused simulations. In December 2019, NIST published the FRVT Part 3: Demographic Effects, available at: <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8381.pdf>. As the report demonstrates, NEC-3, which CBP uses, is among the algorithms with an undetectable false positive differential. NIST also noted, "NEC-3, is on many measures the most accurate we have evaluated," see page 8 of the report.

¹⁴ Information regarding biometric matching performance can be found on CBP's website at <https://biometrics.cbp.gov/privacy> which includes a link to CBP's Privacy Evaluation Report as well as the TVS Privacy Impact Assessment (PIA). The PIA is also available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

date when the suspension will be effective. This decision may be appealed in writing to the Executive Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the appeal is granted and the participant has already been suspended, CBP will notify the participant when its participation in the test will be reinstated.

Privacy

CBP will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to during this test.¹⁵ Pursuant to these requirements, CBP will delete photos of U.S. citizens immediately upon confirmation of U.S. citizenship.¹⁶ CBP will retain photos of all noncitizens¹⁷ and no-matches for up to 14 days in the Automated Targeting System (ATS). DHS will retain the facial images of in-scope¹⁸ noncitizens for up to 75 years in DHS's Automated Biometric Identification System (IDENT) system, and any successor system.

CBP has issued a Privacy Impact Assessment (PIA) for TVS, which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA addresses issues such as the security, integrity, and sharing of data, use limitation and transparency. The PIA is publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

¹⁵ See 8 U.S.C. 552a and <https://www.dhs.gov/privacy-policy-guidance>.

¹⁶ Photos of U.S. citizens are destroyed immediately upon confirmation of U.S. citizenship, but no later than 12 hours only under specific circumstances. If there is a system or network issue, photos will reside in an inaccessible queue for up to 12 hours and will be processed once the system and/or network connectivity is re-established and proper dispositioning (confirmation of U.S. citizenship) can occur. Further information about the retention of facial images is provided in the TVS Privacy Impact Assessment (PIA). It is available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

¹⁷ For purposes of this document, CBP uses the term "noncitizen" in place of the term "alien." However, CBP regulations use the term "alien."

¹⁸ An "in-scope" noncitizen is any person who is required by law to provide biometrics upon entry or exit from the United States pursuant to 8 CFR 215.8(a) and 235.1(f).

CBP has also issued the DHS/CBP-005 APIS System of Records Notice (SORN) and the APIS PIA, as well as the DHS/CBP-007 Border Crossing Information (BCI) SORN and the DHS/CBP-006 Automated Targeting System (ATS) SORN. These documents encompass all data collected for APIS compliance, as well as data collected to create border crossing records for individuals. CBP will create new documents or update these documents as needed to reflect the use of biometric data for the purposes of this test and will make these documents available at: <https://www.dhs.gov/compliance>.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). This information collection is covered by OMB control numbers 1651-0138 Biometric Identity and 1651-0088 Passenger and Crew Manifest.

Signing Authority

Troy A. Miller, the Acting Commissioner of CBP, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: February 13, 2023.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Section 321 Data Pilot: Modification of Data Elements, Expansion of Pilot To Include Additional Test Participants, and Extension of Pilot

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) is modifying the Section 321 Data Pilot by adding optional data elements that may be submitted by any participant. CBP is also expanding the Section 321 Data Pilot to accept applications for additional participants in this test from all parties that meet the eligibility requirements. This notice also announces that CBP is extending the Section 321 Data Pilot through August 2025.

DATES: The voluntary pilot initially began on August 22, 2019, and will run through August 2025. The modifications of the data elements and expansion of the test to include additional participants set forth in this document are effective as of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Prospective pilot participants should submit an email to ecommerce@cbp.dhs.gov. In the subject line of your email please state, "Application for Section 321 Data Pilot." For information on what to include in the email, see section II.D (Application Process and Acceptance) of the notice published in the **Federal Register** on July 23, 2019 (84 FR 35405).

FOR FURTHER INFORMATION CONTACT:

Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division at ecommerce@cbp.dhs.gov or 202-325-6915.

SUPPLEMENTARY INFORMATION:

I. Section 321 Data Pilot

Section 321(a)(2)(C) of the Tariff Act of 1930, as amended, provides for an exemption from duty and taxes for shipments of merchandise imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than \$800. See 19 U.S.C. 1321(a)(2)(C). On July 23, 2019, U.S. Customs and Border Protection (CBP) published a general notice in the **Federal Register** (84 FR 35405) (July 2019 notice) introducing a voluntary Section 321 Data Pilot with a limit of nine participants. In accordance with the pilot, participants agree to transmit electronically certain data in advance of arrival for shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended (Section 321 shipments). The data pilot tests the feasibility of collecting certain advance data, beyond those required by current regulations, and of collecting data from non-traditional entities, such as online marketplaces, in order to effectively identify and target high-risk shipments in the e-commerce environment. With the expansion of the data pilot, CBP intends to increase the number of trade participants who are transmitting