

# FEDERAL USE OF BIOMETRICS AT PORT FACILITIES FOR TRAVELER FUNCTIONS POLICY

EX-26 As of 12/17/21



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## I. BACKGROUND

Biometrics is the use of technology to identify an individual through analysis of that person's physical and behavioral characteristics. Examples of physical characteristics include the unique features of an individual's face or their fingerprint, while examples of behavioral characteristics includes an individual's voice, signature, or how they walk.

The Port recognizes the limitations on its authority to regulate federal use of public-facing biometrics at Port facilities. The federal government has authority to implement its own systems, particularly in federally controlled areas of Port facilities such as the U.S. Transportation Security Administration (TSA) security checkpoints at the airport and U.S. Customs and Border Protection (CBP) customs processing areas at airport and cruise facilities. At this time, the main use of biometric technology by federal agencies at Port facilities is CBP's deployment of their Biometric Entry system for international arriving passengers at both Seattle-Tacoma International Airport (SEA) and the Pier 66 cruise terminal.

Biometric Entry, also known as "Simplified Arrival", is intended to meet CBP's goal of ensuring individuals entering the country are truly the same person who is authorized to do so. Nationally, the U.S. Transportation Security Administration (TSA) is also beginning to pilot the use of this technology at their security screening checkpoints, but not yet at SEA.

Direction for CBP to move to biometric data collection originated as a recommendation of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. In its final report, the 9/11 Commission concluded that "funding and completing a biometric entry-exit screening system for travelers to and from the United States is essential to our national security." Based on the 9/11 Commission's recommendations, Congress included biometric entry/exit provisions in the Intelligence Reform and Terrorism Prevention Act of 2004. The FY 2013 Consolidated and Further Continuing Appropriations Act transferred entry/exit policy and operations to CBP. More recently, President Trump included direction to expedite completion of this transition to biometric identification in section 7 of Executive Order 13769, which is known as the Muslim ban or travel ban: "The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States."

CBP's biometric entry program utilizes the Traveler Verification Service (TVS), which is essentially a system of related databases hosted by CBP that contain the biometric facial recognition "template" of individuals. These templates are based on images previously collected by CBP or other federal agencies, such as from passport or visa application photos. TVS allows CBP to deploy camera systems that capture an image of an individual, at which point the TVS system attempts to match the image to a "gallery" of biometric templates; if it confirms a match, the system transmits a "match/no match" confirmation.

While the Port has very limited ability to influence, much less direct, the activities of CBP or TSA, it can still play an important transparency and accountability role, and potentially impact how federal biometrics for traveler functions are implemented at its facilities – particularly in terms of customer experience and education. To that end, the Commission passed Order 2021-XX, which directs the Executive Director to implement an executive policy governing Port engagement on the Biometric Entry Program and any other future federal uses of biometric technology for traveler functions at Port facilities.

## **II. POLICY STATEMENT**

The following policies will be implemented by the Port of Seattle as directed by the Port of Seattle Commission to increase the transparency and accountability of federal use of biometrics for traveler functions at Port facilities, specifically focused on CBP’s Biometric Entry program. These policies will be updated to include TSA deployment of biometrics when and if it occurs at SEA.

### **Policy 1 – Port Guidelines for Avoiding Unintended Image Capture:**

- The Port will develop recommendations to CBP for their consideration on ways to avoid unintended image capture at Port facilities – for example, by positioning the camera in a direction that does not face the main passenger area, use of a screen behind the individual being photographed, or use of a camera with a minimal field view. While CBP has jurisdiction over this topic, the Port’s unique expertise regarding its facilities will be offered as a value-add to CBP.

### **Policy 2 – Port Communications Efforts:**

- The Port will develop a comprehensive communications plan that notifies the general public of the implementation of Biometric Entry at Port facilities and all related information. The communications plan will include specific communications within the airport or cruise terminal, where possible, including announcements, signage, flyers, and web content, as well as via the Port’s online and social media platforms.
  - The communications plan should include effort to reach local immigrant and refugee communities – in multiple languages and in culturally appropriate ways; languages should be determined based on the most common ones spoken by airport and/or cruise passengers and – if at the airport – languages appropriate to the specific flight (as per feedback from airlines and cruise lines, as well as federal “origin and destination” data). Where possible, the Port should partner with airlines, cruise lines and CBP to implement these communication efforts.
- The Port will produce an annual accountability report that includes all approved, publicly available information on topics such as:
  - A description of the biometrics being used;
  - The system’s general capabilities and limitations;
  - How data is generated, collected, and processed;
  - A description of the purpose and proposed use of the biometrics, and its intended benefits, including any data or research demonstrating those benefits;
  - The specific federal laws and statutes that allow CBP to implement biometrics at Port facilities;
  - CBP’s privacy guidelines;
  - Traveler rights with regard to the biometric entry system;

- The Port’s biometric training guidelines;
  - Any publicly available information about CBP’s testing procedures, including its processes for periodically undertaking operational tests of the service;
  - A description of any potential impacts of the service on civil rights and liberties, including potential impacts to privacy and potential disparate impacts on marginalized communities, and the specific steps the agency will take to mitigate the potential impacts and prevent unauthorized use of the service;
  - Procedures for receiving feedback, including the channels for receiving feedback from individuals affected by the use of the service and from the community at large, as well as the procedures for responding to feedback;
  - Any known or reasonably suspected violations of CBP’s rules and guidelines, including complaints alleging violations;
  - Other relevant data, including any publicly available data shared by CBP about the accuracy and effectiveness of its system, including any available data segmented by key traveler characteristics and/or demographics;
  - Benchmarking data against the operational results of the biometric system at other ports;
  - Feedback about the public’s experience, sought proactively in customer surveys, including whether travelers believe that they fully understand the information about the system;
  - Any publicly available audits of the CBP biometric entry system.
- This accountability report will be shared publicly through appropriate Port communications channels.

**Policy 3 – Port Technology Testing Advocacy:**

- The Port will advocate for CBP to make available an application programming interface (API) or other technical capability, to enable legitimate, independent, and reasonable tests of its biometric technologies for accuracy and unfair performance differences across distinct subpopulations.

**Policy 4 – Port Training Guidelines:**

- The Port will develop suggested biometric training guidelines for personnel who will be administering the facial recognition technology on travelers, including the capabilities and limitations of facial recognition, and how to deal with mismatching issues with sensitivity and discretion. While the Port has no authority to direct CBP’s activities in this regard, the Port’s unique expertise will be offered as a value-add, specifically related to cultural sensitivity and discretion.
- The Port will design suggested training guidelines and encourage airlines and cruise lines to provide such guidelines to their personnel so airline and cruise employees can educate arriving/disembarking international passengers about CBP rules regarding opt-out of the biometric entry system.

**Policy 5 – Port Advocacy Efforts:**

- Port staff will work with stakeholders to advocate for federal laws and regulations that support the Port’s biometric principles.

**Policy 6 – Port Outreach Efforts:**

- Port staff will develop an engagement plan with local jurisdictions, nonprofit organizations, and others to educate local immigrant and refugee communities about the biometric entry program. Specifically, the Port should ensure that these communities are fully informed about the program, publicly available information regarding the technology used in connection with CBP’s biometric entry program, and information regarding travelers’ rights relating to biometric entry program – in multiple languages and in culturally appropriate ways.
- Port staff will work with local jurisdictions, nonprofit organizations and others to inform local immigrant and refugee communities – in multiple languages and in culturally appropriate ways – about resources for sharing concerns about any incidents in which they do not feel they have been afforded their full legal rights and/or their treatment has not been fully respectful.

**III. PROCEDURES FOR NOTICE**

- The Port will inform employees about this policy by posting it online at: <http://compass.portseattle.org/corp/legal/Pages/PoliciesandProcedures.aspx#exec>
- The Port will train relevant Port employees and other associated corporate staff on this policy.
- The Port will communicate this policy directly to private sector tenants and federal agencies operating at Port facilities through existing communication channels.
- The Port will communicate this policy to all relevant external stakeholders, elected officials and impacted community organizations through existing communication channels.

For further information contact [Eric Schinfeld](#).