MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 122

STRENGTHENING BORDER CONTROL THROUGH THE ADOPTION AND IMPLEMENTATION OF THE ADVANCE PASSENGER INFORMATION SYSTEM

WHEREAS, Annex 9 to the Convention on International Civil Aviation or the "Chicago Convention," to which the Philippines is a party, requires each contracting State to establish an Advance Passenger Information (API) system, which must be supported by an appropriate regulation and consistent with internationally recognized standards;

WHEREAS, as an update to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), Specific Annex J of the Revised Kyoto Convention recommends the use of internationally standardized API in order to facilitate customs control of travelers and the clearance of goods carried by them;

WHEREAS, the World Customs Organization (WCO), International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO) have developed the *Guidelines on Advance Passenger Information*, which prescribes international standards and recommends practices on the implementation of API systems, in an effort to harmonize mechanisms on passenger data collection and transmission for better inter-agency co-operation among border control agencies;

WHEREAS, United Nations (UN) Security Council Resolution (SCR) No. 2178 (2014) calls upon Member States to, among others, require airlines operating in their territories to provide API to appropriate national authorities to detect departure from, attempted travel to, entry into or transit through their respective territories;

WHEREAS, UNSCR No. 2178 (2014) further encourages Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law;

WHEREAS, UNSCR No. 2396 (2017) urges Member States to, among others, stem threats to international peace and security by means of effective national border controls and global law enforcement information sharing using a secure communications network, databases, and a system of advisory notices and procedures instituted through bilateral or multilateral mechanisms, in accordance with domestic and international law, including human rights law;

WHEREAS, the Bureau of Immigration (BI) is responsible for the administration and enforcement of immigration, citizenship and alien admission and registration laws in accordance with the provisions of Commonwealth Act (CA) No. 613 or the "Philippine Immigration Act of 1940," as amended;

WHEREAS, under CA No. 613, as amended, the master, agent, owner or consignee of a vessel, whether aircraft or water craft, arriving in the Philippines from a place outside thereof, or departing from the Philippines for a place outside thereof, shall furnish the immigration officer in charge at the port of arrival and port of departure, such crew lists and passenger manifests, and such other information concerning the persons arriving or departing on the vessel, as shall be prescribed by the Commissioner of Immigration;

WHEREAS, Philippine border control must be enhanced through the strict and intensified enforcement of Philippine immigration laws and upgrading of screening capacity to enhance border integrity, manage international traffic flow amidst dramatic growth in passenger numbers, and ensure public safety and security;

WHEREAS, Republic Act (RA) No. 10173 or the "Data Privacy Act of 2012," allows processing of personal information, subject to adherence to data privacy principles, implementation of security measures, and protection of rights of data subjects; and

WHEREAS, Section 17, Article VII of the Constitution provides that the President shall have control of all executive departments, bureaus and offices, and that he shall ensure the faithful execution of laws;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order:

Section 1. Definitions. For purposes of this Order, the following terms shall mean:

a. *API* refers to an electronic communication containing passenger- or crew/non-crew-related information, which is transmitted to the BI prior to arrival or departure and made available on the primary line at the port of entry. API includes data relating to the: (i) flight, such as flight number, arrival and departure times; and (2) individual passenger or crew/non-crew, such as name, date of birth, gender, citizenship and travel document data that may be found in the machine readable zone of the passport or its equivalent;

b. *API System (APIS)* refers to an electronic communications system that collects biographic data from machine readable passports, other official travel documents or basic details provided by commercial carriers. APIS may either be interactive or non-interactive/batch style and shall include other program or system authorized or recommended under pertinent international standards and guidelines;

c. *Commercial Carriers* are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods, or both, by sea or air, for compensation, offering their services to the public. A Commercial Carrier may be a public/common or private carrier; and

d. *Passenger* is a person carried on board a vessel or aircraft, excluding the master and members of the crew or other persons employed or engaged in any capacity on board such commercial vessel or aircraft.

Section 2. API Requirement. The captain, master or agent, or owner of a commercial carrier whose vessel or aircraft is arriving in or departing from any port within the Philippine

territory, shall provide the BI the API of its passengers, and those of the crew and non-crew members.

The API shall serve as initial security vetting of passengers, crew and non-crew members to effectively facilitate and expedite the arrival and departure process of legitimate travelers during primary inspection. This, however, shall not exempt any passenger, crew or non-crew member from submitting to physical primary inspection at the immigration counters of the ports of entry or departure.

Section 3. API Data Elements, Format and Transmission. The API data elements, message format, structure and transmission method shall, to the extent allowed by relevant laws, conform to internationally recognized standards and practices. The BI shall ensure that the data elements required are limited to the minimum necessary, and data integrity is protected.

Section 4. Verification of Information. After receipt of the API, the BI shall perform security vetting or derogatory information verification of the passengers, crew or non-crew members using its database and, whenever necessary, other available law enforcement and non-law enforcement databases, including notices issued by the International Criminal Police Organization and those subject of UN Security Council sanctions and travel bans.

In the event that errors are found in the API, the BI shall provide an opportunity to correct such errors or perform corrections after verification based on travel or other related documents. An individual may only seek access to the API supplied by the commercial carrier if he or she is the subject of the data being accessed.

Section 5. Management of the API. The BI shall implement security measures to protect and ensure the integrity and availability of the API, such as restricting access thereto and using recognized security mechanisms or other reasonable safeguards to prevent unauthorized access. Only personnel authorized by the Commissioner of Immigration shall have access to the APIS.

Section 6. Single Window. The BI is hereby designated as the sole government agency authorized to receive or manage the API and other forms of API data.

Section 7. Information Sharing. Subject to existing treaties, laws, rules and regulations, and whenever consistent with national interest, the BI may share information contained in the API in furtherance of regional or international security. The API may also be provided to the following law enforcement agencies, in furtherance of national security, law enforcement, immigration, intelligence and counter-terrorism functions, as may be required for public safety and order:

a. Department of Finance – Bureau of Customs;
b. Department of Transportation (DOTr) – Office for Air Transportation Security;
c. DOTr – Philippine Coast Guard;
d. Department of Health – Bureau of Quarantine;
e. Department of Justice – National Bureau of Investigation;
f. Department of the Interior and Local Government – Philippine National Police;
g. Department of National Defense;
h. National Intelligence Coordinating Agency;
i. Armed Forces of the Philippines;
j. National Security Council; and
k. Anti-Terrorism Council.

Where disclosure is authorized, the recipient agency is likewise bound to comply with RA No. 10173 and other relevant laws.

Section 8. Sanctions. Any unauthorized disclosure, sharing, publication or use of the information considered as API shall be punishable in accordance with the relevant provisions of RA No. 10173, as well as criminal and civil service laws, rules and regulations.

The captain, master or agent, or owner of a commercial carrier shall be liable for the payment of appropriate administrative fines under CA No. 613 and its implementing rules and regulations, for failure to provide API to the BI or to include a passenger, crew or non-crew member in the API. Such penalty shall be imposed regardless of whether the BI eventually cleared the person for entry into the country, and is without prejudice to the filing of appropriate administrative, civil and/or criminal charges pursuant to existing laws, rules and regulations.

Crew or non-crew members not included in the API shall be shall be dealt with in accordance with immigration protocols under relevant laws, rules and regulations. Passengers may be similarly treated if it can be shown that they were complicit in the omission of their names and other data from the API.

Section 9. Retention and Destruction of Data. Unless the information is classified as terrorism- or crime-related, data collected in the APIS shall be maintained for a period of not more than twelve (12) months from the date of collection. The data shall thereafter be erased, destroyed or disposed of in accordance with such rules and regulations as may hereinafter be promulgated pursuant to Section 11 hereof.

Section 10. Funding. The amount necessary for the initial implementation of this Order shall be charged against existing appropriations of the BI. The funding requirements for succeeding years shall be included in the budget proposal of the BI, subject to the usual budget preparation process.

Section 11. Implementing Rules and Regulations. The BI, in consultation with the National Privacy Commission and other relevant agencies, shall issue rules and regulations for the implementation of this Order, within sixty (60) days from its effectivity.

Section 12. Repeal. All orders, rules and regulations, issuances, or any part thereof, inconsistent with the provisions of this Order are hereby repealed, amended or modified accordingly.

Section 13. Separability. Should any part or provision of this Order be held unconstitutional or invalid, the other parts or provisions not affected thereby shall continue to be in full force or effect.

Section 14. Effectivity. This Order shall take effect immediately upon publication in the Official Gazette or a newspaper of general circulation.

DONE, in the City of Manila, this 15th day of December , in the year of our Lord Two Thousand and Twenty.

By the President:

SALVADOR C. MEDIALDEA
Executive Secretary

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