

Summary of H.R. 3141— Biometric Exit Improvement Act of 2013

October 3, 2013

H.R. 3141, introduced by House Border and Maritime Security Subcommittee Chairwoman Candice Miller (R-MI), requires only a partial implementation of the biometric entry-exit system mandated by federal statute. (See 8 U.S.C. 1365b) The bill requires the Department of Homeland Security (DHS) to submit a plan to implement this partial system within 18 months. It then requires DHS to implement the partial system in stages, starting in two years and ending in five. It also repeals proposed regulations that require aliens to provide—and common carriers to collect—biometric data at all air and sea ports of entry.

BIOMETRIC EXIT PLAN

H.R. 3141 requires DHS to submit a plan to establish a biometric exit system that complies with existing law (8 U.S.C. 1365b) to Congress within six months of enactment. The plan must include the following:

- An estimate of the time needed to establish such a system;
- An estimate of the operational and maintenance costs of such a system;
- Staffing and personnel requirements of such a system;
- An assessment of the training programs necessary to establish such a system;
- An assessment of how such a system will affect wait times; and
- Information received after consultation with private sector stakeholders (undefined).

IMPLEMENTATION

Air and Sea

- (1) Two Years after Enactment—H.R. 3141 requires DHS to establish within 2 years of enactment a biometric exit system at:
- The 10 busiest U.S. international airports; and
 - The 10 busiest U.S. international seaports.

DHS has 3 years from the date of enactment to submit to the House and Senate Homeland Security Committees a report analyzing the effectiveness of the above biometric exit data systems. In doing so, the Secretary must consider the effects of the collection of biometric data on wait time for air and sea travelers, along with any other “significant disruption” to the movement of passengers or cargo.

- (2) Five Years after Enactment—Within 5 years of enactment, the DHS is required to expand the biometric exit system to all air and sea ports of entry.

Land

(1) Pilot Program for Vehicular Traffic

- a. Within 18 months of enactment, DHS must establish a 6-month pilot program to test the biometric exit system on *non-pedestrian outbound traffic* at no fewer than 3 land ports of entry (at least 2 southern, 1 northern) with “significant cross-border traffic.”
- b. The pilot program shall determine:
 - The feasibility of implementing biometric exit data systems at land ports of entry nationwide, including the infrastructure to do so;
 - The effects of such pilot program on “legitimate” travel and trade; and
 - The effects of such pilot program on wait times for such non-pedestrian traffic.
- c. Within 30 days of the pilot program’s conclusion, requires DHS to submit the results to the Government Accountability Office (GAO) for review. GAO must review the results within 90 days of receipt and share its analysis with DHS and Congress.
- d. Within 90 days of receiving the GAO review, DHS must submit to Congress a plan to implement a biometric exit system at all land ports of entry for *non-pedestrian outbound traffic only*.

(2) Pedestrian Traffic

- a. Within 3 years of enactment, the Secretary of Homeland Security is required to expand the biometric exit data system to all *pedestrian-only* land ports of entry.

LIMITATION ON HOW BIOMETRIC DATA IS COLLECTED

Section 2(g) prohibits any non-governmental entities from collecting biometric data, unless it is pursuant to a contract. This provision appears to be intended to shield the travel industry, which ironically suffered catastrophic losses as a result of the 9/11 terrorist attacks, from participating in a biometric exit program unless the carriers are paid.

Moreover, Section 2(e) of the bill requires DHS to repeal the proposed rule on the biometric exit system that it issued in 2008 (73 C.F.R. 22065). That proposed rule, entitled *Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure*, required aliens to provide, and common carriers (airlines, cruise ships, etc.) to collect, biometric data for use in a biometric exit program. The proposed rule required that common carriers collect the data as they do passenger manifest data and submit both to DHS within a specified time.

When DHS proposed the biometric exit rule in 2008, the travel industry complained bitterly that collecting biometric data was too burdensome. The airlines and others successfully convinced the Bush Administration to not issue a final rule, further obstructing the implementation of a full biometric entry-exit system as required by federal law.

Together, these two provisions in H.R. 3141 will enshrine in federal statute that when a biometric exit program is finally implemented, DHS may not impose any data collection requirements on the travel industry, except by contract, even though the travel industry receives significant benefits from the increased security the system will provide. It also highlights that H.R. 3141 does not require DHS or common carriers to collect biometric data at any ports of entry as does the regulation; nor does it require aliens to submit biometric data at all ports of entry.