

Stat. 597. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

The Intelligence Reform and Terrorism Prevention Act of 2004, referred to in text, is Pub. L. 108-458, Dec. 17, 2004, 118 Stat. 3638. For complete classification of this Act to the Code, see Tables.

The Homeland Security Act of 2002, referred to in text, is Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, which is classified principally to chapter 1 (§101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

Executive Order No. 13416, referred to in text, is set out as a note under section 1101 of this title.

### § 1118. Biometrics expansion

#### (a) In general

The Administrator and the Commissioner of U.S. Customs and Border Protection shall consult with each other on the deployment of biometric technologies.

#### (b) Rule of construction

Nothing in this section shall be construed to permit the Commissioner of U.S. Customs and Border Protection to facilitate or expand the deployment of biometric technologies, or otherwise collect, use, or retain biometrics, not authorized by any provision of or amendment made by the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3638) or the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53; 121 Stat. 266).

#### (c) Report required

Not later than 270 days after October 5, 2018, the Secretary shall submit to the appropriate committees of Congress, and to any Member of Congress upon the request of that Member, a report that includes specific assessments from the Administrator and the Commissioner of U.S. Customs and Border Protection with respect to the following:

(1) The operational and security impact of using biometric technology to identify travelers.

(2) The potential effects on privacy of the expansion of the use of biometric technology under paragraph (1), including methods proposed or implemented to mitigate any risks to privacy identified by the Administrator or the Commissioner related to the active or passive collection of biometric data.

(3) Methods to analyze and address any matching performance errors related to race, gender, or age identified by the Administrator with respect to the use of biometric technology, including the deployment of facial recognition technology;<sup>1</sup>

(4) With respect to the biometric entry-exit program, the following:

(A) Assessments of—

(i) the error rates, including the rates of false positives and false negatives, and accuracy of biometric technologies;

(ii) the effects of biometric technologies, to ensure that such technologies do not unduly burden categories of travelers, such as a certain race, gender, or nationality;

(iii) the extent to which and how biometric technologies could address instances of travelers to the United States overstaying their visas, including—

(I) an estimate of how often biometric matches are contained in an existing database;

(II) an estimate of the rate at which travelers using fraudulent credentials identifications are accurately rejected; and

(III) an assessment of what percentage of the detection of fraudulent identifications could have been accomplished using conventional methods;

(iv) the effects on privacy of the use of biometric technologies, including methods to mitigate any risks to privacy identified by the Administrator or the Commissioner of U.S. Customs and Border Protection related to the active or passive collection of biometric data; and

(v) the number of individuals who stay in the United States after the expiration of their visas each year.

(B) A description of—

(i) all audits performed to assess—

(I) error rates in the use of biometric technologies; or

(II) whether the use of biometric technologies and error rates in the use of such technologies disproportionately affect a certain race, gender, or nationality; and

(ii) the results of the audits described in clause (i).

(C) A description of the process by which domestic travelers are able to opt-out of scanning using biometric technologies.

(D) A description of—

(i) what traveler data is collected through scanning using biometric technologies, what agencies have access to such data, and how long the agencies possess such data;

(ii) specific actions that the Department and other relevant Federal departments and agencies take to safeguard such data; and

(iii) a short-term goal for the prompt deletion of the data of individual United States citizens after such data is used to verify traveler identities.

#### (d) Publication of assessments

The Secretary, the Administrator, and the Commissioner shall, if practicable, publish a public version of the assessment required by subsection (c)(2) on the Internet website of the TSA and of the U.S. Customs and Border Protection.

(Pub. L. 115-254, div. K, title I, §1919, Oct. 5, 2018, 132 Stat. 3559.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Intelligence Reform and Terrorism Prevention Act of 2004, referred to in subsec. (b), is Pub. L. 108-458,

<sup>1</sup> So in original. The semicolon probably should be a period.

Dec. 17, 2004, 118 Stat. 3638. For complete classification of this Act to the Code, see Tables.

The Implementing Recommendations of the 9/11 Commission Act of 2007, referred to in subsec. (b), is Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 266. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

Section was enacted as part of the TSA Modernization Act and also as part of the FAA Reauthorization Act of 2018, and not as part of the Implementing Recommendations of the 9/11 Commission Act of 2007 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### DEFINITIONS

For definitions of “Administrator”, “appropriate committees of Congress”, “Department”, “Secretary”, and “TSA” as used in this section, see section 1902 of Pub. L. 115-254, set out as a note under section 101 of Title 49, Transportation.

### § 1119. Voluntary use of credentialing

#### (a) In general

An applicable individual who is subject to credentialing or a background investigation may satisfy that requirement by obtaining a valid transportation security card.

#### (b) Issuance of cards

The Secretary of Homeland Security—

(1) shall expand the transportation security card program, consistent with section 70105 of title 46, to allow an applicable individual who is subject to credentialing or a background investigation to apply for a transportation security card; and

(2) may charge reasonable fees, in accordance with section 469(a) of this title, for providing the necessary credentialing and background investigation.

#### (c) Vetting

The Administrator shall develop and implement a plan to utilize, in addition to any background check required for initial issue, the Federal Bureau of Investigation’s Rap Back Service and other vetting tools as appropriate, including the No-Fly and Selectee lists, to get immediate notification of any criminal activity relating to any person with a valid transportation security card.

#### (d) Definitions

In this section:

##### (1) Applicable individual who is subject to credentialing or a background investigation

The term “applicable individual who is subject to credentialing or a background investigation” means only an individual who—

(A) because of employment is regulated by the Transportation Security Administration, Department of Transportation, or Coast Guard and is required to have a background records check to obtain a hazardous materials endorsement on a commercial driver’s license issued by a State under section 5103a of title 49; or

(B) is required to have a credential and background records check under section

622(d)(2)<sup>1</sup> of this title at a facility with activities that are regulated by the Transportation Security Administration, Department of Transportation, or Coast Guard.

#### (2) Valid transportation security card

The term “valid transportation security card” means a transportation security card that is—

(A) issued under section 70105 of title 46;

(B) not expired;

(C) shows<sup>2</sup> no signs of tampering; and

(D) bears<sup>2</sup> a photograph of the individual representing such card.

(Pub. L. 115-254, div. K, title I, §1977, Oct. 5, 2018, 132 Stat. 3617.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 622 of this title, referred to in subsec. (d)(1)(B), was omitted from the Code.

##### CODIFICATION

Section was enacted as part of the TSA Modernization Act and also as part of the FAA Reauthorization Act of 2018, and not as part of the Implementing Recommendations of the 9/11 Commission Act of 2007 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### DEFINITION

For definition of “Administrator” as used in this section, see section 1902 of Pub. L. 115-254, set out as a note under section 101 of Title 49, Transportation.

### SUBCHAPTER III—PUBLIC TRANSPORTATION SECURITY

### § 1131. Definitions

For purposes of this subchapter, the following terms apply:

#### (1) Appropriate congressional committees

The term “appropriate congressional committees” means the Committee on Banking, Housing, and Urban Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives.

#### (2) Department

The term “Department” means the Department of Homeland Security.

#### (3) Disadvantaged business concerns

The term “disadvantaged business concerns” means small businesses that are owned and controlled by socially and economically disadvantaged individuals as defined in section 124, title 13, Code of Federal Regulations.

#### (4) Frontline employee

The term “frontline employee” means an employee of a public transportation agency who is a transit vehicle driver or operator, dis-

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original.

<sup>3</sup> So in original. Probably should be “part”.