

Calendar No. 383

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-223 }

TSA PRECHECK EXPANSION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

H.R. 2843



MARCH 7, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

59-010

WASHINGTON : 2016

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany H.R. 2843]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 2843) to require certain improvements in the Transportation Security Administration's PreCheck expedited screening program, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2843, (as amended), is to authorize and expand enrollment in TSA PreCheck, the Transportation Security Administration's (TSA) trusted traveler program, to increase the population of travelers that receives increased vetting and expedited screening.

BACKGROUND AND NEEDS

Since its inception in 2011, TSA PreCheck has grown in popularity and utilization, and has been the cornerstone of the TSA's risk-based security efforts. While TSA PreCheck has helped the TSA achieve a number of cost and operational efficiencies, some policy choices made by the TSA meant that not all participants in TSA PreCheck were fully vetted. In addition to vetting, the TSA has relied on alternate ways of granting passengers expedited TSA PreCheck screening. These alternate methods, known as "Managed Inclusion" and "Risk Assessment," have caused confusion among travelers and have undermined comprehensive efforts by the TSA to increase the number of fully vetted "known" travelers.

In multiple reports last year, the Department of Homeland Security (DHS) Office of Inspector General highlighted security vulnerabilities associated with the TSA's use of Risk Assessment rules and Managed Inclusion. As a result, the TSA phased out the practice known as "Managed Inclusion-2" in September 2015, and has begun to re-prioritize security over speed, which TSA Administrator Peter Neffenger has warned will likely lead to longer lines at security checkpoints for non-vetted air travelers.¹

As a result of these expected delays, efforts to expand the vetted population of travelers are increasingly important both for improving the security benefits for known travelers, and for improving overall checkpoint performance. On October 22, 2015, the TSA released a Request for Proposal (RFP) seeking vendors for the TSA PreCheck Application Expansion initiative to deploy ready-to-market application capabilities to expand the public enrollment opportunities for TSA PreCheck. According to the RFP, successful private sector companies must be able to enroll and pre-screen a large population of applicants and demonstrate the ability to effectively market TSA PreCheck to air travelers. The TSA PreCheck Expansion Act would authorize TSA PreCheck with additional requirements and accelerate the TSA PreCheck Application Expansion initiative.

SUMMARY OF PROVISIONS

H.R. 2843 would require the TSA to concentrate on enrolling more people in the TSA PreCheck Application Program by coordinating and leveraging the capabilities and resources of the private sector in a secure, responsible manner. The bill would require the TSA Administrator to add multiple private sector application capabilities to the TSA PreCheck Application Program enrollment standards, ensuring that any information is collected in a manner consistent with relevant cybersecurity and privacy protection standards. The bill also would instruct the TSA Administrator to develop and implement a process for approving private sector marketing of TSA PreCheck and to develop a strategy for partnering with the private sector to encourage enrollment in TSA PreCheck. The TSA Administrator also would be required to ensure that TSA PreCheck screening lanes are open and available, and that TSA PreCheck participants receive expedited screening when the TSA PreCheck screening lanes are not open. Finally, the bill would instruct the TSA Administrator to initiate an assessment of the security vulnerabilities in the vetting process for the TSA PreCheck Application Program.

LEGISLATIVE HISTORY

H.R. 2843 was introduced by Representatives Katko (R-NY), Rogers (R-AL), and McCaul (R-TX) on June 19, 2015, and was ordered to be favorably reported to the House of Representatives with amendments by the Committee on Homeland Security of the House of Representatives on July 22, 2015. H.R. 2843 passed the House of Representatives by voice vote on July 27, 2015, and was referred

¹TSA: Security Gaps, Hearing Before the H. Comm. on Oversight and Government Reform, 114th Cong. (2015).

to the Committee on Commerce, Science, and Transportation of the Senate.

No Senate hearings were held exclusively on H.R. 2843 in the 114th Congress; however, the Committee held a hearing on March 17, 2015, entitled “TSA Oversight and Examination of the Fiscal Year 2016 Budget Request” and received testimony from Melvin Carraway, Acting Administrator, TSA, DHS regarding TSA PreCheck activities and expansion, among other things. The Committee also held a hearing on May 21, 2015, to consider the nomination of Peter Neffenger to be the TSA Administrator, during which TSA PreCheck vulnerabilities and challenges were brought up.

In the House of Representatives in the 114th Congress, the Subcommittee on Transportation Security of the Homeland Security Committee of the House of Representatives held a hearing on March 25, 2015, entitled, “Risk-Based Security: Assessing the Path Forward for TSA PreCheck” and received testimony from John Roth, Inspector General, DHS; Kenneth Fletcher, Chief Risk Officer, TSA, DHS; and Jennifer Grover, Director, Homeland Security and Justice, Government Accountability Office.

On December 9, 2015, the Committee met in open Executive Session to consider H.R. 2843, and ordered the bill to be reported to the Senate favorably, with first and second degree amendments, by voice vote. The first degree amendment, sponsored by Senator Thune, formally authorized TSA PreCheck and made a series of improvements throughout the bill reflecting agency feedback. The second degree amendment, sponsored by Senator Daines, added a provision requiring the TSA to consider leveraging existing airport resources to expedite identity verification as part of the TSA PreCheck Application Program.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

H.R. 2843—TSA PreCheck Expansion Act

H.R. 2843 would require the Transportation Security Administration (TSA) to undertake efforts to expand enrollment in the PreCheck program. Through that program, air travelers voluntarily apply to be prescreened using biographic and biometric information to determine whether they qualify for expedited screening at airport security checkpoints. The bill would direct TSA to publish standards to allow private-sector entities to provide certain services to support increased enrollment and to specify other requirements for the program’s expansion.

Based on information from TSA, CBO estimates that implementing H.R. 2843 would have no significant impact on the federal budget. According to the agency, many of the activities required by the bill are consistent with efforts the agency plans to undertake, under current law, to expand the PreCheck program. Further, because the agency can keep and spend fees that applicants pay for prescreening services (subject to provisions in annual appropriation acts), CBO estimates that any net change in TSA’s spending for in-

creased credentialing activities under H.R. 2843 would not be significant in any year. We also estimate that implementing H.R. 2843 would not significantly affect TSA's overall costs to provide screening at airport checkpoints.

Enacting H.R. 2843 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. H.R. 2843 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill would affect future, voluntary applicants to TSA PreCheck for expedited security screening. The TSA has estimated that, as of September 2015, 1.6 million individuals have enrolled in TSA PreCheck since its inception in December 2013. Going forward, TSA analysis has indicated that expansion of the TSA PreCheck Application Program with private sector vendor pre-screening and marketing could achieve enrollment of 25 million known, low-risk travelers in approximately 3.5 years.

ECONOMIC IMPACT

The bill would not authorize new spending by the Federal Government, and would instead transfer some of the cost burden from the TSA to the private sector. The TSA and vendors would use existing fee structures generated by the TSA PreCheck Application Program to pay for improvements and changes in the enrollment process, and achieve efficiencies by leveraging innovative business models and capabilities. There is a possibility that application fees may decrease as a result of private sector efficiencies gained from the new TSA PreCheck standards and streamlined enrollment process envisioned under the bill. TSA PreCheck applicants may also receive other opt-in benefits that would be available through private sector consortium partnerships.

PRIVACY

The bill would only have an impact on the personal privacy of individuals who voluntarily apply to enroll in TSA PreCheck. Currently, individuals who apply to TSA PreCheck are subject to the collection of biographic and biometric information in order to carry out a criminal history background check. Under the bill, this information would be collected via kiosks, mobile devices, or other mobile enrollment platforms to increase enrollment flexibility. In addition, under the bill this information is required to be collected in a manner that is comparable to applicable information security standards and to be protected consistent with current privacy laws and regulations. The bill would allow the option for TSA PreCheck

applicants to be vetted through a less impactful review of commercially available, non-government data compared to a fingerprint-based Federal Bureau of Investigation (FBI) criminal history records check that is currently used exclusively.

PAPERWORK

The bill would not significantly increase paperwork requirements for private individuals or businesses. On the contrary, it is expected that paperwork requirements may be lessened as a result of the bill due to the use of new, more flexible private sector enrollment capabilities that could include mobile enrollment and advanced technologies. The bill also would require the Federal Government to produce one report to Congress at the end of each fiscal year.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the short title of the bill as the “TSA PreCheck Expansion Act.”

Section 2. Definitions.

This section would provide relevant definitions of terms used in the legislation.

Section 3. Enrollment expansion.

This section would require the TSA Administrator to add multiple private sector application capabilities to the TSA PreCheck application enrollment standards. These capabilities would be designed to increase the public’s enrollment access to TSA PreCheck and would include standards that allow the use of secure technologies, such as online enrollment, kiosks, tablets, or staffed laptop stations, at which individuals can apply for entry into TSA PreCheck.

Additionally, this section would require the TSA Administrator to coordinate with interested parties to deploy TSA-approved ready-to-market private sector solutions that meet the TSA PreCheck application enrollment standards. In doing this, the TSA Administrator would be required to make available additional TSA PreCheck enrollment capabilities and to partner with the private sector to collect biographic and biometric identification information via kiosks, mobile devices, or other mobile enrollment platforms to facilitate TSA PreCheck enrollment. Furthermore, the TSA Administrator would have to ensure that any biometric and biographic information is collected in a manner comparable with the appropriate standards developed by the National Institute of Standards and Technology and protects privacy and data security consistent with the Privacy Act of 1974 (5 U.S.C. 552(a)) and agency regulations.

This section also would ensure that an individual who wants to enroll in TSA PreCheck and has started an application with a single identification verification at one location will be able to save his or her application and return to submit a second identification verification. Additionally, any enrollment expansion using a private sector risk assessment, instead of a fingerprint-based criminal history records check, would need to be equivalent to a fingerprint-based criminal history records check conducted through the FBI, as determined by the Secretary of Homeland Security.

This section also would require the TSA Administrator to develop and implement a continual process, including an associated timeframe, for approving private sector marketing of TSA PreCheck and to develop a long-term strategy for partnering with the private sector to encourage enrollment in TSA PreCheck. This section also would require the TSA Administrator to submit to Congress a report at the end of each fiscal year on any TSA PreCheck application fees collected in excess of the costs of administering such program for the preceding fiscal year, including to assess the feasibility of TSA PreCheck, and to include recommendations for using such amounts to support TSA PreCheck marketing. Additionally, this section would require the TSA Administrator to coordinate with the heads of appropriate components of the DHS to leverage DHS-held data and technologies to verify the citizenship of individuals enrolling in TSA PreCheck.

This section would further require the TSA Administrator to ensure that TSA PreCheck screening lanes are open and available during peak and high-volume travel times at appropriate airports to individuals enrolled in TSA PreCheck and to make every practicable effort to provide expedited screening at standard screening lanes during times when TSA PreCheck screening lanes are closed to individuals enrolled in TSA PreCheck. Finally, this section would require the TSA Administrator to initiate an assessment of the security vulnerabilities in the vetting process for the TSA PreCheck Application Program. This assessment would include an evaluation of whether subjecting TSA PreCheck participants to recurrent fingerprint-based criminal history records checks, in addition to recurrent checks against the terrorist watchlist, could be done in a cost-effective manner to strengthen the security of TSA PreCheck.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.