

Calendar No. 436

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-244 }

ESSENTIAL TRANSPORTATION WORKER
IDENTIFICATION CREDENTIAL ASSESS-
MENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

H.R. 710



APRIL 25, 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

JOHN THUNE, South Dakota, *Chairman*

| | |
|------------------------------|---------------------------------|
| ROGER F. WICKER, Mississippi | BILL NELSON, Florida |
| ROY BLUNT, Missouri | MARIA CANTWELL, Washington |
| MARCO RUBIO, Florida | CLAIRE MCCASKILL, Missouri |
| KELLY AYOTTE, New Hampshire | AMY KLOBUCHAR, Minnesota |
| TED CRUZ, Texas | RICHARD BLUMENTHAL, Connecticut |
| DEB FISCHER, Nebraska | BRIAN SCHATZ, Hawaii |
| JERRY MORAN, Kansas | ED MARKEY, Massachusetts |
| DAN SULLIVAN, Alaska | CORY BOOKER, New Jersey |
| RON JOHNSON, Wisconsin | TOM UDALL, New Mexico |
| DEAN HELLER, Nevada | JOE MANCHIN, West Virginia |
| CORY GARDNER, Colorado | GARY PETERS, Michigan |
| STEVE DAINES, Montana | |

NICK ROSSI, *Staff Director*

ADRIAN ARNAKIS, *Deputy Staff Director*

REBECCA SEIDEL, *General Counsel*

KIM LIPSKY, *Democratic Staff Director*

CHRISTOPHER DAY, *Democratic Deputy Staff Director*

CLINT ODOM, *Democratic General Counsel*

Calendar No. 436

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-244

ESSENTIAL TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL ASSESSMENT ACT

APRIL 25, 2016.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 710]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 710) to require the Secretary of Homeland Security to prepare a comprehensive security assessment of the transportation security card 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. 710, as amended, is to require a comprehensive assessment of the effectiveness of the Transportation Worker Identification Credential (TWIC) program, and require a corrective action plan that addresses concerns raised by the Comptroller General, and during the comprehensive assessment.

BACKGROUND AND NEEDS

Shortly after September 11, 2001, Congress called for the establishment of a common credential for personnel requiring unescorted access to secure areas of the national transportation system. The TWIC program was developed in response to legislative provisions in the Aviation and Transportation Security Act of 2001¹ and the Maritime Transportation Security Act of 2002,² and in accordance with Government standards for secure credentials. The Transportation Security Administration (TSA) manages applicant enroll-

¹P.L. 107-71.
²P.L. 107-295.

ment, background checks, and the issuance of TWICs, and the United States Coast Guard (USCG) develops security regulations and ensures industry compliance. As of April 2014, the TSA had issued nearly 3 million credentials to transportation workers, including merchant mariners, port employees, and truck drivers, with 2 million cards seeing regular use.

While the TWIC program was initially intended to apply to all transportation sectors, there have been significant challenges in the maritime sector. As recently as February 2015, the TSA reported TWIC enrollment delays of more than 60 days and recommended that applicants apply for their TWICs at least 10 to 12 weeks early.³ Those delays and recommendations occurred despite a statutory obligation to respond to the applicant within 30 days.⁴

The Committee also remains concerned by the duplication of vetting between the TWIC program and other Government-issued credentials, as well as the need for some transportation workers to obtain two costly credentials. The Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53; 121 Stat. 266), states that “an individual who has a valid transportation employee identification card issued by the Secretary of the department in which the Coast Guard is operating under section 70105 of title 46, United States Code [i.e., a TWIC], shall be deemed to have met the background records check required” for licensed drivers with hazardous materials endorsements.⁵ Furthermore, the TSA itself determined that the Security Threat Assessment required for issuance of a TWIC is the same background check required for licensed drivers with hazardous materials endorsements.⁶

In addition, the fee for a TWIC, which is valid for 5 years, is \$128. Between August 2012 and December 2014, the TSA offered an Extended Expiration Date TWIC. Through that initiative, a worker holding a valid TWIC could extend a credential for 3 years at a cost of \$60.⁷ Workers with current and comparable background checks, including truck drivers with a Hazmat Commercial Driver License Endorsement (HME) or Merchant Marine Credential, pay a reduced fee of \$105.25. The cost of the TSA’s hazmat background check is \$89.25. While the TSA has worked to harmonize the credentials, a truck driver who needs both a TWIC and an HME would still be forced to pay \$89.25 for an HME background check, and \$105.25 for a reduced fee TWIC, even though the driver has already completed the required security threat assessment. The Committee looks forward to receiving an up-to-date third-party analysis of the program’s vetting standards and overlap, and potential legislative proposals to address these concerns.

In addition to concerns with the TWIC application and vetting process, the program’s ability to enhance security remains in question. In May 2011, the Government Accountability Office (GAO) issued a report entitled, “Transportation Worker Identification Cre-

³ Journal of Commerce. 2015, May 4. TSA reports processing delays for TWIC cards. Retrieved from http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/tsa-reports-processing-delays-twic-cards_20150324.html.

⁴ P.L. 111–281, Section 818.

⁵ P.L. 110–53.

⁶ 72 Federal Register at 3508, January 25, 2007.

⁷ U.S. Congress. Subcommittee on Border and Maritime Security, Committee on Homeland Security of the House of Representatives “Threat, Risk, and Vulnerability: The Future of the TWIC Program.” (Date 6/18/13). Retrieved from <http://www.gpo.gov/fdsys/pkg/CHRG-113hhr85688/html/CHRG-113hhr85688.htm>.

dential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives.” In that report, the GAO found numerous problems with the TSA’s administration of the TWIC program. Most notably, the GAO investigators were successful in accessing ports using counterfeit TWICs, authentic TWICs acquired through fraudulent means, and by offering false business cases.⁸ The report also found that the Department of Homeland Security (DHS) did not have adequate internal controls to assure that only qualified individuals were able to acquire TWICs. The GAO suggested actions in that report that the DHS could implement to assess the effectiveness of the TWIC program. Congress also required that the TSA and the USCG conduct the GAO-recommended assessment before publication of the card reader rule (see below), but all four of the GAO’s recommendations remain open.⁹

The GAO issued another report on the TWIC reader pilot project in April 2013 entitled, “Transportation Worker Identification Credential: Card Reader Pilot Results are Unreliable; Security Benefits Need to Be Reassessed.” While the TSA did complete a pilot program on the effectiveness of the TWIC program, the GAO determined that the TSA’s results “cannot be relied upon to make decisions regarding the TWIC card reader rule or the future deployment of the TWIC program.”¹⁰ The GAO conducted its own assessment and found that, due to a number of vulnerabilities, the TWIC program would have difficulty in carrying out its mission of enhancing maritime security. The GAO made this conclusion following its assessment of the results of the TSA pilot, a comparison of those results to the program’s legislated requirements, and through undercover testing of the TWIC program’s ability to provide access control at four maritime ports. The GAO recommended that Congress halt the DHS’s efforts to promulgate a final regulation on TWIC card readers until the successful completion of a security assessment of the effectiveness of the TWIC program.

On March 22, 2013, the DHS issued a notice of proposed rule-making on card reader requirements for the TWIC program.¹¹ The USCG estimates that the rule will be promulgated in 2016. H.R. 710, the Essential Transportation Worker Identification Credential Assessment Act, will not delay the implementation of the reader rule, but will prevent further regulatory action until the issuance and review of the comprehensive assessment and the corrective action plan.

The Committee looks forward to an analysis that considers whether an alternative credentialing approach, including a more decentralized option, could better achieve the TWIC program goals. Finally, the Committee looks forward to reviewing a third-party analysis of the benefits of the TWIC program, and the costs to government, industry, and workers.

⁸U.S. Government Accountability Office, Transportation Worker Identification Credential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives, GAO-11-657, May 10, 2011.

⁹This assessment was required by the Consolidated Appropriations Act, 2014 (P.L. 113-76).

¹⁰U.S. Government Accountability Office, Transportation Worker Identification Credential: Card Reader Pilot Results are Unreliable; Security Benefits Need to Be Reassessed, GAO-13-198, May 8, 2013.

¹¹78 Federal Register at 17781, March 22, 2013.

SUMMARY OF PROVISIONS

If enacted, H.R. 710, as amended, would do the following:

- Require the Secretary of Homeland Security (Secretary) to commission a comprehensive assessment of the TWIC program within 60 days of the date of enactment. The assessment would be completed by a national laboratory or a university DHS Center of Excellence.
- Require the Secretary to submit a corrective action plan to address any concerns identified in the study.
- Require review of the corrective action plan by the DHS Office of the Inspector General (OIG).
- Delay further rulemaking on the TWIC program until deficiencies are addressed.
- Require semi-annual reports to Congress for three years on the status of the corrective action report recommendations.

LEGISLATIVE HISTORY

H.R. 710 was introduced in the House of Representatives on February 4, 2015, by Representative Jackson Lee of Texas. The bill passed the House by voice vote on February 10, 2015. On May 20, 2015, the Committee met in open Executive Session and, by a voice vote, ordered H.R. 710 to be reported favorably with a manager's amendment offered by Chairman Thune.

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. 710—Essential Transportation Worker Identification Credential Assessment Act

H.R. 710 would direct the Secretary of Homeland Security to assess the effectiveness of the Transportation Worker Identification Credential (TWIC) program. That program was established under the Maritime Transportation Security Act (MTSA), which requires the Secretary of Homeland Security to provide a biometric security credential for personnel who require unescorted access to secure areas of MTSA-regulated facilities and vessels and for all mariners who hold credentials issued by the U.S. Coast Guard. Based on the findings of the proposed assessment, H.R. 710 would direct the Secretary to identify and implement corrective actions necessary to improve the effectiveness of the TWIC program and would require the Government Accountability Office (GAO) to report to the Congress on the status of those efforts. Finally, H.R. 710 would specify conditions that would pertain to certain rulemakings related to the TWIC program.

Based on information from the Coast Guard and GAO, CBO estimates that implementing H.R. 710 would cost about \$1.5 million in 2016, assuming appropriation of the necessary amounts. That estimate is based on the historical cost of studies and analyses undertaken by those agencies that are similar in scope to those envisioned under the legislation. Enacting H.R. 710 would not affect di-

rect spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 710 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

REGULATORY IMPACT

Because H.R. 710 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

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 bill's short title as the "Essential Transportation Worker Identification Credential Assessment Act."

Section 2. Comprehensive security assessment

This section would require a comprehensive assessment of the TWIC program be completed by a national laboratory or maritime security university-based center within the DHS Centers of Excellence network.

This section would require a two-phase assessment of the TWIC program which will review both the TSA credentialing process and the implementation of the TWIC reader rule. The assessment will include an evaluation of whether the TWIC program addresses security risks in the maritime environment, whether previous GAO deficiencies have been addressed, and a cost benefit analysis of the program.

The bill would further require that the DHS submit a corrective action plan to address deficiencies identified in the comprehensive assessment. The DHS OIG is directed to review the corrective action plan to ensure it addresses the concerns raised by the assessment and previous GAO recommendations.

This section also would delay the issuance of any additional final rules relating to the TWIC reader program until the DHS OIG certifies that the report is responsive to the GAO's concerns and that a new list of approved TWIC readers is issued.

This section also would require semi-annual reports to Congress on the implementation of the corrective action plan.

Section 3. No additional funds authorized

This section would provide that no additional funds are authorized to be appropriated for the study, and the study should be funded through existing DHS appropriations for research.

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.

