

TRANSPORTATION WORKER IDENTIFICATION
CREDENTIAL ACCOUNTABILITY ACT OF 2018

JUNE 27, 2018.—Ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 5729]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5729) to restrict the department in which the Coast Guard is operating from implementing any rule requiring the use of biometric readers for biometric transportation security cards until after submission to Congress of the results of an assessment of the effectiveness of the transportation security card program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Transportation Worker Identification Credential Accountability Act of 2018”.

SEC. 2. RESTRICTION ON IMPLEMENTATION OF TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL BIOMETRIC READER RULE.

The department in which the Coast Guard is operating may not implement the rule entitled “Transportation Worker Identification Credential (TWIC)–Reader Requirements” (81 Fed. Reg. 57651), and may not propose or issue a notice of proposed rulemaking for any revision to such rule except to extend its effective date, or for any other rule requiring the use of biometric readers for biometric transportation security cards under section 70105(k)(3) of title 46, United States Code, before the end of the 60-day period beginning on the date of the submission under paragraph (5) of section 1(b) of Public Law 114–278 (130 Stat. 1411 to 1412) of the results of the assessment required by that section.

SEC. 3. PROGRESS UPDATES.

Not later than 30 days after the date of the enactment of this Act, and every 90 days thereafter until the submission under paragraph (5) of section 1(b) of Public Law 114–278 (130 Stat. 1411 et seq.) of the results of the assessment required by that section, the Secretary of Homeland Security shall report to the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate regarding the implementation of that section.

PURPOSE AND SUMMARY

This legislation prevents the Department of Homeland Security from implementing any rule requiring the use of biometric readers for biometric transportation security cards until the Secretary of the Department of Homeland Security publishes and submits to Congress an assessment of the effectiveness of the Transportation Worker Identification Credential (TWIC) program. The bill also prohibits the proposal of any new rule before the end of 60-day period beginning on the date of submission of the assessment to Congress.

BACKGROUND AND NEED FOR LEGISLATION

After the attacks of 9/11, ports across the Nation increased security procedures to prevent vulnerabilities in our Nation’s maritime facilities and deny access to criminals. As a result, the Maritime Transportation Security Act of 2002 (Pub. L. 107–295) established the Transportation Worker Identification Credential (TWIC) program, requiring a background check and issuance of credentials to workers who access secure areas of the Nation’s maritime facilities and vessels. The Transportation Security Administration (TSA) conducts these background checks and issues the credentials for eligible workers; however, high costs of credentialing, lapses in background checks, and poor management hinder the program’s security effectiveness.

In 2011 and 2013, two separate Government Accountability Office (GAO) reports indicated the TWIC program lacks reliability and recommended reassessing the security benefits of the program. In addition, the Department of Homeland Security (DHS) Office of Inspector General (OIG) released a report in 2016 revealing TWIC background checks lack fraud detection capabilities and proper internal controls. The House Committee on Homeland Security responded in 2016 and passed Public Law 114–278, requiring the Department of Homeland Security to complete a comprehensive study on the effectiveness of the TWIC program. However, Congress did not legislate on the requirement for biometric readers.

In 2016, the U.S. Coast Guard (USCG) issued a Federal rule (81 FR 57651) requiring biometric TWIC card readers to be used at high risk maritime facilities by August 23, 2018, as an access control measure. However, this rule did not specify which facilities would require biometric card readers. As a result, industry stakeholders did not initiate the necessary investments in biometric readers, and manufacturers refrained from producing the readers.

This bill legislates that the Federal Rule (81 FR 57651) not be implemented and no further rulemaking on the TWIC program be conducted until after a security effectiveness study of the program is complete and can be used to inform future rulemaking. Given the problems with the TWIC program highlighted by the GAO and the DHS OIG, industry stakeholders should not be required to invest in further implementing the program until the security value and future of the program can be properly determined. As amended, the bill also requires the Secretary of Homeland Security to provide periodic updates to Congress on the completion of the TWIC program effectiveness study required by Public Law 114–278. Despite a requirement to commission a study within 60 of enactment of the law, DHS did not commission the study until 14 months after enactment and has not provided sufficient information to Congress to explain the delay.

HEARINGS

On October 30, 2017, the Committee held a field hearing in San Pedro, California, entitled “Examining Physical Security and Cybersecurity at Our Nation’s Ports.” The Committee received testimony from RADM Todd A. Sokalzuk, Commander, Eleventh Coast Guard District, U.S. Coast Guard, U.S. Department of Homeland Security; Mr. Carlos C. Martel, Director of Field Operations, Los Angeles Field Office, U.S. Customs and Border Protection, U.S. Department of Homeland Security; Mr. Eugene D. Seroka, Executive Director, The Port of Los Angeles; Mr. Mario Cordero, Executive Director, The Port of Long Beach; and Mr. Ray Familathe, International Vice-President, International Longshore and Warehouse Union.

On November 8, 2017, the Full Committee held a hearing entitled “Preventing the Next Attack: TSA’s Role in Keeping Our Transportation Systems Secure.” The Committee received testimony from Hon. David P. Pekoske, Administrator, Transportation Security Administration, U.S. Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on June 6, 2018, to consider H.R. 5729, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by unanimous consent. The Committee took the following actions:

The following amendment was offered:

An amendment offered by MS. JACKSON LEE (#1); was AGREED TO by unanimous consent.

Add at the end a new section entitled “Sec. ____ . Progress Updates.”

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5729.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5729, the Transportation Worker Identification Credential Accountability Act of 2018, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5729 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

LIST the metrics used to provide results etc.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 5729 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Com-

mittee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 5729 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5729 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Transportation Worker Identification Credential Accountability Act of 2018”.

Sec. 2. Restriction on implementation of Transportation Worker Identification Credential biometric reader rule

This section restricts the U.S. Coast Guard from implementing the rule entitled “Transportation Worker Identification Credential (TWIC) Reader Requirements”, and prevents the Coast Guard from proposing a notice of new rulemaking that would require the use of biometric readers for biometric transportation. These restrictions extend 60 days beyond the submission sent to Congress of an assessment of the biometric transportation security card program.

Sec. 3. Progress updates

This section requires the Secretary of the Department of Homeland Security to submit a report regarding the implementation and results of section 1(b) of Public Law 114–278 (130 Stat. 1411 et seq.) to the Committee on Homeland Security and Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. This update shall be submitted not later than 30 days after the enactment of this Act, and every 90 days thereafter.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
As reported, H.R. 5729 makes no changes to existing law.

