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115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-305 }

TRANSPORTATION WORKER IDENTIFICATION
CREDENTIAL ACCOUNTABILITY ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3094



JULY 19, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL ACCOUNTABILITY ACT OF 2018

JULY 19, 2018.—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 S. 3094]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3094) 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, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 3094 is to prohibit the United States Coast Guard (USCG) from implementing the use of biometric readers for biometric transportation security cards, known as Transportation Worker Identification Credentials (TWIC), until after the completion of an ongoing study on the effectiveness of the TWIC program.

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

¹ P.L. 107-71. (<https://www.gpo.gov/fdsys/pkg/PLAW-107publ71/content-detail.html>)

Maritime Transportation Security Act of 2002,² and followed Government standards for secure credentials. The Transportation Security Administration (TSA) manages the program, working in conjunction with the USCG. Specifically, the TSA manages the credentialing, and the USCG manages the port-side security management and use of the credential.

While the TWIC program was initially intended to apply to all transportation sectors, issues with the program in the maritime sector have made it unlikely that the program will be extended to other modes until those problems are resolved. In May 2011, the Government Accountability Office (GAO) issued a report entitled “Transportation Worker Identification Credential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives.”³ In this report, the GAO found numerous problems with the TSA’s administration of the TWIC program. Most notably, GAO investigators were successful in accessing ports using counterfeit TWIC, authentic TWIC acquired through fraudulent means, and false business cases (reasons for accessing secure areas). The report also found that the Department of Homeland Security (DHS) did not have adequate internal controls to ensure that only qualified individuals can acquire TWIC. The GAO recommended that the DHS conduct an effectiveness assessment of the TWIC program, and Congress has required that the TSA and the USCG conduct this review before publication of the card reader rule (see below).⁴

In April 2013, the GAO issued a report on the TWIC reader pilot project entitled “Transportation Worker Identification Credential: Card Reader Pilot Results are Unreliable; Security Benefits Need to Be Reassessed.”⁵ This report characterized the pilot results as “incomplete, inaccurate, and unreliable for informing Congress and for developing a regulation about the readers.” 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, however, the DHS issued a notice of proposed rulemaking (NPRM) on card reader requirements for TWIC and issued a final rule on August 23, 2016, with an effective date of August 23, 2018. Stakeholders complained of discrepancies between the NPRM and the final rule regarding the types and numbers of facilities that would be required to install TWIC readers, and believed it unnecessarily burdening to low-risk facilities.⁶ Additionally, those stakeholders from low-risk facilities were not given an opportunity to comment. An example of a facility captured in the NPRM is one that transfers explosive chemicals from a ship to a shoreside complex. A facility that was captured by the final rule could be one that stores lower quantities of fuel on site for its own use. The proposed rule contemplated requiring TWIC readers at less than 200 facilities; the final rule captured several thousand facilities, though there remains uncertainty as to the exact number.

² P.L. 107–295. (<https://www.gpo.gov/fdsys/pkg/PLAW-107publ295/content-detail.html>)

³ GAO–11–657. (<https://www.gao.gov/products/GAO-11-657>)

⁴ This assessment was required by the Consolidated Appropriations Act, 2014 (P.L. 113–76).

⁵ U.S. Government Accountability Office, Transportation Worker Identification Credential: Card Reader Pilot Results are Unreliable; Security Benefits Need to Be Reassessed, GAO–13–198, May 2013.

⁶ 81–FR–57652. (<https://www.federalregister.gov/documents/2016/08/23/2016-19383/transportation-worker-identification-credential-twic-reader-requirements>)

The USCG agreed with stakeholders and promised to clarify which facilities were captured in the rule.

On December 16, 2016, President Obama signed into law the Act entitled “An Act to Require the Secretary of Homeland Security to Prepare a Comprehensive Security Assessment of the Transportation Security Card Program” (Assessment Act)⁷ to improve the security of the TWIC program.⁸ The Assessment Act requires the DHS to commission an assessment of the effectiveness of the TWIC program within 60 days after the date of enactment of that Act. The DHS has recently contracted with RAND to conduct the mandated review and RAND estimates the study will be completed in 1 year.

Due to delays in both the DHS’s awarding the contract for the above TWIC program assessment and in providing clarification for which facilities are affected by the TWIC Reader Rule, in December 2017, Senator Thune, Senator Fischer, and other legislators⁹ wrote to the Secretary of Homeland Security for additional information.

On June 21, 2018, the USCG announced the release of an NPRM delaying the implementation of the TWIC Reader Rule for many of the facilities. The delay should allow for clarification as to which facilities are meant to be included in the increased security protocol and will provide time to install TWIC readers. However, it does not specifically identify which facilities are exempt, nor does it allow time for those facilities not exempt to install TWIC readers. S. 3094 will delay any implementation until the RAND study is complete, ensuring the significant investment by industry provides the expected added security.

SUMMARY OF PROVISIONS

If enacted, S. 3094 would prohibit the USCG from implementing the use of biometric readers for biometric transportation security cards until after the completion of an ongoing study on the effectiveness of the TWIC program as required by the Assessment Act.

LEGISLATIVE HISTORY

S. 3094 was introduced on June 20, 2018, by Senator Sullivan (for himself and Senator Peters). On June 27, 2018, the Committee met in open Executive Session and, by voice vote, ordered S. 3094 reported favorably without amendment.

H.R. 5729, a substantially similar measure, unanimously passed the House of Representatives on June 10, 2018.

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:

⁷ P.L. 114–278; 130 Stat. 1410.

⁸ P.L. 114–278. (<https://www.congress.gov/114/plaws/publ278/PLAW-114publ278.pdf>)

⁹ Chairs of the following congressional committees: the Committee on Commerce, Science, and Transportation of the Senate; the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security of the Committee on Commerce, Science, and Transportation of the Senate; the Subcommittee on Transportation and Protective Security of the Committee on Homeland Security of the House of Representatives; and Subcommittee on Border and Maritime Security of the Committee on Homeland Security of the House of Representatives.

S. 3094—Transportation Worker Identification Credential Accountability Act of 2018

S. 3094 would prohibit the U.S. Coast Guard from implementing a rule that, under current law, will take effect on August 23, 2018. The rule requires owners and operators of certain vessels and facilities regulated by the Coast Guard to conduct electronic inspections of workers' biometric security credentials. S. 3094 would suspend implementation of the rule until 60 days after the Secretary of Homeland Security has reported to the Congress on the efficacy of such credentials for enhancing security.

CBO estimates that enacting S. 3094 would not significantly affect the federal budget. Delaying implementation of the affected rule would not alter the timing or magnitude of cash flows related to federally issued credentials nor would it significantly affect the Coast Guard's administrative costs, which are subject to appropriation. The Department of Homeland Security is already required to complete an assessment related to the effectiveness of credentials issued to transportation workers.

Enacting S. 3094 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3094 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3094 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On June 28, 2018, CBO transmitted a cost estimate for H.R. 5729, the Transportation Worker Identification Credential Accountability Act of 2018, as ordered reported by the House Committee on Homeland Security on June 6, 2018. The two bills are similar, and the CBO's estimated costs are the same for both bills.

The CBO staff contact for this estimate is Megan Carroll. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

S. 3094, as reported, would delay the implementation of the TWIC Reader Rule, and therefore would alleviate thousands of transportation workers and hundreds of businesses from an unproven regulatory requirement.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 3094 would not create increases in paperwork burdens if enacted.

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 provide that the bill may be cited as the “Transportation Worker Identification Credential Act of 2018.”

Section 2. Restriction on implementation of transportation worker identification credential biometric reader rule.

This section would prohibit the USCG from implementing the use of biometric readers for biometric transportation security cards until after the completion of an ongoing study on the effectiveness of the TWIC program.

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.

