

TO ENSURE THAT ANY NEW OR REVISED REQUIREMENT PROVIDING FOR THE SCREENING, TESTING, OR TREATMENT OF INDIVIDUALS OPERATING COMMERCIAL MOTOR VEHICLES FOR SLEEP DISORDERS IS ADOPTED PURSUANT TO A RULEMAKING PROCEEDING, AND FOR OTHER PURPOSES

SEPTEMBER 25, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3095]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3095) to ensure that any new or revised requirement providing for the screening, testing, or treatment of individuals operating commercial motor vehicles for sleep disorders is adopted pursuant to a rulemaking proceeding, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## PURPOSE OF LEGISLATION

H.R. 3095 ensures that any new or revised requirement providing for the screening, testing, or treatment of individuals operating commercial motor vehicles for sleep disorders is adopted pursuant to a rulemaking proceeding.

## BACKGROUND AND NEED FOR LEGISLATION

The Federal Motor Carrier Safety Administration (FMCSA) requires operators of commercial motor vehicles to undergo a physical evaluation by a certified medical examiner in order to obtain a medical certificate. This certificate, which is valid for up to 24 months, provides proof that the operator is physically qualified to drive a commercial motor vehicle. This authority is codified under section 31136(a)(3) of title 49, United States Code.

Obstructive sleep apnea is a breathing-related sleep disorder that causes interruptions during sleep. In 2011, FMCSA's Medical Review Board and Motor Carrier Safety Advisory Committee recommended that drivers with a Body Mass Index (BMI) greater than or equal to 35 be evaluated for sleep apnea using an objective test, in order to facilitate diagnosis of obstructive sleep apnea.

On April 20, 2012, FMCSA issued a notice and request for public comment in the Federal Register on proposed regulatory guidance for medical certification of commercial motor vehicle drivers in regards to obstructive sleep apnea. On April 27, 2012, FMCSA withdrew its proposed regulatory guidance for obstructive sleep apnea citing a clerical error.

H.R. 3095 would require that any new or revised requirements made to the medical certification of commercial motor vehicle drivers for obstructive sleep apnea be made through a rulemaking proceeding, not regulatory guidance. The rulemaking approach provides stakeholders the opportunity to comment on proposed requirements and requires FMCSA to conduct a cost-benefit analysis of the proposal.

H.R. 3095 does not impact requirements for the screening, testing, or treatment of individuals operating commercial motor vehicles for sleep disorders effective before September 1, 2013.

## HEARINGS

No hearings were held on H.R. 3095.

## LEGISLATIVE HISTORY AND CONSIDERATION

On September 13, 2013, Rep. Larry Bucshon (for himself and Rep. Daniel Lipinski, Rep. Radel, Rep. Farenthold, Rep. Young of Alaska, Rep. Hanna, Rep. Gibbs, Rep. Ribble, Rep. Meehan, and Rep. Southerland) introduced H.R. 3095. On September 19, 2013, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote with a quorum present.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the

names of those members voting for and against. There were no record votes taken in connection with consideration of H.R. 3095.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3095 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 24, 2013.*

Hon. BILL SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3095, a bill to ensure that any new or revised requirement providing for the screening, testing, or treatment of individuals operating commercial motor vehicles for sleep disorders is adopted pursuant to a rulemaking proceeding, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3095—A bill to ensure that any new or revised requirement providing for the screening, testing, or treatment of individuals operating commercial motor vehicles for sleep disorders is adopted pursuant to a rulemaking proceeding, and for other purposes*

H.R. 3095 would require the Federal Motor Carrier Safety Administration (FMCSA) within the Department of Transportation to complete a formal rulemaking process if the agency decides to establish requirements for commercial truckers to address certain sleep disorders among drivers. Under current law, the agency could issue such requirements without going through a formal rulemaking process by issuing guidance to trucking companies.

Based on information from FMCSA, CBO estimates that enacting the legislation would not have a significant effect on the federal

budget. The agency has announced that it will complete a rulemaking on this issue under current law. CBO estimates that the bill would not affect revenues or direct spending; therefore, pay-as-you-go procedures do not apply.

H.R. 3095 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 Sarah Puro. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to ensure any changes made by the Secretary of Transportation to commercial motor vehicle operator requirements relating to sleep disorders are done through a rulemaking.

#### ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 3095 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that enacting H.R. 3095 could result in the completion of a rulemaking within the meaning of section 551 of title 5, United States Code.

#### FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires 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 in-

tended to preempt state, local, or tribal law. The Committee states that H.R. 3095 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY OF 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 (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

*Section 1. Commercial motor vehicle operator requirements relating to sleep disorders*

H.R. 3095 requires that any changes made by the Secretary of Transportation to requirements for screening, testing, or treatment of individuals operating commercial motor vehicles for sleep disorders, after September 1, 2013, must be promulgated through a rulemaking proceeding.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 3095 does not amend existing law.