

AIR CARGO SECURITY IMPROVEMENT ACT OF 2018

MARCH 19, 2018.—Committed to the Committee of the Whole House on the State of the Union and 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. 4176]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4176) to strengthen air cargo security, and for other purposes, 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 “Strengthening Aviation Security Act of 2017”.

**SEC. 2. USE OF RISK-BASED STRATEGIES BY FEDERAL AIR MARSHAL SERVICE.**

(a) **IN GENERAL.**—Subsection (a) of section 44917 of title 49, United States Code, is amended—

- (1) in paragraph (7), by striking “and” after the semicolon at the end;
- (2) in paragraph (8), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following new paragraphs:
  - “(9) shall require the Federal Air Marshal Service to utilize a risk-based strategy when allocating resources between international and domestic flight coverage, including when initially setting its annual target numbers of average daily international and domestic flights to cover;
  - “(10) shall require the Federal Air Marshal Service to utilize a risk-based strategy to support domestic allocation decisions;
  - “(11) shall require the Federal Air Marshal Service to utilize a risk-based strategy to support international allocation decisions; and
  - “(12) shall ensure that the seating arrangements of Federal air marshals on aircraft are determined in a manner that is risk-based and most capable of responding to current threats to aviation security.”.

(b) **REPORT.**—Not later than 270 days after the date of the enactment of this Act, the Administrator of the Transportation Security Administration shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate a report that describes the compliance of the Federal Air Marshal Service with the requirements specified in paragraphs (9) through (12) of subsection (a) of section 44917 of title 49, United States Code, as added by this Act, and the documented methodology used by the Federal Air Marshal Service to conduct risk assessments in accordance with such paragraphs.

(c) **EFFECTIVE DATE.**—The Transportation Security Administration shall begin carrying out the requirements specified in paragraphs (9) through (12) of subsection (a) of section 44917, United States Code, added by this Act, by not later than the date that is 180 days after the date of the enactment of this Act.

**PURPOSE AND SUMMARY**

The purpose of H.R. 4176, the Air Cargo Security Improvement Act of 2018, is to prioritize and reform air cargo security at the Transportation Security Administration (TSA) by establishing the air cargo security division within the TSA to carry out all air cargo security policy and stakeholder engagement. Additionally, this bill requires the TSA Administrator to conduct a feasibility study—and subsequent pilot program—on expanding the use of computed tomography (CT) and other emerging technology for air cargo screening. Last, the bill requires a review of the Certified Cargo Screening Program and the Known Shipper Program.

**BACKGROUND AND NEED FOR LEGISLATION**

The Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53) mandated TSA to screen and inspect 100 percent of air cargo transported on passenger aircraft. However, the Act did not require TSA to screen 100 percent of air cargo on all-cargo aircraft, nor does it require TSA to personally screen all pieces of cargo. Therefore, TSA takes a risk-based approach to the screening of all-cargo flights and leverages trusted partners in the private sector to screen cargo on some passenger flights—via the Certified Cargo Screening Program and the Known Shipper Program.

Even though the majority of TSA’s resources focuses on screening travelers and securing passenger aircraft, air cargo security remains a major concern. The failed 2010 Yemen plot to detonate explosive devices in cargo packages—after transport on both cargo

and passenger aircraft—highlights the threat posed to this sector.<sup>1</sup> For years, aviation stakeholders have highlighted air cargo as an area of vulnerability that often gets neglected by TSA. Indeed, recent aviation threats indicate the need for a renewed focus on ensuring the security of air cargo. Therefore, throughout the 115th Congress, this Committee has sought to elevate air cargo security within TSA and address any necessary reforms, as evidenced by this bill and the Committee’s House-passed H.R. 2825, the Department of Homeland Security Authorization Act.

#### HEARINGS

The Committee did not hold any legislative hearings on H.R. 1309 in the 115th Congress. However, this legislation was informed by a Subcommittee on Transportation and Protective Security Subcommittee hearing on July 25, 2017 entitled “Securing Air Cargo: Industry Perspectives.” The Subcommittee received testimony from Mr. Stephen A. Alterman, President, Cargo Airline Association; Mr. Brandon Fried, Executive Director, Airforwarders Association; Mr. Michael C. Mullen, Executive Director, Express Association of America; and Mr. Bart Elias, Specialist in Aviation Policy, Resources, Science and Industry Division, Congressional Research Service, Library of Congress.

#### COMMITTEE CONSIDERATION

The Committee met on March 7, 2018, to consider H.R. 4176, 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 in the Nature of a Substitute offered by MR. THOMPSON of Mississippi (#1); was AGREED TO by unanimous consent.

#### 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. 4176.

#### 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. 4176, the Air Cargo Security Improvement Act of 2017, would result in no

<sup>1</sup> Leyne, Jon. “Printer cartridge bomb plot planning revealed,” BBC. November 22, 2010. <http://www.bbc.com/news/world-middle-east-11812874>.

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. 4176 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation seeks to prioritize and reform air cargo security at TSA by: establishing the air cargo security division, requiring a feasibility study and pilot program on the use of certain security technologies for air cargo screening, and reviewing the effectiveness of the Certified Cargo Screening Program and the Known Shipper Program.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 4176 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 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.

#### 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. 4176 does not preempt any State, local, or Tribal law.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4176 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 “Air Cargo Security Improvement Act of 2017”.

*Sec. 2. Establishment of Air Cargo Security Division.*

This section establishes an air cargo security division within TSA that shall carry out all policy and engagement with stakeholders. This division must be headed by an individual in the executive service of TSA with at least four full-time equivalents, which will ensure that TSA prioritizes air cargo security. Additionally, the Committee does not intend for the establishment of this division to increase TSA’s budget or operating costs, therefore the division must be comprised of existing TSA staff.

The Committee intends for the creation of an air cargo security division to provide stakeholders with a central entry-point for engaging TSA on matters related to air cargo security and to align air cargo security responsibilities within TSA’s organizational structure in a manner similar to existing aviation and surface transportation security divisions.

*Sec. 3. Feasibility Study and Pilot Program for Emerging Technologies.*

This section requires TSA to conduct a feasibility study on expanding the use of computed tomography technology for screening air cargo on passenger aircraft. Additionally, it identifies that the study should consider: opportunities to leverage CT systems used for screening passengers and baggage, costs and benefits of using CT for air cargo screening, an analysis of emerging CT systems that may have potential to enhance air cargo screening, and an analysis of other emerging screening technologies that may enhance air cargo screening.

This section also requires TSA to initiate a 2-year pilot program and subsequent updates to Congress following the submission of the feasibility study for the purpose of using the new or emerging screening technology to enhance air cargo security screening.

*Sec. 4. Air Cargo Regulation Review.*

This section requires TSA to submit a report regarding efforts to improve the Certified Cargo Screening Program established in 2009. The report shall review the Program's effectiveness at addressing threats to air cargo as well as the Program's vulnerabilities and effectiveness of information sharing with stakeholders. The report shall also include information on actions taken in response to the review findings.

*Sec. 5. Comptroller General Review.*

This section requires the Comptroller General to: (1) review DHS's pre-screening procedures for air cargo; (2) review TSA's pilot program pursuant to section 3; (3) assess the effectiveness of DHS's risk-based strategy for examining air cargo; and (4) review DHS's information sharing procedures with stakeholders regarding air cargo related threats.

*Sec. 6. Known Shipper Program Review.*

This section requires the Air Cargo Subcommittee of the Aviation Security Advisory Committee to conduct a review and security assessment of the known shipper program. The Subcommittee is then required to recommend whether the program should be modified or eliminated.

Additionally, this section requires the Subcommittee to report these findings to the TSA.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE 49, UNITED STATES CODE**

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**SUBTITLE VII—AVIATION PROGRAMS**

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**PART A—AIR COMMERCE AND SAFETY**

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**SUBPART III—SAFETY**

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**CHAPTER 449—SECURITY**

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## SUBCHAPTER I—REQUIREMENTS

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**§ 44917. Deployment of Federal air marshals**

(a) IN GENERAL.—The Under Secretary of Transportation for Security under the authority provided by section 44903(d)—

(1) may provide for deployment of Federal air marshals on every passenger flight of air carriers in air transportation or intrastate air transportation;

(2) shall provide for deployment of Federal air marshals on every such flight determined by the Secretary to present high security risks;

(3) shall provide for appropriate training, supervision, and equipment of Federal air marshals;

(4) shall require air carriers providing flights described in paragraph (1) to provide seating for a Federal air marshal on any such flight without regard to the availability of seats on the flight and at no cost to the United States Government or the marshal;

(5) may require air carriers to provide, on a space-available basis, to an off-duty Federal air marshal a seat on a flight to the airport nearest the marshal's home at no cost to the marshal or the United States Government if the marshal is traveling to that airport after completing his or her security duties;

(6) may enter into agreements with Federal, State, and local agencies under which appropriately-trained law enforcement personnel from such agencies, when traveling on a flight of an air carrier, will carry a firearm and be prepared to assist Federal air marshals;

(7) shall establish procedures to ensure that Federal air marshals are made aware of any armed or unarmed law enforcement personnel on board an aircraft; **[and]**

(8) may appoint—

(A) an individual who is a retired law enforcement officer;

(B) an individual who is a retired member of the Armed Forces; and

(C) an individual who has been furloughed from an air carrier crew position in the 1-year period beginning on September 11, 2001;

as a Federal air marshal, regardless of age, if the individual otherwise meets the background and fitness qualifications required for Federal air marshals**[.]**;

(9) shall require the Federal Air Marshal Service to utilize a risk-based strategy when allocating resources between international and domestic flight coverage, including when initially setting its annual target numbers of average daily international and domestic flights to cover;

(10) shall require the Federal Air Marshal Service to utilize a risk-based strategy to support domestic allocation decisions;

(11) shall require the Federal Air Marshal Service to utilize a risk-based strategy to support international allocation decisions; and

(12) shall ensure that the seating arrangements of Federal air marshals on aircraft are determined in a manner that is risk-

*based and most capable of responding to current threats to aviation security.*

(b) LONG DISTANCE FLIGHTS.—In making the determination under subsection (a)(2), nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority.

(c) INTERIM MEASURES.—Until the Under Secretary completes implementation of subsection (a), the Under Secretary may use, after consultation with and concurrence of the heads of other Federal agencies and departments, personnel from those agencies and departments, on a nonreimbursable basis, to provide air marshal service.

(d) TRAINING FOR FOREIGN LAW ENFORCEMENT PERSONNEL.—

(1) IN GENERAL.—The Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security, after consultation with the Secretary of State, may direct the Federal Air Marshal Service to provide appropriate air marshal training to law enforcement personnel of foreign countries.

(2) WATCHLIST SCREENING.—The Federal Air Marshal Service may only provide appropriate air marshal training to law enforcement personnel of foreign countries after comparing the identifying information and records of law enforcement personnel of foreign countries against all appropriate records in the consolidated and integrated terrorist watchlists maintained by the Federal Government.

(3) FEES.—The Assistant Secretary shall establish reasonable fees and charges to pay expenses incurred in carrying out this subsection. Funds collected under this subsection shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Assistant Secretary for purposes for which amounts in such account are available.

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