

PRECHECK IS PRECHECK ACT OF 2018

SEPTEMBER 4, 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. 6265]

The Committee on Homeland Security, to whom was referred the bill (H.R. 6265) to ensure that only travelers who are members of a trusted traveler program use Transportation Security Administration security screening lanes designated for trusted travelers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	4
Background and Need for Legislation	4
Hearings	4
Committee Consideration	5
Committee Votes	5
Committee Oversight Findings	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	5
Congressional Budget Office Estimate	5
Statement of General Performance Goals and Objectives	6
Duplicative Federal Programs	6
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	6
Federal Mandates Statement	6
Preemption Clarification	6
Disclosure of Directed Rule Makings	6
Advisory Committee Statement	7
Applicability to Legislative Branch	7
Section-by-Section Analysis of the Legislation	7
Changes in Existing Law Made by the Bill, as Reported	9

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 “PreCheck is PreCheck Act of 2018”.

SEC. 2. ELIGIBILITY FOR TSA PRECHECK EXPEDITED SCREENING.**(a) ELIGIBILITY.—**

(1) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Administrator of the Transportation Security Administration (TSA) shall ensure that only travelers who are members of a trusted traveler program specified in subsection (b) are permitted to use TSA PreCheck security screening lanes at Transportation Security Administration checkpoints.

(2) **CERTAIN TRAVELERS.**—Any traveler who is 12 or under or 75 or over who is not a member of a trusted traveler program specified in subsection (b) shall be permitted to utilize TSA PreCheck security screening lanes at Transportation Security Administration checkpoints when traveling on the same itinerary as a member of such a program.

(b) TRUSTED TRAVELER PROGRAMS.—Trusted traveler programs referred to in subsection (a) include the following:

(1) Programs implemented by the Transportation Security Administration under section 109(a)(3) of the Aviation and Transportation Security Act (Public Law 107–71; 49 U.S.C. 114 note).

(2) Any other United States Government program that issues unique identifiers, such as a known traveler number, that the Transportation Security Administration accepts as validating that the person holding such identifier is a member of a known low-risk population.

(c) EXEMPTIONS.—Nothing in this section shall affect—

(1) the ability of the Transportation Security Administration to carry out expedited screening for severely injured or disabled members of the Armed Forces and severely injured or disabled veterans, as set forth in section 44927 of title 49, United States Code; or

(2) the Honor Flight program, set forth in section 44928 of such title.

SEC. 3. RISK MODIFIED SCREENING.

(a) **IN GENERAL.**—Not later than 60 days after the date of the enactment of this Act, the Administrator of the Transportation Security Administration shall commence a pilot program regarding a risk modified screening protocol for lanes other than designated TSA PreCheck security screening lanes at Transportation Security Administration checkpoints, in airports of varying categories, to further segment passengers based on risk. Such pilot program shall conclude on the date that is 120 after such date of commencement.

(b) **REPORT; IMPLEMENTATION.**— Not later than 30 days after the conclusion of the pilot program required under subsection (a), the Administrator of the Transportation Security Administration shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the finding of such pilot program, including information relating to the security effectiveness and passenger facilitation effectiveness of the risk modified screening protocol that was the subject of such pilot program and, in the event that the Administrator is satisfied with the effectiveness of such protocol, information relating to plans to deploy such protocol at as many Transportation Security Administration checkpoints as practicable, taking into consideration the level of risk at the airport at issue, the available space at such airport, passenger throughput levels at such airport, and checkpoint configuration at such airport, while maintaining adequate resources to appropriately serve passengers in TSA PreCheck security screening lanes at Transportation Security Administration checkpoints.

(c) **ELIGIBILITY.**—Only low-risk passengers shall be eligible to undergo risk modified screening at Transportation Security Administration checkpoints described in subsection (a). Such low-risk passengers are those passengers who—

(1) meet risk-based, intelligence-driven criteria outlined by the Administrator of the Transportation Security Administration; or

(2) have undergone canine enhanced screening upon arrival at a Transportation Security Administration checkpoint.

(d) WORKING GROUP.—

(1) **IN GENERAL.**—In carrying out subsections (a) and (b), the Administrator of the Transportation Security Administration shall establish and utilize a working group comprised of individuals from or representatives of Category X, 1, 2, 3, and 4 airports and air carriers (as such term is defined in section 40102 of title 49, United States Code) to inform the piloting and development of plans to deploy the risk modified screening protocol described in such subsections for lanes other than designated TSA PreCheck security screening lanes at Trans-

portation Security Administration checkpoints in a manner which ensures maximum security effectiveness and efficiency.

(2) NON-APPLICABILITY OF FACAA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group established under this subsection.

SEC. 4. CONGRESSIONAL REPORTS.

(a) IN GENERAL.—Beginning with the first full calendar quarter after the date of the enactment of this Act, the Administrator of the Transportation Security Administration shall brief, on a quarterly basis, the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the implementation of section 2.

(b) CERTIFICATION.—Upon a determination by the Administrator of the Transportation Security Administration that only travelers who are members of a trusted traveler program specified in section 2(b) are permitted to use TSA PreCheck security screening lanes at Transportation Security Administration checkpoints in accordance with subsection (a) of such section, the Administrator shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a written certification relating to such determination.

(c) SUNSET.—The briefings required under subsection (a) shall terminate at the time the certification described in subsection (b) is submitted.

SEC. 5. INSPECTOR GENERAL ASSESSMENTS.

After the Administrator of the Transportation Security Administration submits the certification described in section 4(b), the Inspector General of the Department of Homeland Security shall, beginning in the first calendar year after such certification and in each of the next three subsequent calendar years, conduct an assessment to determine if there has been a systematic pattern of violations of section 2(a) during the previous calendar year. The Inspector General shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate the results of each such assessment.

SEC. 6. PRECHECK PROGRAM EXPANSION.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Transportation Security Administration shall develop and begin the implementation of a long-term strategy to increase enrollment in the TSA PreCheck Program and expand the total population of members of trusted traveler programs specified in section 2(b).

(b) ENROLLMENT.—In carrying out the long-term strategy referred to in subsection (a), the Administrator of the Transportation Security Administration shall—

(1) seek to partner with air carriers (as such term is defined in section 40102 of title 49, United States Code) to incorporate PreCheck Program promotion opportunities in the reservation process described in section 1560.101 of title 49, Code of Federal Regulations;

(2) seek to include in the PreCheck Program individuals who—

(A) hold a Secret, Top Secret, or Top Secret/Sensitive Compartmented Information clearance, unless such an individual has had his or her clearance revoked or did not pass a periodic reinvestigation; or

(B) are current, full-time Federal law enforcement officers;

(3) increase PreCheck Program enrollment flexibility by offering a secure mobile enrollment platform that facilitates in-person identity verification and application data collection, such as biometrics;

(4) develop initiatives to minimize the amount of travel to PreCheck Program enrollment centers for applicants, including—

(A) adjusting the locations and schedules of existing PreCheck Program enrollment centers to accommodate demand;

(B) seeking to collocate such enrollment centers with existing facilities that support the issuance of—

(i) United States passports; and

(ii) Security Identification Display Area credentials (as such term is defined in section 1540.5 of title 49, Code of Federal Regulations) located in public, non-secure areas of airports, provided that no systems of an airport operator are used in support of enrollment activities for such credentials; and

(C) increasing the availability of PreCheck Program enrollment platforms, such as kiosks, tablets, or staffed laptop stations;

(5) assess the feasibility of providing financial or other incentives for PreCheck Program enrollment for—

- (A) children between the ages of 12 and 18;
 - (B) families of five or more individuals;
 - (C) private sector entities, including small businesses, that establish PreCheck Program enrollment centers in their respective facilities; and
 - (D) private sector entities, including small business concerns (as such term is described under section 3 of the Small Business Act (15 U.S.C. 632)), that reimburse employees for the cost of the PreCheck Program application; and
- (6) explore the possibility of combining the PreCheck Program with other trusted traveler programs specified in section 2(b).

PURPOSE AND SUMMARY

H.R. 6265 requires the Transportation Security Administration (TSA) to ensure—with very narrow exceptions—that PreCheck lanes are only being utilized by members of trusted traveler programs. The bill also directs TSA to conduct a pilot of “risk modified screening” for low risk passengers. If successful, this program should allow TSA to increase throughput at checkpoints while mitigating some of the vulnerabilities that exist under the current system. Finally, H.R. 6265 requires TSA to take several steps to increase PreCheck enrollment. For example, the bill directs TSA to partner with airlines to better market the program, increase enrollment flexibility via the use of innovative technologies, and make PreCheck enrollment centers more accessible.

BACKGROUND AND NEED FOR LEGISLATION

As airport passenger volumes continue to climb, the Transportation Security Administration (TSA) will need to increase throughput at checkpoints to prevent another wait times crisis. This coupled with TSA’s recent struggles to increase the number of travelers enrolled in trusted traveler programs, such as TSA PreCheck, has forced TSA to take additional actions to prevent a surge in checkpoint wait times. Through methods such as intelligence-based rules and the use of canines, TSA has expanded the population of travelers who are eligible to use PreCheck lanes—even though these individuals are not members of a trusted traveler program—with the end goal of increasing checkpoint throughput.

This is problematic for several reasons, primarily because PreCheck was designed to enhance security, not manage traffic at the checkpoint. However, passengers who receive expedited screening via a rule or canines have not undergone the same vetting as PreCheck members, resulting in a potential security vulnerability. In addition, by giving Precheck “away for free,” TSA is undermining its own efforts to increase PreCheck enrollment. Therefore, TSA will likely need to continue using alternative methods, despite the associated vulnerabilities, to manage checkpoint wait times. H.R. 6265 seeks to ensure that PreCheck and expedited screening is being used as a security tool and not to manage checkpoint throughput.

HEARINGS

No hearings were specifically held on H.R. 6265. However, the Committee held two hearings relating to Transportation Security Administration’s PreCheck program. On May 17, 2018 the Subcommittee on Transportation and Protective Security held a hearing entitled “Assessing the TSA Checkpoint: The PreCheck Pro-

gram and Airport Wait Times”. Testimony was heard from Darby LaJoye, Assistant Administrator, Office of Security Operations, Transportation Security Administration, Department of Homeland Security; William Russell, Acting Director, Homeland Security and Justice Team, Government Accountability Office; and public witnesses.

On November, 8, 2018 the Committee on Homeland Security held a hearing entitled “Preventing the Next Attack: TSA’s Role in Keeping our Transportation System Secure”. Testimony was heard from David P Pekoske, Administrator, Transportation Security Administration, Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on July 24, 2018, to consider H.R. 6265, 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 Committee adopted H.R. 6265, as amended, by unanimous consent.

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MR. KATKO (#1); was AGREED TO, without amendment, 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. 6265.

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. 6265, the PreCheck is PreCheck 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. 6265 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation ensures that only travelers who are members of a trusted traveler program use Transportation Security Administration PreCheck security screening lanes. The bill also requires the TSA to brief the Committee on Homeland Security of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate on the implementation of the new PreCheck eligibility requirements on a quarterly basis, beginning on the first full calendar quarter after the enactment of this legislation. Once the Administrator of the TSA determines that only trusted travelers are using PreCheck lanes, the Administrator will submit a written certification to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 6265 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. 6265 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 6265 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 “PreCheck is PreCheck Act of 2018”.

Sec. 2. Eligibility for TSA PreCheck expedited screening

This section requires that TSA (TSA) ensure that only travelers who are members of a trusted traveler program use TSA PreCheck security screening lanes at TSA checkpoints, not later than one year after the enactment of this Act. However, any traveler under the age of 12 or over the age of 75 who is not a member of a trusted traveler program may utilize TSA PreCheck security lanes at TSA checkpoints when traveling on the same itinerary as a member of a trusted traveler program.

Trusted traveler programs include programs implemented by the TSA under section 109(a)(3) of the Aviation and Transportation Security Act (Public Law 107–71; 49 U.S.C. 114 note); and any other U.S. Government program that issues unique identifiers that the TSA accepts as validating that the person as member of a known low-risk population, such as a known traveler number.

This bill shall not affect the ability of the TSA to carry out expedited screening for severely injured or disabled members of the Armed Forces and severely injured or disabled veterans, as set forth in section 44927 of title 49, United States Code; or the Honor Flight program.

Sec. 3. Risk modified screening

This section instructs TSA to pilot a risk modified screening protocol, which further segments passengers based on risk, for lanes other than designated TSA PreCheck security screening lanes at TSA checkpoints. If the pilot is successful, this risk modified screening protocol shall be implemented at as many Transportation Security Administration checkpoints as practicable, taking into consideration the level of risk at the airport, the available space and passenger throughput levels at the airport, and the checkpoint configuration at the airport.

Only low risk-passengers shall be eligible to undergo risk modified screening at TSA checkpoints. These low-risk passengers include those who meet intelligence-based criteria, as outlined by the TSA Administrator, or have undergone canine enhanced screening upon arrival at a TSA checkpoint.

Furthermore, TSA shall establish and utilize a working group comprised of Category X,1,2,3, and 4 airports and air carriers (as defined in section 40102 of title 49, United States Code) to inform

the implementation of the risk modified screening protocol for lanes other than designated TSA PreCheck security screening lanes at checkpoints in a manner which ensures maximum security efficacy and efficiency. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group established under this subsection.

Sec. 4. Congressional reports

This section mandates that the TSA brief, on a quarterly basis, the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the implementation of section 2. Once fully implemented, the TSA Administrator shall submit a written certification that only travelers who are members of a trusted traveler program are utilizing TSA PreCheck lanes at TSA checkpoints, to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Once the certification is submitted, the briefings shall terminate.

Sec. 5. Inspector general assessments

This section requires the Inspector General of the Department of Homeland Security to conduct an assessment, beginning the calendar year after the certification in Section 4 is submitted, to determine if there has been a systematic pattern of violations with respect to non-trusted travelers using PreCheck lanes over the previous year. The results of this assessment will be sent to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate. The Inspector General will conduct these assessments on an annual basis for 4 years after the certification outlined in Section 4 is submitted.

Sec. 6. PreCheck program expansion

This section requires TSA to implement a long-term strategy to increase enrollment in the TSA Precheck Program and expand the total population of trusted traveler programs.

In carrying out the long-term strategy, TSA shall seek to partner with air carriers to incorporate PreCheck program promotions opportunities in the reservation process, seek to include Precheck Program individuals who hold a Secret, Top Secret, or Top Secret/Sensitive Compartmented Information clearance—unless the clearance was revoked or the individual did not pass a periodic reinvestigation—or are current, full-time Federal law enforcement officers.

In addition, TSA shall increase PreCheck enrollment flexibility by offering a secure mobile enrollment platform and develop initiatives to minimize the amount of travel to PreCheck Program enrollment centers for applicants. These initiatives shall include: adjusting the locations and schedules of existing PreCheck Program enrollment centers to accommodate demand; co-locating such centers with existing passport issuance or Security Identification Display Areas credential facilities, where practicable; and increasing the availability of PreCheck enrollment kiosks, tablets, or staffed laptop stations at airports.

TSA shall also assess the feasibility of providing incentives for PreCheck Program enrollment for children between the ages of 12 and 18, families of five or more individuals, private sector entities, including small businesses, that establish PreCheck Program enrollment centers in their facilities or reimburse employees for the cost of the PreCheck Program application.

Finally, the bill requires TSA to explore the possibility of combining the PreCheck Program with other trusted traveler programs, as defined in section 2(b).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 6265 makes no changes to existing law.

