

COVERT TESTING AND RISK MITIGATION IMPROVEMENT  
ACT OF 2019

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NOVEMBER 19, 2019.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. THOMPSON of Mississippi, from the Committee on Homeland  
Security, submitted the following

R E P O R T

[To accompany H.R. 3469]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3469) to direct the Transportation Security Administration to carry out covert testing and risk mitigation improvement of aviation security operations, 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 AND SUMMARY

H.R. 3469, the “Covert Testing and Risk Mitigation Improvement Act of 2019,” seeks to make improvements to the Transportation

Security Administration (TSA)'s covert testing processes and requires TSA to identify, document, and mitigate risks found through these tests. H.R. 3469 was introduced by late-Representative Elijah Cummings (D-MD) to foster reforms to enhance TSA's capacity to identify and mitigate vulnerabilities to the security of U.S. transportation systems.

#### BACKGROUND AND NEED FOR LEGISLATION

The Government Accountability Office (GAO) and the Department of Homeland Security (DHS) Office of Inspector General (OIG) have reported on the longstanding challenges TSA faces in addressing vulnerabilities in airport security operations. The DHS OIG, in addition to issuing public reports on security vulnerabilities in TSA operations, has issued several classified reports—including on September 27, 2017, October 24, 2017, and February 13, 2019—that identified security vulnerabilities.

In April 2019, GAO issued a report which found that TSA did not use a risk-informed approach to guide its covert tests of its security operations and that TSA has limited assurance that its covert tests are targeted at the most likely threats. GAO also found that of the nine security vulnerabilities identified through covert tests by TSA since 2015, none had been formally resolved as of September 2018.

The Committee on Homeland Security has received classified briefings from GAO, DHS, OIG, and TSA on these issues over the past several years which have reinforced the need for more formal covert testing and risk mitigation processes.

#### HEARINGS

For the purposes of section 103(i) of H. Res. 6. of the 116th Congress, the following hearings were used to develop H.R. 3469:

- On April 9, 2019, the Committee held a hearing entitled “Securing America’s Transportation and Maritime Systems: A Review of the Fiscal Year 2020 Budget Requests for the Transportation Security Administration and the U.S. Coast Guard.” The Committee received testimony from David P. Pekoske, Administrator, Transportation Security Administration, U.S. Department of Homeland Security; and Admiral Karl L. Schultz, Commandant, U.S. Coast Guard, U.S. Department of Homeland Security.
- On November 8, 2017, the Committee held a hearing entitled “Preventing the Next Attack: TSA’s Role in Keeping Our Transportation Systems Secure.” The Committee received testimony from David P. Pekoske, Administrator, Transportation Security Administration, U.S. Department of Homeland Security.

#### COMMITTEE CONSIDERATION

The Committee met on October 23, 2019, with a quorum being present, to consider H.R. 3469 and ordered the measure to be reported to the House with a favorable recommendation, 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. 3469.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements 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 adopts as its own the estimate of the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 18, 2019.*

Hon. BENNIE G. THOMPSON,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3469, the Covert Testing and Risk Mitigation Improvement Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>H.R. 3469, Covert Testing and Risk Mitigation Improvement Act of 2019</b>			
As ordered reported by the House Committee on Homeland Security on October 23, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 3469 would require the Transportation Security Administration (TSA) to perform the following activities related to its covert testing program, under which the agency conducts tests to identify vulnerabilities in airport security operations.

- Conduct at least three covert testing projects each year designed to identify vulnerabilities in aviation security;
- Implement a long-term covert testing program;
- Establish a system to address, assess, and mitigate the identified vulnerabilities;
- Conduct additional covert tests to assess the effectiveness of mitigation efforts; and
- Report to the Congress on the status of the covert testing program.

The bill also would require the Government Accountability Office (GAO) to study the effectiveness of the program's processes and report to the Congress.

According to TSA, most of the requirements in the bill, other than the reporting requirements for TSA and GAO, are already being planned and implemented. Based on the cost of similar reports, CBO estimates that implementing H.R. 3469 would have no significant cost over the 2020–2024 period.

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

#### FEDERAL MANDATES 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.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 3469 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the objective of H.R. 3469 is to improve the effectiveness of TSA’s covert testing program and TSA’s efforts to identify security vulnerabilities and mitigate risk. The bill seeks to strengthen TSA’s tracking and reporting of vulnerabilities and requires TSA to document and report to Congress on its plans to mitigate such vulnerabilities. In sum, the objective is to improve TSA’s covert testing and risk mitigation processes to enhance our nation’s transportation security.

## ADVISORY ON EARMARKS

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(d), 9(e), or 9(f) of the rule XXI.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section provides that this bill may be cited as the “Covert Testing and Risk Mitigation Improvement Act of 2019.”

*Sec. 2. TSA Covert testing and risk mitigation improvement*

This section requires TSA to create a system for conducting risk-informed headquarters-based covert tests of aviation security operations that can yield statistically valid data. On an annual basis TSA is required to conduct at least three risk-informed projects that can identify systematic vulnerabilities in the transportation security system.

Section 2 also establishes requirements for TSA to mitigate vulnerabilities that are found through the risk-informed projects. TSA is required to analyze each vulnerability and, within 120 days, document its rationale for mitigating or not mitigating a vulnerability. If TSA decides to mitigate a vulnerability, TSA is required to conduct additional covert testing on that vulnerability within 180 days to determine the effectiveness of its mitigation efforts.

This section also requires TSA to comprehensively track all vulnerabilities it identifies, how it plans to mitigate the vulnerabilities, and the results of any covert testing that was conducted on that vulnerability. TSA is required to present this information with TSA’s annual budget request.

Finally, this section requires the Government Accountability Office (GAO) to submit to TSA and Congress a report on the effectiveness of TSA’s covert testing programs within three years of enactment.

In sum, this section will formalize and enhance TSA’s covert testing and risk mitigation efforts. It will also provide Congress with additional insight to hold TSA accountable for its efforts to address vulnerabilities.