

TSA OFFICE OF INSPECTION ACCOUNTABILITY ACT OF
 2014

JULY 3, 2014.—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. 4803]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4803) to require the Transportation Security Administration to conform to existing Federal law and regulations regarding criminal investigator positions, 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	3
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
New Budget Authority, Entitlement Authority, and Tax Expenditures	4
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	7
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	8

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 “TSA Office of Inspection Accountability Act of 2014”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Consistent with Federal law and regulations, for law enforcement officers to qualify for premium pay as criminal investigators, the officers must, in general, spend on average at least 50 percent of their time investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States.

(2) According to the Inspector General of the Department of Homeland Security (DHS IG), the Transportation Security Administration (TSA) does not ensure that its cadre of criminal investigators in the Office of Inspection are meeting this requirement, even though they are considered law enforcement officers under TSA policy and receive premium pay.

(3) Instead, TSA criminal investigators in the Office of Inspection primarily monitor the results of criminal investigations conducted by other agencies, investigate administrative cases of TSA employee misconduct, and carry out inspections, covert tests, and internal reviews, which the DHS IG asserts could be performed by employees other than criminal investigators at a lower cost.

(4) The premium pay and other benefits afforded to TSA criminal investigators in the Office of Inspection who are incorrectly classified as such will cost the taxpayer as much as \$17,000,000 over 5 years if TSA fails to make any changes to the number of criminal investigators in the Office of Inspection, according to the DHS IG.

(5) This may be a conservative estimate, as it accounts for the cost of Law Enforcement Availability Pay, but not the costs of law enforcement training, statutory early retirement benefits, police vehicles, and weapons.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADMINISTRATION.**—The term “Administration” means the Transportation Security Administration.

(2) **ASSISTANT SECRETARY.**—The term “Assistant Secretary” means the Assistant Secretary of Homeland Security (Transportation Security) of the Department of Homeland Security.

(3) **INSPECTOR GENERAL.**—The term “Inspector General” means the Inspector General of the Department of Homeland Security

SEC. 4. INSPECTOR GENERAL REVIEW.

(a) **REVIEW.**—Not later than 60 days after the date of the enactment of this Act, the Inspector General shall analyze the data and methods that the Assistant Secretary uses to identify employees of the Administration who meet the requirements of sections 8331(20), 8401(17) and 5545a of title 5, United States Code, and provide the relevant findings to the Assistant Secretary, including a finding on whether the data and methods are adequate and valid.

(b) **PROHIBITION ON HIRING.**—If the Inspector General finds that such data and methods are inadequate or invalid, the Administration may not hire any new employee to work in the Office of Inspection of the Administration until—

(1) the Assistant Secretary makes a certification described in section 5 to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate; and

(2) the Inspector General submits to such Committees a finding, not later than 30 days after the Assistant Secretary makes such certification, that the Assistant Secretary utilized adequate and valid data and methods to make such certification.

SEC. 5. TSA OFFICE OF INSPECTION WORKFORCE CERTIFICATION.

(a) **CERTIFICATION TO CONGRESS.**—The Assistant Secretary shall, by not later than 90 days after the date the Inspector General provides its findings to the Assistant Secretary under section 4(a), document and certify in writing to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that only those employees of the Administration who meet the requirements of sections 8331(20), 8401(17), and 5545a of title 5, United States Code, are classified as criminal investigators and are receiving premium pay and other benefits associated with such classification.

(b) **EMPLOYEE RECLASSIFICATION.**—The Assistant Secretary shall reclassify criminal investigator positions in the Office of Inspection as noncriminal investigator positions or non-law enforcement positions if the individuals in those positions do not, or are not expected to, spend an average of at least 50 percent of their time performing criminal investigative duties.

(c) **PROJECTED COST SAVINGS.**—

(1) **IN GENERAL.**—The Assistant Secretary shall estimate the total long-term cost savings to the Federal Government resulting from the implementation of subsection (b), and provide such estimate to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by not later than 180 days after the date of enactment of this Act.

(2) **CONTENTS.**—Such estimate shall identify savings associated with the positions reclassified under subsection (b) and include, among other factors the Assistant Secretary considers appropriate, savings from—

- (A) law enforcement training;
- (B) early retirement benefits;
- (C) law enforcement availability pay; and
- (D) weapons, vehicles, and communications devices.

SEC. 6. INVESTIGATION OF FEDERAL AIR MARSHAL SERVICE USE OF FEDERAL FIREARMS LICENSE.

Not later than 90 days after the date of the enactment of this Act, or as soon as practicable, the Assistant Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) any materials in the possession or control of the Department of Homeland Security associated with the Office of Inspection's review of the use of a Federal firearms license by Federal Air Marshal Service officials to obtain discounted or free firearms for personal use; and

(2) information on specific actions that will be taken to prevent Federal Air Marshal Service officials from using a Federal firearms license, or exploiting, in any way, the Service's relationships with private vendors to obtain discounted or free firearms for personal use.

PURPOSE AND SUMMARY

The purpose of H.R. 4803 is to require the Transportation Security Administration (TSA) to conform to existing Federal law and regulations regarding criminal investigator positions, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4803 would address issues identified by the Department of Homeland Security Office of Inspector General (DHS OIG) in its report entitled, *Transportation Security Administration Office of Inspection's Efforts to Enhance Transportation Security* [OIG-13-123], released in September 2013, as well as testimony received during the Subcommittee on Transportation Security's January 28, 2014, hearing entitled "Examining TSA's Cadre of Criminal Investigators." The premium pay and other benefits afforded to TSA criminal investigators within the Office of Inspection (OOI) who are incorrectly classified as such will cost the taxpayer as much as \$17,000,000 over 5 years if TSA fails to make any changes to the number of OOI criminal investigators, according to the DHS OIG. During the Subcommittee's hearing, the Assistant Administrator of OOI acknowledged that his office could reduce the number of criminal investigator positions but could not specify an exact number.

According to the DHS OIG, TSA's criminal investigators in OOI primarily monitor the results of criminal investigations conducted by other agencies, investigate administrative cases of TSA employee misconduct, and carry out inspections, covert tests, and internal reviews. While each of these functions is important, and in

many cases a criminal investigator may be well suited to perform these functions, they do not represent the equivalent of a criminal investigation and should therefore not be the primary functions of those employees who receive premium pay and other benefits associated with being a criminal investigator, according to Federal law and regulations.

HEARINGS

No legislative hearings were held on H.R. 4803. However, the Committee held the following oversight hearing.

The Subcommittee on Transportation Security held a hearing on On January 28, 2014, entitled "Examining TSA's Cadre of Criminal Investigators." The Subcommittee received testimony from Mr. Roderick Allison, Assistant Administrator, Office of Inspection, Transportation Security Administration, U.S. Department of Homeland Security; Ms. Karen Shelton Waters, Assistant Administrator, Office of Human Capital, Transportation Security Administration, U.S. Department of Homeland Security; and Ms. Anne Richards, Assistant Inspector General, Office of Audits, U.S. Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on June 11, 2014, to consider H.R. 4803, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. Prior to consideration, the Chair discharged the Subcommittee on Transportation Security from further consideration of H.R. 4803/ The Committee took the following actions:

The following amendments were offered:

An amendment offered by MR. THOMPSON of Mississippi (#1), as filed on the roster by MS. LORETTA SANCHEZ of California; was AGREED TO by voice vote.

Add at the end a new section entitled "Sec. ____ Investigation of Federal Air Marshal Service Use of Federal Firearms License."

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. 4803.

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. 4803, the TSA Office of Inspection Accountability Act of 2014, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 2014.

Hon. MICHAEL MCCAUL,
*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. 4803, the TSA Office of Inspection Accountability Act of 2014.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4803—TSA Office of Inspection Accountability Act of 2014

The Office of Inspection in the Transportation Security Administration (TSA) is responsible for ensuring the effectiveness and efficiency of TSA's operations and identifying vulnerabilities in the agency's security systems. In carrying out its mission, the office conducts internal inspections, investigations, and covert tests to assess the integrity of the agency's activities and its staff. Under current law, roughly half of the office's employees are classified as criminal investigators and are eligible for certain statutory employment benefits because they are considered law enforcement officers. In particular, such individuals qualify for additional compensation (known as Law Enforcement Availability Pay) and enhanced retirement benefits.

H.R. 4803 would direct the Inspector General of the Department of Homeland Security (DHS) to review the data and methods that TSA uses to classify personnel as law enforcement officers and to reclassify, as necessary, any staff of the Office of Inspection that are currently misclassified according to the results of that review. The bill would require DHS to provide various security-related updates and reports to the Congress.

Based on information from DHS, CBO estimates that implementing H.R. 4803 would have no significant effect on federal spending. According to DHS, TSA is already undertaking an analysis of the agency's workforce that will serve as the basis for potential reclassifications of personnel who do not meet criteria to be considered law enforcement officers, and CBO does not expect that enacting H.R. 4803 would significantly affect the timing or outcome of that process. We estimate that complying with the bill's reporting requirements would cost less than \$500,000, assuming the availability of appropriated funds. H.R. 4803 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4803 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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. 4803 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation requires TSA to certify to the Congress, and DHS OIG to validate, that only TSA employees who meet the relevant legal and regulatory requirements are classified as criminal investigators and receive premium pay. If the Inspector General finds that TSA is using inadequate or invalid data and methods to classify criminal investigators, TSA may not hire any new employee to work in OOI until TSA makes a new certification and the DHS OIG submits to Congress a finding that TSA utilized adequate and valid data and methods to make its certification. It also requires TSA to reclassify any criminal investigators who don't meet the legal requirements and report to Congress on any associated cost savings.

In addition, this legislation requires TSA to submit to Congress any materials associated with OOI's review of the use of a Federal Firearms License by Federal Air Marshal Service (FAMS) officials to obtain discounted or free firearms for personal use. Furthermore, it would require TSA to submit information on specific actions that will be taken to prevent FAMS officials from using a Federal Firearms License and the agency's relationships with private vendors to obtain discounted or free firearms for personal use.

DUPLICATIVE FEDERAL PROGRAMS

The Committee finds that H.R. 4803 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

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.

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. 4803 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4803 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 bill may be cited as the “TSA Office of Inspection Accountability Act of 2014”.

Sec. 2. Findings

This section conveys findings regarding the Transportation Security Administration’s Office of Inspection (TSA OOI) and the criminal investigators in OOI.

Sec. 3. Definitions

This section defines the terms “Administration” as the Transportation Security Administration, “Assistant Secretary” as the Assistant Secretary of Homeland Security (Transportation Security), and “Inspector General” as the Inspector General of the Department of Homeland Security.

Sec. 4. Inspector General review

(a) *Review.*—This section requires the DHS IG, within 60 days of enactment, to analyze the data and methods that TSA uses to identify employees who meet the requirements of sections 8331(20), 8401(17) and 5545a of title 5, U.S.C., and provide the relevant findings to TSA, including a finding on whether the data and methodology are adequate and valid.

(b) *Prohibition of Hiring.*—If the DHS IG finds that TSA’s data and methods are inadequate or invalid, TSA may not hire any new employee to work in OOI until—

(1) TSA makes a new certification (described in section 5) to the Committee on Homeland Security of the House and the Committee on Commerce Science and Transportation of the Senate; and

(2) The DHS IG submits a finding to those Committees within 30 days of the Assistant Secretary making the certification, that the Assistant Secretary utilized adequate and valid data and methods to make such certification.

Sec. 5. TSA Office of Inspection workforce certification

(a) *Certification to Congress.*—This section requires TSA, within 90 days after the date the DHS IG provides its findings to TSA, to document and certify in writing to the Committee on Homeland Security of the House and the Committee on Commerce, Science, and Transportation of the Senate that only those employees of TSA who meet the requirements of sections 8331(20), 8401(17), and 5545a of title 5, United States Code, are classified as criminal investigators and are receiving premium pay and other benefits associated with such classification.

(b) *Employee Reclassification.*—The section requires TSA to reclassify criminal investigator positions in OOI as noncriminal investigator positions or non-law enforcement positions if the individuals in those positions do not, or are not expected to, spend an average of at least 50 percent of their time performing criminal investigative duties.

Projected Cost Savings.—This section requires TSA to estimate the total long-term cost savings to the Federal government resulting from the implementation of subsection (b), and provide such estimate to the Committee on Homeland Security of the House and the Committee on Commerce, Science, and Transportation of the Senate by not later than 180 days after the date of enactment of this Act. Such estimate shall identify savings associated with the positions reclassified under subsection (b) and include factors such as, law enforcement training; early retirement benefits; law enforcement availability pay, and weapons, vehicles, and communications devices.

Sec. 6. Investigation of Federal Air Marshal Service use of Federal Firearms License

This section, offered as an amendment by Ms. Loretta Sanchez of California, requires TSA to submit any materials in the possession of the Department related to OOI's review of the use of a Federal Firearms License by FAMS officials to obtain discounted or free firearms for personal use.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 4803 makes no changes to existing law.