

STRENGTHENING AVIATION SECURITY ACT OF 2017

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. 4467]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4467) to require the Federal Air Marshal Service to utilize risk-based strategies, 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 2018”.

**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. 4467, the Strengthening Aviation Security Act of 2017, is to ensure that the Federal Air Marshal Service utilizes risk-based strategies and seating when allocating resources for international and domestic flight coverage to improve effectiveness. Additionally, it requires the Administrator of the Transportation Security Administration (TSA) to report to Congress about the compliance with these risk-based requirements.

**BACKGROUND AND NEED FOR LEGISLATION**

The Federal Air Marshal Service is a Federal law enforcement agency within TSA that is responsible for detecting, deterring, and defeating hostile acts against aviation. Federal air marshals (FAMs) are armed law enforcement officers who are deployed on passenger flights worldwide to protect airline passengers and crew against criminals and terrorists. Given the high volume of daily flights—both domestic and international—and the limited resources and personnel at TSA, FAMs are not able to deploy on every flight departing from or landing in the U.S.

Accordingly, TSA’s ability to maximize the limited number of FAMs in order to achieve security effectiveness is an ongoing challenge. In September 2017, GAO reported that TSA does not measure data on the effectiveness and deterrence value of FAMs.<sup>1</sup> This is a major problem for accountability—since FAMs deployment cost taxpayers \$800 million in Fiscal Year 2015—as well as for the

<sup>1</sup> Government Accountability Office, *Aviation Security: Actions Needed to Systematically Evaluate Cost and Effectiveness Across Security Countermeasures*, GAO-17-794. September 11, 2017.

value of the program itself, where the primary goal is to deter threats and minimize risk to passengers and crew.<sup>2</sup> This bill will ensure that TSA utilizes risk-based strategies when allocating FAMs on passenger flights in order to increase the effectiveness of the program and gain the maximum value from its limited resources. It will also ensure that the seating of FAMs onboard passenger aircraft is determined in a risk-based manner that enables them to respond effectively to security threats.

#### HEARINGS

The Committee did not hold any legislative hearings on H.R. 4467 in the 115th Congress. However, this legislation was informed by a Full Committee hearing on November 8, 2017, entitled “Preventing the Next Attack: TSA’s Role in Keeping Our Transportation Systems Secure.” The Committee received testimony from the Honorable David P. Pekoske, Administrator of the Transportation Security Administration, U.S. Department of Homeland Security.

#### COMMITTEE CONSIDERATION

The Committee met on March 7, 2018, to consider H.R. 4467, 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 offered by MR. KATKO (#1); was AGREED TO by unanimous consent.

Page 2, line 15, strike “and”.

Page 2, line 18, strike the first period, the closing quotes, and the second period and insert “; and”.

Page 2, beginning line 19, insert the following: “(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.”.

#### 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. 4467.

#### 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. 4467, the Strengthening Aviation Security Act of 2017, would result in no

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<sup>2</sup> *Ibid.*

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. 4467 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation ensures that the Federal Air Marshal Service utilizes risk-based strategies and seating when allocating resources for international and domestic flight coverage to improve effectiveness.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 4467 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. 4467 does not preempt any State, local, or Tribal law.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4467 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 “Strengthening Aviation Security Act of 2017”.

*Sec. 2. Use of Risked-based Strategies by Federal Air Marshal Service*

This section amends subsection (a) of section 44917 of title 49, United States Code, by adding a new paragraph that requires the Federal Air Marshal Service to utilize a risk-based strategy when allocating resources between international and domestic flight coverage. It also adds new paragraphs requiring the Federal Air Marshal Service to utilize risk-based strategies to support domestic and international allocation decisions. Last, it adds an additional paragraph requiring the Federal Air Marshal Service to ensure that the seating arrangements of FAMs onboard passenger aircraft are determined in a risk-based manner that enables them to respond effectively to current threats to aviation security.

In addition, this section requires the TSA Administrator to 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 risk-based requirements, as well as the documented methodology used to conduct the necessary risk assessments.

## 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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