IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Jonathan Corbett Petitioner v. Transportation Security Administration, Respondent	**No. 15-15717** **REPLY TO RESPONDENT'S OPPOSITION TO MOTION TO STAY ORDER** ***Oral Arguments Requested***

Jonathan Corbett, *pro se* Petitioner, replies to the government's opposition to his motion to stay an order of the TSA as follows:

I. Petitioner Clearly Has Constitutional Standing and Statutory "Substantial Interest" In The Order Challenged

Respondent argues that Petitioner does not have standing, and thus the Court does not have jurisdiction, because he did not identify a specific future flight that he has booked[1]. Opp. to Mot. to Stay, p. 9. Petitioner clearly expressed that he has flown "over 100 flights over the last 2 years *and intends to continue this level of travel*." Mot. to Stay, p. 9 (*emphasis added*). Petitioner's burden is not to "prove that he faces an imminent threat of mandatory screening in the future." Opp. to Mot.

[1] Respondent also notes that Petitioner has not alleged that he has been subject to mandatory body scanning in the past. Opp. to Mot. to Stay, p. 9. Of course he hasn't. The TSA just made body scanning mandatory last month and Petitioner filed suit 6 days after the TSA announced the policy.

to Stay, p. 9. It is to demonstrate a "substantial interest" in the order. 49 U.S.C. § 46110(a). In light of this, Respondent's argument borders on frivolous.

This is especially so because Respondent has previously argued that the order challenged – a presumed update to the TSA's Screening Checkpoint Standard Operating Procedures – imposes restrictions on air travelers or, in the alternative, is still challengeable under the "substantial interest" language of § 46110. *Corbett v. United States*, No. 11-12426, Brief of Appellee, p. 40 ("The text of § 46110(a) envisions that an order may be challenged by persons with 'a substantial interest in an order,' even if they are not directly regulated by the order."). It should be noted that this brief was prepared by the same attorney that prepared the opposition to the instant motion.

Refusing standing for Petitioner would also raise serious constitutional questions. Since § 46110 imposes a 60 day time limit for challenges, if a frequent air traveler does not have a flight booked within those 60 days, under Respondent's strained interpretation of standing, the traveler would *never* have the opportunity to challenge the order. "[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *Jones v. United States*, 529 U.S. 848, 857, 120 S.Ct. 1904 (2000).

Notwithstanding, Petitioner has submitted a declaration along with this reply that notes that he now has a ticketed air reservation that will subject him to the new policies of the TSA in the near future. *See* Exhibit A, Declaration II of Jonathan Corbett, p. 1. The TSA's argument is, therefore, moot, but the Court should still express disapproval of Respondent's persistent attempts to avoid review of its orders by making near-frivolous arguments regarding standing. If, essentially, during the 60 day period, the TSA argues a challenge is not ripe, and after 60 days, the TSA argues that a challenge is time-barred, the intent and effect is obviously avoidance of judicial review, and this deserves condemnation.

II. The Proposed Rule Is Not Rationally Related to the Stated Purpose of Providing Heightened Screening to Individuals With a Heightened Security Risk

To the extent that the TSA wishes to use heightened security measures against certain individuals who present a heightened security risk, the order is not rationally related to that purpose because the TSA has not – and cannot – claim that subjecting a traveler to screening by body scanner is any more effective than a pat-down. This point is clearly evident when considering the TSA's own workflow for screening passengers. When a traveler goes through a body scan, the TSA screener operating the device receives either a "pass" indicator, which results in the passenger being

immediately cleared and allowed to proceed to his flight, or a "fail" indicator, which results in the passenger receiving a pat-down[2]. That is, passengers who are allowed to opt out *and* body scanner passengers who consent to body scanner screening but fail it are, in the end, cleared by the same pat down.

The body scanners, therefore, serve not as a way to add security to the workflow, but as a way to allow the TSA to clear some passengers without the need to pat them down. Clearing passengers via a body scanner takes significantly less time and manpower – a body scan takes roughly 10 seconds per passenger, while a pat down takes approximately 5 minutes. *See* Exhibit A, p. 2. With this understanding, it is clear that the TSA's interest in refusing to allow passengers to opt out is not to add security, but to save the TSA time by allowing it to clear many passengers without a lengthy pat down. Any suggestion that there is a security reason for the challenged order is merely subterfuge designed to mislead the Court into approving the change[3].

[2] "Security Screening." Transportation Security Administration. https://www.tsa.gov/travel/security-screening ("You may also undergo a pat-down procedure if you alarm the screening equipment")

[3] While the government may later argue that it has an interest in conducting security more cheaply, the interest in saving money is on a substantially different level from its interest in providing security, and is thus significantly more susceptible to challenges based on Fourth Amendment reasonableness. Issuing a stay against a TSA order that serves only to save money – rather than to address an imminent security issue – while serious constitutional issues and blatant failure to follow rulemaking process are discussed is squarely in the interest of justice.

In reality, the more passengers that are screened with body scanners instead of a pat down, the more security is *reduced*. The body scanners have been subjected to peer-reviewed studies that show that they are easily foiled by anyone with a basic understanding of the technology[4]. Congress' Government Accountability Office has reported that the TSA hasn't actually done a proper real-world study of body scanner efficacy[5]. Pat downs suffer from none of the same faults identified by the studies and the GAO. Petitioner, despite extensive study, is aware of no method to conceal nonmetallic explosives on one's person that would be detected by a body scanner but not a pat down, nor has the TSA made a claim to the contrary. *See* Exhibit A, pp. 2, 3.

The implication that the body scanners somehow constitute "heightened security measures" in comparison to a pat down is also belied by the fact that, for the last 6 years, the TSA has been willing to allow anyone to choose a pat-down instead of the body scanners, essentially treating the screening methods as equivalent. Compare the present situation to when the TSA was rolling out the body scanner and pat down program in 2010, and the TSA cited the inability of metal

[4] "Security Analysis of a Full-Body Scanner." Keaton Mowery (U.C. San Diego), Eric Wustrow (U. Mich.), Stephen Checkoway (Johns Hopkins U.), *et. al.* https://www.radsec.org/secure1000-sec14.pdf

[5] "Aviation Security: TSA Has Taken Steps to Improve Oversight of Key Programs, but Additional Actions Are Needed." Government Accountability Office. May 13th, 2015. http://www.gao.gov/products/GAO-15-559T

detectors to detect non-metallic explosives as its reason. *Corbett* v. TSA, 767 F.3d 1171, 1175 (11th Cir. 2014); *Elec. Privacy Info. Ctr. (EPIC) v. D.H.S.*, 653 F.3d 1, 3 (D.C. Cir. 2011). As a result, one can say that the body scanner/pat down program is rationally related to the legitimate government interest of preventing explosives from being smuggled aboard commercial aircraft. But, like body scanners, pat downs are also capable of detecting non-metallic explosives on the body, and TSA itself has always considered pat downs to be an "effective alternative method of screening passengers." *Id*.

The TSA's opposition to the instant motion fails to explain why it felt the need to make the policy change in question. Respondent summarily states that "[p]reventing TSA from requiring certain passengers posing a heightened security risk to undergo AIT scanning would undermine national security and jeopardize public safety." Opp. to Mot. to Stay, p. 17. But unlike when it rolled out the body scanner / pat down program in 2010 and clearly told the public that it needed to do so to stop nonmetallic explosives, the TSA has never explained why it feels that passengers posing a "heightened security risk" need to go through a body scanner instead of a pat down. If something has changed such that there is, all of the sudden, a new, compelling reason to change the practice[6], the TSA must identify that to the

[6] Given that pat downs are still used to "resolve" failed body scans, as discussed *supra*, it seems impossible that a compelling security reason can exist that would

Court rather than make generic statements about how they are charged with providing aviation security and want to do what they want to do because they know best. A rational basis review[7] requires the government to *explain* the rational basis, not merely assert that it has one. If it needs to do so *in camera* and/or *ex parte*, then it should ask to do so.

III. TSA's Assertion That Only "Passengers Posing A Heightened Security Risk" Are Affected Is Incorrect and Irrelevant

Respondent argues that the new policies apply only to passengers who represent a "heightened security risk." Opp. to Mot. to Stay, *passim*. At the outset, it should be noted that the Privacy Impact Assessment (PIA) Update that informed the public about the challenged order in no way says that only "heightened security risk" passengers will be affected; rather, it says that the TSA "may direct mandatory AIT [body scanner] screening for some passengers as warranted by security considerations." *Id.*, Exhibit 1, p. 4. The text of the PIA update plainly allows the TSA to force passengers through body scanner screening whenever it so chooses.

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explain why pat downs are not acceptable for initial screening, but are perfectly acceptable once someone has failed a body scan.

[7] Petitioner does not stipulate that a rational basis review is the correct standard. As Section IV of this document explains, more and more courts are ruling that, in today's world, air travel is a fundamental right because some travel is simply not feasible without it. If air travel is reclassified as a fundamental right, it is possible that strict scrutiny, or at least some level of heightened scrutiny, is appropriate.

But, *arguendo*, let us assume that TSA intends only to apply the new policy to "selectee" passengers. "Selectees" are individuals who are screened using heightened screening measures before they are allowed to fly, and include: 1) individuals on an FBI/TSA watch list, 2) individuals who do something "suspicious" (such as purchase a one-way plane ticket in cash on the day of the flight), and 3) *randomly selected individuals*. See Exhibit A, p. 3. It is, therefore, of no consolation to Petitioner if the TSA plans only to enforce the new order on those whom it deems a risk, because at any time, the TSA can indeed determine that Petitioner is a risk that should be forced through a body scanner.

This is not merely speculative: while not a majority of the time, *Petitioner has indeed been considered a "selectee" passenger in the past*. See Exhibit A, pp. 3, 4. And, like most frequent travelers, because of random selection, he will likely encounter it again in the future. *Id.*, pp. 3, 4 (noting that in the next year alone he will likely have at least 50 opportunities to be "randomly selected"). Notwithstanding, refusing to consider Petitioner to have a "substantial interest" in the order because there is a chance that the TSA may not apply the order to him again raises constitutional questions due to § 46110's 60 day time limit. Petitioner is obligated to challenge the TSA's order *now*, and cannot merely "wait and see" how often the TSA chooses to apply it to him and file later, because by that time, his challenge will be time-barred.

IV. Petitioner Cannot Avoid Harm by "Taking the Bus," And A Growing Consensus Exists That Air Travel Is a Fundamental Right

Respondent is well aware that travel is generally considered to be a fundamental constitutional right. *Kent v. Dulles*, 357 U.S. 116, 125 (1958) ("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment.") As a result, it argues not that Petitioner has no right to travel, but that Petitioner may avoid harm by traveling via different means ("buses, trains, and automobiles"). Opp. to Mot. to Stay, p. 15.

This position ignores the reality of today's world. There are 2 states and several U.S. territories that are not accessible by road and rail-based travel, and Respondent does not even try to argue that Petitioner can "take a boat" because long-distance commercial transportation by boat is nearly non-existent.

It also ignores the reality of international travel, which Petitioner, as many others, engage in for business opportunities, religious requirements or visiting family and friends. *See* Exhibit A, p. 4. As Petitioner is traveling overseas in April, he cannot merely take a bus, train, or car to accomplish his travel.

A growing number of courts have begun to recognize that travel by air is the only feasible way to accomplish some types of travel, and thus the government implicates a protected constitutional interest when it restricts access to air travel. It is true that courts have noted that "passengers do not possess a constitutional right

to the most convenient form of travel." Opp. to Mot. to Stay, p. 15, *citing* *Molloy v. Metro. Transp. Auth.*, 94 F.3d 808, 813 (2nd Cir. 1996). But here in this decade, courts have begun to catch up to the realities of modern travel as described above. "While the Constitution does not ordinarily guarantee the right to travel by any particular form of transportation, given that other forms of travel usually remain possible, the fact remains that for international travel, air transport in these modern times is practically the only form of transportation, travel by ship being prohibitively expensive." *Ibrahim v. D.H.S.*, 2012 U.S. Dist. LEXIS 180433 at *22 (N.D. Cal., Dec. 20th, 2012); *see also* *Latif v. Holder*, 28 F. Supp. 3d 1134, 1148 (D. Or., June 24th, 2014).

Finally, the TSA neglects to mention that in addition to airplanes, it also asserts jurisdiction over "buses, trains, and automobiles." "A screening activity may be initiated once an individual has elected to attempt entry into a sterile or secure area of any transportation venue, or elected to attempt to board an aircraft, bus, train, or other public conveyance." *See* Exhibit B, TSA Management Directive 100.4, p. 9. A brief search of the news shows that TSA screeners have indeed set up

checkpoints at Amtrak stations[8], Greyhound stations[9], and even roadside checkpoints[10]. Petitioner has personally seen them outside trains in Detroit and in Penn Station in New York. *See* Exhibit A, p. 4.

V. TSA Body Scanners Still Produce Nude Images of Travelers, Even If Those Images Are Generally Not Displayed to a Human

A body scanner works by emitting radiation in the direction of the traveler and measuring the radiation that is reflected. The measurements are fed into an algorithm that converts them into an image. The image created displays the surface of the subject's body and resembles a low-quality black-and-white image of the subject with his or her clothing removed. All body scanners – both current and former – work using these principles.

TSA is correct when it states that currently and during normal operations, no TSA screener sees a nude image of your body, as they did with older versions of the body scanner. Opp. to Mot. to Stay, p. 3. However, the nude image is still generated

[8] "Amtrak, TSA boost rail security for Labor Day weekend." USA Today. http://www.usatoday.com/story/news/2015/09/03/tsa-rail-security-amtrak-homeland-security-jeh-johnson-tsa-peter-neffenger/71608730/

[9] "TSA bus station exercise draws scorn from Iowa ACLU." The Des Moines Register. http://blogs.desmoinesregister.com/dmr/index.php/2011/06/16/tsa-bus-station-exercise-draws-scorn-from-iowa-aclu

[10] "The TSA Is Coming To A Highway Near You." Forbes (Op-Ed by U.S. Rep. Marsha Blackburn (TX)). http://www.forbes.com/sites/realspin/2012/02/29/the-tsa-is-coming-to-a-highway-near-you/

and analyzed by a computer instead of a human. *See* Exhibit A, p. 4. While the fact that a human is not looking at the image may be somewhat less embarrassing to some travelers, the fact of the matter remains that a virtual strip search has just occurred, whether done by man or machine. The TSA does not deny this in its opposing brief: a careful review shows that the TSA denies "displaying" and "collecting" images, but does not, and cannot, deny "creating" them.

A strip search does not automatically become reasonable simply because it is a computer that is doing the search. This issue will be more fully briefed later in the case, but for the purposes of the instant motion, the Court should be aware that Petitioner does not concede that the privacy impact is *de minimis* simply because of the automated nature of the search.

VI. No Court Has Held That "Requiring Passengers To Pass Through an AIT Scanner" Is Fourth Amendment Reasonable

As Respondent is well aware, this Court did not rule that *mandatory* body scanner use was constitutional, yet Respondent states the opposite in its opposition. Opp. to Mot. to Stay, p. 9. This Court ruled that the body scanner search that it was reviewing at the time, which the TSA repeatedly told the Court included an opt out option, was constitutional.

Likewise, every other Court to consider the matter necessarily considered the TSA's program *with* the opt out option, because before December 18th, 2015, there was a universally guaranteed opt out option. No court of which Petitioner is aware has yet passed upon whether body scanners without an opt out are constitutional, and the question raises serious issues that will be further discussed when this case is briefed.

VII. The Order Is a Substantive Change Subject to Formal Rulemaking

The TSA, once again, attempts "the position [that] it is not required to initiate a rulemaking each time it changes screening procedures." *EPIC* at 4. The argument fails here as it did in 2011.

In *EPIC*, the TSA argued that its body scanner/pat down implementation was not a "substantive rule" but either a "procedural rule," "interpretive rule," or "general statement of policy." *Id*. The *EPIC* court had no trouble rejecting this argument. A rule is "substantive" if it "alter the rights or interests of parties." *Id.* at 5; *see also Time Warner Cable Inc. v. FCC*, 729 F.3d 137 (2nd Cir. 2013) ("substantive rules 'change existing rights and obligations'"). Forcing the public to submit to a particular type of search clearly affects their obligations – the TSA can hardly argue that Petitioner is not "obliged" to comply with its rules if he wants to fly. As such,

the EPIC court found that "the TSA's use of AIT for primary screening has the hallmark of a substantive rule." *Id*. at 6.

The TSA's summary assertion that, even though introducing the body scanner program was ruled to have "substantively affected the public," removing a core component of that program (the traveler's choice as to whether to use a body scanner or receive a pat down) is somehow not substantive, fails. The change is not a "narrow policy revision," but the imposition, for the first time, of a mandatory obligation to participate in the body scanner program without a pat down option.

Nor does the fact that the TSA has added privacy safeguards (automated target recognition) mean that eliminating the pat down option is not "substantive." Opp. to Mot. to Stay, p. 14. Many still consider the body scanners to be offensive, unsafe, ineffective, or otherwise repulsive, including Petitioner, and to those people, the TSA has not mitigated their interest in the continuation of the opt out option. *See* Exhibit A, p. 4.

The TSA's blatant disrespect for its obligations under the APA is evidenced by the fact that it still has not issued a formal rule in 2016, which it was ordered to do in 2011, for a rule that it illegally put into effect in 2010, but it is also evidenced by the way its attorneys cavalierly dismiss its failure to formalize both the 2010 rule and the 2015 rule challenged here as a "mere procedural violation" that has no redressable effect on the public. Congress has mandated that the public should not

suffer obligations imposed on it without notice-and-comment rulemaking. 5 U.S.C. § 706 ("The reviewing court shall … (2) hold unlawful and set aside agency action found to be … (D) without observance of procedure required by law"). And the U.S. Supreme Court has indicated that restrictions on travel cannot be imposed without due process. *Kent* at 125. TSA's "mere procedure violation" infringes on Petitioner's rights just as the "mere failure to get a search warrant" before coming into his home would, even if the intrusion would have been lawful had procedure been followed.

The Court in *EPIC* allowed the TSA to conduct rulemaking *post hoc*, without staying the order until rulemaking was complete, because the TSA alleged that air travel in the nation would not be safe otherwise and supported that allegation with rational facts (a discussion of how metal detectors cannot detect nonmetallic explosives but body scanners and pat downs can). The D.C. Circuit was not sanctioning a general "implement first, formal rulemaking later" approach for the TSA for all future rules, but rather made a one-time exception for the TSA because of security reasons it felt were compelling. In the instant case, the TSA has not, and cannot, support any such assertions, since the rule challenged is not actually designed to increase safety but to decrease costs, as discussed *supra*. If the Court refuses to stay the TSA's order in the instant case, where there is no immediate security reason that compelled the TSA to act before complying with the APA, the

Court will essentially exempt the TSA from the APA's requirement that rulemaking is to be done first.

VIII. The Rulemaking For the 2010 Rule Does Not Cover the Challenged Change

At the outset, it must be reiterated that even if the rulemaking the TSA is in the process of completing, as ordered by the *EPIC* court, *did* include the ability to remove the opt out procedure, the rulemaking is still not finished, and the TSA's assurances that they will finish it soon do not affect the fact that today, no formal rulemaking has been completed and therefore the order challenged today was made without rulemaking.

Regardless, the rulemaking the TSA has begun is based on its 2010 rule that did not contemplate doing away with an opt out option. Instead, the notice of proposed rulemaking (NPRM) specifically stated that "individuals may opt-out of the AIT in favor of physical screening." *See* Exhibit C, "NPRM: Passenger Screening Using Advanced Imaging Technology (Federal Register Publication)," Section III(B). "AIT screening is currently optional, but when opting out of AIT screening, a passenger will receive a pat-down. When TSA deploys AIT equipment at a screening lane, a sign is posted to inform the public that AIT may be used as part of the screening process prior to passengers entering the machine so that each

passenger may exercise an informed decision on the use of AIT. The sign also indicates that a passenger who chooses not to be screened by AIT will receive a pat-down." *Id*. at Section III(D). TSA commentary in the Courts has matched. *EPIC* at 3.

TSA notes that "[s]everal commenters objected to [potential future] mandatory screening" and "at least one commenter endorsed mandatory screening." Opp. to Mot. to Stay, p. 16. The fact that some people anticipated that the TSA may change its policy in the future has no bearing on the fact that a reasonable reader of the NPRM would conclude that the rule contemplated at that time included a right to opt out because the NPRM specifically said that "individuals may opt out." Plainly, TSA has not issued an NPRM that proposed to eliminate the opt out option.

It should also be noted that Petitioner has taken the time to review all of the public comments, and out of the 5,578 comments submitted, 5,129 were opposed to the rule. *See* Exhibit D, Analysis of Public Comments on TSA Body Scanners by Jonathan Corbett. The overwhelming consensus of the public – even with the opt out requirement – is that the body scanner/pat down program is vehemently disfavored. By removing the opt out requirement in the face of 94% opposition[11][12],

[11] Petitioner cited this number as 95% in his Motion to Stay. After a thorough count, Petitioner corrects this number down to 94%.

[12] 5,578 comments were logged, but 120 of them did not appear to take a position on the rule. *See* Exhibit D, p. 16. The calculation of opposition percentage is, therefore, as follows: `5,129 / (5,578 - 120) = 0.9397 ≈ 94.0%`

TSA has essentially told the public that they couldn't care less what the public thinks, a position congruent with its disrespect for the APA discussed *supra*.

IX. The Court Should Hear Oral Arguments

As Respondent's opposing brief created confusion by raising several questionable positions regarding both the facts and the law, because the Court may be interested in directly questioning TSA's counsel regarding whether the order challenged has any security benefit or is merely a cost-saving issue, and because the Court may wish to ask the TSA to explain how it rationalizes eliminating the ability to opt for a pat down in lieu of body scanning when it requires those who fail a body scan to be patted down, the Court should have a hearing on the motion before ruling. Petitioner respectfully requests oral arguments, and requests that they be heard in the Court's Miami satellite office.

X. Conclusion

For the foregoing reasons, the Court should hear further argument and then stay the challenged order pending review.

Dated: Miami, Florida
January 19th, 2016

Respectfully submitted,

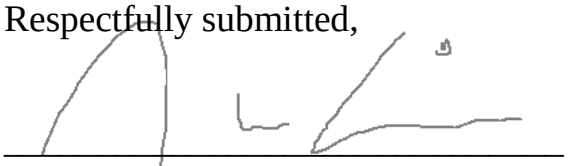

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Exhibit A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Jonathan Corbett Petitioner v. Transportation Security Administration, Respondent	**No. 15-15717** **DECLARATION II OF JONATHAN CORBETT**

I, Jonathan Corbett, hereby declare under penalty of perjury as follows:

1. My name is Jonathan Corbett, I am over the age of 18, and I am, and always have been, a citizen of the United States.
2. I currently have a ticketed reservation to fly from New York to Oslo in April 2016.
3. I intend to fly at least 2 more times before that date.
4. I intend to continue to fly regularly after that date.
5. Since at least 2010, I have studied and regularly observed TSA screening practices, having been present at TSA checkpoints on at least 200 occasions in that time.
6. The intent of my studies is to determine whether the TSA is actually protecting the public, including myself, against air terrorism in an effective and minimally-invasive manner.

7. I have training in computer science and mathematics from Rensselaer Polytechnic Institute, one of the nation's top engineering universities.

8. My studies of TSA security have included all available documentation regarding their body scanners and pat down procedure, as well as technical data describing theory behind backscatter imaging, incident reports of terrorists who have successfully passed through security checkpoints (and what could have been done to thwart them), and public versions of government reports on TSA efficacy, as well as personal experience as described above.

9. From my observations, and from personal experience having gone through TSA body scanners in 2012, I have noticed that screening via "body scan" takes approximately 10 seconds, unless the passenger alarms the scanner.

10. From my observations, the TSA resolves body scanner alarms by giving the passenger a pat-down.

11. From my observations, and from personal experience having gone through TSA full-body pat downs on at least 50 occasions, a full-body pat down, whether done because of body scanner alarm, opt-out, or otherwise, takes approximately 5 minutes.

12. I am aware of no "exploits" (problems with a security measure) that could successfully pass nonmetallic explosives, nor any other kind of

contraband, through a pat down, that would be unsuccessful when attempted against a body scanner.

13. Conversely, I am aware of many exploits that could successfully pass nonmetallic explosives, and other contraband, through a body scanner, that would be unsuccessful when attempted against a pat down.

14. From this, I conclude that unless the TSA has extraordinarily new and surprising research that is not available to the public, there is no scientific basis for any assertion that body scanners provide "heightened" security over a pat down under any circumstance.

15. The TSA has, essentially, four levels of security for passengers: "normal," PreCheck (reduced security), selectee (heightened security), and no-fly (boarding prohibited).

16. From my research, in order to become a selectee passenger, you must do one of the following: 1) be on an FBI/TSA watch list, 2) do something "suspicious" (such as purchase a one-way plane ticket in cash on the day of the flight), or 3) be randomly selected for heightened security.

17. Thus, everyone, including PreCheck passengers, children, the elderly, and anyone else, has a chance of receiving heightened security on any particular day.

18. On at least 3 occasions, I have been subject to heightened security.

19. I presume I was subjected to heightened security due to random selection, as I would be consistently, rather than sporadically, a selectee if I were on a watch list, and I do not believe I triggered any of the factors to be deemed "suspicious" on those occasions.

20. Since I fly at least 50 times a year for both business and personal reasons, I will have at least 50 more opportunities to be randomly selected in 2016.

21. As a result, I think it is likely that I will be a selectee passenger in the near future.

22. I am opposed to being body scanned regardless of whether privacy features have been installed because I believe it is still incredibly invasive to be digitally strip searched, whether by computer or a human.

23. In addition to airports, I have also personally seen TSA employees patrolling train stations on at least 2 occasions: one in downtown Detroit, MI, and the other in Penn Station, New York, NY.

Dated: Miami, Florida
January 19th, 2016

Respectfully submitted,

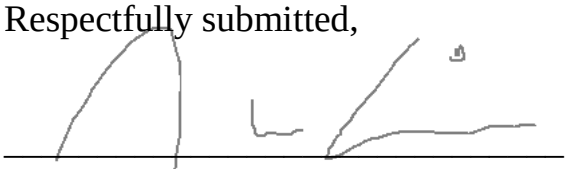

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Exhibit B

To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

REVISION: This revised directive supersedes TSA MD 100.4, *Transportation Security Searches*, dated September 1, 2009.

SUMMARY OF CHANGES: Section 4, Definitions, clarifies and adds terms; and Section 6, Policy, addresses discovery of currency and illegal items, explains authority to verify identity, and discusses layered security.

1. **PURPOSE:** This directive establishes TSA policies to enhance the security of domestic and international commercial travel in the United States. These policies protect persons, facilities, and critical infrastructure as part of a layered security system in all modes of transportation by preventing, protecting against, and responding to acts of terrorism.

2. **SCOPE:** This directive applies to all TSA operational components and to all searches conducted under TSA authority, including, but not limited to, checkpoint screening to find explosives, improvised explosive device (IED) components, weapons, and other threat items. TSA personnel must use this directive in carrying out their functions. This directive does not and is not intended to limit the authority of TSA law enforcement officers. All search operations must be conducted without regard to race, color, religion, national origin, ethnicity, sexual orientation, or disability except as directed by the Federal Security Director (FSD) or Supervisory Air Marshal in Charge (SAC) and provided such direction is based on specific intelligence threat information.

3. **AUTHORITIES:**

   A. 6 U.S.C. § 1112

   B. 49 U.S.C. § 114

   C. 49 U.S.C. § 44901

   D. 49 U.S.C. § 44903

   E. 49 U.S.C. § 44917

   F. 49 CFR Chapter XII, Parts 1500-1699

   G. Prohibited Items Interpretive Rule, 70 Federal Register 72930 (December 8, 2005)

4. **DEFINITIONS:** For purposes of this directive, the following definitions apply:

   A. Administrative Search: A search conducted without a warrant as part of a regulatory plan in furtherance of a specified non-law enforcement government purpose, such as to determine compliance with TSA regulations or to prevent the carriage of threat items or entry of an

unauthorized person into the sterile area, or to screen passengers entering any public conveyance.

B. Accessible Property: Property that is intended to be accessible to the individual in any secure area or while aboard any public conveyance.

C. Behavior Detection Officers (BDOs): Specially-trained TSA personnel and TSA contract personnel who execute TSA's Screening of Passengers by Observation Technique (SPOT) program.

D. Checkpoint Screening: A search or appraisal of individuals and property for threats or threat items at a screening checkpoint.

E. Consent Search: A search by an authorized individual of a person, property, location, or vehicle based on permission by a person who has actual or apparent authority over the thing to be searched.

F. Detection Technology: Electronic and/or mechanical means used to assist in the discovery and identification of property or persons that may pose a threat.

G. Federal Air Marshal (FAM): A TSA law enforcement officer who derives his or her authority from 49 U.S.C. § 114(p), 49 U.S.C. § 44903(d), 49 U.S.C. § 44917, and the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53, 121 Stat. 266).

H. Gate Screening: The screening of passengers and other individuals and their accessible property at the boarding gate of an aircraft.

I. Identification Media: Documents that establish identity for the purposes of accessing the screening checkpoint, or any other secure area of a transportation facility or mode of conveyance. Identification media includes, but is not limited to, Government-issued or Government-sanctioned photo identification, such as passports and driver's licenses. (For a non-exhaustive list of acceptable identification media, go to www.tsa.gov.)

J. Law Enforcement Officer: A sworn employee of a government entity (Federal, to include U.S. Military Police and U.S. Capitol Police, state, tribal, territorial and local, to include Rail police officers), with full power of arrest, who is trained and commissioned to enforce the criminal laws of the jurisdiction(s) in which he or she is commissioned

K. Playbook: Playbook is a risk mitigation program that provides a menu of security countermeasures ("Plays") that make use of various TSA and non-TSA security assets deployed in a random or unpredictable manner in order to complicate terrorist planning activities and deter, detect, and disrupt attacks within the airport environment. The Playbook approach is risk-based and supported through local decision-making between the airport operator and TSA.

L. Playbook Screening: Screening of individuals and their accessible property within the airport environment conducted consistent with and pursuant to the Playbook program.

M. Office of Inspection Criminal Investigator: A TSA law enforcement officer that derives his or her authority from 49 U.S.C. § 114(p), 49 U.S.C. § 44903(d), and the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53, 121 Stat. 266).

N. Prohibited Items: Items that are not permitted to be carried by individuals through the screening checkpoint, in the sterile area, in the cabin of an aircraft, or in checked baggage, as described in the prohibited items interpretive rule (70 FR 72930 (Dec. 8, 2005)) or other TSA regulations, orders, and policies.

O. Random Selection Protocol: A pre-determined protocol that uses a random number generator or other neutral system to select which persons, property, or vehicles will be screened during an administrative or special needs search. Use of a random selection protocol helps to ensure that selection authority is not arbitrarily or discriminatorily exercised.

P. Regulatory Inspection: Inspection or test to determine compliance with TSA regulations, security programs, orders, policies, and applicable laws.

Q. Reverse Screening: Post-arrival screening of passengers, accessible property, and checked baggage.

R. Screening: A search or appraisal of a person, place, document or thing, with or without assisting technologies, to determine compliance with TSA standards, regulations, and applicable laws in order to detect a threat. Not all screening activities are searches under the Fourth Amendment (e.g., BDO observations).

S. Screening Checkpoint: A screening location at the entry to a secure or other area of a transportation facility or public conveyance.

T. Screening of Passengers by Observation Technique (SPOT) Program: SPOT is a behavior observation and analysis program that detects behaviors and activities that deviate from an established environmental baseline. Individuals whose behaviors meet or exceed predetermined thresholds are referred for additional screening or law enforcement intervention.

U. Search: An examination or inspection conducted in accordance with the Fourth Amendment of a person's body, property, conveyance, or other area where the person would have a reasonable expectation of privacy.

V. Secure Area: Any area of a transportation facility for which access is restricted and controlled in some manner, to include but not limited to: sterile, secured, and air operations areas of airports.

W. Special Needs Search: A search conducted without a warrant and in furtherance of a special governmental need, beyond the ordinary needs of law enforcement. In the context of transportation security, special needs searches are designed to mitigate the risk to the public posed by the introduction of threats into the transportation system.

X. Sterile Area: A portion of an airport, defined in the Airport Security Program (ASP), that provides individuals access to boarding aircraft and to which the access generally is

controlled by TSA or by an aircraft operator under 49 CFR part 1544 or a foreign air carrier under 49 CFR part 1546, through the screening of persons and property.

Y. Threat: A natural or man-made situation, or an individual, entity, or action that has or indicates the potential to harm life, information, operations, the environment and/or property.

Z. Threat Items: Any potentially hazardous items that pose a risk to transportation security, such as explosives, incendiaries, and items that could be used as weapons or otherwise transformed into a threat. Threat items may include items that are themselves benign, but that can be rapidly transformed into a security risk, including parts of weapons or explosives, and IED components, such as certain liquids and gels. Threat items may also be benign items that cannot be effectively and rapidly distinguished from dangerous items (e.g., water from certain liquid explosives; or an ordinary laptop from an electronic triggering device) or items that on their face appear to be threat items, such as imitation firearms or grenades. In addition, threat items may also include items that have been used or altered to conceal threats or prohibited items, such as thermos bottles and certain electronics.

AA. Transportation Security Inspector (TSI): A specially-trained TSA employee who conducts security assessments of transportation systems, works with transit officials to enhance the security of their systems, provides technical assistance for security, and conducts regulatory inspections.

BB. Transportation Security Officer (TSO): An individual who is trained, qualified, and authorized in accordance with applicable TSA standards and directives to screen individuals, accessible property, identification documents, and/or checked baggage for the presence of explosives, incendiaries, weapons, or other threats or threat items.

CC. Transportation Venue: A building, structure, or location that facilitates the movement of passengers or goods in the transportation system.

DD. Travel Document Checker: A specially-trained TSA employee who conducts checks of travel documents and verification of identification for individuals electing to access the screening checkpoint.

EE. TSA Law Enforcement Officer: A law enforcement officer who derives his or her authority from 49 U.S.C. § 114(p), 49 U.S.C. § 4490(d), and the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53, 121 Stat. 266) and whose authority includes, but is not limited to, carrying a firearm; making arrests without a warrant for any offense against the United States committed in the officer's presence; or for any felony cognizable under the laws of the United States if there is probable cause to believe that the person to be arrested has committed or is committing the felony; and seeking and executing warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

FF. Visible Intermodal Prevention and Response (VIPR) Operations: TSA's deployment of specialized teams to augment the security of any mode of transportation. VIPR teams may comprise any asset of the U.S. Department of Homeland Security (DHS), including, FAMs, TSIs, canine detection teams, and detection technology.

5. **RESPONSIBILITIES:** All offices and individuals responsible for establishing and implementing programs and procedures involving searches must ensure that searches are conducted in accordance with this directive and other applicable law and policy.

A. Office of Security Operations (OSO) is responsible for drafting procedures for operations that are consistent with this directive.

B. Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS) is responsible for drafting procedures for OLE/FAMS operations that are consistent with this directive.

C. Office of Training and Workforce Engagement (TWE) is responsible for:

(1) General oversight and training of all TSA personnel, for example, Federal Air Marshals (FAMs), Federal Security Directors (FSDs), Transportation Security Specialists – Explosives (TSS-Es), TSIs, BDOs and TSOs.

(2) Ensuring that all TSA personnel receive appropriate training to carry out this directive.

D. FSDs are responsible for ensuring that all searches conducted by OSO personnel under his or her leadership are in accordance with this directive and all other applicable laws and policy including TSA Standard Operating Procedures and policies for regulatory inspections.

E. OLE/FAMS SACs are responsible for ensuring that all searches conducted by FAMs and Assistant FSDs for Law Enforcement under his or her leadership are in accordance with OLE/FAMS authorities, policies and procedures, and this directive.

F. Joint Coordination Center (JCC) is responsible for:

(1) General oversight of the VIPR Program.

(2) Coordination and development of guidelines for VIPR operations with other TSA components.

(3) Monitoring active VIPR deployments.

(4) Ensuring that VIPR operations plans are distributed to all appropriate TSA components for review.

G. Office of Intelligence and Analysis (OIA) is responsible for providing information and guidance to assist in the identification of current threats and vulnerabilities that may form a predicate for searches.

H. Office of Inspection (OOI) is responsible for providing procedures and conducting searches and all operations consistent with this directive.

I. Office of Chief Counsel (OCC) is responsible for:

(1) Reviewing Operations Plans, Standard Operating Procedures, Security Directives, TSA regulations, and other policies and plans to help ensure compliance with legal requirements.

(2) Providing legal advice and guidance on issues related to searches.

6. **POLICY:** TSA personnel must use this directive in carrying out their functions. Nothing in this directive is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter.

A. General: Intelligence reports indicate that Al-Qaeda and Al-Qaeda affiliates and other terrorist groups continue to develop plans for multiple attacks against transportation systems. Successful, coordinated bombing attacks aimed at incurring mass casualties in various transportation systems have occurred. Terrorist groups continue to pursue a range of targets, tactics, and capabilities to accomplish their objectives.

(1) TSA conducts all administrative and special needs searches in a manner designed to be minimally intrusive, in light of current technology, to detect the presence of threat items. TSA recognizes individuals being searched have an expectation of privacy in their persons and property, and demands that all TSA personnel conduct searches in such a way as to respect those privacy interests, while advancing TSA's transportation security mission.

(2) Searches may be conducted by TSA personnel or at the direction of TSA, as determined by TSA Headquarters or local TSA officials. TSA will consult and coordinate with Federal, state, and local law enforcement officials, as well as affected transportation entities, as appropriate, when conducting these operations. Risk analysis and operational and strategic intelligence may provide guidance in executing appropriate screening and security measures.

(3) TSA's layered security strategy includes an overlapping system of screening and searches. No single security measure or method is sufficiently reliable to be depended upon in isolation. For this reason, search techniques, to include detection technology (e.g., Advanced Imaging Technology), may be utilized in any appropriate circumstance, and are not limited to circumstances indicating a potential threat. Additionally, an individual and his or her property may be selected for more than one search activity prior to boarding an aircraft, bus, train, or other public conveyance.

(4) Searches may include examination of individuals and all contents of accessible property, including, but not limited to, containers, compartments, and envelopes, or anywhere threat items may reasonably be expected to be concealed. Searches may be conducted for the purpose of resolving items that appear to be a threat or for identification media, as appropriate. Interactions with TSA personnel as part of checkpoint screening may not rise to the level of a search (e.g., a brief verbal exchange with BDOs), but those interactions may result in a need to conduct a search of an individual or accessible property.

(5) During a search, it may be necessary to read textual materials, for example, any written material or other media that may provide information about potential threats.

Searches may properly include the reading of textual materials if necessary to rule out the presence of a threat.

B. Administrative/Special Needs Searches:

(1) All administrative or special needs searches are to be tailored to the transportation security purpose for which they are conducted. These searches are designed to be minimally intrusive, in that they should be no more intensive or extensive than reasonably necessary to detect threat items, to prevent persons who may pose a threat to transportation security from entering the transportation system, or to determine compliance with TSA standards, regulations, and applicable laws.

(2) Examples of administrative or special needs searches include:

(a) Open and look searches of a carry-on bag conducted during Gate Screening;

(b) Screening activities conducted as part of checkpoint screening, including patdowns, walk-through metal detector (WTMD), and Advanced Imaging Technology (AIT);

(c) Explosives Detection System (EDS) screening; and

(d) Other screening activities, such as, Explosives Trace Detection (ETD) of hands, and/or vehicle screening either by physical search (e.g., open trunk) or by backscatter x-ray technology.

(3) All administrative or special needs searches should be conducted according to established procedures to ensure that the searches will be confined in good faith to their intended purpose. When designing or conducting an administrative or special needs search, the following objectives must be addressed, if applicable:

(a) How the search is intended to enhance the security of persons and critical infrastructure, to augment the security of any mode of transportation, or to ensure compliance with TSA regulations;

(b) The threat item(s) that are the target of the search, or the regulation or order in the case of regulatory inspection;

(c) The manner in which persons are given notice of the search;

(d) The procedures used to detect or deter the introduction of the designated threat item(s), to conduct regulatory inspections, or to determine whether an individual is using multiple names or dates of birth which may need to be checked against Government watch lists;

(e) How the search procedures are tailored to protect personal privacy;

(f) The applicable pre-determined random selection protocol, unless all persons and/or vehicles that pass through the location will be searched; and

(g) Maintaining appropriate records of the activity.

(4) Before conducting an administrative or special needs search, standard operating procedures and applicable deployment operations plans should be developed in consultation with OCC.

(5) To incorporate unpredictability and enhance deterrence, search locations may be switched or the number, staffing, and scheduling of locations may vary so that deployment patterns are shifting and difficult to predict.

(6) Notice must be provided to persons who will be subject to search.

(a) The notice should be provided in such a manner as to allow persons the opportunity to avoid the search by choosing not to enter the location. In addition, the notice should provide warning that once the screening process has begun, screening must be completed. For additional information regarding the legal requirements for notification, see *TSA Airport Signage Guidelines* (August 2010).

(b) TSA should seek the cooperation of airport, aircraft, mass transit, or other transportation operators to inform the public that searches may occur at that transportation venue, in addition to notice provided prior to entry into the physical location of the search.

(7) With appropriate training and authorization, any TSA personnel may conduct an administrative or special needs search.

(8) TSA personnel also engage in other security activities that are not searches. Examples of security activities which are NOT searches include:

(a) Canine sniff;

(b) Visible presence operations as part of VIPR operations;

(c) Any BDO observations; and

(d) Brief verbal exchanges between TSA personnel and non-TSA personnel.

C. Possible Criminal Activity:

(1) Administrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security. However, if such evidence is discovered, TSA personnel shall refer it to a supervisor or a law enforcement official for appropriate action. This report satisfies a TSA employee's obligation to report known or suspected violations of Federal law. (TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, Section 5A(9)). Although an individual may be requested to wait until law enforcement arrives, he or she is free to leave the screening checkpoint once applicable screening requirements have been completed successfully. TSA officers must complete an Incident Report whenever law enforcement is notified. Examples of criminal wrongdoing include possession of illegal drugs, possession of child pornography, and money laundering (i.e.,

transferring illegally gained money through legitimate channels so that its illegal source is untraceable).

(2) Traveling with large amounts of currency is not illegal. Sometimes currency discovered at the screening checkpoint will need to be screened to clear it to enter sterile areas (or other secure areas). For example, cash in very large quantities may shield explosive materials and other threat items. As a general matter, there should be no reason to ask questions of the passenger about currency, although there may be times when questions are warranted by security needs. When currency appears to be indicative of criminal activity, TSA will report the matter to the appropriate authorities. For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment. For international flights, currency that exceeds $10,000 may not be transported into or out of the United States unless it has been reported to U.S. Customs and Border Protection (CBP). TSA should notify CBP and/or law enforcement authorities pursuant to its local standard operating procedures that the individual possesses a sum of currency that appears to exceed $10,000. TSA may also note any factors related to criminal activity for purposes of notifying CBP and/or law enforcement. Although an individual may be requested to wait until law enforcement arrives, he or she is free to leave the screening checkpoint once applicable screening requirements have been completed successfully.

D. Verifying Identification: The purpose of screening for identification media is to verify an individual's identity and to ensure they have undergone watch list matching or other possible information-based pre-screening before entering a sterile area and/or before boarding an aircraft.

(1) Prior to entering the sterile area, individuals seeking access must have their identity verified by the Travel Document Checker (TDC).

(2) Identification media may be screened at locations other than the TDC. The purpose of such screening is to re-verify the individual's identity when there has been an indication that re-verification is appropriate (for example, when an individual possesses multiple forms of identification reflecting different names or dates of birth that have not been checked against the watch lists), thus adding an additional layer of security.

(3) TSA may screen an individual's accessible property for identification media when TSA would otherwise have a right to access the individual's property and in order to verify the individual's identity, for example, according to the standard operating procedures for the SPOT program; when TSA is already screening the accessible property; during gate screening; or for another appropriate reason (e.g., as a result of a random selection protocol).

E. Initiation and Completion of Security Screening Searches: A screening activity may be initiated once an individual has elected to attempt entry into a sterile or secure area of any transportation venue, or elected to attempt to board an aircraft, bus, train, or other public conveyance. Once a screening activity has been initiated, it must be completed, and an individual may not withdraw from or refuse to complete the screening activity without authorization by the FSD or Deputy Federal Security Director (DFSD) or their delegees. If an individual were to be allowed to withdraw from or refuse to complete screening, it would

afford terrorists multiple opportunities to attempt to penetrate security by "electing not to fly" on the cusp of detection until a vulnerable portal is found. It would also allow terrorists a low-cost method of detecting systematic vulnerabilities in security, knowledge that could be extremely helpful in planning future attacks. Ordinarily, an individual demonstrates an election to attempt entry into a sterile or the secured area or board an aircraft or conveyance as described below:

(1) Checkpoint Queue. Ordinarily, screening of an individual or accessible property in the checkpoint queue begins when an individual both (1) passes a sign posted at the entrance to the queue advising that individuals and property are subject to screening and (2) is selected by TSA personnel to undergo the screening procedure being conducted in the queue. Once the screening procedure is complete, the individual may proceed to the TDC podium, the checkpoint, or return to the public area of the airport or transportation venue.

(2) TDC Podium. Ordinarily, screening of an individual at the TDC podium begins when the individual hands his or her travel document and identification to the TDC. Once verification of the travel document and the identity of the individual are complete, the individual may depart the TDC podium and either proceed to the checkpoint or return to the public area of the airport or transportation venue.

(3) Checkpoint Screening of Accessible Property. Ordinarily, screening of accessible property at the screening checkpoint begins when an individual places accessible property on the x-ray conveyor belt or hands accessible property to TSA personnel. Once screening of the accessible property and the individual are complete, the individual may depart the checkpoint and either proceed into the sterile area/board the conveyance, or return to the public area of the airport or transportation venue.

(4) Checkpoint Screening of an Individual. Screening of an individual at the checkpoint is ordinarily conducted through the use of various procedures and detection technology, such as the WTMD, AIT, and/or patdown. In order to initiate any of these procedures, generally individuals must divest property, including the removal of shoes and outer garments, and/or empty their pockets. Ordinarily, screening of an individual at the checkpoint begins when the individual divests and places such property on the x-ray conveyor belt or hands such property to TSA personnel. Once screening is complete, the individual may depart the checkpoint and proceed into the sterile area/board the conveyance, or return to the public area of the airport or transportation venue.

F. Consent Searches: Unlike an administrative or special needs search, the scope of a consent search will depend on the scope of the permission given by the individual who has actual or apparent authority over the thing to be searched.

(1) A search of a person, property, vehicle, or location based on consent may be conducted in any transportation venue.

(2) Persons may decline to be searched or withdraw consent at any time.

(3) With appropriate training, any TSA personnel, including TSOs and TSIs, may conduct a consent search.

G. Law Enforcement Searches:

(1) TSA law enforcement officers may engage in law enforcement activities consistent with established authorities and protocols. This directive does not and is not intended to limit the authority of TSA law enforcement officers.

(2) Law enforcement activities may include investigations, detentions, and searches, as appropriate, and are not limited to administrative or special needs searches. This directive does not and is not intended to explain or define the variety of law enforcement searches that may be conducted.

(3) The only TSA personnel who should engage in law enforcement activities are TSA law enforcement officers (e.g., Office of Inspection Criminal Investigator or FAMs acting in accordance with their authorities under 49 U.S.C. § 114(p)).

7. **PROCEDURES:** All screening, searches and regulatory inspection must be conducted in accordance this directive and other applicable laws and policy.

8. **APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature, unless otherwise specified.

APPROVAL

Signed January 25, 2012

John Pistole Date
Administrator

EFFECTIVE

Date

Distribution: Administrator; Offices of Chief Counsel, Inspection, Intelligence and Analysis, Law Enforcement/Federal Air Marshal Service, and Security Operations; and Federal Security Directors; Special Agents in Charge; and Supervisory Air Marshals in Charge

Point-of-Contact: Office of Chief Counsel, (571) 227-3645

Exhibit C

Executive Order 13132

NHTSA does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act of 1995

NHTSA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For more information on DOT's implementation of the Privacy Act, please visit: *http://www.dot.gov/privacy.*

List of Subjects in 49 CFR Part 553

Rulemaking Procedures.

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration proposes to amend 49 CFR part 553 of the Code of Federal Regulations as follows:

PART 553—RULEMAKING PROCEDURES

■ 1. The authority citation is revised to read 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.95.

■ 2. Add § 553.14 to Subpart B to read as follows:

§ 553.14 Direct final rulemaking.

If the Administrator, for good cause, finds that notice is unnecessary, and incorporates that finding and a brief statement of the reasons for it in the rule, a direct final rule may be issued according to the following procedures.

(a) Rules that the Administrator judges to be non-controversial and unlikely to result in adverse public comment may be published as direct final rules. These may include rules that:

(1) Are non-substantive amendments, such as clarifications or corrections, to an existing rule;

(2) Update existing forms or rules, such as incorporations by reference of the latest technical standards;

(3) Affect NHTSA's internal procedures, such as filing requirements and rules governing inspection and copying of documents;

(4) Are minor substantive rules or changes to existing rules on which the agency does not expect adverse comment.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by NHTSA within the specified time after the date of publication of the direct final rule and that, if no written adverse comment or written notice of intent to submit adverse comment is received in that period, the rule will become effective a specified number of days after the date of publication of the direct final rule.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by NHTSA within the specified time after the date of publication in the **Federal Register**, NHTSA will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If NHTSA receives any written adverse comment or written notice of intent to submit adverse comment within the specified time after publication of the direct final rule in the **Federal Register**, the agency will publish a notice withdrawing the direct final rule, in whole or in part, in the final rule section of the **Federal Register**. If NHTSA decides to proceed with a provision on which adverse comment was received, the agency will publish a notice of proposed rulemaking in the proposed rule section of the **Federal Register** to provide another opportunity to comment.

(e) An ''adverse'' comment, for the purpose of this subpart, means any comment that NHTSA determines is critical of any provision of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

■ 3. In § 553.15, revise paragraphs (a), (b)(1) and (b)(3) to read as follows:

§ 553.15 Contents of notices of proposed rulemaking and direct final rules.

(a) Each notice of proposed rulemaking, and each direct final rule, is published in the **Federal Register**, unless all persons subject to it are named and are personally served with a copy of it.

(b) * * *

(1) A statement of the time, place, and nature of the rulemaking proceeding;

* * * * *

(3) A description of the subjects and issues involved or the substance and terms of the rule;

* * * * *

■ 4. Revise § 553.23 to read as follows:

§ 553.23, Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal or direct final rule. Late filed comments will be considered to the extent practicable.

Issued in Washington, DC on March 19, 2013, under authority delegated in 49 CFR part 1.95.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–06724 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

[Docket No. TSA–2013–0004]

RIN 1652–AA67

Passenger Screening Using Advanced Imaging Technology

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Transportation Security Administration (TSA) is proposing to revise its civil aviation security regulations to clarify that TSA may use advanced imaging technology (AIT) to screen individuals at security screening checkpoints. This proposed rule is issued to comply with a decision of the U.S. Court of Appeals for the District of Columbia Circuit, which ordered TSA to engage in notice-and-comment rulemaking on the use of AIT for screening. The Court decided that TSA should provide notice and invite comments on the use of AIT technology for primary screening.

DATES: Submit comments by June 24, 2013.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a

government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Chawanna Carrington, Project Manager, Passenger Screening Program, Office of Security Capabilities, Transportation Security Administration, 701 South 12th Street, Arlington, VA 20598–6016; telephone: (571) 227–2958; facsimile: (571) 227–1931; email: *Chawanna.Carrington@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and sensitive security information (SSI).[1] Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the FOIA regulations of the Department of Homeland Security (DHS) found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act System of Records Notice published in the **Federal Register** on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

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Table of Contents

I. Executive Summary
- A. Purpose of the Regulation
- B. Summary of Major Provisions
- C. Costs and Benefits

II. Background
- A. The Evolving Threat to Aviation Security
- B. Layers of Security
- C. Congressional Direction To Pursue AIT
- D. U.S. Court of Appeals Decision in *EPIC* v. *DHS*

III. AIT Screening Protocols
- A. Types of AIT Equipment
- B. Privacy Safeguards for AIT
- C. Safety of AIT
  - 1. Millimeter Wave Units
  - 2. Backscatter Units
- D. AIT Procedures at the Checkpoint

IV. Deployment of AIT

V. Rulemaking Analyses and Notices
- A. Regulation Evaluation Summary and Economic Impact Analyses
- B. Executive Orders 12866 and 13563 Assessment

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

C. Regulatory Flexibility Act Assessment
D. International Trade Impact Assessment
E. Unfunded Mandates Reform Act Assessment
F. Paperwork Reduction Act
G. Executive Order 13132, Federalism
H. Environmental Analysis
I. Energy Impact Analysis

I. Executive Summary

A. Purpose of the Regulation

TSA is proposing to amend its regulations to specify that screening and inspection of an individual conducted to control access to the sterile area of an airport or to an aircraft may include the use of advanced imaging technology (AIT), also referred to as whole body imaging, as a screening method. Terrorists have repeatedly attempted to cause harm with the aid of weapons and devices smuggled aboard aircraft. It is the primary mission of DHS to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism.[2] The use of AIT is an important tool in accomplishing that mission.

This NPRM is being issued to comply with the decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in *Electronic Privacy Information Center* v. *U.S. Department of Homeland Security*.[3] In that case, the U.S. Court of Appeals directed TSA to conduct notice-and-comment rulemaking on the use of AIT as a screening method for passengers. The Court did not require TSA to stop using AIT to screen passengers, explaining that ''vacating the present rule would severely disrupt an essential security operation,'' and that the rule is ''otherwise lawful.'' [4]

B. Summary of Major Provisions

The proposed rule codifies the use of AIT to screen individuals at aviation security screening checkpoints. This NPRM discusses the following points regarding the use of AIT:

- The threat to aviation security has evolved to include the use of non-metallic explosives, non-metallic explosive devices, and non-metallic weapons.
- AIT currently provides the best available opportunity to detect non-metallic anomalies [5] concealed under clothing without touching the passenger and is an essential component of TSA's security layers.
- Congress has authorized TSA to procure and deploy AIT for use at security checkpoints.
- TSA implemented stringent safeguards to protect the privacy of passengers undergoing AIT screening when AIT units were initially deployed and enhanced privacy even further by upgrading its millimeter wave AIT units with automatic target recognition (ATR) software. An AIT unit equipped with ATR creates a generic outline, not an image of a specific individual, and eliminates the need for operator interpretation of an image. TSA is removing all units that are not equipped with ATR from its checkpoints by May 31, 2013.[6]
- The safety of the two types of AIT equipment initially deployed was tested by TSA and independent entities and all results confirmed that both the backscatter and millimeter wave technologies are safe because the x-ray or radio waves emissions are well below applicable safety and health standards, and are so low as to present a negligible risk to passengers, airline crew members, airport employees, and TSA employees.[7]
- TSA has provided a detailed explanation of AIT procedures on its webWeb site at *www.tsa.gov/ait-how-it-works* (which allows opt out procedures for passengers) and posted signs at airport checkpoints to notify passengers about AIT and alternative screening procedures. The level of acceptance by passengers has been high; the vast majority of passengers do not object to AIT screening.
- TSA's experience in using AIT confirms that it is effective in detecting small, non-metallic items hidden underneath passenger clothing that could otherwise escape detection. When an item is detected, additional screening must be performed to determine whether the item is prohibited.

C. Costs and Benefits

When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. As the AIT machine life cycle from deployment to disposal is eight years, the period of analysis for estimating the cost of AIT is eight years. However, as AIT deployment began in 2008, there are costs that have already been borne by TSA, the traveling public, and airport operators that were not due to this rule. Consequently, in the Initial Regulatory Impact Analysis for this rule, TSA is reporting the AIT-related costs that have already occurred (years 2008–2011), while considering the additional cost of this rulemaking to be years 2012–2015. By reporting the costs that have already happened and estimating future costs in this manner, TSA considers and discloses the full eight-year life cycle of AIT deployment.

TSA reports that the net cost of AIT deployment from 2008–2011 has been $841.2 million (undiscounted) and that TSA has borne over 99 percent of all costs related to AIT deployment. TSA projects that from 2012–2015 net AIT-related costs will be approximately $1.5 billion (undiscounted), $1.4 billion at a three percent discount rate, and $1.3 billion at a seven percent discount rate. During 2012–2015, TSA estimates it will also incur over 98 percent of AIT-related costs with equipment and personnel costs being the largest categories of expenditures. Table 1 below reports the costs that have already occurred (2008–2011) by cost category, while Table 2 shows the additional costs TSA is attributing to this rulemaking (2012–2015). Table 3 shows the total cost of AIT deployment from 2008 to 2015.

TABLE 1—NET COST [8] SUMMARY OF AIT DEPLOYMENT FROM 2008–2011 BY COST COMPONENT

[Costs already incurred in $ thousands—undiscounted]

Year	Passenger opt outs	Industry utilities	TSA costs				Total
			Personnel	Training	Equipment	Utilities	
2008	$7.0	$5.7	$14,689.1	$389.5	$37,425.2	$18.8	$52,535.3
2009	32.2	5.7	15,618.6	88.0	42,563.6	20.4	58328.5
2010	262.2	158.2	247,566.7	5,332.8	119,105.4	241.4	372,666.6

[2] 49 U.S.C. 114.

[3] 653 F.3d 1 (DC Cir. 2011).

[4] *Id.* at 8.

[5] An anomaly is any object that would not ordinarily be found on someone's person.

[6] The manufacturer of these units will bear the costs of removal and storage. TSA is following the Federal Management Regulation process to transfer and donate this equipment to other DHS components and then to other Federal, State, and local government agencies, if necessary. TSA will not hold any public auction or sale and will not donate or abandon any of the equipment to the public in the interests of security.

[7] See, *http://www.tsa.gov/ait-safety*.

TABLE 1—NET COST[8] SUMMARY OF AIT DEPLOYMENT FROM 2008–2011 BY COST COMPONENT—Continued

[Costs already incurred in $ thousands—undiscounted]

Year	Passenger opt outs	Industry utilities	TSA costs				Total
			Personnel	Training	Equipment	Utilities	
2011	1,384.2	186.7	284,938.7	15,354.4	55,567.2	269.1	357,700.2
Total	1,685.6	356.3	562,813.0	21,164.7	254,661.3	549.6	841,230.6

[8] TSA removed costs related to Walk Through Metal Detectors (WTMDs) that would have occurred regardless of AIT deployment to obtain an estimated net cost for AIT.

TABLE 2—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2012–2015) BY COST COMPONENT

[AIT Costs in $ thousands]

Year	Passenger Opt Outs	Industry Utilities	TSA Costs				Rapiscan Removal	Total
			Personnel	Training	Equipment	Utilities		
2012	$2,716.5	$325.7	$375,886.9	$12,043.0	$116,499.3	$473	$0.0	$507,924.4
2013	3,991.7	329.3	280,844.3	4,277.5	51,588.8	324.4	1,809.6	343,165.7
2014	4,238.7	312.0	263,677.6	4,190.5	51,397.8	317.7	0.0	324,134.2
2015	5,611.8	300.3	278,580.2	4,144.2	68,052.6	365.7	0.0	357,054.9
Total	16,558.7	1,267.3	1,198,969.0	24,655.2	287,538.5	1,480.9	1,809.6	1,532,279.2
Discounted 3%	15,265.0	1,178.9	1,118,459.3	23,810.2	269,233.7	1,380.7	1,705.7	1,431,033.5
Discounted 7%	13,766.6	1,075.8	1,024,344.7	22,048.8	247,810.4	1,263.8	1,580.6	1,311,890.7

TABLE 3—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2008–2015) BY COST COMPONENT

[AIT Costs in $ thousands—undiscounted]

Year	Passenger opt outs	Industry utilities	TSA costs				Rapiscan removal	Total
			Personnel	Training	Equipment	Utilities		
2008	$7.0	$5.7	$14,689.1	$389.5	$37,425.2	$18.8	$0.0	$52,535.3
2009	32.2	5.7	15,618.6	88.0	42,563.6	20.4	0.0	58,328.5
2010	262.2	158.2	247,566.7	5,332.8	119,105.4	241.4	0.0	372,666.6
2011	1,384.2	186.7	284,938.7	15,354.4	55,567.2	269.1	0.0	357,700.2
2012	2,716.5	325.7	375,866.9	12,043.0	116,499.3	473.0	0.0	507,924.4
2013	3,991.7	329.3	280,844.3	4,277.5	51,588.8	324.4	1,809.6	343,165.7
2014	4,238.7	312.0	263,677.6	4,190.5	51,397.8	317.7	0.0	324,134.2
2015	5,611.8	300.3	278,580.2	4,144.2	68,052.6	365.7	0.0	357,054.9
Total	18,944.4	1,623.6	1,761,782.0	45,819.9	542,199.9	2,030.4	1,809.6	2,373,509.9

The operations described in this proposed rule produce benefits by reducing security risks through the deployment of AIT that is capable of detecting both metallic and non-metallic weapons and explosives.[9] Terrorists continue to test our security measures in an attempt to find and exploit vulnerabilities. The threat to aviation security has evolved to include the use of non-metallic explosives. AIT is a proven technology based on laboratory testing and field experience and is an essential component of TSA's security screening because it provides the best opportunity to detect metallic and non-metallic anomalies concealed under clothing without the need to touch the passenger. Since it began using AIT, TSA has been able to detect many kinds of non-metallic items, small items, and items concealed on parts of the body that would not have been detected using the WTMD.

II. Background

A. The Evolving Threat to Aviation Security

The need for security screening at airports dates back to the 1960s when the most significant threat to aviation security was hijacking. To combat this threat, metal detectors were installed at airports and used by air carriers to detect firearms and other metallic weapons. In 1974, Congress passed the Air Transportation Security Act,[10] which directed the Federal Aviation Administration (FAA) to require all passengers to be screened by weapon-detecting devices, and conduct research to develop and evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft. Since that time, technological and procedural improvements have been implemented to keep pace with evolving threats.

Following the events of September 11, 2001, it was clear that the security screening at airports was insufficient to protect the traveling public against the threat posed by Al Qaeda and other terrorists who sought to harm the United States by targeting civil aviation. In response to those events, TSA was created to ensure freedom of movement

[9] Metal detectors and AITs are both designed to detect metallic threats on passengers, but go about it in different ways. Metal detectors rely on the inductance that is generated by the metal, while AIT relies on the metal's reflectivity properties to indicate an anomaly. AIT capabilities exceed metal detectors because AIT can detect metallic/non-metallic weapons, non-metallic bulk explosives, and non-metallic liquid explosives.

[10] Public Law 93–366.

for people and commerce by preventing terrorist attacks, reducing the vulnerability of the United States to terrorism, and effectively securing all modes of transportation, including aviation.

Pursuant to law, TSA is required to ''provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft * * *.'' [11] Regulations restricting the carriage of weapons, explosives, and incendiaries on an individual's person or accessible property and requiring individuals to submit to the screening and inspection of their person and accessible property prior to entering a sterile area or boarding an aircraft were transferred from FAA to TSA in February 2002.[12] TSA took over operation of the screening checkpoints from the air carriers and began instituting additional protocols and new equipment to detect individuals and items that could pose a threat to aviation security.

The FAA had begun exploring AIT in the mid-1990s and started testing and evaluating AIT in 2000. Once TSA was established, the evaluation of AIT and other technology that could detect metallic and non-metallic threats continued. TSA began testing early AIT equipment and protocols to evaluate the size of the units, image quality, detection capabilities, safety, and other operational issues.

Since September 11, 2001, the nature of the threat to transportation security has evolved as terrorists continue to test our security measures in an attempt to find and exploit vulnerabilities. As the recent instances described below demonstrate, non-metallic explosives have become one of the greatest threats to aviation security. TSA has responded to the developing threats by deploying new screening protocols and increasing its use of technology to improve its ability to detect weapons, explosives, and incendiaries.

On December 22, 2001, on board an airplane bound for the United States, Richard Reid attempted to detonate a non-metallic bomb concealed in his shoe. Following this terrorist attempt, screening procedures were revised by enhancing the screening of footwear.

In 2004, terrorists mounted a successful attack on two domestic Russian passenger aircraft using explosives that were concealed on the torsos of female passengers. TSA responded to this demonstrated security vulnerability by implementing a variety of enhancements to its standard operating procedures. Revised pat-down protocols that increased the thoroughness of pat-downs on the female torso were among the enhancements implemented to improve the ability to detect explosives concealed on the body.

In 2006, terrorists in the United Kingdom plotted to bring on board aircraft liquid explosives that would be used to construct and detonate a bomb while in flight. Following this threat, TSA again adjusted its security procedures by limiting the amount of liquids that could be brought on board aircraft and enhancing the screening of liquids, aerosols, and gels. TSA also deployed technology to improve detection of liquid explosives.

On December 25, 2009, a bombing plot by Al Qaeda in the Arabian Peninsula (AQAP) culminated in Umar Farouk Abdulmutallab's attempt to blow up an American aircraft over the United States using a non-metallic explosive device hidden in his underwear. TSA's pat-down procedures then in effect may not have detected the device. TSA modified its screening procedures to improve its ability to detect explosives hidden in an area of the body that previously was not thoroughly searched and hastened to expand deployment of AIT to improve its ability to detect non-metallic explosives concealed on the body through the use of technology, rather than the pat-down.[13]

In October 2010, AQAP attempted to destroy two airplanes in flight using non-metallic explosives hidden in two printer cartridges. TSA immediately instituted new screening requirements for cargo bound for the United States.

In May 2012, AQAP developed another non-metallic explosive device that could be hidden in an individual's underwear and detonated while on board an aircraft. Fortunately, this device was obtained by an undercover operative and was not given to a potential suicide bomber. The device was provided to the Federal Bureau of Investigation for technical and forensic analysis and the results indicate that terrorists have modified certain characteristics of the bomb in comparison with the December 25, 2009 bomb in an attempt to avoid the 2009 bombing attempt's design failure.

As evidenced by the incidents described above, TSA operates in a high-threat environment. Terrorists look for security gaps or exceptions to exploit. The device used in the December 25, 2009 attempt is illustrative. It was cleverly constructed and intentionally hidden on a sensitive part of the body to avert detection. If this attack were successful as planned, the lives of the almost 300 passengers and crew and potentially people on the ground would have been in jeopardy.

As these examples of the real and ever-evolving threats to aviation security demonstrate, non-metallic explosives are now one of the foremost known threats to passenger aircraft. The best defense against these and other terrorist threats remains a risk-based, layered security approach that uses a range of screening measures, both seen and unseen. This includes the use of AIT, which is proven technology for identifying non-metallic explosives during passenger screening, such as the device Umar Farouk Abdulmutallab attempted to detonate on Christmas Day 2009. TSA requests comment on the threat to aviation security described above and the risk-based, layered security approach it has adopted.

B. Layers of Security

TSA deploys approximately 50,000 Transportation Security Officers (TSOs) at more than 446 domestic airports with over 700 security checkpoints to screen nearly 2 million passengers each day using various screening methods and technologies. Although the airport checkpoints are the most visible layer of security used by TSA, TSA also relies extensively on intelligence regarding potential and actual terrorist threats to inform and identify what security measures are necessary to meet the nature of those threats. Other security layers include checking passenger manifests against records from the Government known or suspected terrorist watch lists through TSA's Secure Flight program, examining identity and travel documents, using explosives detection systems, and conducting random security operations at the checkpoint and throughout the airport.

Because even the best intelligence does not identify in advance every individual who would seek to do harm to passengers, aviation security, and the United States, TSA must rely on the security expertise of its frontline personnel—TSOs, Federal Air Marshals, Transportation Security Specialists-Explosives, Behavior Detection Officers,

[11] 49 U.S.C. 44901.

[12] *See* 49 CFR 1540.107 and 1540.111.

[13] On January 7, 2010, the President issued a ''Presidential Memorandum Regarding 12/25/2009 Attempted Terrorist Attack,'' which charged TSA with aggressively pursuing enhanced screening technology in order to prevent further such attempts, while at the same time protecting passenger privacy. A copy of that memorandum is available in the docket for this rulemaking and can be found at *http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-12252009-attempted-terrorist-attack.*

and explosives detection canine teams, among others—to help prevent acts of terrorism.

Effective technology is an essential component of TSA's arsenal of tools to detect and deter threats against our nation's transportation systems. Since its creation, TSA has deployed an increasingly sophisticated range of next generation detection equipment—including bottled liquid scanners, advanced technology x-ray systems, explosives trace detection (ETD) units, and AIT—as the threats to aviation security change and become more sophisticated. As recent history illustrates, TSA changes its screening equipment and procedures as needed to respond to evolving threats based on experience and the latest intelligence. TSA's layered approach and its ability to deploy new security methods to respond to the latest threats are necessary to provide adequate security for the traveling public. Advanced Imaging Technology currently provides the best opportunity to detect metallic and non-metallic threats concealed on the body under clothing without physical contact.[14]

C. Congressional Direction To Pursue AIT

In 2004, Congress directed TSA to continue to explore the use of new technologies to improve its threat detection capabilities.[15] Specifically, the law provides:

> Deployment and use of detection equipment at airport screening checkpoints
> • Weapons and explosives.—The Secretary of Homeland Security shall give a high priority to developing, testing, improving, and deploying, at airport screening checkpoints, equipment that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms, on individuals and in their personal property * * * the types of weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.
> • [The TSA Administrator shall submit] * * * a strategic plan to promote the optimal utilization and deployment of explosive detection equipment at airports to screen individuals and their personal property. Such equipment includes walk-through explosive detection portals, document scanners, shoe scanners, and backscatter x-ray scanners.

Additional references in congressional reports accompanying appropriations and authorizing legislation demonstrate Congress' continued direction to DHS and TSA to pursue enhanced screening technologies and imaging technology, including:

(1) Explanatory Statement, House Appropriations Committee Print for Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY09 DHS Appropriations) Pub. L. 110–329 at p. 640:

> The bill provides $250,000,000 for Checkpoint Support to deploy a number of emerging technologies to screen airline passengers and carry-on baggage for explosives, weapons, and other threat objects by the most advanced equipment currently under development. TSA is directed to spend funds on multiple whole body imaging technologies including backscatter and millimeter wave as directed in the Senate report.

(2) H. Rep. 110–862 at p. 64, FY09 DHS Appropriations:

> Over the past year, TSA has made some advances in testing, piloting, and deploying next-generation checkpoint technologies that will be used to screen airline passengers and carry-on baggage for explosives, weapons, and other threats. Even with this progress, however, additional funding is necessary to expedite pilot testing and deployment of advanced checkpoint explosive detection equipment and screening techniques to determine optimal deployment as well as preferred operational and equipment protocols for these new systems. Eligible systems may include, but are not limited to, advanced technology screening systems; whole body imagers; * * * The Committee expects TSA to give the highest priority to deploying next-generation technologies to designated Tier One threat airports.

(3) S. Rep. 110–396 at p. 60, FY09 DHS Appropriations:

> WHOLE BODY IMAGERS. The Committee is fully supportive of emerging technologies at passenger screening checkpoints, including the whole body imaging program currently underway at Category X airports. These technologies provide an increased level of screening for passengers by detecting explosives and other non-metal objects that current checkpoint technologies are not capable of detecting. The Committee directs that funds for whole body imaging continue to be spent by TSA on multiple imaging technologies, including backscatter and millimeter wave.

(4) H. Rep.110–259, at Web page 363, Conference Report to Implementing Recommendations of 9/11 Commission Act of 2007, Pub. L. 110–53, sec. 1601—Airport checkpoint screening fund:

> The National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) asserted that while more advanced screening technology is being developed, Congress should provide funding for, and TSA should move as expeditiously as possible to support, the installation of explosives detection trace portals or other applicable technologies at more of the nation's commercial airports. Advanced technologies, such as the use of non-intrusive imaging, have been evaluated by TSA over the last few years and have demonstrated that they can provide significant improvements in threat detection at airport passenger screening checkpoints for both carry-on baggage and the screening of passengers. The Conference urges TSA to deploy such technologies quickly and broadly to address security shortcomings at passenger screening checkpoints.[16]

D. U.S. Court of Appeals Decision in EPIC v. DHS

In July 2010, the EPIC petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of TSA's use of AIT as a primary screening device to screen airline passengers. EPIC argued that the use of AIT violated various federal statutes and the Fourth Amendment to the Constitution and should have been the subject of notice-and-comment rulemaking.

The Court of Appeals issued a decision on July 15, 2011, which rejected nearly all of EPIC's claims.[17] In ruling on EPIC's Fourth Amendment claim, the Court held that screening passengers at an airport is an administrative search that does not rely on individualized suspicion. ''Instead, whether an administrative search is 'unreasonable' within the condemnation of the Fourth Amendment 'is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests'.'' [18]

The Court found that the ''balance clearly favors the Government here.'' [19] The Court recognized the clear need for AIT screening, and the advantages the AIT provides over the WTMD. The Court stated that ''[t]he need to search

[14] In September 2012, TSA initiated a limited procurement for next generation AIT units for the purpose of testing such units in a laboratory environment. The outcome of the testing will determine if the units will proceed to testing in an airport environment. TSA anticipates that next generation AIT units will have enhanced detection capabilities, faster passenger throughput, and a smaller footprint.

[15] 49 U.S.C. 44925.

[16] *See also,* sec. 109 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (2001), as amended by sec. 1403(b) of the Homeland Security Act of 2002, Public Law 107–296, ''(7) Provide for the use of voice stress analysis, biometric, or other technologies to prevent a person who might pose a danger to air safety or security from boarding the aircraft of an air carrier or foreign air carrier in air transportation or intrastate air transportation'' and Title IV of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 ''* * * for procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment.''

[17] *Electronic Privacy Information Center* v. *U.S. Department of Homeland Security,* 653 F.3d 1 (D.C. Cir. 2011).

[18] *Id.* at 10 (quoting *United States* v. *Knights,* 534 U.S. 112, 118–119 (2001)).

[19] *Id.*

airline passengers 'to ensure public safety can be particularly acute' and, crucially, an AIT scanner, unlike a magnetometer, is capable of detecting, and therefore of deterring, attempts to carry aboard airplanes explosives in liquid or powder form.'' [20]

As explained in the decision, the AIT scanners then in use produce a ''crude image of an unclothed person * * *.''[21] In rejecting EPIC's privacy argument, the Court recognized that TSA has taken steps:

[T]o mitigate the effect a scan using AIT might have upon passenger privacy: Each image produced by a scanner passes through a filter to obscure facial features and is viewable on a computer screen only by an officer sitting in a remote and secure room. As soon as the passenger has been cleared, moreover, the image is deleted; the officer cannot retain the image on his computer, nor is he permitted to bring a cell phone or camera into the secure room.[22]

The Court also noted that three Privacy Impact Assessments (PIAs) of the AIT program had been completed and were sufficient. ''[T]he petitioners make no more specific objection that would enable us to disturb the [Chief Privacy Officer's] conclusion that the privacy protections built into the AIT program are sufficiently 'strong'.'' [23]

In its decision, the Court acknowledged that Congress authorized TSA to prescribe the details of the screening process. The Court noted that ''Congress did * * * in 2004, direct the TSA to 'give a high priority to developing, testing, improving, and deploying' at airport screening checkpoints a new technology 'that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms'.'' [24] The Court observed that TSA responded to this directive through the development and procurement of AIT scanners, which enable the operator of the machine to detect non-metallic objects, such as a liquid or powder, which a metal detector cannot detect, without touching the passengers coming through the checkpoint.[25]

TSA tested the use of AIT machines in 2009 for primary screening at a limited number of airports. The Court acknowledged that ''based on the apparent success of the test, the TSA decided early in 2010 to use the scanners everywhere for primary screening.'' [26] The Court also pointed out that passengers are not required to go through the AIT screening process. The Court stated ''no passenger is ever required to submit to an AIT scan * * * [and] signs at the security checkpoint notify passengers they may opt instead for a patdown.'' [27] The Court also rejected EPIC's claims that the AIT is unlawful under the Video Voyeurism Prevention Act and the Religious Freedom Restoration Act.

In ruling on EPIC's Administrative Procedure Act claim, the Court determined that TSA did not justify ''its failure to initiate notice-and-comment rulemaking before announcing it would use AIT scanners for primary screening.'' [28] Even though privacy precautions had been implemented, the Court stated ''it is clear that by producing an image of the unclothed passenger, an AIT scanner intrudes upon * * * personal privacy in a way a magnetometer does not.'' [29] Thus, the Court found the use of the AIT in primary screening ''substantively affects the public to a degree sufficient to implicate the policy interests animating notice-and-comment rulemaking.'' [30] The Court did not require TSA to stop using AIT. ''[D]ue to the obvious need for the TSA to continue its airport security operations without interruption, we remand the rule to the TSA but do not vacate it * * *.'' [31]

III. AIT Screening Protocols

A. Types of AIT Equipment

TSA engaged in extensive laboratory and operational testing before approving the two types of AIT equipment initially deployed. In February 2007, TSA initiated a pilot operation at an airport to test AIT detection capability in the secondary screening position for aviation passengers who set off the alarm of the WTMD. In January 2008, TSA published a PIA to cover AIT screening of all passengers at the security screening checkpoint. Throughout 2007 and 2008, additional AIT units were tested in the secondary screening position and TSA continued to evaluate different types of AIT equipment, including both general-use x-ray backscatter and millimeter wave. In 2009, TSA began to evaluate using AIT in the primary screening position as an alternative to WTMD.[32] Deploying AIT in the primary position to screen all passengers for both metallic and non-metallic threats allows TSA to use the technology to its full capability. In February 2010, TSA submitted a report to Congress on privacy protections and deployment of AIT.[33]

TSA has compared AIT to other transportation security equipment and manual processes, including ETD, WTMD, and pat-downs. Based on the testing results, TSA determined that AIT currently offers the best opportunity to detect both metallic and non-metallic threat items concealed underneath clothing, such as the explosives carried by Mr. Abdulmutallab, without physical contact.

One type of AIT equipment initially deployed by TSA, the Rapiscan Secure 1000, uses backscatter technology. Unlike a traditional x-ray machine, which relies on the transmission of x-rays through an object, general-use backscatter technology projects low level x-ray beams over the body surface at high speed. The reflection or ''backscatter'' of the beam is detected and digitized to create an image.[34]

The L–3 ProVision, another type of AIT equipment currently deployed by TSA, uses millimeter-length radio waves. Millimeter wave technology bounces electromagnetic waves off of the human body to detectors in the machine, which a computer then interprets in order to create a black and white image.[35]

Working with the DHS Science & Technology Directorate and private industry, TSA began testing ATR software in 2010. Automatic Target Recognition software generates a generic outline and not an individual image.[36]

[20] *Id.* (quoting *City of Indianapolis* v. *Edmond,* 531 U.S. 32, 47–48) (internal citation omitted).

[21] *Id.* at 3.

[22] *Id.* at 4.

[23] *Id.* at 9.

[24] *Id.* at 3 (quoting sec. 4013 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3719).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 6.

[30] *Id.*

[31] *Id.* at 8.

[32] In addition to the AIT equipment described below, TSA evaluated infrared (IR) technology, which scans for temperature differences on the body's surface or for temperature imbalances between the body, clothes, and any hidden objects.

[33] ''Advanced Imaging Technologies: Passenger Privacy Protections,'' Fiscal Year 2010 Report to Congress, February 25, 2010.

[34] An example of the image produced by the backscatter technology is posted on TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-how-it-works.*

[35] See ''Safety of AIT'' for a discussion of the safety of the millimeter wave equipment. The Food and Drug Administration has found that millimeter wave is safe and states on its Web site that ''[m]illimeter wave security systems which comply with the limits set in the applicable national non-ionizing radiation safety standard * * * cause no known adverse health effects.'' *http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/SecuritySystems/ucm227201.htm#2.*

[36] Examples of the generic outline that the ATR software produces are available on TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-how-it-works.*

In July 2011, TSA began installing ATR software on millimeter wave AIT units and completed installation on all millimeter wave units currently in use. This advancement significantly enhances privacy by eliminating the passenger-specific images referred to in the *EPIC* v. *DHS* decision.

As part of the Federal Aviation Administration Modernization and Reform Act of 2012, Congress mandated that all AIT units must be equipped with ATR by June 1, 2012.[37] As permitted by law, the deadline was extended to June 1, 2013. While all of the millimeter wave units have been equipped with the ATR software, Rapiscan was unable to develop ATR software that would work on the general-use backscatter units. As a result, TSA terminated its Rapiscan ATR delivery order and all Rapiscan general-use backscatter AIT units currently deployed at TSA checkpoints are being removed from operation by Rapiscan.[38] By June 1, 2013, only AIT equipped with ATR will be used at TSA checkpoints.

TSA will continue to evaluate current AIT systems and associated screening procedures, as well as any new technologies and procedures that may be considered for deployment, to ensure that they are safe and meet all relevant government and consensus industry standards, are effective against established and anticipated threats, and require the least disruption and intrusion on passenger privacy possible.

B. Privacy Safeguards for AIT

The use of ATR software enhances passenger privacy by eliminating images of individual passengers, as well as the need for a TSO to view the individual images to identify anomalies.[39] Automatic Target Recognition software auto-detects anomalies concealed on the body and displays these on a generic outline, which is viewable on a screen located on the AIT equipment. These anomalies are then resolved through additional screening. Automatic Target Recognition-enabled units deployed at airports are not capable of storing or printing the generic outline that will be visible to passengers. TSA has installed the software on all currently-deployed millimeter wave units. As noted above, AIT units without ATR software are being removed from operation and only ATR-equipped AIT units will be used at the checkpoint as of June 1, 2013.

Section 222 of the Homeland Security Act requires that the Privacy Office assure that the use of technologies sustain and do not erode privacy protections relating to the use, collection, and disclosure of personal information, and to conduct a privacy impact assessment (PIA) for proposed rules impacting the privacy of personal information (6 U.S.C. 142). Even before the development of the ATR software, TSA instituted rigorous safeguards to protect the privacy of individuals who are screened using AIT. In addition, as noted by the Court in *EPIC* v. *DHS,* the DHS Chief Privacy Officer has conducted several PIAs on the use of AIT equipment to ensure that the public's privacy concerns related to AIT screening are adequately addressed. These PIAs meet the requirements of section 222 for this NPRM and describe the strict measures TSA uses to protect privacy.[40] To the extent that TSA receives substantive comments on privacy issues related to the use of AIT, they will be addressed in the final rule and any resulting changes will be addressed appropriately in a revised PIA.

While graphic images purportedly from TSA's AIT machines have been circulated in the media, those images were not the type produced by TSA's AIT equipment. Neither of the AIT technologies that have been used by TSA produced photographs or images that would enable personal identification. As deployed by TSA, neither technology is able to store, print, or export any image.

When using the backscatter technology, TSA requirements dictated that a filter be applied to prevent a detailed image of an individual. In addition, the images were viewed by a trained TSO in a locked, remote location. The anonymity of the individual being screened was preserved, since the TSO assisting the individual at the AIT unit never saw the image, and the TSO viewing the image never saw the individual being screened. No TSA personnel were permitted to view both the image and the individual. The backscatter units did not store, print, or export any images. Storage capability was disabled prior to deployment, and TSA airport personnel were not able to activate the storage capability. In addition, the backscatter images were transmitted securely between the unit and the viewing room so they could not be lost, modified, or disclosed. The images produced by the backscatter units were encrypted during transmission. The images were deleted from the screen in the viewing room when the individual was cleared. TSOs in the viewing room were prohibited from bringing electronic devices such as cameras, cell phones, or other recording devices into the room. Violations of these procedures subjected the TSO to disciplinary action, which included termination.

To give further effect to the Fair Information Practice Principles that are the foundation for privacy policy and implementation at DHS, individuals may opt-out of the AIT in favor of physical screening. TSA provides notice of the use of AIT and the opt-out option at the checkpoint so that individuals may exercise an informed judgment on AIT. Signs are posted that explain the technology and state ''use of this technology is optional. If you choose not to be screened by this technology you will receive a thorough pat down.''[41] TSA requests comment on the privacy safeguards discussed above and on the ability of passengers to opt-out of AIT screening.

C. Safety of AIT

AIT equipment has been subject to extensive testing that has confirmed that it is safe for individuals being screened, equipment operators, and bystanders.[42] The exposure to ionizing x-ray beams emitted by the backscatter machines that are being removed pursuant to statute, as well as the non-ionizing electromagnetic waves from the millimeter wave machines is well within the limits allowed under relevant national health and safety standards. Prior to procuring and deploying both backscatter and millimeter wave AIT equipment, TSA tested the units to determine whether they would be safe for use in passenger screening. As explained further below, TSA determined that the general-use backscatter and millimeter wave technologies were safe for use in screening the public because the x-ray and radio waves emissions were so low as to present a negligible risk to passengers, airline crew members, airport employees, and TSA employees.

1. Millimeter Wave Units

The millimeter wave AIT systems that will be the only technology deployed at

[37] Public Law 112–95.

[38] *http://blog.tsa.gov/2013/01/rapiscan-backscatter-contract.html.*

[39] Before the installation of ATR software, TSA required that all millimeter wave machines blur the face of the passenger.

[40] The most recent update to the PIA is posted on the DHS Web site at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-tsa-ait.pdf* and is available in the docket for this rulemaking.

[41] See AIT Signs at *http://www.tsa.gov/ait-how-it-works.*

[42] See AIT: Safety at *http://www.tsa.gov/ait-safety.*

the checkpoint as of June 1, 2013 use non-ionizing radio frequency energy in the millimeter wave spectrum to generate a three-dimensional image based on the energy reflected from the body. Millimeter wave imaging technology meets all known national and international health and safety standards. In fact, the energy emitted by millimeter wave technology is 1,000 times less than the international limits and guidelines. The millimeter wave AIT systems that TSA uses must comply with the 2005 Institute of Electrical and Electronics Engineers, Inc. Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields (IEEE Std. C95.1™–2005) as well as the International Commission on Non-Ionizing Radiation Protection Guidelines for Limiting Exposure to Time-Varying Electric, Magnetic, and Electromagnetic Fields, Health Physics 74(4); 494–522, published April 1998. TSA's millimeter wave units are also consistent with Federal Communications Commission OET Bulletin 65, Health Canada Safety Code 6, and RSS–102 Issue 3 for Canada. The FDA has also confirmed that millimeter wave security systems that comply with the IEEE Std. C95.1™–2005 cause no known adverse health effects.[43]

2. Backscatter Units

As required by statute, TSA will remove all currently deployed Rapiscan backscatter units by May 31, 2013. When in use, TSA addressed potential health concerns regarding the ionizing radiation emitted by general-use backscatter technology. TSA's procurement specifications required that the backscatter units must conform to the consensus radiation safety standard of the American National Standards Institute (ANSI)[44] and Health Physics Society (HPS)[45] for the design and operation of security screening systems that use ionizing radiation. That standard is ANSI/HPS N43.17, which was first published in 2002 and revised in 2009.[46]

The annual dose limits in ANSI/HPS N43.17 are based on dose limit recommendations for the general public published by the National Council on Radiation Protection and Measurements[47] in Report 116, ''Limitations of Exposure to Ionizing Radiation.''[48] The dose limits were set with consideration given to individuals, such as pregnant women, children, and persons who receive radiation treatments, who may be more susceptible to radiation health effects. Further, the standard also takes into consideration the fact that individuals are continuously exposed to ionizing radiation from the environment. ANSI/HPS N43.17 sets the maximum permissible dose of ionizing radiation from a general-use system per security screening at 0.25 microsieverts.[49] The standard also requires that individuals should not receive 250 microsieverts or more from a general-use x-ray security screening system in a year.

The radiation dose (effective dose) a passenger receives from a general-use backscatter AIT screening has been independently evaluated by the Food and Drug Administration's (FDA's) Center for Devices and Radiological Health, the National Institute for Standards and Technology, and the Johns Hopkins University Applied Physics Laboratory. All results affirmed that the effective dose for individuals being screened, operators, and bystanders was well below the dose limits specified by ANSI/HPS N43.17.[50] These results were confirmed in a report issued by the DHS Office of Inspector General (OIG) in February 2012.[51] The OIG report found that the independent surveys show that backscatter radiation levels are below the established limits and that TSA complied with ANSI/HPS N43.17.

Typical doses from backscatter machines are no more than 0.05 microsieverts per screening, well below the ANSI/HPS N43.17 maximum dosage of 0.25 microsievert per screening. An individual would have to have been screened by the Rapiscan Secure 1000 more than 13 times daily for 365 consecutive days before exceeding the ANSI/HPS standard.

By comparison, a traveler would have to be screened via Rapiscan/backscatter AIT 2,000 times to equal the dosage received in a single chest x-ray, which delivers 100 microsieverts of ionizing radiation. A typical bite-wing dental x-ray of 5 microsieverts would be equivalent to 100 backscatter screenings, and a two-view mammogram that delivers 360 microsieverts would be equivalent to 7,200 backscatter screenings.[52] A passenger flying one-way from Washington, DC to Los Angeles is exposed to approximately 19.1 microsieverts of ionizing radiation over the course of the 4.7 hour flight.[53]

ANSI/HPS also reflects the standard for a negligible individual dose of radiation established by the National Council on Radiation Protection and Measurements at 10 microsieverts per year. Efforts to reduce radiation exposure below the negligible individual dose are not warranted because the risks associated with that level of exposure are so small as to be indistinguishable from the risks attendant to environmental radiation that individuals are exposed to every day.[54] The level of radiation issued by the Rapiscan Secure 1000 is so low that most passengers would not have exceeded even the negligible individual

[43] *http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/SecuritySystems/ucm227201.htm.*

[44] ANSI is a private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. The Institute oversees the development and use of voluntary consensus standards by providing neutral, third-party accreditation of the procedures used by standards developing organizations, and approving their documents as American National Standards.

[45] HPS is a scientific organization of professionals who specialize in radiation safety. Its mission is to support its members and to promote excellence in the science and practice of radiation safety. As an independent nonprofit scientific organization, HPS is not affiliated with any government or industrial organization or private entity.

[46] American National Standard, ''Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation,'' ANSI/HPS N43.17 (2009); Health Physics Society, McLean, VA. Copies can be ordered at: *http://webstore.ansi.org/faq.aspx#resellers.*

[47] The National Council on Radiation Protection and Measurements was founded in 1964 by Congress to cooperate with the International Commission on Radiological Protection, the Federal Radiation Council, the International Commission on Radiation Units and Measurements, and other national and international organizations, both governmental and private, concerned with radiation quantities, units, and measurements as well as radiation protection.

[48] Copies of the report can be ordered at: *http://www.ncrppublications.org/Reports/116.*

[49] The biological effect of radiation is measured in sieverts. One sievert equals 1,000 millisieverts and one millisievert equals 1,000 microsieverts.

[50] TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-safety* contains many articles and studies that discuss AIT safety, including a description of the built-in safety features of the Rapiscan Secure 1000, an Archives of Internal Medicine report on the risks of imaging technology, the FDA evaluation of backscatter technology, and other independent safety assessments of AIT.

[51] Department of Homeland Security, Office of Inspector General, ''Transportation Security Administration's Use of Backscatter Units,'' OIG–12–38, February 2012.

[52] HPS Fact Sheet: Radiation Exposure from Medical Exams and Procedures, January 2010, *http://hps.org/documents/Medical_Exposures_Fact_Sheet.pdf.*

[53] Federal Aviation Administration, ''What Aircrews Should Know About Their Occupational Exposure to Ionizing Radiation,'' DOT–FAA–AM–03–1 (October 2003) at p. 9. Available at: *http://www.faa.gov/data_research/research/med_humanfacs/oamtechreports/2000s/media/0316.pdf.*

[54] The World Health Organization estimates that each person is exposed, on average, to 2.4 millisieverts (*i.e.,* 2400 microsieverts) of ionizing radiation each year from natural sources. *www.who.int/ionizing_radiation/about/what_is_ir/en/index2.html.*

dose. In fact, an individual would have to be screened more than 200 times a year by a Rapiscan Secure 1000 before he or she would exceed the negligible individual dose and, even then, the exposure would be below the ANSI/HPS N43.17 standard.

The European Commission released a report conducted by the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) on the risks related to the use of security scanners for passenger screening that use ionizing radiation such as the general-use backscatter AIT machines.[55] The committee found no short term health effects that can result from the doses of radiation delivered by security scanners. In the long term, it found that the potential cancer risk cannot be estimated, but is likely to remain so low that it cannot be distinguished from the effects of other exposures including both ionizing radiation from other natural sources, and background risk due to other factors.

The ANSI/HPS N43.17 standard also requires that any general-use backscatter machine have safety interlocks to terminate emission of x-rays in the event of any system problem that could result in abnormal or unintended radiation emission. The Rapiscan Secure 1000 had three such features. First, the unit was designed to cease x-ray emission once the programmed scan motion ends. That feature could not be adjusted. Second, the unit was programmed to terminate emission once the requiWeb site number of lines of data necessary to create an image was received. Both of these automatic features reduced the possibility that emissions could continue if the unit malfunctions. Finally, the unit had an emergency stop button that would terminate x-ray emission.

Upon installation, a radiation emission survey was conducted on each Rapiscan Secure 1000 to ensure the unit operated properly. Preventive maintenance checks, including radiation safety surveys, were performed at least once every six months; after any maintenance that affected the radiation shielding, shutter mechanism, or x-ray production components; after any incident where damage was suspected; or after a unit was moved. The U.S. Army Public Health Command also conducted an independent radiation survey on deployed systems. The report confirmed that the general-use backscatter units tested were well within applicable national safety standards.[56]

The DHS Office of the Chief Procurement Officer is also requesting the National Academy of Sciences to review previous studies as well as the current processes used by DHS and equipment manufacturers to estimate radiation exposure resulting from general-use backscatter equipment and to provide a report on whether radiation exposures comply with applicable health and safety standards and whether system design operating procedures and maintenance procedures are appropriate.

D. AIT Procedures at the Checkpoint

TSA's regulations require that ''[i]ndividuals may not enter or be present within a secured area, air operations area, security identification display area, or sterile area without complying with the systems, measures, or procedures used to control access to such areas.'' [57] In addition, ''[i]ndividuals may not enter a sterile area or board an aircraft without submitting to the screening and inspection of their person and accessible property in accordance with the procedures being applied to control access to that area or the aircraft.'' [58] Federal law also requires that air carriers refuse to transport a passenger who does not consent to a search of his person or baggage,[59] and authorizes air carriers to refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.[60]

The specific security procedures, systems, or measures that TSA deploys are included in its Standard Operating Procedures (SOPs). The SOPs instruct the TSOs how to conduct the screening measures currently in use. Terrorists continue to seek ways to thwart aviation security measures and could use information on TSA procedures, such as the instructions on how to operate AIT equipment and the AIT equipment specifications, to plan and execute attacks. Therefore, the SOPs are SSI and are not made public as such disclosure would prove detrimental to transportation security.[61]

In response to the decision in *EPIC* v. *DHS,* TSA is proposing to add the following language to its current regulations at 49 CFR 1540.107, quoted above, to specifically address AIT screening:

> (d) The screening and inspection described in (a) may include the use of advanced imaging technology. For purposes of this section, advanced imaging technology is defined as screening technology used to detect concealed anomalies without requiring physical contact with the individual being screened.

In addition, TSA has posted information on its Web site on what individuals can expect when submitting to AIT screening. AIT screening is currently optional, but when opting out of AIT screening, a passenger will receive a pat-down. When TSA deploys AIT equipment at a screening lane, a sign is posted to inform the public that AIT may be used as part of the screening process prior to passengers entering the machine so that each passenger may exercise an informed decision on the use of AIT. The sign also indicates that a passenger who chooses not to be screened by AIT will receive a pat-down. However, TSA has found that since 2009, fewer than two percent of passengers opt for a pat-down in lieu of AIT screening.[62]

TSA's Web site [63] explains that AIT looks for any items, both metallic and non-metallic, that might be anywhere on the body. It recommends that individuals remove all items from pockets and their person and place them in carry-on baggage prior to entering the checkpoint. It notes that removal will lessen the chance that additional screening will be required. The Web site also explains that for AIT units not equipped with ATR, the TSO who views the image cannot see the individual; while for AIT equipped with ATR software, the screen with the generic outline is located on the scanner and is visible to the passenger and the TSO. The Web site states that AIT is optional.

After any items are removed, individuals are directed to enter the

[55] The SCENIHR is an independent committee that provides the European Commission with the scientific advice it needs when preparing policy and proposals relating to consumer safety, public health and the environment. The committee is made up of external experts. The report can be found at *http://ec.europa.eu/health/scientific_committees/emerging/docs/scenihr_o_036.pdf.*

[56] The report is available on TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-safety.*

[57] 49 CFR 1540.105(a)(2).

[58] 49 CFR 1540.107(a).

[59] 49 U.S.C. 44902(a), 49 CFR 1544.201(c).

[60] 49 U.S.C. 44902(b).

[61] SSI is defined in footnote 1.

[62] TSA's Web site describes the results of independent polling on AIT acceptance showing strong public support for and understanding of the need for AIT. See *http://www.tsa.gov/ait-more-information.* In addition, passengers with joint replacements or other medical devices that would regularly set off the alarm on a metal detector often prefer AIT because it is quicker and less invasive than a pat-down. See *http://www.tsa.gov/traveler-information/advanced-imaging-technology-ait.* An internet campaign in 2010 failed in an attempt to disrupt checkpoint operations by urging passengers to request a pat-down in lieu of AIT screening during the Thanksgiving holiday travel period. See ''Opt Out Turns Into Opt In,'' The TSA Blog, November 24, 2010, *http://blog.tsa.gov/2010_11_24_archive.html.*

[63] *http://www.tsa.gov/travelers-guide/ait-how-it-works.*

AIT. Once inside, individuals are directed to stand with arms raised, and to remain still for several seconds while the image is created. When using AIT with ATR, the image is not an image of the individual passenger, rather a generic outline that indicates where the anomaly is detected. Individuals are directed to exit the opposite side of the portal. Once the image is reviewed and any anomalies are resolved, the image is deleted. This process usually takes less than a minute.

TSA has also refined its procedures to make sure that the screening process addresses the needs of families. TSA never separates a child from an accompanying adult and makes sure that the accompanying adult observes the entire screening process. Advanced Imaging Technology is safe for children, and children may undergo screening using AIT as long as they are able to stand with their hands above their head for the five to seven seconds needed to conduct the scan. However, TSA no longer requires children who are 12 years old or younger to be screened by AIT and will direct those passengers to the WTMD unless instructed otherwise by an accompanying adult.[64] TSA has also implemented procedures to accommodate those passengers with disabilities and medical conditions that make them ineligible for AIT screening because they cannot stand in the necessary pose.

IV. Deployment of AIT

As of February 22, 2013, TSA has deployed over 800 AIT machines at approximately 200 airports in the United States.[65] TSA is removing the 174 Rapiscan general-use backscatter units from its checkpoints and by June 1, 2013, only units equipped with ATR software will be used to conduct screening.

Since it began using AIT, TSA has been able to detect many kinds of non-metallic items, small items, and items concealed on parts of the body that would not have been detected using metal detectors. Once an anomaly is detected, additional screening is required to determine if the item is prohibited.

Since January 2010, this technology has helped TSA officers detect hundreds of prohibited, dangerous, or illegal items concealed on passengers.[66] TSA's procurement specifications require that any AIT system must meet certain thresholds with respect to the detection of anomalies concealed under an individual's clothing. While the detection requirements of AIT are classified, the procurement specifications require that any approved system be sensitive enough to detect smaller items, such as a Web pager, wallet, or small bottle of contact lens solution.

Experience has confirmed that AIT will detect metallic and non-metallic items, including material that could be in various forms concealed under an individual's clothing. For example, a non-metallic martial arts weapon called a ''Tactical Spike'' was discovered in the sock of a passenger in Pensacola, Florida after being screened by AIT.[67] Advanced Imaging Technology is also effective in detecting metallic items. In December, 2011, a loaded .38 caliber firearm in an ankle holster was discovered during AIT screening of a passenger at Detroit Metropolitan Airport.[68] The versatility of AIT in detecting both metallic and non-metallic concealed items without physical contact makes it more effective than metal detectors as a tool to protect transportation security.

Some of the items discovered concealed on passengers during AIT screening are small items, such as weapons made of composite, non-metallic materials, including a three inch pocket knife hidden on a passenger's back; little packets of powder, including a packet the size of a thumbprint; and a syringe full of liquid hidden in a passenger's underwear.[69] A plastic dagger hidden in the hemline of a passenger's shirt was detected using AIT [70] and a plastic dagger concealed inside a comb was detected in a passenger's pocket.[71] Advanced Imaging Technology's capability to identify these small items is important because in addition to weapons and explosive materials, TSA also searches for improvised explosive device components, such as timers, initiators, switches, and power sources. Such items may be very small. Advanced Imaging Technology enhances TSA's ability to find these small items and further assists TSA in detecting threats.

V. Rulemaking Analyses and Notices

A. Regulatory Evaluation Summary and Economic Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to consider the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

B. Executive Orders 12866 and 13563 Assessment

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is a

[64] See Advanced Imaging Technology (AIT) at *http://www.tsa.gov/traveler-information/traveling-children.*

[65] TSA maintains a list of airports that have AIT machines on its Web site at *http://www.tsa.gov/travelers-guide/ait-frequently-asked-questions.*

[66] Remarks of TSA Administrator John S. Pistole, Homeland Security Policy Institute, George Washington University, November 10, 2011.

[67] ''TSA Week In Review: Non Metallic Martial Arts Weapon Found with Body Scanner,'' *http://blog.tsa.gov/2011/12/tsa-week-in-review-non-metallic-martial.html.*

[68] *http://blog.tsa.gov/2011/12/loaded-380-found-strapped-to-passengers.html.*

[69] ''Advanced Imaging Off To a Great Start,'' April 20, 2010, at *http://blog.tsa.gov/2010/04/advanced-imaging-technology-off-to.html* and ''Advanced Imaging Technology—Yes, It's Worth It,'' March 31, 2010, at *http://blog.tsa.gov/2010/03/advanced-imaging-technology-yes-its.html.*

[70] ''TSA Week in Review: Plastic Dagger Found With Body Scanner,'' May 4, 2012, at *http://blog.tsa.gov/2012/05/tsa-week-in-review-plastic-dagger-found.html.*

[71] ''TSA Week in Review: Comb Dagger Discovered With Body Scanner, 28 Loaded Guns, and More,'' August 17, 2012 at *http://blog.tsa.gov/2012/08/tsa-week-in-review-comb-dagger.html.*

''significant regulatory action'' that is economically significant under sec. 3(f)(1) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

In conducting these analyses, TSA has determined:

(1) This rulemaking is a ''significant regulatory action'' as defined in the E.O.

(2) An Initial Regulatory Flexibility Analysis suggests this rulemaking would not have a significant economic impact on a substantial number of small entities.

(3) This rulemaking would not constitute a barrier to international trade.

(4) This rulemaking does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector under UMRA.

These analyses, available in the docket, are summarized below. This NPRM proposes to codify the use of AIT to screen passengers boarding commercial aircraft for weapons, explosives, and other prohibited items concealed on the body. These costs are incurred by airport operators, the traveling public, Rapiscan, and TSA. Some airport operators incur utility costs for the additional electricity consumed by AIT machines. The small percentage of passengers (approximately one percent) who choose to opt out of AIT screening will incur opportunity costs due to the additional screening time needed to receive a pat-down. Rapiscan, a company that manufactures AIT machines, will incur a cost to remove backscatter AIT units in 2013 that have been deployed in previous years.[72] TSA incurs equipment costs associated with the life cycle of AIT machines (testing, acquisition, maintenance, *etc.*); personnel costs to hire TSOs to operate the AIT machines; utility costs at reimbursed airports; and training costs to train TSOs to operate AIT, and to detect and resolve any anomalies that may be discovered during AIT screening.

When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. Because the AIT machine life cycle from deployment to disposal is eight years, the period of analysis for estimating the cost of AIT is also eight years. However, as AIT deployment began in 2008, there are costs that have already been borne by airport operators, the traveling public, and TSA that were not due to this rule. Consequently, in the Initial Regulatory Impact Analysis for this rule, TSA is reporting the AIT-related costs that have already occurred (years 2008–2011), but TSA considers the additional cost of this rulemaking to be years 2012–2015. By reporting the costs that have already happened and estimating future costs in this manner, TSA will have considered and disclosed the full eight-year life cycle of AIT deployment.

TSA reports that the net cost of AIT deployment from 2008–2011 has been $841.2 million (undiscounted) and that TSA has borne over 99 percent of all costs related to AIT deployment. TSA projects that from 2012–2015 total AIT-related costs will be approximately $1.5 billion (undiscounted), $1.4 billion at a three percent discount rate, and $1.3 billion at a seven percent discount rate. During 2012–2015, TSA estimates it will also incur over 98 percent of AIT-related costs with equipment and personnel costs being the largest categories of costs. Table 4 below reports the costs that have already happened (2008–2011) by cost category, while Table 5 shows the additional costs TSA is attributing to this rulemaking (2012–2015). Table 6 shows the total cost of AIT deployment from 2008 to 2015.

TABLE 4—NET COST[73] SUMMARY OF AIT DEPLOYMENT FROM 2008–2011 BY COST COMPONENT

[Costs already incurred in $ thousands—undiscounted]

Year	Passenger opt outs	Industry utilities	TSA costs				Total
			Personnel	Training	Equipment	Utilities	
2008	$7.0	$5.7	$14,689.1	$389.5	$37,425.2	$18.8	$52,535.3
2009	32.2	5.7	15,618.6	88.0	42,563.6	20.4	58,328.5
2010	262.2	158.2	247,566.7	5,332.8	119,105.4	241.4	372,666.6
2011	1,384.2	186.7	284,938.7	15,354.4	55,567.2	269.1	357,700.2
Total	1,685.6	356.3	562,813.0	21,164.7	254,661.3	549.6	841,230.6

TABLE 5—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2012–2015) BY COST COMPONENT

[AIT costs in $ thousands]

Year	Passenger opt outs	Industry tilities	TSA costs				Rapiscan removal	Total
			Personnel	Training	Equipment	Utilities		
2012	$2,716.5	$325.7	$375,866.9	$12,043.0	$116,499.3	$473.0	$0.0	$507,924.4
2013	3,991.7	329.3	280,844.3	4,277.5	51,588.8	324.4	1,809.6	343,165.7
2014	4,238.7	312.0	263,677.6	4,190.5	51,397.8	317.7	0.0	324,134.2
2015	5,611.8	300.3	278,580.2	4,144.2	68,052.6	365.7	0.0	357,054.9
Total	16,558.7	1,267.3	1,198,969.0	24,655.2	287,538.5	1,480.9	1,809.6	1,532,279.2
Discounted 3%	15,265.0	1,178.9	1,118,459.3	23,810.2	269,233.7	1,380.7	1,705.7	1,431,033.5
Discounted 7%	13,766.6	1,075.8	1,024,344.7	22,048.8	247,810.4	1,263.8	1,580.6	1,311,890.7

[72] On December 21, 2012, TSA terminated part of its contract with Rapiscan for the Convenience of the Government because it could not meet development related issues in regards to ATR by the Congressionally-mandated June 2013 deadline. As a result of the contract termination, Rapiscan will pay for the removal of all units still in the field.

[73] TSA removed costs related to WTMD that would have occurred regardless of AIT deployment to obtain an estimated net cost for AIT.

TABLE 6—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2008–2015) BY COST COMPONENT

[AIT costs in $ thousands—undiscounted]

Year	Passenger opt outs	Industry utilities	TSA costs				Rapiscan removal	Total
			Personnel	Training	Equipment	Utilities		
2008	$7.0	$5.7	$14,689.1	$389.5	$37,425.2	$18.8	$0.0	$52,535.3
2009	32.2	5.7	15,618.6	88.0	42,563.6	20.4	0.0	58,328.5
2010	262.2	158.2	247,566.7	5,332.8	119,105.4	241.4	0.0	372,666.6
2011	1,384.2	186.7	284,938.7	15,354.4	55,567.2	269.1	0.0	357,700.2
2012	2,716.5	325.7	375,866.9	12,043.0	116,499.3	473.0	0.0	507,924.4
2013	3,991.7	329.3	280,844.3	4,277.5	51,588.8	324.4	1,809.6	343,165.7
2014	4,238.7	312.0	263,677.6	4,190.5	51,397.8	317.7	0.0	324,134.2
2015	5,611.8	300.3	278,580.2	4,144.2	68,052.6	365.7	0.0	357,054.9
Total	18,244.4	1,623.6	1,761,782.0	45,819.9	542,199.9	2,030.4	1,809.6	2,373,509.9

This preamble (in the Background section above) has previously explained in detail the need for AIT and the Congressional direction to pursue AIT. In summary, terrorists continue to test our security measures in an attempt to find and exploit vulnerabilities. The threat to aviation security has evolved to include the use of non-metallic explosives, non-metallic explosive devices, and non-metallic weapons. Below are examples of this threat:

- On December 22, 2001, on board an airplane bound for the United States, Richard Reid attempted to detonate a non-metallic bomb concealed in his shoe.
- On December 25, 2009, a bombing plot by Al Qaeda in the Arabian Peninsula (AQAP) culminated in Umar Farouk Abdulmutallab's attempt to blow up an American aircraft over the United States using a non-metallic explosive device hidden in his underwear.
- In October 2010, AQAP attempted to destroy two airplanes in flight using non-metallic explosives hidden in two printer cartridges.
- In May 2012, during the most recent terrorist plot thwarted, AQAP developed another non-metallic explosive device that could be hidden in an individual's underwear and detonated while on board an aircraft.

As evidenced by the incidents described in the above sections, TSA operates in a high-threat environment. Terrorists look for security gaps or exceptions to exploit. The device used in the December 25, 2009, attempt is illustrative. It was cleverly constructed and intentionally hidden on a sensitive part of the body to avert detection. If detonated, the lives of the almost 300 passengers and crew and untold numbers of people on the ground would have been in jeopardy.

Advanced Imaging Technology is proven technology which provides the best opportunity to detect metallic and non-metallic anomalies concealed under clothing without touching the passenger and is an essential component of TSA's security. Since it began using AIT, TSA has been able to detect many kinds of non-metallic items, small items, and items concealed on parts of the body that would not have been detected using metal detectors. In addition, risk reduction analysis shows that the chance of a successful terrorist attack on aviation targets generally decreases as TSA deploys AIT. However, the results of TSA's risk-reduction analysis are classified.

Passengers do not experience additional wait time due to use of AIT equipment because the x-ray screening of carry-on baggage constrains the overall screening process; they wait for their personal belongings regardless of which passenger screening technology is used.

In Tables 7 and 8 below, we present annualized cost estimates and qualitative benefits of AIT deployment. In Table 7, we show the annualized net cost of AIT deployment from 2012 to 2015. As previously explained, costs incurred from 2008–2011 occurred in the past and are not considered costs attributable to this proposed rule. However, given the life cycle of the AIT technology considered in this analysis is eight years; we have also added Table 8 showing the annualized net cost of AIT deployment from 2008–2015 (a full eight-year life cycle and includes the ''sunk costs'' from 2008 to 2011). Please note that while the *total costs* of AIT deployment for a full eight-year life cycle (2008–2015) are higher than the *total costs* of AIT deployment during the four-year period of 2012–2015, the *annualized* costs ($368,262.8 at seven percent discount) of the full eight-year cycle shown in Table 8 are actually lower than the *annualized* costs ($387,307.7 at seven percent discount) of the 2012–2015 deployment shown in Table 7. As previously shown in Tables 4 and 5, AIT deployment costs in 2008 and 2009 are relatively low compared with the later year AIT expenditures, resulting in lower annualized costs for the eight-year life cycle of 2008–2015. The costs are annualized and discounted at both three and seven percent and presented in 2011 dollars.

TABLE 7—OMB A–4 ACCOUNTING STATEMENT

[$ Thousands for 2012–2015]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (initial RIA, preamble, etc.)
BENEFITS				
Monetized benefits	Not estimated	Not estimated	Not estimated	Initial RIA.
Annualized quantified, but unmonetized, benefits	0	0	0	Initial RIA.

TABLE 7—OMB A–4 ACCOUNTING STATEMENT—Continued

[$ Thousands for 2012–2015]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (initial RIA, preamble, etc.)
Unquantified benefits	The operations described in this proposed rule produce benefits by reducing security risks through the deployment of AIT technology that is capable of detecting both metallic and non-metallic weapons and explosives.			Initial RIA.
COSTS				
Annualized monetized costs (discount rate in parenthesis)	(7%) $387,307.0 (3%) $384,986.7		Initial RIA.	
Annualized quantified, but unmonetized, costs	0	0	0	Initial RIA.
Qualitative costs (unquantified)	Not estimated			Initial RIA.
TRANSFERS				
Annualized monetized transfers: "on budget"	0	0	0	Initial RIA.
From whom to whom?	N/A	N/A	N/A	None.
Annualized monetized transfers: "off-budget"	0	0	0	Initial RIA.
From whom to whom?	N/A	N/A	N/A	None.
Miscellaneous analyses/category	**Effects**			**Source citation (initial RIA, preamble, etc.).**
Effects on state, local, and/or tribal governments	None			Initial RIA.
Effects on small businesses	No significant economic impact anticipated. Prepared Initial Regulatory Flexibility Analysis			Initial Regulatory Flexibility Analysis.
Effects on wages	None			None.
Effects on growth	None			None.

TABLE 8—OMB A–4 ACCOUNTING STATEMENT

[$ Thousands, 2008–2015, eight-year lifecycle]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (initial RIA, preamble, etc.)
BENEFITS				
Monetized benefits	Not estimated	Not estimated	Not estimated	Initial RIA.
Annualized quantified, but unmonetized, benefits	0	0	0	Initial RIA.
Unquantified benefits	The operations described in this proposed rule produce benefits by reducing security risks through the deployment of AIT technology that is capable of detecting both metallic and non-metallic weapons and explosives.			Initial RIA.
COSTS				
Annualized monetized costs (discount rate in parentheses)	(7%) $368,262.8 (3%) $326,410.1			Initial RIA.
Annualized quantified, but unmonetized, costs	0	0	0	Initial RIA.
Qualitative costs (unquantified)	Not estimated			Initial RIA.
TRANSFERS				
Annualized monetized transfers: "on budget"	0	0	0	Initial RIA.
From whom to whom?	N/A	N/A	N/A	None.
Annualized monetized transfers: "off-budget"	0	0	0	Initial RIA.
From whom to whom?	N/A	N/A	N/A	None.

TABLE 8—OMB A–4 ACCOUNTING STATEMENT—Continued

[$ Thousands, 2008–2015, eight-year lifecycle]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (initial RIA, preamble, etc.)
Miscellaneous analyses/category	**Effects**			**Source citation (initial RIA, preamble, etc.).**
Effects on state, local, and/or tribal governments	None			Initial RIA.
Effects on small businesses	No significant economic impact anticipated. Prepared IRFA			IRFA.
Effects on wages	None			None.
Effects on growth	None			None.

As alternatives to the preferred regulatory proposal presented in the NPRM, TSA examined three other options. The following table briefly describes these options, which include a continuation of the current screening environment (no action), increased use of physical pat-down searches that supplements primary screening with WTMDs, and increased use of ETD screening that supplements primary screening with WTMDs. These alternatives, and the reasons why TSA rejected them in favor of the proposed rule, are discussed in detail in Chapter 3 of the regulatory evaluation located in this docket, and summarized in Table 9.

TABLE 9—COMPARISON OF REGULATORY ALTERNATIVES

Regulatory alternative	Name	Description
1	No Action	Under this alternative, the passenger screening environment remains the same as it was prior to 2008. TSA continues to use WTMDs as the primary passenger screening technology and to resolve alarms with a pat-down.
2	Pat-Down	Under this alternative, TSA continues to use WTMDs as the primary passenger screening technology. In addition, TSA supplements the WTMD screening by conducting a pat-down on a randomly selected portion of passengers after screening by a WTMD.
3	ETD Screening	Under this alternative, TSA continues to use WTMDs as the primary passenger screening technology. In addition, TSA supplements the WTMD screening by conducting ETD screening on a randomly selected portion of passengers after screening by a WTMD.
4	AIT Screening (NPRM)	Under this alternative, the proposed alternative, TSA uses AIT as a passenger screening technology. Alarms would be resolved through a pat-down.

C. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies consider the impacts of their rules on small entities. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. TSA has included an Initial Regulatory Flexibility Analysis within the Initial Regulatory Impact Analysis.

This NPRM proposes to codify the use of AIT to screen passengers boarding commercial aircraft for weapons, explosives, and other prohibited items concealed on the body. The only additional direct cost small entities incur due to this rule is for utilities, as a result of increased power consumption from AIT operation. TSA identified 102 small entities that could have potentially incurred additional utility costs due to AIT; however, TSA reimburses the additional utility costs for five of these small entities. Consequently, this rule would cause 97 small entities to incur additional direct costs. Of the 97 small entities affected by this proposed rule, 96 are small governmental jurisdictions with populations less than 50,000. A privately-owned airport is considered small under SBA standards if revenue amounts to less than $30 million. TSA identified one small privately-owned airport.

The small entities incur an additional utility cost as a result of increased power consumption from AIT operation. To estimate the costs of the deployment of AIT on small entities TSA uses the average kilowatt hour (kWh) consumed per unit on an annual basis at federalized airports. Depending on the size of the airport, TSA estimates the average additional utility cost to range from $815 to $1,270 per year while the average annual revenue for these small entities ranges from $69.5 million to $133.1 million per year. Consequently, TSA estimates that the cost of this NPRM on small entities represents approximately 0.001 percent of their annual revenue. Therefore, TSA's Initial Regulatory Flexibility Analysis suggests that this rulemaking would not have a significant economic impact on a substantial number of small entities.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it

will have only a domestic impact and therefore no effect on any trade-sensitive activity.

E. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA sec. 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The PRA defines ''collection of information'' to be ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinion by or for an agency, regardless of form or format…imposed on ten or more persons.'' 44 U.S.C. 3502(3)(A). TSA has determined that there are no current or new information collection requirements associated with this proposed rule. TSA's use of AIT to screen passengers does not constitute activity that would result in the collection of information as defined in the PRA.

G. Executive Order 13132, Federalism

TSA has analyzed this proposed rule under the principles and criteria of E.O. 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

H. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

I. Energy Impact Analysis

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1540

Air carriers, Aircraft, Airports, Civil aviation security, Law enforcement officers, Reporting and recordkeeping requirements, Screening, Security measures.

The Proposed Amendment

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend Chapter XII, of Title 49, Code of Federal Regulations, as follows:

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 1. The authority citation for part 1540 is revised to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44925, 44935–44936, 44942, 46105.

■ 2. In § 1540.107, add paragraph (d) to read as follows:

§ 1540.107 Submission to screening and inspection.

* * * * *

(d) The screening and inspection described in (a) may include the use of advanced imaging technology. For purposes of this section, advanced imaging technology is defined as screening technology used to detect concealed anomalies without requiring physical contact with the individual being screened.

Issued in Arlington, Virginia, on March 20, 2013.

John S. Pistole,

Administrator.

[FR Doc. 2013–07023 Filed 3–22–13; 4:15 pm]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 130103006–3243–01]

RIN 0648–BC89

Fisheries in the Western Pacific; 5-Year Extension of Moratorium on Harvest of Gold Corals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would extend the region-wide moratorium on the harvest of gold corals in the U.S. Pacific Islands through June 30, 2018. NMFS intends this proposed rule to prevent overfishing and to stimulate research on gold corals.

DATES: Comments must be received by April 25, 2013.

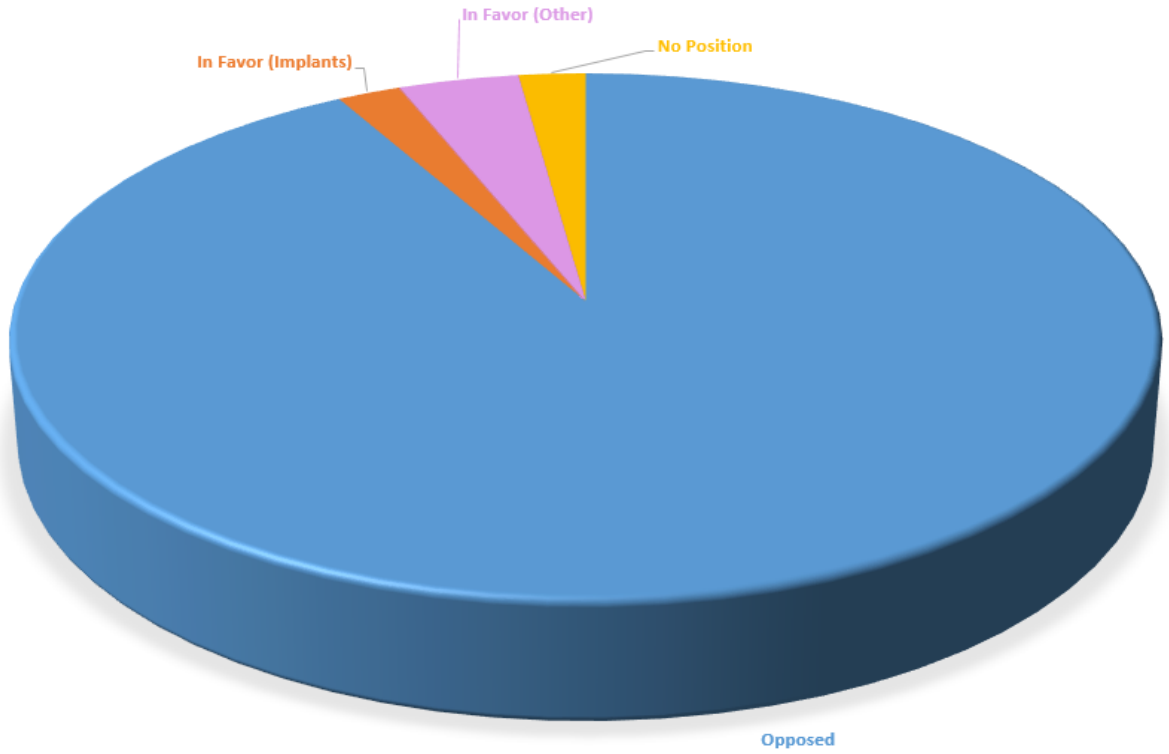
ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0002, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0002,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

Exhibit D

Visualization of Comments to the TSA's Proposed Rule



Full Data (Graphed)

Opposed to the Rule:	5,129	92.0%
In Favor of the Rule (Implants):	115	2.1%
In Favor of the Rule (Other):	214	3.8%
No Position:	120	2.2%
Total:	**5,578**	**100.0%**

Merged Data with Comments Expressing No Position Removed

Opposed to the Rule:	5,129	94.0%
In Favor of the Rule (All):	329	6.0%
Total:	**5,458**	**100.0%**

Comments Primarily Opposed to the TSA's Proposed Rule (TSA-2013-0004-xxxx) **Total: 5,129**

0001	0079	0125	0171	0216	0261	0306	0352	0397
0034	0080	0126	0172	0217	0262	0307	0353	0398
0036	0081	0127	0173	0218	0263	0308	0354	0399
0037	0082	0129	0174	0219	0264	0309	0355	0400
0038	0083	0130	0175	0220	0265	0310	0356	0401
0039	0084	0131	0176	0221	0266	0311	0357	0402
0040	0085	0132	0177	0222	0267	0312	0358	0403
0041	0086	0133	0178	0223	0268	0313	0359	0404
0042	0087	0134	0179	0224	0269	0314	0360	0405
0043	0088	0135	0180	0225	0270	0315	0361	0406
0044	0089	0136	0181	0226	0271	0316	0362	0407
0045	0090	0137	0182	0227	0272	0317	0363	0408
0046	0091	0138	0183	0228	0273	0318	0364	0409
0047	0092	0139	0184	0229	0274	0319	0365	0410
0048	0093	0140	0185	0230	0275	0321	0366	0411
0049	0094	0141	0186	0231	0276	0322	0367	0412
0050	0095	0142	0187	0232	0277	0323	0368	0413
0051	0096	0143	0188	0233	0278	0324	0369	0414
0052	0097	0144	0189	0234	0279	0325	0370	0415
0053	0098	0145	0190	0235	0280	0326	0371	0416
0054	0099	0146	0191	0236	0281	0327	0372	0417
0055	0101	0147	0192	0237	0282	0328	0373	0418
0056	0102	0148	0193	0238	0283	0329	0374	0419
0057	0103	0149	0194	0239	0284	0330	0375	0420
0058	0104	0150	0195	0240	0285	0331	0376	0421
0059	0105	0151	0196	0241	0286	0332	0377	0422
0060	0106	0152	0197	0242	0287	0333	0378	0423
0061	0107	0153	0198	0243	0288	0334	0379	0424
0062	0108	0154	0199	0244	0289	0335	0380	0425
0063	0109	0155	0200	0245	0290	0336	0381	0426
0064	0110	0156	0201	0246	0291	0337	0382	0427
0065	0111	0157	0202	0247	0292	0338	0383	0428
0066	0112	0158	0203	0248	0293	0339	0384	0429
0067	0113	0159	0204	0249	0294	0340	0385	0430
0068	0114	0160	0205	0250	0295	0341	0386	0431
0069	0115	0161	0206	0251	0296	0342	0387	0432
0070	0116	0162	0207	0252	0297	0343	0388	0433
0071	0117	0163	0208	0253	0298	0344	0389	0434
0072	0118	0164	0209	0254	0299	0345	0390	0435
0073	0119	0165	0210	0255	0300	0346	0391	0436
0074	0120	0166	0211	0256	0301	0347	0392	0437
0075	0121	0167	0212	0257	0302	0348	0393	0438
0076	0122	0168	0213	0258	0303	0349	0394	0439
0077	0123	0169	0214	0259	0304	0350	0395	0440
0078	0124	0170	0215	0260	0305	0351	0396	0441

0442	0489	0536	0589	0646	0703	0755	0802	0861
0443	0490	0537	0590	0647	0704	0756	0803	0862
0444	0491	0538	0591	0648	0705	0757	0804	0863
0445	0492	0539	0592	0649	0706	0758	0805	0864
0446	0493	0540	0594	0650	0707	0759	0806	0865
0447	0494	0541	0595	0652	0708	0760	0808	0866
0448	0495	0542	0596	0654	0709	0761	0809	0867
0449	0496	0543	0597	0656	0710	0762	0811	0868
0450	0497	0544	0598	0658	0711	0763	0812	0869
0451	0498	0545	0599	0660	0712	0764	0813	0870
0452	0499	0546	0602	0661	0713	0765	0814	0871
0453	0500	0547	0605	0663	0714	0766	0815	0872
0454	0501	0548	0606	0664	0715	0767	0816	0873
0455	0502	0549	0607	0665	0716	0768	0817	0874
0456	0503	0550	0608	0666	0717	0769	0819	0875
0457	0504	0551	0609	0667	0718	0770	0821	0876
0458	0505	0552	0610	0668	0719	0771	0822	0877
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0461	0508	0555	0613	0671	0722	0774	0826	0881
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3290	3348	3396	3443	3492	3547	3609	3656	3704
3291	3349	3397	3444	3493	3548	3610	3657	3705
3292	3350	3398	3445	3494	3550	3611	3658	3706
3293	3351	3399	3446	3495	3551	3612	3659	3707
3294	3352	3400	3447	3496	3553	3613	3660	3708
3295	3353	3401	3448	3497	3554	3614	3661	3709
3296	3354	3402	3449	3500	3555	3615	3662	3710
3297	3355	3403	3450	3501	3556	3616	3663	3711
3298	3356	3404	3451	3502	3557	3617	3664	3712
3299	3357	3405	3452	3503	3558	3618	3666	3713
3300	3358	3406	3453	3505	3559	3619	3667	3714
3301	3359	3407	3454	3506	3560	3620	3668	3715
3302	3360	3408	3455	3507	3562	3621	3669	3716
3303	3362	3409	3456	3508	3563	3622	3670	3717
3304	3363	3410	3457	3509	3564	3623	3671	3718
3305	3364	3411	3458	3510	3565	3624	3672	3719
3306	3365	3412	3459	3511	3566	3625	3673	3720
3307	3366	3413	3460	3512	3567	3626	3674	3721
3308	3367	3414	3461	3513	3568	3627	3675	3722
3309	3368	3415	3462	3514	3569	3628	3676	3724

3725	3772	3820	3871	3918	3970	4018	4067	4118
3726	3773	3821	3872	3920	3971	4019	4068	4119
3727	3774	3822	3873	3921	3972	4020	4069	4120
3728	3775	3823	3874	3922	3973	4021	4070	4121
3729	3776	3824	3875	3923	3974	4022	4071	4122
3730	3777	3825	3876	3924	3975	4023	4072	4123
3731	3778	3826	3877	3925	3976	4024	4073	4124
3732	3779	3827	3878	3926	3977	4025	4074	4125
3733	3780	3828	3879	3927	3978	4026	4075	4126
3734	3781	3829	3880	3928	3979	4027	4076	4127
3735	3782	3830	3881	3929	3980	4028	4077	4128
3736	3783	3831	3882	3930	3981	4029	4078	4129
3737	3784	3832	3883	3931	3982	4030	4079	4130
3738	3785	3833	3884	3932	3983	4031	4080	4131
3739	3786	3834	3885	3935	3984	4032	4081	4132
3740	3787	3835	3886	3936	3985	4033	4082	4133
3741	3788	3836	3887	3937	3986	4034	4083	4134
3742	3789	3837	3888	3938	3987	4035	4085	4135
3743	3790	3838	3889	3939	3988	4036	4086	4136
3744	3791	3839	3890	3940	3989	4037	4087	4137
3745	3792	3840	3891	3941	3990	4038	4088	4138
3746	3793	3841	3892	3942	3991	4039	4090	4139
3747	3794	3842	3893	3943	3992	4040	4091	4140
3748	3795	3843	3894	3944	3993	4041	4092	4141
3749	3796	3844	3895	3945	3994	4042	4093	4142
3750	3797	3845	3896	3946	3995	4043	4094	4143
3751	3798	3846	3897	3947	3996	4044	4095	4144
3752	3799	3847	3898	3948	3997	4045	4096	4145
3753	3800	3848	3899	3949	3999	4046	4097	4146
3754	3801	3849	3900	3950	4000	4047	4098	4148
3755	3802	3851	3901	3951	4001	4048	4099	4149
3756	3803	3852	3902	3952	4002	4049	4100	4151
3757	3804	3853	3903	3953	4003	4050	4101	4152
3758	3805	3854	3904	3954	4004	4051	4102	4153
3759	3806	3855	3905	3955	4005	4052	4103	4154
3760	3807	3856	3906	3956	4006	4053	4104	4155
3761	3808	3857	3907	3957	4007	4054	4106	4156
3762	3809	3859	3908	3958	4008	4056	4107	4157
3763	3810	3860	3909	3959	4009	4057	4108	4158
3764	3811	3861	3910	3960	4010	4058	4109	4159
3765	3812	3862	3911	3961	4011	4059	4110	4160
3766	3813	3863	3912	3963	4012	4061	4111	4161
3767	3814	3865	3913	3964	4013	4062	4113	4162
3768	3815	3867	3914	3965	4014	4063	4114	4163
3769	3816	3868	3915	3967	4015	4064	4115	4164
3770	3818	3869	3916	3968	4016	4065	4116	4165
3771	3819	3870	3917	3969	4017	4066	4117	4166

4167	4215	4263	4314	4362	4410	4457	4505	4554
4168	4216	4265	4315	4363	4411	4458	4506	4555
4169	4217	4266	4316	4364	4412	4459	4507	4556
4170	4218	4267	4317	4365	4413	4460	4508	4557
4171	4219	4268	4318	4366	4414	4461	4509	4558
4172	4220	4269	4320	4367	4415	4462	4510	4559
4173	4221	4270	4321	4368	4416	4463	4511	4560
4174	4222	4271	4322	4369	4417	4464	4512	4561
4176	4223	4272	4323	4370	4418	4465	4513	4562
4177	4224	4273	4324	4371	4419	4466	4514	4563
4178	4225	4274	4325	4372	4420	4467	4515	4564
4179	4226	4275	4326	4373	4421	4468	4516	4565
4180	4227	4276	4327	4374	4422	4469	4517	4566
4181	4228	4277	4328	4375	4423	4470	4518	4567
4182	4229	4278	4329	4376	4424	4471	4519	4568
4183	4230	4279	4330	4377	4425	4472	4520	4569
4184	4231	4280	4331	4378	4426	4473	4521	4570
4185	4232	4281	4332	4379	4427	4474	4522	4571
4186	4233	4282	4333	4380	4428	4475	4523	4572
4187	4234	4283	4334	4381	4429	4476	4524	4573
4188	4235	4284	4335	4382	4430	4477	4525	4574
4189	4236	4285	4336	4383	4431	4478	4526	4575
4190	4237	4286	4337	4384	4432	4479	4527	4576
4191	4238	4287	4338	4385	4433	4480	4528	4577
4192	4239	4288	4339	4387	4434	4481	4529	4578
4193	4240	4289	4340	4388	4435	4482	4530	4579
4194	4241	4290	4341	4389	4436	4483	4531	4580
4195	4242	4291	4342	4390	4437	4484	4532	4581
4196	4243	4292	4343	4391	4438	4485	4533	4582
4197	4244	4293	4344	4392	4439	4486	4534	4583
4198	4245	4294	4345	4393	4440	4487	4536	4584
4199	4246	4296	4346	4394	4441	4488	4537	4585
4200	4247	4297	4347	4395	4442	4489	4538	4586
4201	4248	4298	4348	4396	4443	4491	4539	4587
4202	4249	4299	4349	4397	4444	4492	4540	4588
4203	4250	4300	4350	4398	4445	4493	4541	4589
4204	4252	4301	4351	4399	4446	4494	4542	4590
4205	4253	4302	4352	4400	4447	4495	4543	4591
4206	4254	4303	4353	4401	4448	4496	4544	4592
4207	4255	4304	4354	4402	4449	4497	4545	4593
4208	4256	4305	4355	4403	4450	4498	4546	4594
4209	4257	4306	4356	4404	4451	4499	4547	4595
4210	4258	4307	4357	4405	4452	4500	4548	4596
4211	4259	4310	4358	4406	4453	4501	4549	4597
4212	4260	4311	4359	4407	4454	4502	4550	4598
4213	4261	4312	4360	4408	4455	4503	4552	4599
4214	4262	4313	4361	4409	4456	4504	4553	4600

4601	4649	4697	4744	4793	4841	4889	4945	4992
4602	4650	4698	4746	4794	4842	4890	4946	4993
4603	4651	4699	4748	4795	4843	4891	4947	4994
4604	4652	4700	4749	4796	4844	4892	4948	4995
4605	4653	4701	4750	4797	4845	4893	4949	4996
4606	4654	4702	4751	4798	4846	4894	4950	4997
4607	4655	4703	4752	4799	4847	4895	4951	4998
4608	4656	4704	4753	4800	4848	4896	4952	4999
4609	4657	4705	4754	4801	4849	4897	4953	5000
4610	4658	4706	4755	4802	4850	4898	4954	5001
4611	4659	4707	4756	4803	4851	4899	4955	5002
4612	4660	4708	4757	4804	4852	4900	4956	5003
4613	4661	4709	4758	4805	4853	4902	4957	5004
4614	4662	4710	4759	4806	4854	4905	4958	5005
4615	4663	4711	4760	4807	4855	4909	4959	5006
4616	4664	4712	4761	4808	4856	4910	4960	5007
4617	4665	4713	4762	4809	4857	4911	4961	5008
4618	4666	4714	4763	4810	4858	4912	4962	5009
4619	4667	4715	4764	4811	4859	4913	4963	5010
4620	4668	4716	4765	4812	4860	4915	4964	5011
4621	4669	4717	4766	4813	4861	4916	4965	5012
4622	4670	4718	4767	4814	4862	4917	4966	5013
4623	4671	4719	4768	4815	4863	4918	4967	5014
4624	4672	4720	4769	4816	4864	4919	4968	5015
4625	4673	4721	4770	4817	4865	4920	4969	5016
4626	4674	4722	4771	4818	4866	4921	4970	5017
4627	4675	4723	4772	4819	4867	4922	4971	5018
4629	4676	4724	4773	4820	4868	4923	4972	5019
4630	4677	4725	4774	4821	4869	4924	4973	5020
4631	4678	4726	4775	4822	4870	4925	4974	5021
4632	4679	4727	4776	4823	4871	4926	4975	5022
4633	4680	4728	4777	4824	4872	4927	4976	5023
4634	4681	4729	4778	4826	4873	4929	4977	5024
4635	4682	4730	4779	4827	4874	4930	4978	5025
4636	4683	4731	4780	4828	4875	4931	4979	5026
4637	4685	4732	4781	4829	4876	4932	4980	5027
4638	4686	4733	4782	4830	4877	4933	4981	5028
4639	4687	4734	4783	4831	4878	4934	4982	5029
4640	4688	4735	4784	4832	4879	4935	4983	5030
4641	4689	4736	4785	4833	4880	4936	4984	5031
4642	4690	4737	4786	4834	4881	4938	4985	5032
4643	4691	4738	4787	4835	4882	4939	4986	5033
4644	4692	4739	4788	4836	4883	4940	4987	5034
4645	4693	4740	4789	4837	4884	4941	4988	5035
4646	4694	4741	4790	4838	4886	4942	4989	5036
4647	4695	4742	4791	4839	4887	4943	4990	5037
4648	4696	4743	4792	4840	4888	4944	4991	5038

5039	5086	5139	5186	5240	5289	5339	5388	5436
5040	5087	5140	5188	5241	5290	5340	5389	5437
5041	5088	5141	5189	5242	5291	5341	5390	5438
5042	5089	5142	5190	5243	5293	5342	5391	5439
5043	5090	5143	5191	5244	5294	5343	5392	5440
5044	5091	5144	5192	5245	5295	5344	5393	5441
5045	5093	5145	5195	5246	5296	5345	5394	5442
5046	5094	5146	5196	5247	5297	5346	5395	5443
5047	5095	5147	5197	5248	5298	5347	5396	5444
5048	5096	5148	5198	5250	5299	5348	5397	5445
5049	5097	5149	5199	5252	5300	5349	5398	5446
5050	5098	5150	5200	5253	5301	5350	5399	5447
5051	5099	5151	5202	5254	5302	5351	5400	5448
5052	5100	5152	5205	5255	5303	5352	5401	5449
5053	5101	5153	5206	5256	5304	5353	5402	5451
5054	5102	5154	5207	5257	5305	5354	5403	5453
5055	5103	5155	5208	5258	5306	5355	5404	5454
5056	5104	5156	5209	5259	5307	5356	5405	5455
5057	5105	5157	5210	5260	5308	5357	5406	5456
5058	5106	5158	5211	5261	5309	5358	5407	5457
5059	5108	5159	5212	5262	5310	5359	5408	5458
5060	5109	5160	5213	5263	5311	5360	5409	5459
5061	5110	5161	5214	5264	5312	5361	5410	5461
5062	5111	5162	5215	5265	5313	5362	5411	5462
5063	5112	5163	5216	5266	5314	5363	5412	5463
5064	5114	5164	5217	5267	5315	5364	5413	5465
5065	5115	5165	5218	5268	5316	5365	5414	5467
5066	5116	5166	5219	5269	5317	5366	5415	5468
5067	5118	5167	5220	5270	5318	5367	5416	5469
5068	5119	5168	5221	5271	5320	5368	5417	5470
5069	5120	5169	5222	5272	5321	5369	5418	5474
5070	5121	5170	5224	5273	5322	5370	5419	5477
5071	5122	5171	5225	5274	5324	5371	5420	5478
5072	5123	5172	5226	5275	5325	5372	5421	5479
5073	5124	5173	5227	5276	5326	5374	5422	5480
5074	5125	5174	5228	5277	5327	5375	5423	5482
5075	5126	5175	5229	5278	5328	5376	5425	5484
5076	5127	5176	5230	5279	5329	5377	5426	5486
5077	5128	5177	5231	5280	5330	5378	5427	5487
5078	5130	5178	5232	5281	5331	5379	5428	5489
5079	5132	5179	5233	5282	5332	5380	5429	5491
5080	5133	5180	5234	5283	5333	5381	5430	5494
5081	5134	5181	5235	5284	5334	5382	5431	5495
5082	5135	5182	5236	5285	5335	5383	5432	5496
5083	5136	5183	5237	5286	5336	5384	5433	5497
5084	5137	5184	5238	5287	5337	5386	5434	5498
5085	5138	5185	5239	5288	5338	5387	5435	5499

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Comments Primarily In Favor of the TSA's Proposed Rule (TSA-2013-0004-xxxx) **Total: 329**

…because they/family have a metallic implant and dislike the pat-downs…

572	2143	3574
604	2157	3586
624	2207	3588
627	2249	3591
642	2251	3603
651	2290	3919
657	2296	3934
659	2383	4745
662	2384	4885
688	2388	5107
702	2415	5113
743	2443	5129
747	2445	5251
807	2446	5319
820	2448	5450
825	2452	5452
827	2455	5460
829	2506	5471
839	2635	5472
841	2704	5473
943	2707	5475
1041	2743	5481
1137	2857	5488
1154	2944	5490
1205	2955	5493
1285	2987	5503
1356	3051	5504
1381	3073	5511
1408	3102	5518
1427	3106	
1468	3129	
1494	3265	
1516	3285	
1518	3314	
1520	3319	
1642	3328	
1787	3468	
1803	3473	
1896	3499	
2091	3525	
2108	3531	
2113	3571	
2129	3573	

…for all other reasons…

575	1402	2076	2680	3342
576	1422	2081	2683	3361
578	1428	2082	2689	3504
583	1435	2089	2713	3549
587	1442	2092	2720	3552
600	1451	2096	2774	3561
601	1453	2123	2789	3572
603	1471	2205	2807	3578
614	1480	2210	2818	3604
626	1495	2212	2819	3605
655	1501	2214	2820	3665
685	1502	2236	2839	3723
738	1526	2316	2873	3817
740	1575	2324	2885	3850
753	1585	2326	2891	3866
818	1588	2338	2933	3933
830	1633	2347	2934	3966
836	1671	2348	2940	4055
840	1676	2351	2942	4060
879	1679	2353	2988	4089
919	1703	2355	3004	4105
1030	1718	2362	3023	4112
1067	1746	2367	3026	4264
1089	1756	2373	3038	4295
1099	1759	2380	3042	4308
1147	1782	2392	3085	4319
1153	1798	2403	3086	4628
1156	1805	2412	3134	4747
1179	1811	2438	3135	5117
1198	1814	2449	3137	5131
1202	1824	2451	3151	5187
1217	1825	2458	3158	5193
1240	1840	2499	3162	5223
1244	1843	2567	3165	5464
1246	1895	2569	3173	5466
1251	1914	2593	3174	5476
1313	1915	2639	3175	5483
1340	1946	2648	3219	5492
1344	1989	2652	3316	5505
1352	1993	2662	3321	5509
1364	2041	2671	3325	5512
1382	2049	2678	3336	5535
1387	2063	2679	3338	

Comments Not Expressing an Opinion Regarding The TSA's Proposed Rule (TSA-2013-0004-xxxx) Total: 120

Methodology: Comments that merely ask questions, make jokes, criticize TSA activities unrelated to the proposed rule, are blank, are completely unrelated to aviation security, or discuss the pros and cons without expressing a conclusion are listed here. Comments that are sarcastic, but for which it is clear that the commenter is for or against the proposed rule, are organized in the for or against sections. Comments calling for the TSA to be disbanded, defunded, or privatized (i.e., calls for the airlines to resume control of security as they did pre-2002) are organized as opposed to the proposed rule, even if they did not discuss the proposed rule, because it is presumed that one who does not want the TSA to exist opposes TSA rulemaking. Also, TSA contributed to the comment docket to add footnotes, references, and exhibits. These too are listed here.

0002	0320	3132	4937
0003	0593	3163	5092
0004	0653	3188	5194
0005	0678	3203	5201
0006	0810	3332	5203
0007	0995	3339	5204
0008	1062	3498	5249
0009	1069	3522	5292
0010	1213	3524	5323
0011	1321	3546	5373
0012	1353	3580	5385
0013	1475	3858	5424
0014	1628	3864	5485
0015	1632	3962	5570
0016	1654	3998	5577
0017	1685	4084	
0018	1755	4147	
0019	1783	4150	
0020	1789	4175	
0021	1876	4251	
0022	1902	4309	
0023	1916	4386	
0024	1918	4490	
0025	1981	4535	
0026	2119	4551	
0027	2344	4684	
0028	2358	4825	
0029	2428	4901	
0030	2474	4903	
0031	2570	4904	
0032	2575	4906	
0033	2742	4907	
0035	2747	4908	
0100	2760	4914	
0128	3096	4928	