



One Hundred Thirteenth Congress  
U.S. House of Representatives  
Committee on Homeland Security  
Washington, DC 20515

April 9, 2013

The Honorable John S. Pistole  
Administrator  
Transportation Security Administration  
601 South 12th Street  
Arlington, VA 20598

Dear Administrator Pistole:

On March 21, 2013, we, along with 133 Members of Congress, wrote to you requesting that the Transportation Security Administration (TSA) maintain knives and sporting equipment on the Prohibited Items List (PIL) until a process of formal consultation is conducted with all stakeholders through the Aviation Security Advisory Committee (ASAC).

On April 3, 2013, we received a letter from you outlining the reasoning behind your decision to permit certain sporting goods and knives to be carried aboard a plane by a passenger.

While we appreciate your effort to elaborate on the factors you used in reaching your decision, we continue to question the failure to include stakeholders through the established ASAC process. Your response letter did not address this central concern.

According to your letter, “[T]he mandate for TSA . . . was and remains today, to ensure the safety and security of the traveling public by preventing catastrophic terrorist attacks.”

After the events of 9/11, Congress established TSA through the *Aviation Transportation Security Act* (ATSA). ATSA authorized that all security regulations be transferred from the Federal Aviation Administration (FAA) to TSA.<sup>1</sup> According to Title 49 USC §44903, TSA is given the authority to “prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy.”<sup>2</sup>

As you will note, the statutory language does not require TSA to narrowly limit safety and security concerns to the prevention of “catastrophic terrorist attack.” On the contrary, the statute,

<sup>1</sup> 49 U.S.C. 114(d) and ATSA sec. 141.

<sup>2</sup> 49 U.S.C. (b) Protections Against Violence and Piracy.

issues an overarching mandate to protect passengers and property against acts of criminal violence or aircraft piracy. The interpretation of TSA's mission contained in your letter seems to offer an unnecessarily narrow and limited interpretation. Given this narrow and terrorism-focused interpretation of the agency's mission, it is no wonder that TSA could arrive at a policy proposal that would permit knives and other objects which may be used to cause bodily injury or intimidate passengers and crewmembers within an airplane's passenger compartment. We would urge you to reconsider your decision based on the plain language of the statute.

Further, your letter mentions previous changes made to the PIL in 2005. At that time, TSA announced that 4-inch blade scissors and small tools would be allowed within the passenger compartment of an aircraft. Your letter seems to draw the conclusion that permitting those objects has "not caused a single reported disruption." Thus, it would seem that your point in raising this previous decision is to infer that because no incidents have occurred, none will occur. The same conclusion could have been reached on September 10, 2001 regarding the likelihood of terrorist attack.

We would encourage you to review the analysis of that PIL decision undertaken by the Government Accountability Office (GAO) in 2007. According to GAO, prior to implementing the 2005 decision, TSA did not analyze data to determine the extent to which transportation security officers (TSO) resources would actually be freed up to implement other security measures, nor did TSA analyze other relevant factors such as the amount of time taken to search for small scissors and tools and the number of TSOs conducting these searches.<sup>3</sup> Further, GAO indicated that its analysis of TSA data determined that TSOs spent, on average, **less than 1 percent of their time – about 1 minute per day over the 6-month period – searching for the approximately 1.8 million sharp objects**, other than knives and box cutters that were found at passenger screening checkpoints during the time period. **GAO found that "it may not have been accurate for TSA to assume that no longer requiring TSOs to search for small scissors and tools would significantly contribute to TSA's efforts to free up TSO resources that could be used to implement other security measures."** In essence, according to GAO, the 2005 removal of items from the PIL was not undertaken with accurate data or rigorous analysis.

Despite the many flaws in the decision-making process that preceded the 2005 PIL action, that decision did include a feature that the current PIL action did not include – a process that included consultation and agreement from 9 of the 13 recognized stakeholders.

And, it is that formal consultation process that 133 Members of Congress wrote to request regarding the most recent PIL decision. Engaging with stakeholders through formal standing mechanisms, such as the ASAC, would allow TSA to solicit official feedback from airlines, crewmembers and passenger advocacy groups on TSA's intent to modify the PIL.

Because your letter did not mention the ASAC process, we are left to draw the conclusion that you are refusing to permit this decision to be reviewed through that process. Further, it appears

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<sup>3</sup> Government Accountability Office (GAO). *TSA's Change to Its Prohibited Items List Has Not Resulted in Any Reported Security Incidents, but the Impact of the Change on Screening Operations Is Inconclusive*. GAO-07-623R. Apr 25, 2007

that your exclusion of ASAC from consultation began over a year ago when you began to deliberate policy changes impacting the PIL.<sup>4</sup>

To be clear, we support TSA's flexibility to alter the PIL, particularly when there is a need to add an item based on threat information. From time to time, TSA may need to make additions to the PIL based on current threat information. Under such circumstances, public notice prior to adding prohibited items may not be appropriate.<sup>5</sup> However, the urgency associated with adding items does not exist when TSA seeks to remove items from the list. Where there is no urgency, such as in the case of removing items from the PIL, the public's need for transparency and openness from government, must take precedence over a change to the PIL.

Finally, your letter notes that current intelligence information indicates that terrorist organizations continue to target commercial aviation for attack using explosives. While we share your concern regarding the threat posed by explosives, we are unable to forget that the attack on September 11<sup>th</sup> was not carried out by explosives, but by an organized group carrying knife-like weapons. Not only do we remember this tragic history, we also understand that terrorists exploit known vulnerabilities. Unfortunately, the decision to remove this group of items from the PIL may inject an unnecessary and heretofore unknown hazard within the passenger compartment of a plane that had not previously existed. It is unclear how the introduction of avoidable risk promotes TSA's mission.

Because we continue to be concerned about the failure to include stakeholders through the established ASAC process, pursuant to Rule X(3)(g) and Rule XI of the Rules of the House of Representatives, we respectfully request that you respond to the following no later than April 19, 2013:

1. According to your testimony on March 14<sup>th</sup> before the Subcommittee on Transportation Security, you stated that changes in the PIL were made through careful analysis and with the support of a Prohibited Items Working Group. How often did the group meet to discuss proposed changes of the PIL? Please provide us with a list of the members of this Prohibited Items Working Group and a copy of their final report evaluating the proposed modifications to the PIL.
2. According to your testimony on March 14<sup>th</sup> before the Subcommittee on Transportation Security, you stated that while pocketknives and other small blades would be permitted on aircrafts, other blades would continue to be banned based on their "construction or use," even if they measured shorter than 6 centimeters. We request that TSA identify the standard operating procedures and training guides that will be issued to the TSO workforce pursuant to the PIL changes, as well as explain methods used to identify blade types and sizes, and the approximate time spent on this procedure. Please provide us with copies of the information guidelines distributed to Federal Security Directors (FSDs) at airports prior to implementing the announced PIL policy change.

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<sup>4</sup> Aviation Security Advisory Committee Meeting Summary September 18, 2012. ASAC Members met at TSIF Briefing Room #202, 3701 West Post Office Road, Ronald Reagan Washington National Airport on September 18, 2012. <http://www.tsa.gov/aviation-security-advisory-committee>

<sup>5</sup> Administrative Procedure Act at 5 U.S.C. § 553(b)(3)(A)

3. Please provide us with the guidelines outlining any penalties that may apply should TSOs, in error, miss the identification and retrieval of knives larger than those allowed. If there are any penalties or recurrent training as a result of this error, please provide us with the process used to determine such penalty or recurrent training.
4. In regards to the specific sporting equipment allowed and the number of items for each, you stated that the decision was made by the Prohibited Items Working Group, but this regulation would be left to the discretion of each airline. How will TSA work with airlines to streamline outreach and communication impacting the prohibited items list? Have all airlines agreed to allow these items on board the cabin as a carry on item?
5. On March 5, 2013, the American Knife and Tool Institute released a press release announcing their efforts in working closely with TSA to remove knives from the PIL. The press release also cites a meeting that was between Department officials and the American Knife and Tool Institute on September 20, 2012 to discuss "small knives onboard airplanes."<sup>6</sup>
  - Please provide us with a list of all those present at the September 20, 2012 meeting to discuss the removal of small knives from the PIL.
  - Please provide us with a comprehensive list of all the meetings you had with stakeholders solely on upcoming PIL modifications.
  - Please provide us with a list of meetings you had with stakeholders solely on allowing small knives on airplanes.
  - Please provide us with a comprehensive list of all the meetings with workforce stakeholders regarding any modifications to the prohibited items list and allowing small knives on the plane.

We thank you for your prompt attention to this matter. If you have any questions or concerns regarding the information requested above, please contact Cherri Branson, Chief Counsel for Oversight, at 202-226-2616.

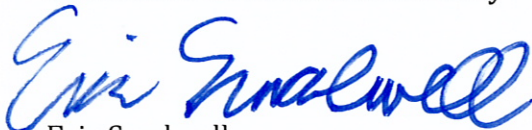
Sincerely,



Bennie G. Thompson  
Ranking Member  
Committee on Homeland Security



Cedric Richmond  
Ranking Member  
Subcommittee on Transportation Security



Eric Swalwell  
Committee Member

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<sup>6</sup> The American Knife and Tool Institute (AKTI). March 5, 2013. <http://www.akti.org/news/tsa-will-permit-knives-back-on-passenger-planes>