

**TSA Has Not Implemented  
All Requirements of the  
9/11 Act and the  
TSA Modernization Act**





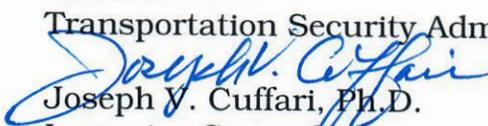
## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

September 22, 2021

MEMORANDUM FOR: The Honorable David P. Pekoske  
Administrator  
Transportation Security Administration

FROM:   
Joseph V. Cuffari, Ph.D.  
Inspector General

SUBJECT: *TSA Has Not Implemented All Requirements of the 9/11 Act and the TSA Modernization Act*

For your action is our final report, *TSA Has Not Implemented All Requirements of the 9/11 Act and the TSA Modernization Act*. We incorporated the formal comments provided by your office.

The report contains one recommendation aimed at how TSA carries out legislative mandates. Your office did not concur with our recommendation. Based on information provided in your response to the draft report, we consider the recommendation open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendation will be considered open and unresolved. Please send your response or closure request to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

Consistent with our responsibility under the *Inspector General Act of 1978, as amended*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Bruce Miller, Deputy Inspector General for Audits, at (202) 981-6000.

Attachment



# DHS OIG HIGHLIGHTS

## ***TSA Has Not Implemented All Requirements of the 9/11 Act and the TSA Modernization Act***

**September 22, 2021**

### **Why We Did This Audit**

The objective of our audit was to determine the extent to which the Transportation Security Administration (TSA) has implemented requirements of the *Implementing Recommendations of the 9/11 Commission Act of 2007* and the *TSA Modernization Act* to develop strategies, programs, regulations, reports, and other initiatives to strengthen transportation security.

### **What We Recommend**

We recommend TSA designate a lead office responsible for establishing internal controls, conducting oversight, and providing quality assurance, which should improve how it carries out legislative mandates.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

### **What We Found**

Although TSA implemented 167 of the 251 (67 percent) requirements in both Acts, 55 of the 167 (33 percent) were not completed by the Acts' established deadlines, and TSA did not complete the remaining 84 requirements. TSA was unable to complete 33 of these requirements because the actions relied on external stakeholders acting first or depended on conditions outside of TSA's control.

The shortfalls occurred because TSA did not:

- (1) designate a lead office to establish internal controls, conduct oversight, and provide quality assurance for implementing the legislatively mandated requirements;
- (2) develop formal policies and procedures to ensure consistency and accountability for implementing the requirements on time; or
- (3) plan or develop an effective system to maintain relevant supporting documentation for the Acts' requirements to help ensure information accuracy, continuity, and record retrieval capability.

Further, TSA had difficulty completing some mandates that required lengthy regulatory processes or coordination with and reliance on external Government and industry stakeholders. Because TSA has not implemented all requirements, it may be missing opportunities to address vulnerabilities and strengthen the security of the Nation's transportation systems.

### **TSA Response**

TSA provided a corrective action plan but did not concur with the recommendation.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Table of Contents**

Background ..... 1  
Results of Audit ..... 3  
    TSA Did Not Implement All Requirements in the 9/11 and TSA  
    Modernization Acts ..... 4  
Recommendation ..... 13

**Appendixes**

Appendix A: Objective, Scope, and Methodology ..... 16  
Appendix B: TSA’s Comments to the Draft Report..... 19  
Appendix C: 9/11 Act Requirements by Topic Area ..... 30  
Appendix D: TSA Modernization Act Requirements by Topic Area..... 32  
Appendix E: Diagram of Federal Rulemaking Process ..... 35  
Appendix F: Office of Audits Major Contributors to This Report ..... 36  
Appendix G: Report Distribution ..... 37

**Abbreviations**

9/11 Act	Implementing Recommendations of the 9/11 Commission Act of 2007
EAA	Executive Assistant Administrator
Exec Sec	Executive Secretariat
GAO	Government Accountability Office
LA	Legislative Affairs
OMB	Office of Management and Budget
TSA	Transportation Security Administration
TSA Mod Act	TSA Modernization Act



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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### Background

Within 2 weeks after the September 11, 2001 terrorist attacks, President Bush created the Office of Homeland Security in the White House. The office oversaw and coordinated a comprehensive national strategy to safeguard the country from terrorism and respond to future attacks. Congress passed the *Homeland Security Act of 2002* in November 2002, creating the Department of Homeland Security as a stand-alone, cabinet-level department to further coordinate and unify national homeland security efforts, beginning March 1, 2003. Among the 22 agencies merged into DHS, the Transportation Security Administration (TSA) is responsible for protecting the Nation's transportation systems and ensuring freedom of movement for people and commerce.

Also, in response to the terrorist attacks, Congress created the National Commission on Terrorist Attacks Upon the United States, which was tasked with investigating facts and circumstances related to these events. This commission made recommendations to guard against future attacks on the United States. In an effort to strengthen the Nation and address threats posed by terrorist groups targeting the country, Congress passed the *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act) on August 3, 2007.<sup>1</sup> We identified 87<sup>2</sup> legislative requirements in the 9/11 Act that TSA was to implement, which included requirements related to public and surface transportation security. Appendix C shows the number of 9/11 Act requirements by topic area.

On October 5, 2018, Congress passed the *Federal Aviation Administration Reauthorization Act of 2018* that included the *TSA Modernization Act* (TSA Mod Act), which primarily focused on TSA's ongoing security challenges with aviation and surface transportation sectors.<sup>3</sup> Through our review of the TSA Mod Act, we identified 202 legislative requirements for TSA. These requirements included third-party testing and verification of screening technologies, assigning Federal Air Marshals to flights based on risk assessments and documented methodologies, and issuing standards for using explosive detection canines for screening air cargo. Appendix D shows TSA Mod Act requirements by topic area.

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<sup>1</sup> *Implementing Recommendations of the 9/11 Commission Act of 2007*, P.L. 110-53.

<sup>2</sup> Because of the significant challenges TSA had locating supporting documentation for 9/11 Act requirements, we did not pursue supporting documentation for 38 requirements. These 38 were non-recurring requirements with mandated deadlines earlier than 2012. We reported on TSA's implementation status for 49 of the 87 requirements under the 9/11 Act.

<sup>3</sup> *Federal Aviation Administration Reauthorization Act of 2018*, P.L. 115-254, Division K, Title I (may be cited as the *TSA Modernization Act*).



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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TSA indicated that it formed an internal 9/11 Act Implementation Team, which met regularly to discuss implementation plans and compliance with legislated requirements of the 9/11 Act. This team encompassed several offices including Security Operations, Law Enforcement/Federal Air Marshal Service, and the Office of Chief Counsel (Counsel). According to TSA, it monitored implementation of the 9/11 Act requirements using an electronic spreadsheet as its 9/11 Act Implementation Tracker and also created a SharePoint site to improve information sharing, collaboration, and document management capabilities across the 9/11 Act Implementation Team. TSA Counsel has primary responsibility for addressing the outstanding requirements of the 9/11 Act, including issuing Federal regulations, known as “rulemaking.” According to a TSA Counsel official, after TSA implemented many requirements, the office inherited primary responsibility for completing several 9/11 Act requirements pertaining to rulemaking and the regulatory review required for those requirements.

TSA indicated the following four offices are primarily responsible for implementing the TSA Mod Act requirements:

- Operations Support
- Enterprise Support
- Security Operations
- Law Enforcement/Federal Air Marshal Service

Each of these offices is led by an Executive Assistant Administrator (EAA) who is responsible for overseeing the office’s efforts to implement requirements.

TSA’s Executive Secretariat (Exec Sec) and Legislative Affairs (LA) offices facilitate the submission of documents or responses to Congress from the program offices for the legislative requirements. Exec Sec reviews legislation for deadlines and tracks reports to Congress. LA tracks and manages reports to Congress until implementation. According to TSA officials, both offices monitor the implementation status of requirements and notify the program offices when a legislative deadline is approaching.

The U.S. House of Representatives and the Government Accountability Office (GAO) have reported on TSA’s efforts and challenges implementing requirements from the 9/11 Act and TSA Mod Act.<sup>4</sup> These stakeholders concluded that although TSA made progress in implementing some of the Acts’

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<sup>4</sup> U.S. House of Representatives’ *Ten Years Later Major Homeland Security Mandates of the 9/11 Commission Act*, September 11, 2017, and GAO testimony *TSA Has Taken Steps to Improve Security Areas Identified in the TSA Modernization Act, But Additional Actions are Needed*, GAO-20-225T, October 29, 2019.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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requirements, additional actions were needed to complete the remaining requirements.

We conducted this as our first audit mandated by the TSA Mod Act, which requires us to report to Congress every 2 years on the status of TSA's implementation of the requirements in Titles XIII, XIV, and XV of the 9/11 Act and all requirements in the TSA Mod Act. Specifically, we are to report on:

- requirements TSA has not fully implemented;
- additional actions necessary to implement the requirements; and
- recommendations for amending or repealing requirements.

Our objective was to determine the extent to which TSA has implemented requirements of the 9/11 Act and TSA Mod Act to develop strategies, programs, regulations, reports, and other initiatives to strengthen transportation security.

### **Results of Audit**

TSA implemented 167 of the 251 (67 percent) total requirements set forth in the 9/11 and TSA Mod Acts. However, 55 of the 167 (33 percent) were not completed within established timeframes. The remaining 84 (33 percent) requirements are not implemented. TSA was unable to complete 33 of these requirements because the actions relied on external stakeholders acting first or depended on conditions outside of TSA's control.

These shortfalls occurred because:

- TSA did not designate a lead office responsible for establishing internal controls, conducting oversight, and providing quality assurance for the implementation of legislative mandates.
- TSA did not develop formal policies and procedures to ensure consistency and accountability for implementing legislatively mandated requirements on time.
- TSA did not plan or develop an effective system to maintain relevant supporting documentation for the Acts' requirements to help ensure information accuracy, continuity, and record retrieval capability.
- TSA had difficulty completing some mandates that required lengthy regulatory processes or coordination with and reliance on external Government and industry stakeholders.



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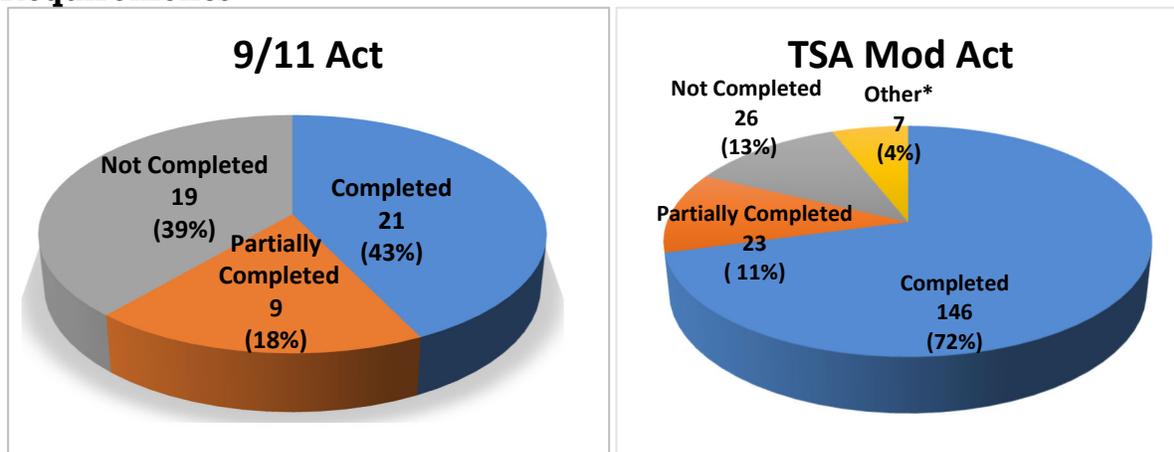
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Because TSA has not implemented all requirements, it may be missing opportunities to address vulnerabilities and strengthen the security of the Nation's transportation systems.

### TSA Did Not Implement All Requirements in the 9/11 and TSA Mod Acts

TSA did not implement or meet the legislative deadlines for all requirements in the 9/11 Act and TSA Mod Act. As shown collectively in Figure 1, we determined that TSA implemented 167 of the 251 (67 percent) total requirements in both Acts. However, 55 of the 167 (33 percent) were not completed within the established timelines. For 84 of the 251 (33 percent) requirements reviewed, TSA either did not complete the requirements or provide sufficient documentation to demonstrate it fully completed the requirements (i.e., partially completed). TSA could not implement the remaining seven Mod Act requirements because those requirements relied on external stakeholders taking actions first or depended on conditions outside of TSA's control. According to TSA, it keeps Congress informed of the implementation status of legislative requirements, but TSA did not always provide enough evidence of these communications.

**Figure 1. TSA's Implementation Status of 9/11 Act and TSA Mod Act Requirements**



Source: DHS Office of Inspector General analysis of 9/11 Act and TSA Mod Act requirements and supporting documentation provided by TSA

\*TSA could not implement the seven "other" TSA Mod Act requirements due to conditions out of TSA's control.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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The Acts did not establish implementation deadlines for 111 of the 251 (44 percent) requirements. We determined that TSA did not complete or partially completed 40 of these 111 requirements. In addition, at the time of our review, there were five requirements with future deadlines that we considered partially completed or not completed and are included in Figure 1.

GAO's *Standards for Internal Controls in the Federal Government*<sup>5</sup> provide specific guidance on internal controls that management should implement to improve accountability in achieving an entity's mission. These controls include establishing an organizational structure, assigning responsibility, and delegating authority to achieve the entity's objectives; monitoring and evaluating performance and holding individuals accountable for their internal control responsibilities; and developing and maintaining documentation of its internal control system.

As part of our reporting mandate to recommend that requirements be amended or repealed, we compared the TSA Mod Act and the 9/11 Act to identify overlapping requirements. Our analysis showed overlapping requirements related to explosives detection canine teams in both Acts. For example, Section 1307 of the 9/11 Act directs DHS to increase certified explosives detection canine teams by partnering with other entities to increase training capacity for canine detection teams, as well as procure canines trained by these parties, consistent with TSA's standards and requirements. Section 1307 also requires DHS to establish criteria, performance standards, and other requirements to ensure third parties' canine teams are adequately trained and maintained. Sections 1928 and 1941 in the TSA Mod Act list similar requirements. Section 1928 directs TSA to develop standards for third-party explosives detection canine teams to screen individuals and property.

Section 1928 requires TSA to periodically assess evaluation centers' programs for training dogs to ensure canine proficiency. TSA is also to establish processes to oversee the certification program and compliance with standards, as well as to procure third-party explosives detection canines. Section 1941 directs TSA to develop standards for third-party explosives detection canines to screen air cargo and to establish a system to audit TSA's third-party canine teams' certification process. Despite these overlapping requirements related to canine teams, TSA did not provide evidence that it maintains correspondence with Congress regarding legislative mandates that are duplicative, challenging, and cannot be completed timely due to external factors.

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<sup>5</sup> GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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#### **TSA's Compliance with 9/11 Act Requirements**

TSA implemented 21 of the 49 (43 percent) requirements we reviewed for the 9/11 Act. For 28 of the 49 (57 percent) requirements reviewed, TSA either did not complete the requirements or did not provide sufficient documentation to show the component fully completed the requirements (i.e., partially completed). For example, TSA did not provide any documentation to prove it had satisfied Section 1412 of the 9/11 Act, which requires DHS to report annually to Congress on a national strategy for public transportation security, among other items. TSA did not have any of these mandated congressional reports after March 2008.

In other cases, TSA's documentation showed it only partially completed the requirement. For instance, Section 1533 of the 9/11 Act requires DHS to establish a program to conduct security exercises for bus transportation to assess and improve stakeholders' capabilities in preventing, preparing for, mitigating, responding to, and recovering from terrorist acts. For this and other requirements cited in this report as mandates for DHS, TSA subsequently accepted responsibility for their implementation by including them in its tracking systems. Although TSA provided some documentation on its security training and exercise program, it did not provide evidence showing security exercises were based on current risk assessments or addressed the needs of elderly and those with disabilities, which are part of the requirement.

#### **TSA's Compliance with TSA Mod Act Requirements**

TSA implemented 146 of the 202 (72 percent) total requirements in the TSA Mod Act. However, 55 of the 146 (38 percent) requirements implemented were not completed by established deadlines. For 49 of the 202 (24 percent) requirements reviewed, TSA either did not complete the requirements or did not provide sufficient documentation to prove it fully completed the requirements (i.e., partially completed). For example, Section 1919 of the TSA Mod Act required TSA to develop a biometrics report with U.S. Customs and Border Protection. The report should include deployment assessments for biometric technologies, such as the operational and security impact of using biometric technology to identify travelers and potential effects on privacy. The documentation TSA provided was missing portions of the requirement, such as an estimate of the rate at which fraudulent traveler credentials are rejected and an assessment of the detection percentage of fraudulent identification that could be accomplished using conventional methods. Therefore, TSA only partially met this legislative mandate.

TSA could not implement 7 of the 202 requirements (4 percent) due to conditions outside of the component's control. In other cases, TSA asserted it



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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had completed the requirements, but could not provide documentation to support its assertions. Therefore, we considered the requirements as partially completed or not completed. For instance, Section 1960 of the TSA Mod Act required TSA to encourage increased participation by air carrier employees in a voluntary self-defense training program. TSA asserted 40 self-defense classes are conducted per year, but could not provide documentation to show the requirement is completed.

#### **TSA Did Not Designate a Lead Office for Oversight and Quality Assurance**

TSA did not designate a lead office to establish internal controls, conduct oversight, and provide quality assurance for implementing the legislatively mandated requirements. Instead, multiple offices in TSA share responsibility for implementing legislative requirements. Exec Sec and LA facilitate document submissions and responses to Congress from the program offices. These offices have limited oversight responsibilities for some congressional correspondence, but their oversight does not include conducting quality control checks or ensuring program offices fully meet all requirements. Instead, individual program offices are responsible for fulfilling the Acts' requirements, including reporting implementation status to Exec Sec and OLA for congressional reporting purposes.

According to TSA officials, each program office, which is led by an EAA, operates independently and has a separate process for implementing TSA Mod Act requirements. As the leader of a program office, each EAA is responsible for oversight of the execution of programs within their offices. We reviewed the performance plans for the EAAs for each of the four program offices and noted that each one includes a requirement to meet implementation deadlines set forth in the TSA Mod Act. Two of the EAAs' performance plans identify general responsibilities such as ensuring quality and timeliness of goals.

Without a lead office to conduct oversight and quality assurance of efforts to implement congressional mandates, TSA cannot ensure it is fully implementing and meeting the intent of each requirement.

#### **TSA Did Not Establish Formal Procedures to Monitor, Track, and Implement Legislative Requirements**

LA, Exec Sec, and the program offices did not establish formal standard operating procedures or directives for monitoring, tracking, and implementing all 9/11 and TSA Mod Act requirements. We requested policies and procedures related to implementing legislative requirements from TSA. TSA provided guidance related to congressional engagements, inquiries, and reports, but none related to implementing legislative mandates. The guidance TSA provided



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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did not specify necessary steps for documenting the review and assessment of the sufficiency of information to conclude that TSA fully implemented such mandates.

Exec Sec provided us with its undated *Reports to Congress Desk Guide*, which identifies the process for developing and approving a congressional report. We analyzed the document and determined it did not contain specific procedures for implementing other types of legislative mandates other than congressional reports. For example, the guide does not describe how to:

- track and process legislative mandates;
- critically analyze supporting documentation;
- assess the sufficiency and timeliness of actions taken;
- determine whether actions taken meet the intent of the legislative requirements; and
- submit information to Congress to meet legislative deadlines.

The guide also contains a flowchart identifying the general roles several key offices play in the development, approval, external clearance, and submission of reports to Congress. Similarly, Security Operations' *Executive Correspondence Procedures*, dated August 28, 2020, focuses on steps and responsibilities specific to submitting reports to Congress. Neither document includes processes for implementing various legislative mandates that do not require congressional reports.

Without formalized policies and procedures that identify specific roles and responsibilities for implementing requirements, TSA cannot hold individuals accountable to fully comply with legislative mandates.

### **TSA Did Not Properly Maintain Records to Demonstrate Progress Meeting Requirements**

TSA did not always properly maintain records to demonstrate progress and track relevant supporting documentation to show implementation of the requirements of the 9/11 Act and TSA Mod Act. Specifically, TSA's databases for tracking implementation of legislative mandates did not contain all relevant supporting documentation. Additionally, TSA program offices could not always provide documentation to support implementation of the Acts' requirements.

#### TSA's Databases Did Not Contain Supporting Documentation to Track Implementation of Requirements

TSA uses two databases, SharePoint and the Correspondence Control Management System, for tracking and monitoring completion of requirements



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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in accordance with the legislative deadlines. According to TSA, it uses SharePoint to determine whether a program office is on track to meet a requirement deadline for completion, but acknowledged SharePoint cannot store all legislative supporting documentation. As a result, each program office is assigned requirements it must implement and updates the database on the periodic progress for each requirement. LA relies on the EAAs to determine whether requirements are satisfied and on the program offices to oversee, review, track, and maintain all supporting documentation related to implementing legislative requirements.

Exec Sec uses the Correspondence Control Management System to maintain information derived from SharePoint related to implementation of legislative requirements. According to the Security Operation's *Executive Correspondence Procedures*, this database tracks reporting requirements assigned to the program offices. In addition, Exec Sec's *Reports to Congress Desk Guide* notes the database also tracks the progress of congressional reports towards completion. According to an Exec Sec official, Exec Sec only tracks where the requirement documents are physically located in TSA, not whether program offices monitor progress towards completing the requirements. Exec Sec also relies on the EAAs to ensure that the information meets the intent of the requirements.

We determined that TSA's Mod Act tracking database contained inaccurate or incomplete information. Specifically, for 21 out of 202 (10 percent) Mod Act requirements, this database showed requirements were completed, but TSA could not provide any supporting documentation, or the documentation provided was insufficient to conclude the requirement was implemented. For example, Section 1938 of the TSA Mod Act requires TSA to establish a working group to advise the Administrator on developing deployment plans for risk-modified screening at TSA's passenger screening checkpoints other than TSA PreCheck®<sup>6</sup> lanes. This protocol was designed to further separate passengers based on risk. TSA's tracking system indicated the component completed this mandate, but TSA did not provide us with documentation to show that it was fully implemented. TSA provided us with an Administrator briefing memorandum for a stakeholder meeting, working group meeting notes, and email exchanges scheduling a briefing with multiple associations. TSA did not provide sufficient documentation identifying the members of the working group and what the group was established to do.

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<sup>6</sup> TSA's PreCheck trusted traveler program is designed to be an intelligence-driven and risk-based security approach to identify low-risk passengers for expedited checkpoint screening at the airport.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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TSA's Mod Act tracking database also identifies requirements that TSA considered on track for meeting the legislative deadlines. We identified three requirements that TSA believed would be implemented on time. However, it could not provide sufficient supporting documentation to demonstrate ongoing efforts were adequate to achieve full implementation by the deadlines.

#### TSA's Program Offices Could Not Retrieve Documentation to Support Implementing All Act Requirements

Because TSA's databases do not contain all relevant documentation to support implementation of the Acts' requirements, LA and Exec Sec rely on each program office to maintain documentation for requirements it must implement. TSA's program offices could not retrieve documentation necessary to support implementation of 19 requirements of the 9/11 Act. For example, Section 1407 of the 9/11 Act requires DHS to establish a program on conducting security exercises for public transportation agencies. TSA could not provide documentation, such as program information, performance measures, and best practice assessments, related to its security and training programs.

TSA also could not provide documentation to support completion of Section 1405 of the 9/11 Act, which requires DHS to update its public transportation security priority assessment annually. The component initially provided an e-mail explaining the implementation status, which was not sufficient, and we requested additional information needed to consider this requirement completed. TSA provided more information related to this requirement nearly five months after our initial data request. However, we determined this additional information was not sufficient. According to TSA officials, a former TSA employee was the primary individual responsible for maintaining the records supporting implementation efforts of the 9/11 Act requirements. Once the individual left the component, TSA could not locate some of these records.

TSA officials acknowledged difficulties locating supporting documentation and cited reasons for these challenges, such as:

- difficulty identifying the individual or individuals responsible for implementing each requirement;
- TSA's internal processes involving multiple offices for implementing legislative mandates;
- staff turnover;
- multiple reorganizations; and
- age of the requirements.

Because of the significant challenges TSA had locating supporting documentation for the 9/11 Act requirements, we did not pursue supporting



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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documentation for 38 of the 9/11 Act requirements. Doing so would have likely required significant time and resources, with potentially limited value in answering our objective. These 38 requirements were non-recurring with mandated deadlines earlier than 2012 and are not included in Figure 1. We advised TSA of the OIG requirement to review these Acts every 2 years. This would allow TSA time to research and locate the support for completing the earlier requirements prior to our next audit.

TSA also had challenges locating and retrieving supporting documentation for the TSA Mod Act. For example, Section 1925 of the TSA Mod Act requires TSA to develop a pilot program to test the use of screening equipment using computed tomography technology to screen air cargo. TSA provided a Requirements and Capabilities Analysis briefing document, *Computed Tomography Pilot Program: EDS Field Assessment Updates*, as evidence of its pilot program. However, it is not clear that the pilot program used emerging or new screening technologies such as computed tomography technology. Therefore, we could not determine whether this alternative meets the intent of the legislative mandate.

### **External Challenges to Implementing Legislative Mandates**

TSA did not implement certain requirements in the 9/11 Act due to required external actions, namely lengthy regulatory processes or the need to coordinate with and rely on external government and industry stakeholders, both domestic and international.

First, we identified three 9/11 Act requirements involving regulations that TSA did not complete or partially completed. According to TSA, implementation of requirements involving rulemaking can be challenging because of regulatory processes. For TSA to publish a regulation, it must take several actions such as:

- developing proposed regulatory language,
- conducting a cost-benefit analysis,
- having the proposed rule reviewed by the Office of Management and Budget (OMB),
- allowing the public to comment on the proposed rule, and
- preparing the final rule for publishing in the Federal Register.

Appendix E contains additional details on the standard Federal rulemaking process.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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We previously reported<sup>7</sup> on the complex rulemaking process, which contributed to TSA's challenges implementing timely passenger rail requirements in the 9/11 Act. For example, Section 1531 of the 9/11 Act requires DHS to review and approve bus operators' vulnerability assessments and security plans pursuant to standards and guidance in DHS-issued regulations within 6 months of receiving the operators' submissions. TSA has not fulfilled this requirement due to the complex regulatory process.

Second, to complete 26 of the requirements, the Acts direct DHS and TSA to coordinate with or rely on other agencies and industry partners. Fulfilling the legislative mandates is contingent on efforts by entities external to TSA. TSA did not implement some of the Acts' requirements because to do so requires external entities to act first. For example:

- Section 1534 of the 9/11 Act requires DHS to approve or revise security training programs developed by specific bus operators to meet Federal regulations. As noted in the October 26, 2020 amendment to the Final Rule in the Federal Register, TSA granted a second extension for approval submissions. The Surface Transportation Security Advisory Committee, which TSA established in 2019, as required by Section 1969 of the TSA Mod Act, requested an extension to submit required training plans to TSA due to the impact of the COVID-19 public health crisis. TSA's Senior Official Performing the Duties of the Administrator extended the deadline to June 21, 2021. As a result, this requirement has not been implemented.
- Section 1974 of the TSA Mod Act requires the TSA Administrator to issue a decision on Amtrak's use of TSA's Secure Flight program or a similar passenger vetting system. This vetting system uses Federal Government terrorist watchlists to enhance passenger security. Before TSA can render its decision, Amtrak must first submit a request. According to TSA, Amtrak had not submitted a request for this passenger vetting system. As a result, TSA has not issued a decision.

### Conclusion

Without a lead office to conduct oversight and quality assurance of TSA's efforts to coordinate implementation of congressional mandates, TSA cannot ensure it fully implements and meets the intent of each requirement. Additionally, the development of formalized policies and procedures is essential to identify specific roles and responsibilities for implementing requirements and to hold individuals accountable for fully complying with legislative

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<sup>7</sup> *TSA Oversight of National Passenger Rail System Security*, OIG-16-91, May 13, 2016.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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mandates. Without an effective system for documenting and archiving essential supporting documentation, TSA cannot ensure it accurately tracks the implementation status of legislative mandates and fully meets requirements. By not fulfilling the requirements, which were intended to better prepare and guard against future terrorist attacks on transportation systems and commercial aviation, TSA may be missing opportunities to address vulnerabilities and improve the security of the Nation's transportation systems.

### **Recommendation**

**Recommendation 1:** We recommend the Administrator, Transportation Security Administration, designate a lead office responsible for establishing internal controls, conducting routine oversight, and providing quality assurance for the implementation of outstanding legislative mandates in the 9/11 Act and TSA Modernization Act, as well as future legislation. This should include:

- a. establishing formal policies and procedures for resolving and closing legislative mandates to include:
  - analyzing critically supporting documentation;
  - reviewing details and assessing the sufficiency and timeliness of actions taken; and
  - documenting its review and conclusions reached.
- b. developing a reliable system to enable more complete and accurate tracking of existing and future legislative mandates to ensure all relevant documentation is properly archived and retrievable.
- c. ensuring TSA documents requirements and maintains correspondence with Congress and the Inspector General regarding those requirements that are challenging and cannot be done timely due to external factors, as well as identifying redundant requirements in other legislation so TSA can avoid duplicative efforts.

### **TSA Management Comments and OIG Analysis**

In its response to our report, TSA expressed appreciation for our review but disagreed with some of our analyses and conclusions, had significant concerns with our findings, and did not concur with our recommendation. We routinely met and communicated with TSA officials to review, discuss, and confirm the status of the Acts' requirements and the actions needed for TSA to improve



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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requirement compliance. Additionally, we made several contextual revisions to the report and the recommendation based on lengthy discussions with TSA officials. Although it did not concur with our recommendation, TSA has begun implementing a corrective action plan that may satisfy its intent.

TSA also noted that the report treats requirements we determined were “not completed” and “partially completed” as the same. Officials argued that we weighed partially completed requirements the same as requirements not completed in the overall analysis, which disregards the totality of TSA's implementation efforts. We assessed TSA's compliance with the Acts' requirements and assessed whether TSA met all, none, or some of each requirement as mandated by law. We objectively reported our assessment and gave TSA credit for partially completing requirements.

TSA further noted that the report does not recognize its efforts to implement requirements despite a lack of funding to carry them out and wanted credit for finding ways to partially fulfill some requirements despite funding challenges. TSA took issue with us reporting these requirements the same as mandates for which funding was provided. Due to budgetary constraints and the absence of funding in annual appropriations legislation, TSA said it was unable to fully implement these requirements. We recognized external factors within the report and noted challenges. However, TSA never provided support for lack of funding during our audit. Further, TSA could not provide evidence it had communicated its budget challenges to Congress directly or through OMB.

TSA's response noted that the report fails to acknowledge a critical distinction between the TSA Mod Act and the 9/11 Act when identifying TSA's lack of compliance resulting from not establishing formal procedures to monitor, track, and implement legislative requirements. Officials explained that when Congress enacted the 9/11 Act, the Department assumed responsibility for ensuring components implemented the requirements. Overall coordination for assigning responsibilities and reporting on implementation was carried out at the departmental level, while TSA tracked implementation of actions assigned to it, following extensive DHS working group coordination efforts. TSA phased out internal tracking as the majority of requirements were implemented. However, TSA continued to provide updates on the status of these requirements to Congress. We recognize some requirements were implemented in the past, but TSA was unable to share proof of completion for many.

According to TSA, for the TSA Mod Act, its executive leadership and staff worked collaboratively to identify requirements and assigned responsibility for implementing the requirements identified. According to officials, TSA established structure, assigned responsibility, delegated authority, and enforced accountability in alignment with principles in GAO's *Standards for*



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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*Internal Control in the Federal Government.* TSA assigned responsibility and delegated authority to implement requirements, which created accountability by tying implementation to performance plans. Although TSA took these actions, component officials could not collect and share results with the OIG to demonstrate accountability for implementing the requirements.

We consider the recommendation unresolved and open. Appendix B contains a copy of TSA's comments in their entirety. TSA submitted technical comments separately, which we incorporated in the report as appropriate. The following is a summary of TSA's response to the draft report and OIG's analysis of the response.

**TSA Response to the Recommendation:** Non-concur. TSA asserted it has improved its ability to establish internal controls, conduct oversight to ensure implementation actions are documented, and ensure the quality of its actions to implement legislative mandates. Due to records retention issues for documentation of 9/11 Act requirement implementation, officials stated TSA would not be able to "research and locate the support for completing the earlier requirements prior to the OIG's next audit," as suggested in the draft report. TSA also opposed the designation of a lead office as recommended. However, TSA leadership will issue a formal directive of established processes for oversight and monitoring of component implementation of enacted legislation, including designating a lead office for oversight responsibilities, as appropriate.

**OIG Analysis:** Although TSA did not concur with our recommendation, it agrees action is needed to improve efforts meeting and documenting implementation of requirements. Specifically, TSA plans to issue a formal directive of established processes for oversight and monitoring of implementation of enacted legislation, including designating a lead office for oversight responsibilities. Although these are positive steps, we believe implementing the recommendation in its entirety will ensure TSA has sufficient and appropriate controls in place to ensure it meets all legislative mandates in these two Acts and future legislation. This recommendation is unresolved and open until TSA provides evidence it has taken sufficient corrective actions to fulfill and complete legislative requirements.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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### **Appendix A**

#### **Objective, Scope, and Methodology**

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of our audit was to determine the extent to which TSA has implemented requirements of the 9/11 Act and TSA Mod Act to develop strategies, programs, regulations, reports, and other initiatives to strengthen transportation security. Section 1967(b) of the TSA Mod Act requires us to report to Congress every 2 years on the status of TSA's implementation of requirements in Titles XIII, XIV, and XV of the 9/11 Act and all of TSA's requirements in the TSA Mod Act. The report should contain:

- identification of the requirements that have not been fully implemented;
- description of what additional action is necessary, and
- recommendations regarding whether any of the 9/11 Act or TSA Mod Act requirements should be amended or repealed.

To answer our objective, we reviewed and analyzed the 9/11 and TSA Mod Acts to identify all legislative mandates for TSA. Most of the requirements we identified indicated that TSA "shall" take a specific action. We grouped some of the requirements together if they were related and involved the same action or product. We provided TSA with the requirements we identified for both Acts and our assessment of the implementation status for each. We reviewed associated supporting documentation provided by TSA to determine whether TSA's actions fully implemented the requirements. We also reviewed relevant Federal regulations and TSA criteria, congressional testimony, and prior OIG and GAO audit reports.

We interviewed TSA headquarters officials from various offices to identify (1) the processes used to track, monitor, and implement the 9/11 and TSA Mod Act requirements; (2) completed and ongoing efforts to implement requirements; (3) challenges retrieving supporting documents; and (4) record retention requirements. These offices are:

- Executive Secretariat
- Legislative Affairs
- Operations Support
- Office of Chief Counsel
- Enterprise Support
- Security Operations



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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- Law Enforcement/Federal Air Marshal Service
- Audit Liaison Division
- Records Management Officers

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. Our assessment included TSA's controls over its implementation of legislative mandates such as oversight, quality assurance measures, standard operating procedures, and records maintenance. Because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

We assessed the reliability of TSA's tracking databases showing the implementation status of the Acts' requirements. We determined that TSA's Mod Act database was not sufficiently reliable. For example, we identified instances where the database showed requirements were completed, but TSA could not provide supporting documentation, or the information provided was insufficient to conclude that TSA completed the requirement.

During our audit, we encountered significant issues with obtaining sufficient evidence from TSA to determine the completion status of the 9/11 and TSA Mod Act requirements that affected data reliability. Challenges we encountered included:

- insufficient and missing supporting documentation;
- inability to gain access to TSA's SharePoint system to review all relevant information related to implementation of mandated requirements;
- concerns raised by TSA staff about their ability to retrieve documents; and
- different office processes for tracking requirement implementation status.

As a result of these challenges, and the significant time and resources needed to locate documents, we did not pursue 9/11 Act requirements that were non-recurring with mandated deadlines earlier than 2012. We identified issues related to the accuracy of TSA's Mod Act tracking database and the component's ability to provide all supporting documentation. However, we determined the documents TSA provided were sufficient for us to draw our conclusions about the implementation status for the requirements they supported.

To ensure timely reporting, we established an agreed upon 2-week timeframe for TSA to provide supporting documentation. For 28 requirements, TSA continued to provide us with additional documentation beyond the 2-week



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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timeframe, but we could not review the information and maintain our audit schedule for timely reporting. Since the TSA Mod Act requires us to report every 2 years on TSA's implementation status of the 9/11 Act and TSA Mod Act requirements until all mandates are implemented, we will review this additional information as part of our follow-up audit.

We conducted this performance audit between July 2020 and May 2021 pursuant to the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix B**  
**TSA's Comments to the Draft Report**



U.S. Department of Homeland Security  
Transportation Security Administration  
6595 Springfield Center Drive  
Springfield, Virginia 20598

September 7, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.  
Inspector General  
Department of Homeland Security

FROM: David P. Pekoske *David P. Pekoske*  
Administrator

SUBJECT: Management Response to OIG Report: "TSA Has Not Implemented All Requirements of the 9/11 Act and the TSA Modernization Act" (Project No. 20-052-AUD-TSA)

Thank you for the opportunity to comment on this report. The Transportation Security Administration (TSA) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review, but disagrees with some of the analyses and conclusions that are contained in this draft report.

As the Nation marks 20 years since the September 11, 2001, terrorist attacks and enactment of the 2001 "Aviation and Transportation Security Act", Pub. L. No. 107-71, TSA remains committed to its mission of protecting the Nation's transportation systems to ensure freedom of movement for people and commerce. We would like to acknowledge Congress for introducing and passing both the "TSA Modernization Act" (TSA Mod Act) and "Implementing Recommendations of the 9/11 Commission Act of 2007" (9/11 Act), which are important and complex pieces of legislation that have advanced and improved transportation security.

Although we value our continued partnership with the OIG, we have significant concerns with the draft report and non-concur with the findings and recommendation.

Overall, TSA takes issue with:

- 1) OIG's determination of the number of requirements that have been implemented from both the October 5, 2018, "TSA Modernization Act" (TSA Mod Act) and the August 3, 2007, "Implementing Recommendations of the 9/11 Commission Act of 2007" (9/11 Act), as well as the methodology used to make that determination.
- 2) The draft report's assertion that TSA's lack of compliance results from not:
  - a. "Designat[ing] a lead office responsible for establishing internal controls, conducting oversight, and providing quality assurance for the implementation of legislative mandates;"



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

2

- b. “Develop[ing] formal policies and procedures to ensure consistency and accountability for implementing legislatively mandated requirements on time;” and
  - c. “Plan[ning] or develop[ing] an effective system to maintain relevant supporting documentation for the Acts’ requirements to help ensure information accuracy, continuity, and record retrieval capability.”
- 3) OIG’s criticisms of TSA’s inability to produce documentation sufficient to satisfy the OIG regarding compliance with the statutory requirements.

#### **OIG’s Determination of Implementation Progress and Methodology Used**

Pursuant to the audit directive included in Section 1967(b) of the TSA Mod Act, OIG is required to audit TSA’s implementation of the requirements in Titles XIII, XIV, and XV of the 9/11 Act, not *all* requirements in the 9/11 Act. TSA believes that the title of the OIG draft report leads the reader to believe implementation of the entire law was reviewed, when it was not.<sup>1</sup>

Further, as noted in Figure 1 on page 4 of the OIG’s draft report, seven of the 202 TSA Mod Act requirements were outside of TSA’s control to implement, yet the OIG includes these seven requirements in the denominator of total Mod Act requirements when calculating its statistics. Including these requirements in the overall total of requirements for TSA to complete skews the OIG’s statistics and creates an inaccurate assessment of TSA’s efforts to implement statutory mandates.

The OIG’s draft report also treats requirements that are “not completed” and “partially completed” as effectively the same category in Figure 1 and on pages 3 and 4 of the draft report. No weight is given to partially completed requirements in the overall analysis, which also disregards the totality of TSA’s implementation efforts. This analysis leads to a recommendation that assumes TSA is deficient in its implementation processes because it has not implemented all statutory requirements yet. We disagree with this logic and the way the statistics were evaluated and portrayed by OIG.

Additionally, the OIG’s draft report does not recognize TSA’s efforts to implement requirements despite a lack of funding to carry out these requirements and faults TSA for not being able to fully satisfy these requirements. The draft report treats these requirements the same as mandates for which funding was provided. Due to budgetary constraints and the absence of funding in annual appropriations legislation, TSA was unable to fully implement these requirements. However, TSA still found ways to partially fulfill these requirements. TSA believes that requirements without appropriated funding should be recognized as such in the OIG’s draft report, and that TSA should not be criticized for not completing them. Examples of these requirements include:

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<sup>1</sup> In October 2020, OIG provided a spreadsheet that included 105 requirements from the 9/11 Act that they determined were within the scope of the statutorily required audit. In December 2020, OIG notified TSA that they would only consider 49 of these requirements (stating they were removing those requirements for which the due date was over eight years ago and for which there is no recurring requirement). While the report notes it is only representing the number of requirements the OIG reviewed (Report at 6), they continually use this number (49 requirements) as representative of TSA’s overall compliance with the 9/11 Act.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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3

- **TSA Mod Act Section 1920 (Pilot Program for Automated Exit Lane Technology):** Despite lack of appropriations, TSA conducted limited data collection to meet the intent of this provision. TSA conducted a site visit in September 2019 to a Category III airport to gain insight into the airport's use of automated technology for securing passenger exit lanes, collect feedback on the airport's self-reported benefits from using security technology to secure its exit lanes, and identify variables which should be taken into consideration when assessing the financial feasibility of installing automated security technology to secure exit lanes at Category II and III airports. An analytical report was prepared and made available to appropriate stakeholders. While there was an authorization of appropriations to carry out the pilot program, no funds were ultimately appropriated, thereby curbing TSA's ability to conduct the required pilot program. TSA communicated concerns to the Chairs and Ranking Members of TSA's authorizing committees in correspondence dated March 22, 2019 and September 3, 2020. TSA also updated committee staff on the implementation of this requirement during a briefing titled, "Status Update: TSA Modernization Act Implementation" on May 7, 2020. TSA continues to support airport use of exit lane technologies. Beginning in 2014, TSA has maintained an exit lane resource toolbox available to authorized, vetted users free of charge. In addition to useful operational guidance and best practices advice, the toolbox includes an algorithm that assists stakeholders in selecting the types of exit lane systems that are best for their unique environments.
- **TSA Mod Act Section 1922 (Real-Time Security Checkpoint Wait Times):** TSA conveyed to authorizing committee staff in multiple briefings, such as in October and December 2018, that this requirement had neither an authorization for, nor an appropriation to implement the requirements. TSA conducted significant research on various types of customer movement technologies, including conducting a formal Request for Information and hosting an Industry Day to engage with vendors on developing requirements. TSA also formally established requirements, demonstrated different technologies, and formalized an Integrated Project Team (IPT) to assess technology already in use at more than 425 airports nationwide that might be leveraged to meet section 1922 requirements. The IPT identified various implementation methods and estimated it would cost approximately \$250 million over five years to implement the provision fully. Recognizing existing funding limitations, TSA modified checkpoint reporting requirements consistent with the statutory definition of wait times through processes and technologies currently in place. It is also important to note that further implementation of this requirement will occur over time as airports make checkpoint investments increasing the ability to fully implement this requirement.
- **TSA Mod Act Section 1925(c) (New or Emerging Screening Technology Pilot for Air Cargo):** The Congressional Budget Office estimated the cost to implement this provision at \$7 million in the FY 2019-2021 period.<sup>2</sup> TSA completed the required feasibility study required under 1925(b) without additional funding. Additionally, TSA used a planned Explosives Detection Systems (EDS) technology field assessment to meet the

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<sup>2</sup> Megan Carroll and Jon Sperl, "Cost Estimate: H.R. 4176 Air Cargo Security Improvement Act of 2018," Congressional Budget Office, March 20, 2018, available at: <https://www.cbo.gov/publication/53679>.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

4

requirement for a pilot. The field assessment was completed and a final report will be made available to appropriate stakeholders. TSA has provided four briefings to Congress on the implementation of this requirement.<sup>3</sup> TSA continues to focus on new and emerging technology and methods to screen air cargo. TSA requires regulated parties to screen cargo using approved screening methods. To support compliance with this requirement, the agency continues to provide a list of air cargo screening technology that has been assessed by TSA. TSA also established the Third-Party Canine-Cargo (3PK9-C) program to enhance the screening of air cargo by leveraging the capabilities of third-party explosives detection canine teams. The 3PK9-C program was created under TSA's Certified Cargo Screening Programs (CCSP), 49 CFR part 1549, to provide an efficient and effective method for screening air cargo to TSA's standards.

It is also important to note that in both testimony and correspondence with Congress, there is agreement between Congress and TSA regarding the need to complete the rulemakings required by sections 1408, 1414, 1512, 1517, 1531, and 1534 of the 9/11 Act. In none of these communications has Congress indicated that it considers TSA to have failed at satisfying other requirements in the 9/11 Act.

TSA regularly communicated with and briefed Congress, both proactively and as required by statute, about our progress in implementing requirements in both Acts. These engagements demonstrate TSA's transparency with Congress on actions taken.<sup>4</sup> On October 29, 2019, the House Committee on Homeland Security (CHS), Subcommittee on Transportation and Maritime Security (TMS) held a hearing, at which TSA appeared as a witness, entitled "One Year Later: Implementation of the TSA Modernization Act." In his opening statement, CHS-TMS Chairman Luis Correa (D-CA) noted "[w]e appreciate TSA's dedication to implementing the many directives and reporting requirements in this bill, as well as TSA's transparency in updating the Committee on its progress." CHS Chairman Bennie Thompson's (D-MS) opening statement echoed Chairman Correa's sentiments about the monumental task TSA had in implementing the many requirements of the TSA Mod Act, as well as, the transparency and proactive steps TSA took to keep Congress apprised of implementation progress saying, "I thank TSA for its efforts to implement the agency's first-ever reauthorization, a complex law with a large number of provisions. I appreciate TSA's commitment to transparency and providing this Committee regular updates." CHS-TMS Ranking Member Debbie Lesko (R-AZ) also positively noted that TSA's work, "along with Congressional oversight has resulted in 87 percent of the laws required actions for TSA being either successfully completed or on track for successful completion in a timely manner."

Additionally, we recommend the OIG report acknowledge that the Unified Agenda of Regulatory and Deregulatory Actions (Agenda) provides a regular and transparent tracking on the status of the rulemakings required by the 9/11 Act. The scope of items listed in the Agenda are set by the Office of Information and Regulatory Affairs (OIRA) and consider overall capability to establish regulations across the Government. The Agenda reports on the regulatory

<sup>3</sup> TSA briefings to Congress pursuant to section 1925(d) of the TSA Mod Act occurred on: December 5, 2019; May 7, 2020; November 4, 2020, and May 14, 2021.

<sup>4</sup> Examples, but not an exhaustive list, of proactive, non-statutorily required briefings to Congress on TSA Mod Act implementation were held on: October 31 and December 18, 2018; February 7, 2019; and May 7, 2020.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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5

actions agencies plan to issue in the near and long term, and TSA, like other federal agencies, must comply with the regulatory processes established by OIRA.

#### **OIG's Assertion of Lack of Formal Procedures to Monitor, Track, and Implement Legislative Requirements**

OIG's determination that TSA's lack of compliance stemmed from not establishing formal procedures to monitor, track, and implement legislative requirements fails to acknowledge a critical distinction between the TSA Mod Act and the 9/11 Act. While the Department of Homeland Security (DHS) assumed the responsibility of assuring that Components implemented 9/11 Act requirements assigned to them acting on behalf of the Secretary of Homeland Security,<sup>5</sup> transportation security provisions in the TSA Mod Act generally require the TSA Administrator to take action.

Consequently, upon enactment of the 9/11 Act, overall coordination for assignment of responsibilities and reporting on implementation was conducted at the Departmental level, while TSA tracked implementation of actions assigned to it following extensive DHS working group coordination efforts. TSA phased out internal tracking as the majority of requirements were implemented. However, TSA continued to provide updates of the status of these requirements to Congress and through the Agenda.

With regard to the Mod Act, TSA executive leadership and staff worked collaboratively to identify requirements within the Act and assigned an Executive Assistant Administrator (EAA) responsible for implementing the requirements identified. TSA does not believe that the OIG's conclusions about formal procedures fully acknowledge the structure, assignment of responsibility, delegation of authority, and enforcement of accountability that TSA enacted in alignment with the principles of the U.S. Government Accountability Office's (GAO) "Standards for Internal Controls in the Federal Government," dated September 2014. Consistent with GAO Principles 3 and 5, TSA assigned responsibility for, and delegated authority to achieve, requirement implementation to EAAs. This action achieved accountability by tying implementation to EAA performance plans. Yet the OIG's conclusions on pages 8 and 13 of its draft report do not recognize that TSA's actions are in alignment with GAO's standards and achieve the same goal that the draft report's recommendation is intended to achieve.

Criticisms of TSA's databases used to track and document implementation of requirements are also misdirected, as they ignore the purposes and functions of these systems. TSA disagrees with the report's criticisms of the sufficiency of TSA's tracking databases, such as the SharePoint database and Correspondence Control Management System (CCMS).

The SharePoint tracker's principle purpose was to provide a high-level snapshot of TSA Mod Act requirements. The SharePoint tracker was not designed to replace program management systems used to document every aspect of a program; these more comprehensive tracking mechanisms and systems reside within EAA offices.

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<sup>5</sup> See, e.g., section 1303 that authorizes the Secretary, "acting through the Administrator of the Transportation Security" to develop Visible Intermodal Prevention and Response Teams."



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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6

Additionally, the OIG reviewed the SharePoint tracker in a non-original format during the course of fieldwork. Due to technological access issues, TSA provided data contained in this database via Microsoft Excel spreadsheet format on several occasions. These spreadsheets presented the data in a format not as user-friendly as in its original SharePoint format, and were only a snapshot of data at the point in time the data was downloaded into spreadsheet format.

Further, the CCMS system is a document-specific database designed to hold versions of documents as they make their way to senior TSA leadership for review, approval, or signature. This system predated the TSA Mod Act, and tracks documents beyond, for example, reports to Congress. This system was not meant to capture every document associated with a program or implementation of TSA Mod Act requirements.

TSA also disagrees with what the OIG believes to be a sufficient body of information to consider a requirement completed. In the case of TSA Mod Act Section 1938, for example, TSA provided a meeting memorandum, working group meeting notes, and scheduling emails. However, the OIG nevertheless determined this documentation was insufficient to show a working group was established.

#### **OIG's Criticisms of TSA's Inability to Produce Documentation**

Similarly, TSA disagrees with the draft report's criticisms regarding TSA's production of sufficient documents to satisfy the OIG regarding compliance with statutory mandates and does not believe that a lack of ability to provide documentation equates to non-compliance. In several instances, the OIG requested a level of documentation that cannot be met for many 9/11 Act requirements due to the passage of time, including the schedules for records retention and destruction, or records of meeting attendance or copies of presentations more than a decade old. TSA believes that concluding the inability to produce such documents as indicative of non-compliance is an unfair and inaccurate characterization of TSA's ability to produce and maintain sufficient documentation.

Although TSA acknowledges that, in some instances, such as Section 1407 of the 9/11 Act, TSA was unable to produce program information, performance measures and best practice assessments, it should be noted that the 9/11 Act was signed into law in 2007 and that some of the documents sought by the OIG related to Section 1407, or other requirements, may have been unavailable because they were previously disposed of pursuant to an appropriate National Archives and Records Administration (NARA)-approved disposition authority. The unavailability of records that were properly disposed of in accordance with NARA-approved disposition authorities should not be taken as evidence of noncompliance with requirements, especially if TSA has established a program for public transportation agencies to conduct security exercises as required by Section 1407.

With regard to the draft report specifically citing Section 1925 of the TSA Mod Act as an example where TSA "also had challenges locating and retrieving supporting documentation for the TSA Mod Act," TSA notes that, on February 5, 2021, the OIG was tracking the four requirements of Section 1925 as "met" and "closed." Later, however, despite this assessment and TSA providing documentation initially on September 15, 2020, and on multiple occasions



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

7

thereafter, including in response to the OIG's final request for information during fieldwork in late April, 2021, the OIG later determined Section 1925(c) to be "Not Met" on June 17, 2021.<sup>6</sup> It appears that the OIG misunderstood the documentation TSA provided for this requirement and concluded TSA has deficient record keeping, when what actually is at play is a disagreement of what constitutes sufficient documentation to prove implementation.<sup>7</sup>

Further, although the draft report states that TSA took months after OIG's initial data request to provide information satisfying implementation for Section 1405 of the 9/11 Act, TSA contends that this information was among the first sets of documents provided to the OIG during fieldwork on October 1, 2020, in response to a September 15, 2020, request for information. No follow-up requests for additional documentation were made by the OIG related to this section, and only after seeing an interim status of requirements in early 2021 did TSA come to understand that the OIG deemed the initial documentation insufficient. Accordingly, TSA sent a second set of documents relating to Section 1405 on February 20, 2021. This is only one example of a lack of clear communication from the OIG regarding its standard of review or expectations regarding documentation.

The OIG acknowledges on page 17 of the draft report that it was unable to review all of the information provided during the fieldwork for 28 requirements due to the audit schedule. TSA should not be criticized for not producing all requested documentation when TSA responded to numerous follow-up requests for information,<sup>8</sup> no standard of review or guidance on substantiating completion was communicated to TSA by the OIG, and ultimately the OIG did not review all documentation TSA provided. The assumption that TSA did not complete a requirement because the OIG potentially failed to review supporting documentation unfairly biases the analysis and statistics presented in the OIG's report.

In addition, page 16 of the draft report notes the OIG's "inability to gain access to TSA's SharePoint system to review all relevant information related to implementation of mandated requirements." However, TSA worked with the OIG to overcome technical obstacles and provide documentation for this audit, including:

<sup>6</sup> TSA acknowledges that the OIG's interim determination of requirement statuses were subject to change during fieldwork. The OIG represented to TSA on February 11, 2021, it had not yet reviewed all the documentation TSA had provided in response to requests, yet the term "closed" implies finality.

<sup>7</sup> Though not explicitly referenced in the report, this requirement refers to TSA Mod Act Section 1925(c), a "pilot program to achieve enhanced air cargo security screening outcomes through the use of new or emerging screening technologies, such as computed tomography technology . . ." (*emphasis added*). The OIG misunderstood the documentation TSA provided for this requirement. The documentation notes that, for the air cargo pilot program, technologies TSA may employ ". . . may include Non-Computed Tomography (Non-CT) Transmission X-Ray Devices. . ." TSA, in fact, used technology for the pilot that was computed tomography technology, even though Section 1925(c) did not require Computed Tomography be used. In addition, TSA provided documentation of compliance with Section 1925(d) (briefings to Congress on the implementation progress of Section 1925(c)) on October 19, 2020. At that time, TSA had provided two briefings pursuant to the requirement. To date, TSA has provided four required briefings pursuant to Section 1925(d). Interestingly, the OIG considers 1925(d) to be "complete," yet the pilot program, which was unfunded and upon which the briefings were providing updates, was considered "not met." The purpose for which the OIG provided Section 1925 as an example, that TSA "had challenges locating and retrieving supporting documentation," is not based in reality.

<sup>8</sup> The OIG continued to make additional requests for documentation through May 2021. The OIG indicated in its exit conference that it only considered material provided in a two-week window after a request for information was made.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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8

- Providing an alternative means for the OIG to assess TSA's SharePoint tracking system for the TSA Mod Act;
- Furnishing the OIG a secure flash drive containing more than 1,000 pages of information documenting implementation of requirements for the TSA Mod Act; and
- Resending documentation via email multiple times due to attachment size constraints by the recipients' email servers.

It should also be noted that this audit, including the entirety of its fieldwork, was conducted virtually during the COVID-19 pandemic, which is a contributing factor for some of the technical issues confronted. Further, TSA requested a meeting with the OIG to discuss the status of each requirement or provide context and further explanation for the documentation TSA provided. This meeting was ultimately held on August 24, 2021, 20 days after the Exit Conference with the OIG held on August 4, 2021. This delay of a timely dialogue between the OIG and TSA is an example of challenges stemming from the pandemic.

#### **Conclusion**

Ultimately, TSA believes that the numerous issues with the OIG's draft report mischaracterize TSA's progress in achieving implementation of the requirements from the TSA Mod Act and the 9/11 Act. It is important to note that the OIG's draft report does, however, illustrate an improvement in TSA's ability to implement the requirements in the TSA Mod Act (72 percent completed), when compared to the requirements completed as a subset of total 9/11 Act requirements (43 percent completed). TSA's tracking of the statutory mandates in the TSA Mod Act, enacted in 2018, reflects significant improvement through capabilities developed since enactment of the 9/11 Act in 2007, and therefore the title of the OIG's draft report is misleading and inaccurate. TSA believes this draft report—

- Inaccurately calculates statistics for the TSA Mod Act and 9/11 Act, and mischaracterizes compliance with these statutory mandates;
- Undervalues certain challenges and other facts related to records retention, technology, review of documentation, and lack of funding;
- Does not recognize efforts TSA made to follow the GAO's best practices for internal controls; and
- Does not capture efforts TSA has taken, both as required by law and proactively, to keep Congress apprised of its efforts implementing both Acts.

In light of TSA's mission for transportation security, laws with the breadth and complexity of the 9/11 Act and TSA Mod Act must be implemented with consideration of the risks and resources. TSA has consistently prioritized actions critical to address vulnerabilities in transportation security recognized by Congress and those that can be quickly implemented solely within TSA's control and availability of funding. TSA is also transparent with Congress on challenges to implementing requirements, notifies them when certain requirements cannot be met due to issues that may not have been anticipated when legislation was being drafted, and has not received indications from Congress that reports indicating compliance with mandates are unacceptable. TSA consistently acknowledged our prioritization of the surface security-related rulemakings



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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9

that are, in our view, the only outstanding requirements in the 9/11 Act, and continues to prioritize completion of these rules and full implementation of the TSA Mod Act.

The draft report contained one recommendation with which TSA non-concurs. Attached find our detailed response to the recommendation. TSA previously submitted technical comments addressing several accuracies, contextual, and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions.

Attachment:

1. Management Response to Recommendation Contained in 20-052-AUD-TSA



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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### Attachment: Management Response to Recommendation Contained in 20-052-AUD-TSA

OIG recommended that the TSA Administrator:

**Recommendation 1:** Designate a lead office responsible for establishing internal controls, conducting routine oversight, and providing quality assurance for the implementation of outstanding legislative mandates in the 9/11 Act and TSA Modernization Act, as well as future legislation. This should include:

- a. Establishing formal policies and procedures for resolving and closing legislative mandates to include:
  - analyzing critically supporting documentation
  - reviewing details and assessing the sufficiency and timeliness of actions taken
  - documenting its review and conclusions reached
- b. Developing a reliable system to enable more complete and accurate tracking of existing and future legislative mandates to ensure all relevant documentation is properly archived and retrievable
- c. Ensuring TSA documents requirements and maintains correspondence with Congress and the Inspector General regarding those requirements that are challenging and cannot be done timely due to external factors, as well as identifying redundant requirements in other legislation so TSA can avoid duplicative efforts

**Response:** Non-concur. This recommendation appears to be based upon what TSA regards as an inaccurate determination of the percentage of legislative requirements implemented and associated documentation. Instead, TSA believes it is important to note that the significant progress the agency has shown in its ability to document implementation of statutory requirements over time. While TSA does not agree with the OIG's analysis, the OIG's representation of a significant difference in implementation between the 9/11 Act and the TSA Mod Act recognizes that TSA improved its ability to establish internal controls, conduct oversight to ensure implementation actions are documented, and assure the quality of TSA's actions to implement legislative mandates.

The improvement in tracking and documentation systems was due to TSA's methods for: (1) tracking requirement implementation; (2) assigning responsibility to EAAs; and (3) instituting accountability mechanisms in accordance with the GAO's "Standards for Internal Controls in the Federal Government." TSA leadership, in conjunction with officials from TSA's Legislative Affairs, Chief Counsel, and EAA offices identified and assigned requirements from the TSA Mod Act. Responsibility for TSA Mod Act requirement implementation was assigned to EAAs, and accountability was achieved by tying implementation to EAA performance plans.

Further, the recommendation will not assist TSA's efforts to find or create documentation for actions that have already been completed or partially completed, making it impossible to apply the recommendation retroactively as implied by language in the report and recommendation.



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2

Due to records retention issues for documentation for 9/11 Act requirement implementation, TSA will not be able to “research and locate the support for completing the earlier requirements prior to [the OIG’s] next audit,” as suggested in the draft report.

Therefore, TSA opposes the designation of a lead office as the recommendation details. However, TSA leadership has directed the documentation (as a formal Directive) of established processes for oversight and monitoring of agency implementation of enacted legislation, to include designating a lead office for oversight responsibilities, as appropriate.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix C**  
**9/11 Act Requirements by Topic Area**

Titles & Sections	# of Requirements*	# of Requirements Not Fully Completed **
<b>TITLE XIII—TRANSPORTATION SECURITY ENHANCEMENTS</b>		
SEC. 1302 - Enforcement Authority	1	0
SEC. 1303 - Authorization of Visible Intermodal Prevention and Response Teams	1	0
SEC. 1304 - Surface Transportation Security Inspectors	1	0
SEC. 1305 - Surface Transportation Security Technology Information Sharing	1	0
SEC. 1307 - National Explosives Detection Canine Team Training Program	4	1
SEC. 1308 - Maritime and Surface Transportation Security User Fee Study	1	1
SEC. 1309 - Prohibition of Issuance of Transportation Security Cards to Convicted Felons	1	0
<b>TITLE XIV—PUBLIC TRANSPORTATION SECURITY</b>		
SEC. 1405 - Security Assessments and Plans	4	1
SEC. 1407 - Security Exercises	1	1
SEC. 1409 - Public Transportation Research and Development	1	0
SEC. 1410 - Information Sharing	1	1
SEC. 1412 - Reporting Requirements	2	2
SEC. 1413 - Public Transportation Employee Protections	1	1
<b>TITLE XV—SURFACE TRANSPORTATION SECURITY</b>		
<i>Subtitle A - General Provisions</i>		
SEC. 1501 - Definitions	1	0
SEC. 1502 - Oversight and Grant Procedures	2	1
<i>Subtitle B - Railroad Security</i>		
SEC. 1512 - Railroad Carrier Assessment and Plans	3	3
SEC. 1513 - Railroad Security Assistance	1	0
SEC. 1514 - System-wide Amtrak Security Upgrades	1	0
SEC. 1516 - Railroad Carrier Exercises	1	1
SEC. 1517 - Railroad Security Training Program	2	2
SEC. 1518 - Railroad Security Research and Development	1	0
SEC. 1519 - Railroad Tank Car Security Testing	3	3
SEC. 1521 - Railroad Employee Protections	1	1
SEC. 1522 - Security Background Checks of Covered Individuals	1	1
SEC. 1524 - International Railroad Security Program	1	1



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Department of Homeland Security

Titles & Sections	# of Requirements*	# of Requirements Not Fully Completed **
<b>Subtitle C - Over-the-Road Bus and Trucking Security</b>		
SEC. 1531 - Over-the-Road Bus Security Assessments and Plans	2	2
SEC. 1532 - Over-the-Road Bus Security Assistance	1	0
SEC. 1533 - Over-The-Road Bus Exercises	1	1
SEC. 1534 - Over-The-Road Bus Security Training Program	2	2
SEC. 1535 - Over-The-Road-Bus Security Research and Development	1	0
SEC. 1536 - Motor Carrier Employee Protections	1	0
<b>Subtitle D - Hazardous Material and Pipeline Security</b>		
SEC. 1552 - Railroad Security-Sensitive Material Tracking	1	1
SEC. 1554 - Motor Carrier Security-Sensitive Material Tracking	1	1
SEC. 1558 - Pipeline Security and Incident Recovery Plan	1	0
<b>Total TSA Requirements</b>	<b>49</b>	<b>28</b>

Source: DHS OIG analysis of 9/11 Act requirements

\*This table identifies the number of 9/11 Act requirements we reviewed. It does not reflect the 87 legislative requirements in the 9/11 Act we identified that TSA was to implement. As noted in this report, because of the significant challenges TSA had locating supporting documentation for the 9/11 Act requirements, we did not pursue supporting documentation for 38 of the 9/11 Act requirements. We reported on TSA's implementation status for 49 of these 87 requirements.

\*\*Requirements that were partially completed or not completed.



**OFFICE OF INSPECTOR GENERAL**  
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**Appendix D**  
**TSA Modernization Act Requirements by Topic Area**

Titles & Sections	# of Requirements*	# of Requirements Not Fully Completed**
<b>Title I - Transportation Security</b>		
<b>Subtitle A - Organization and Authorizations</b>		
SEC. 1905 - Transportation Security Administration Organization	2	0
SEC. 1906 - Transportation Security Administration Efficiency	2	0
SEC. 1907 - Personnel Management System Review	2	0
SEC. 1908 - TSA Leap Pay Reform	1	0
SEC. 1910 - Transmittals to Congress	1	0
<b>Subtitle B - Security Technologies</b>		
SEC. 1911 - Third Party Testing and Verification of Screening Technology	1	1
SEC. 1912 - Transportation Security Administration Systems Integration Facility	3	0
SEC. 1913 - Opportunities to Pursue Expanded Networks for Business	2	1
SEC. 1914 - Reciprocal Recognition of Security Standards	1	0
SEC. 1915 - Transportation Security Laboratory	3	0
SEC. 1916 - Innovation Task Force	2	0
SEC. 1917 - 5-Year Technology Investment Plan Update	2	0
SEC. 1918 - Maintenance of Security-Related Technology	2	0
SEC. 1919 - Biometrics Expansion	3	1
SEC. 1920 - Pilot Program for Automated Exit Lane Technology	1	1
SEC. 1922 - Real-Time Security Checkpoint Wait Times	1	1
SEC. 1924 - Screening Technology Review and Performance Objectives	7	3
SEC. 1925 - Computed Tomography Pilot Programs	4	1
<b>Subtitle C - Public Area Security</b>		
SEC. 1927 - Explosives Detection Canine Capacity Building	3	0
SEC. 1928 - Third Party Domestic Canines	4	3
SEC. 1929 - Tracking and Monitoring of Canine Training and Testing	1	0
SEC. 1930 - Visible Intermodal Prevention and Response (VIPR) Team Statistics	1	1
SEC. 1931 - Public Area Security Working Group	3	0



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Titles & Sections	# of Requirements*	# of Requirements Not Fully Completed**
SEC. 1932 - Public Area Best Practices	4	0
SEC. 1933 - Airport Worker Access Controls Cost and Feasibility Study	1	0
SEC. 1934 - Securing Airport Worker Access Points	10	1
SEC. 1935 - Law Enforcement Officer Reimbursement Program	2	1
SEC. 1936 - Airport Perimeter and Access Control Security	4	2
<b>Subtitle D - Passenger and Cargo Security</b>		
SEC. 1937 - PreCheck Program	7	1
SEC. 1938 - PreCheck Expedited Screening	7	3
SEC. 1939 - Trusted Traveler Programs; Collaboration	1	0
SEC. 1941 - Third Party Canine Teams for Air Cargo	1	0
SEC. 1942 - Known Shipper Program Review	1	0
SEC. 1943 - Establishment of Air Cargo Security Division	1	0
SEC. 1944 - Air Cargo Regulation Review	1	0
SEC. 1946 - Screening Partnership Program Updates	3	1
SEC. 1947 - Screening Performance Assessments	1	0
SEC. 1948 - Transportation Security Training Programs	2	0
SEC. 1949 - Traveler Redress Improvement	6	0
SEC. 1950 - Improvements for Screening of Passengers with Disabilities	4	0
SEC. 1951 - Air Cargo Advance Screening Program	8	0
SEC. 1952 - General Aviation Airports	3	0
<b>Subtitle E - Foreign Airport Security</b>		
SEC. 1953 - Last Point of Departure Airports; Security Directives	3	0
SEC. 1954 - Last Point of Departure Airport Assessment	1	0
SEC. 1955 - Tracking Security Screening Equipment from Last Point of Departure Airports	3	0
SEC. 1956 - International Security Standards	4	0
SEC. 1957 - Aviation Security in Cuba	2	1
SEC. 1958 - Report on Airports Used by Mahan Air	2	0
<b>Subtitle F - Cockpit and Cabin Security</b>		
SEC. 1959 - Federal Air Marshal Service Updates	8	2
SEC. 1960 - Crew Member Self-Defense Training	1	1
SEC. 1961 - Flight Deck Safety and Security	2	0



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Department of Homeland Security

<b>Titles &amp; Sections</b>	<b># of Requirements*</b>	<b># of Requirements Not Fully Completed**</b>
SEC. 1962 - Carriage of Weapons, Explosives, and Incendiaries by Individuals	2	2
SEC. 1963 - Federal Flight Deck Officer Program Improvements	7	4
<b>Subtitle G- Surface Transportation Security</b>		
SEC. 1964 - Surface Transportation Security Assessment and Implementation of Risk-Based Strategy	5	3
SEC. 1965 - Risk-Based Budgeting and Resource Allocation	3	2
SEC. 1967 - Transparency	1	0
SEC. 1968 - TSA Counterterrorism Asset Deployment	3	2
SEC. 1969 - Surface Transportation Security Advisory Committee	7	2
SEC. 1974 - Passenger Rail Vetting	2	0
SEC. 1975 - Study on Surface Transportation Inspectors	1	0
SEC. 1976 - Security Awareness Program	4	3
SEC. 1977 - Voluntary Use of Credentialing	2	1
SEC. 1978 - Background Records Checks For Issuance of Hazmat Licenses	1	0
SEC. 1980 - Pipeline Security Study	1	0
SEC. 1981 - Feasibility Assessment	1	0
SEC. 1982 - Best Practices to Secure Against Vehicle-Based Attacks	1	0
SEC. 1983 - Surface Transportation Stakeholder Survey	2	0
<b>Subtitle H- Transportation Security</b>		
SEC. 1986 - Risk Scenarios	2	2
SEC. 1987 - Integrated and Unified Operations Centers	2	0
SEC. 1988 - National Deployment Force	2	0
SEC. 1989 - Information Sharing and Cybersecurity	7	1
SEC. 1990 - Security Technologies Tied to Foreign Threat Countries	1	1
<b>Total TSA Requirements</b>	<b>202</b>	<b>49</b>

Source: DHS OIG analysis of TSA Mod Act requirements

\*This table identifies the number of TSA Mod Act requirements we reviewed.

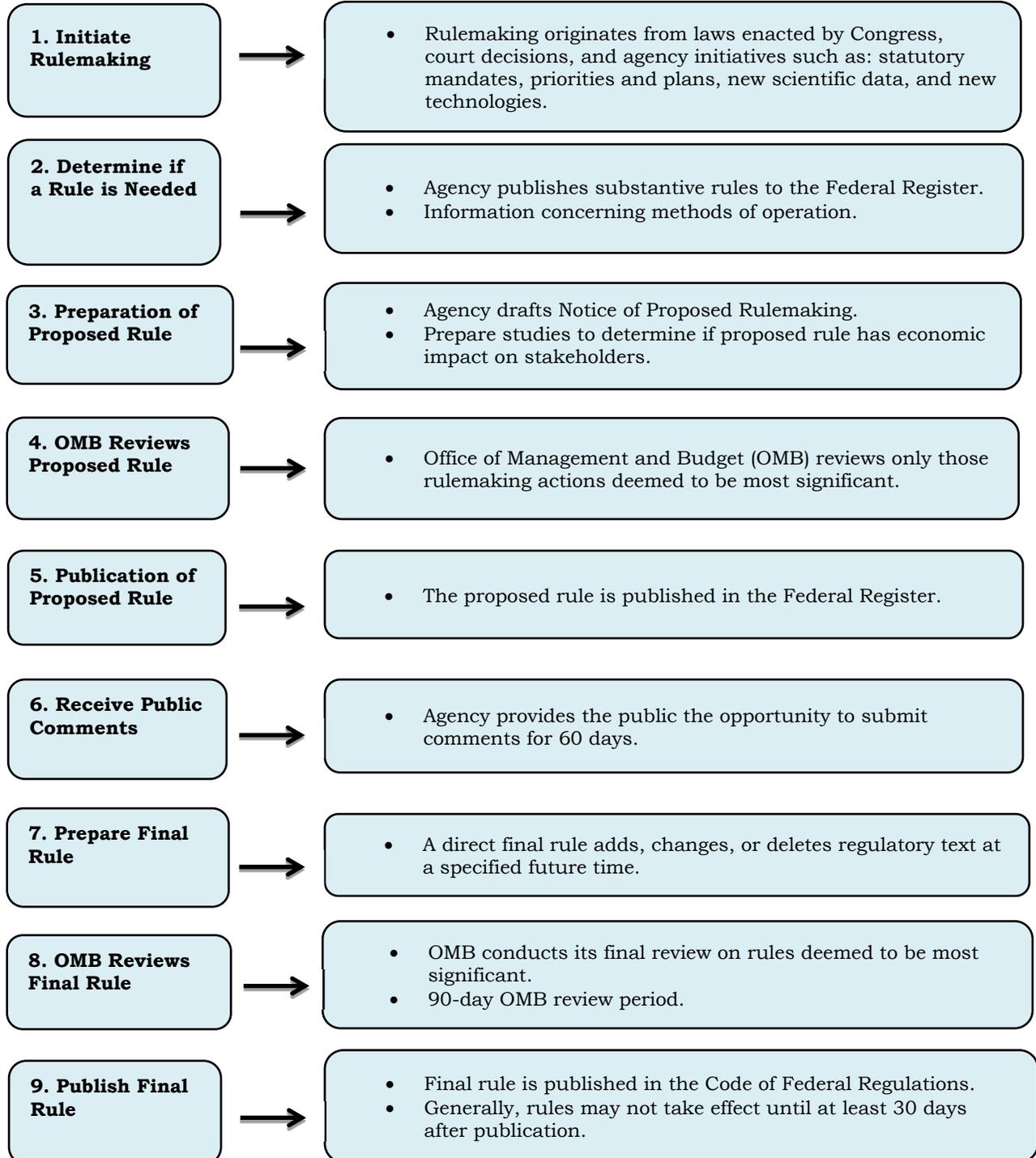
\*\*Requirements that are partially completed or not completed.



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Department of Homeland Security

## Appendix E Diagram of Federal Rulemaking Process



Source: DHS OIG analysis of the U.S. General Service Administration’s “Reg Map” at [reginfo.gov](http://reginfo.gov)



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**Appendix F**  
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