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Infrastructure and Systems Security Working Group

Random Inspections of Carry-On Items in Transit Systems

Abstract: This recommended practice provides information to help transit systems prepare and, if necessary, implement a program to conduct random inspections of carry-on items.

Keywords: carry-on, checkpoint, container, inspection, screening, search, security, transit

Summary: This recommended practice provides information regarding random inspections and inspection programs for carry-on items in transit systems. It is intended to give a snapshot of the industry as it relates to transit carry-on inspections. Agencies should consider developing a carry-on screening program even if there are no immediate plans for implementation. Advance preparation will support an agency's ability to quickly and effectively initiate random inspection in response to an elevated threat. Should an agency decide to establish a screening program, this document offers guidelines and considerations for developing and implementing an inspection program. Agencies that already have a screening program should consider reviewing their program to include applicable information provided in this document.

Foreword

The American Public Transportation Association is a standards development organization in North America. The process of developing standards is managed by the APTA Standards Program's Standards Development Oversight Council (SDOC). These activities are carried out through several standards policy and planning committees that have been established to address specific transportation modes, safety and security requirements, interoperability, and other topics.

APTA used a consensus-based process to develop this document and its continued maintenance, which is detailed in the manual for the APTA Standards Program. This document was drafted in accordance with the approval criteria and editorial policy as described. Any trade name used in this document is information given for the convenience of users and does not constitute an endorsement.

This document was prepared by the Infrastructure and Systems Security Working Group as directed by the Security Standards Policy and Planning Committee.

This document represents a common viewpoint of those parties concerned with its provisions, namely transit operating/planning agencies, manufacturers, consultants, engineers and general interest groups. The application of any recommended practices or guidelines contained herein is voluntary. APTA standards are mandatory to the extent incorporated by an applicable statute or regulation. In some cases, federal and/or state regulations govern portions of a transit system's operations. In cases where there is a conflict or contradiction between an applicable law or regulation and this document, consult with a legal adviser to determine which document takes precedence.

This document was revised from a white paper to a recommended practice.

This document supersedes APTA-SS-SRM-WP-002-10, which has been revised. Below is a summary of changes from the previous document version:

- Section 1:
  - Combines and updates previous history and overview section and makes various clarifications
  - Adds information on a system wide risk assessment and evolving technology
- Section 2:
  - Reorganizes and makes various clarifications on relevant legal challenges to random inspections
- Sections 3-7:
  - Makes various changes (e.g., includes procedures for body-worn cameras)
- Makes updates to references, definitions and abbreviations.

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Introduction

This introduction is not part of APTA SS-SRM-RP-002-10, "Random Inspections of Carry-On Items in Transit Systems."

APTA recommends the use of this document by:

- individuals or organizations that operate transit systems;
- individuals or organizations that contract with others for the operation of transit systems; and
- individuals or organizations that influence how transit systems are operated (including but not limited to consultants, designers and contractors).

Scope and purpose

This document offers best practices and recommendations to guide the development of and, if necessary, implement a program to conduct random inspections of carry-on items.

Random Inspections of Carry-On Items in Transit Systems

1. Overview

Due to persistent security and terrorism threats against public transit, transit agencies should consider whether, or under which circumstances, they should institute mass transit passenger screening procedures. Such procedures should be minimally invasive to the public, minimally disruptive to normal transit operations and constitutionally sound in accordance with applicable laws.

Several U.S. transit agencies—including Amtrak, New York's Metropolitan Transportation Authority, Massachusetts Bay Transportation Authority (MBTA), Los Angeles Metro, New Jersey Transit, Niagara Frontier Transportation Authority and Maryland Transit Administration—have fielded models to carry out random inspections of carry-on items in transit environments. Transit agencies typically work closely with local, state and/or federal law enforcement to conduct screening operations. For instance, the Transportation Security Administration's Visible Intermodal Prevention and Response (VIPR) program offers security augmentation, to include screening support, to surface and air transportation agencies and facilities.

The random inspection of carry-on items is one security tactic among a range of tools that may prevent or protect against terrorism (i.e., disrupt terrorist preparation by creating uncertainty in the security environment). Other security measures can be conducted alongside screening to support an agency's response to heightened security levels. See APTA SS-ISS-RP-007-24, "Security Measures for Elevated Threats," for additional information about security measures.

Random security inspections of passengers' carry-on items are viewed as "administrative searches," which are inspections of non-suspicious people or items that do not necessarily raise a security concern. Similar examples of administrative searches include airport security screening and security checks at sports stadium venues or concerts. Administrative searches must include such characteristics as serving a valid administrative purpose, being minimally intrusive to the person searched and providing people with an alternative to avoid the search (such as choosing not to enter the location).

This document is intended to provide transit agencies with information to help them develop and implement carry-on screening programs. While this information is based on existing programs and legal precedent, every transit agency must tailor its program to ensure compliance with applicable state and local laws in its areas of operation. Given the varying legal and transit operating environments across the industry, there will be variations in each transit agency's random inspection program. The intent of this document is solely to provide information and guidance to a transit agency in the development of its own program.

The programs identified in this document are primarily intended to address the possession and use of improvised explosive devices, which have been the most common terrorist weapon used on trains and buses and in transit and rail facilities throughout the world. Existing programs acknowledge that, while the primary focus is explosives, police will appropriately respond to the discovery of other contraband. In addition to

explosives, agencies should consider the threats posed by firearms and chemical, biological and radiological materials.

Information included in this document may be applied to search for dangerous items beyond just explosives. However, note that as part of the *MacWade v. Kelly* case, the court specifically cited the "narrow scope" of the inspections conducted, in that NYPD inspected for explosives and those containers capable of carrying them as the primary focus of its program. Programs expanding the scope of searches to include other contraband such as deadly weapons and dangerous instruments likely would result in further judicial review, should they be challenged. Transit agencies considering such expanded-scope programs should be prepared to justify them to the public, public officials and judicial review.

While expanded searches are routine in airports and other types of facilities (e.g., court facilities, government office buildings) and have survived extensive judicial review, transit systems are generally considered open public systems where Fourth Amendment protections against unreasonable government searches and seizures apply. The *MacWade* court, however, balanced that general expectation against the real and substantial harm posed to the public by explosives, citing terrorist bombings in Madrid, Moscow and London, in upholding the NYPD's limited screening program. These types of screening programs are essentially a balancing act between society's need for safety and security versus the Fourth Amendment rights of citizens to not be subjected to unreasonable searches and seizures. As a result, it is incumbent on mass transit and passenger rail agencies and their law enforcement providers to thoughtfully craft legally supportable screening program policies and procedures.

1.1 Evolving technology

Screening technology with application to the transit environment is continuously evolving. Multiple jurisdictions are testing and using a variety of technologies, some of which use video analytics and artificial intelligence. Additionally, transit agencies are exploring and expressing interest in minimally intrusive, high throughput screening. High throughput standoff detection and walkthrough portals may provide capabilities to detect explosives and weapons of mass destruction as well as other dangerous items such as guns and knives, which can be used in mass casualty incidents.

Transit agencies should conduct thorough assessments and develop an agency-specific concept of operations for screening technology to assure the procurement and use of the right systems for their environment. The Transportation Security Administration, Office of Requirements and Capabilities Analysis, Intermodal Division, provides security technology recommendations and solutions for surface and aviation transportation venues by evaluating existing security technologies and developing requirements for new technologies.

1.2 Systemwide risk assessment

Each transit agency should conduct and document a security risk assessment of its system and use the output as a guide to determining considerations for a random inspections program. The assessment should be holistic and consider the total transit and local threat environment. The security risk assessment should evaluate the following:

- transit operating environment
- personnel (e.g., law enforcement, security, managers and frontline staff)
- facilities and infrastructure
- policy and procedures
- surrounding non-transit environment

See APTA SS-SIS-S-017-21, "Security Risk Assessment Methodology for Public Transit," for additional information about methodologies to determine security risk in public transportation systems.

2. Legal background

Transit system carry-on inspection programs have been viewed by civil libertarians as controversial and have generated recent civil rights lawsuits. In two cases, *American-Arab Anti-Discrimination Committee v. Massachusetts Bay Transit Authority* and *MacWade v. Kelly*, the federal courts upheld the use of random mass transit system carry-on inspections by the police. A third case related to the issue (*Cassidy v. Chertoff*) concerned the inspection of vehicle trunks and passenger carry-on luggage aboard ferries going between Vermont and New York and also resulted in the federal court affirming the constitutionality of inspections. The United States Court of Appeals Second Circuit affirmed the judgment of the district court and rejected the plaintiffs' claims that the searches violated their Fourth Amendment rights. A related issue concerning collection of demographic information, specifically racial data on people stopped at transit checkpoints, was addressed in *Sultan v. Kelly*. In this case, the American Civil Liberties Union unsuccessfully attempted to require collection of demographic information to enable tracking of racial profiling. The case resulted in a monetary settlement in favor of the plaintiff and the ACLU.

In addition to these cases, there are numerous related rulings regarding administrative searches at airports, as well as numerous Fourth Amendment rulings related to police search-and-seizure procedures and policies. Other case law related to this subject is discussed in *Public Transportation Passenger Security Inspections: A Guide for Policy Decision Makers*, published by the Transportation Research Board in 2007.

2.1 *American-Arab Anti-Discrimination Committee et al. v. MBTA*

In 2004, the Massachusetts Bay Transportation Authority initiated a shortened schedule (four days) of passenger carry-on screening procedures as part of the security plan for the Democratic National Convention. The protocols mandated the screening of all people utilizing the Orange Line subway and those bus routes that traversed the venue site security zone. Screening was conducted by the MBTA Police Department. Other subway lines and bus routes of the MBTA were not affected.

Public notifications were made before the screening began to afford passengers wishing to avoid it the opportunity to use different routes or methods of travel. The MBTA produced a written policy that described the inspection methods and listed prohibited items. The plan provided no discretion to the officers conducting the inspections regarding whom to select for screening, since it applied to all people. It also provided for documenting checkpoint activities and required the presence of supervisory law enforcement personnel at checkpoints.

The federal District Court for Massachusetts upheld the inspection policy, finding the following:

- There was no reason to have a separate constitutional analysis for urban mass transportation systems than for airline transportation.
- The administrative search policy served a substantial governmental interest and public need.
- The administrative searches were limited in scope and duration and very similar to the intrusions imposed under other, increasingly common administrative security search regimes (e.g., at airports, sports venues or concerts).
- The privacy intrusion was reasonable in its scope and effect, given the nature and dimension of the public interest to be served.

The MBTA discontinued active use of the random carry-on screening policy at the end of the Democratic National Convention, and the court ruling was not appealed to the next level. In 2006, following a decision by

the United States Court of Appeals for the Second Circuit in *MacWade v. Kelly*, MBTA resumed random carry-on screening, using revised policies and applying them on a systemwide basis.

2.2 *MacWade v. Kelly*

Following the series of bombings on the London Underground in July 2005, the New York Police Department initiated a randomized container screening program that was applied to passengers boarding trains, buses and ferries in New York City. This program was similar in some respects to the 2004 MBTA model and also incorporated elements of existing vehicle checkpoint procedures used by NYPD.

This program was established through a written policy, required supervisory presence, identified prohibited actions, afforded people the opportunity to decline the minimally intrusive searches by not entering the transit system, and established a nonarbitrary selection process. Unlike MBTA, NYPD chose to apply the assignment of checkpoint locations in a manner designed to appear random, which could be applied to any transit facility at any time. Additionally, screening was not automatically applied to all people at a checkpoint and was instead based on a strict mathematical sequence system.

In August 2006, the United States Court of Appeals for the Second Circuit ruled that the use of this policy by NYPD was constitutional pursuant to the "special needs" doctrine. The court found that "(1) preventing a terrorist attack on the subway is a special need; (2) that the need is weighty; (3) the program is a reasonably effective deterrent; and (4) even though the searches intrude on a full privacy interest, they do so to a minimal degree."

The court noted the following key elements of the NYPD's program:

- The assignment of checkpoints in a deliberative manner that may appear random, undefined and unpredictable.
- The constantly shifting checkpoint patterns, including changes in the locations, quantity of checkpoints, staffing assigned, scheduled times and other overlapping counterterrorism coverage.
- The voluntary nature of submitting to a search, by providing people a clear notification of the checkpoint presence and the ability to avoid inspection by declining to enter the transit system.
- The conducting of searches in the open, in a non-secretive manner.
- The presence of supervisory officers controlling and overseeing the checkpoint activity.
- The lack of discretion in whom to search due to the supervisor establishing a specific selection rate, with which officers must comply.
- The limited intrusiveness and narrow scope of the inspection, for the following reasons:
    - The inspection is to look only for explosives, and screeners received training on what to look for.
    - Items too small to contain explosives is not be inspected.
    - Contraband is not intentionally searched for (however, if inadvertently uncovered, it will be handled appropriately).
    - Officers will not attempt to read written or printed material.
    - The typical inspection takes a very short amount of time.

> **NOTE:** The guidelines in this case specifically concern the justification and conduct of an initial, suspicion-less or administrative search in a transit system. Should the suspicion level be raised because of a positive reading or any other circumstances, law enforcement is always allowed to detain an individual for further investigation using their normal stop, question and frisk (SQF) or arrest powers.

The court also found that the number of checkpoints on a given day was the result of reasonable deployment decisions made by NYPD and declined to second-guess such decisions. The fact that a large percentage of

stations might have no checkpoints each day was deemed to be irrelevant since the unpredictable nature of assignments is specifically designed to interrupt the terrorist tactic of seeking vulnerable and predictable targets.

> **NOTE:** The *MacWade v. Kelly* decision, as with most court opinions, rests upon the specific facts of the case. In other words, while the NYPD procedures for random, suspicion-less carry-on searches have been deemed to be "reasonable" within a "special needs exception" to the warrant requirement of the Fourth Amendment in the context of New York City and its specific circumstances, it shouldn't be construed as the only "reasonable" procedure available. There may be facts and circumstances, (e.g., staffing constraints, threat environment, equipment/facility constraints, geographic considerations) based on which the court might deem a more restrictive procedure to be nevertheless "reasonable." Conversely, the facts and circumstances relative to a particular search regimen and a particular jurisdiction may deem an NYPD-patterned regimen unreasonable and therefore in violation of the Fourth Amendment.

2.3 *Sultan v. Kelly*

In this case, NYPD's subway carry-on search program was challenged by a native New Yorker of Kashmiri descent. He had been stopped and searched by police officers 21 times in three years since the inception of the program and claimed that most white New Yorkers are stopped rarely, if at all. He asserted that his South Asian appearance is the only factor that can explain this frequent targeting by police officers.

The lawsuit asked the court to issue an injunction requiring the NYPD to implement better training, supervision and monitoring to eliminate the possibility of racial profiling and to require the NYPD to collect racial data of all people stopped at subway checkpoints. The case was settled by the payment of $10,000 to the plaintiff and the payment of his attorneys' fees without any finding of fault and liability. No injunction and no requirement to collect demographic data were issued.

Some agencies, however, do collect demographic information of screened people for managerial review to guard against allegations of ethnic profiling. Other agencies have chosen not to collect this information primarily due to the administrative burden it creates for such a large program and the fact that it can be interpreted as another form of intrusion upon the screened individual. Additionally, the requirement for sequential counts as the basis for selection was designed to specifically guard against ethnic profiling by removing from the screeners the ability to exercise autonomous judgment on whom to select. On the other hand, it could be argued that collecting information provides management with additional oversight that can protect the integrity of the program.

3. The role of security and law enforcement personnel

Law enforcement agencies have a responsibility to protect public safety and security, which may include assisting transit agencies in the implementation of carry-on screening programs, particularly where transit safety and security personnel do not have law enforcement authority. Many law enforcement and security providers routinely engage in counterterrorism-related patrol activities. As targets for terrorist activities, transit agencies should effectively coordinate with law enforcement to maximize the level of attention given to their facilities and passengers. Transit agencies without their own law enforcement personnel should coordinate agreements with external police agencies and municipalities.

3.1 Police authority

The use of police at checkpoint screening locations offers multiple benefits, including the ability to use police powers to arrest offenders and the assurance that the search is conducted with necessary authority. With these programs, the deterrent effect of the activity is coupled with the potential for engaging actual criminals attempting to enter transit facilities with weapons and contraband. Transit facilities are considered public

spaces, different from venues such as sports stadiums or airports, which also engage in inspections. As a result, police personnel play a strong role in keeping the peace in situations where people may object to having their belongings inspected. Another deterrent is the visual effect provided by uniformed police conducting counterterrorism security activities.

Most critically, the aforementioned legal rulings specifically cite the use of police to conduct random inspections, and in particular, the presence of police supervision to oversee carry-on screening activities.

3.2 Personnel: security versus police

In the legal cases discussed, carry-on security inspection programs were conducted exclusively by police personnel. While this does not necessarily preclude the use of agency security personnel, there should always be a police presence at carry-on screening locations. The use of security personnel as part of a team with law enforcement may be unavoidable in areas where law enforcement resources are limited. Two examples of a mixed security and law enforcement model are the TSA-coordinated program field tested on the Indianapolis bus system IndyGo in August 2007, and joint TSA/Amtrak Police screenings at multiple locations beginning in 2009. In an optimal situation, however, a law enforcement team should conduct or supervise the screening. Because security personnel other than the police might have limited authority, screenings conducted by security teams without any police involvement or supervision may be more likely to be subjected to scrutiny by the courts in the event of a challenge.

4. Working with various stakeholders

A mass transit agency should obtain input from within the agency and from its primary stakeholders before establishing a carry-on screening program to ensure agency support for the program and anticipate potential legal issues. Transit agencies should consider reaching out to external stakeholders that have a voice within the community and/or with transit customers.

4.1 Internal transit agency

Transit and rail agencies should internally discuss implementing random carry-on inspections at the executive level. Such discussions should include a legal review by agency counsel regarding the scope of such searches (explosives only or expanded scope) and other legal issues.

4.2 Develop safety and security design criteria

Transit agencies should consider reaching out to their primary stakeholders for input. Transit stakeholders may include local law enforcement agencies, local officials, riders, community organizations and advocacy organizations.

When engaging community and advocacy organizations, transit agencies should consider the following factors:

- mandatory public comment requirements
- local politics regarding the transit system and law enforcement
- historical relationship between the organization and the transit system

Note that consensus with external parties may not be achievable in all situations, and consensus may be more complicated to achieve if the transit agency’s area of operations spans multiple jurisdictions. In some cases, it may be possible, or even preferable, for local government to direct, approve or recommend implementation of random carry-on inspections on the transit system by law enforcement personnel.

5. Preliminary activities

Certain preliminary activities should take place before conducting random carry-on inspection activities within a transit system.

5.1 Agency responsibilities

The transit agency and law enforcement department conducting random carry-on inspections should develop an understanding regarding responsibilities. Agency responsibilities may include determining personnel who will be present at screening locations, communicating with the public about the program and purchasing necessary equipment. In some cases, transit agencies should seek a memorandum of understanding in situations involving external agencies. Agreements like memoranda of understanding should delineate each agency's responsibilities in developing, implementing and evaluating the screening program.

5.2 Legal considerations

5.2.1 The Fourth Amendment

The Fourth Amendment to the United States Constitution protects citizens against unreasonable search and seizure. As a result, transit agencies and law enforcement departments have to consider legal issues surrounding search and seizure and, in particular, administrative searches by law enforcement personnel.

5.2.2 State and local laws

While federal law and precedent address questions regarding the Fourth Amendment and the constitutionality of administrative searches, states may have laws and regulations that affect various aspects of a transit agency's screening program. Transit agencies should consider state and local laws, ordinances and judicial precedents regarding law enforcement power when devising and implementing screening programs.

For example, transit agencies and law enforcement should identify specific crimes in the state penal law that may be charged in checkpoint scenarios. In addition to the obvious contraband-related charges, transit and law enforcement agencies should determine whether there are applicable laws related to people refusing to follow lawful orders of law enforcement officers. This can be an anticipated issue if people declining to be screened are directed to leave a transit facility by police, then attempt to reenter with the uninspected carry-on through the same or a different entry point.

5.2.3 Agency rules

Mass transit agencies that have the authority to promulgate official rules and codes of conduct governing acceptable activities and conduct within their systems should ensure that such rules provide appropriate sanctions against the carrying of explosives, unauthorized weapons and dangerous items in transit facilities and vehicles, when consistent with state laws. These rules could be supplemental to crimes in the state penal codes and should make appropriate exceptions for people authorized to carry weapons (e.g., police officers, licensed gun permit holders).

5.3 Notification to the public

5.3.1 Pre-implementation notifications

Transit agencies should notify the public about the program and how it works prior to implementation. Notification should include information on how personnel will accommodate people with special needs and the elderly. Notifications may include the following:

- press releases by the transit agency
- press releases by the law enforcement provider

- press releases by local government
- public comment by agency or government officials
- public outreach to community leaders
- public meetings

5.3.2 Continuing notifications

In addition to making pre-implementation notifications, transit agencies and/or partners should continue certain types of notifications as part of an overall public education campaign. Continued notifications may include the following:

- public address announcements on transit facilities and vehicles (for example, “Backpacks and other carry-on items are subject to random inspection by authorized personnel”)
- posted notices at entry points and on vehicles
- variable message boards
- pamphlets or flyers
- agency website information
- integration of the random screening program into existing awareness programs
- message boards or posters to be used at random screening locations
- local media

5.4 Equipment and materials

Various types of equipment and materials should be considered and obtained for use by personnel conducting random screening, including the following:

- latex gloves
- large tongs for moving items in carry-ons
- bullhorns to announce a screening location and to direct people
- items that can be used to hang or post announcement posters in a variety of situations (easels, elastic cords, tie wraps, etc.)
- portable tables
- flashlights or other lighting
- police line or other tape that can be used to establish queuing lines.
- explosive trace detection equipment (including extra equipment to validate initial positive readings) and related materials (electrical extension cords, batteries, cleaning materials, etc.)
- radiation detection equipment
- body-worn cameras and related materials
- utility connections
- communications equipment
- any other equipment needed to facilitate the screening of people with disabilities and the elderly and to ensure that the process is compliant with the requirements of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973

NOTE: Electronic scanning devices allow for scanning of passenger bags without opening or visually inspecting the bags. They vary from handheld to tabletop models. They also test for different chemical compounds and require varying lengths of time to analyze materials. Agencies using such equipment should be aware of the specific types of explosives that each device model is able to detect.

5.5 Training

Prior to deploying personnel to conduct random carry-on screenings, transit agencies should detail screening procedures (e.g., create screening standard operating procedures) and conduct related training.

5.5.1 Transit agency training

Transit agencies should provide appropriate training to employees and contractors on the random carry-on inspection program. Transit agencies should train all personnel participating in screening operations on the involved procedures and the limitations to their authority.

For transit personnel who are not directly involved in the screening procedures, transit agencies should provide information via bulletins or SOPs that explain that the program is supported by the transit agency and that personnel must cooperate with law enforcement at assigned locations.

5.5.2 Law enforcement training

Law enforcement conducting random carry-on inspections should publish SOPs that address the establishment, staffing and conduct of random inspections. Transit agencies and law enforcement should design inspections to meet the legal standards set in relevant court cases (e.g., *MacWade v. Kelly*). Procedures may be similar to those that law enforcement departments may apply in support of vehicle checkpoint and security screening procedures in other settings.

Since random carry-on inspections could lead to the discovery of potentially suspicious materials, transit or law enforcement should incorporate refresher training on agency procedures related to explosives, suspicious packages, hazardous materials and emergency incident management. Procedures should differentiate between checkpoints using only a visual inspection of carry-on items and those using explosives trace detection equipment or explosives detection dogs (illustrated in **Figure 1**).

FIGURE 1
Types of Checkpoints

Visual inspection of carry on (left) and portable trace protection (right).

5.5.2.1 Explosives trace detection equipment training

If personnel use explosives trace detection equipment, training must address equipment calibration, use and care. Training should include a practical demonstration and practice using the equipment. Training should also include procedures to follow in the event of a positive reading. Training should identify common

situations caused by people having contact with legitimate substances (e.g., heart patients in possession of nitroglycerine tablets, jewelry manufacturing employees).

5.5.2.2 Explosives detection K-9 training

If personnel use K-9 screening, training should address their integration into checkpoint procedures. Training should also include procedures in the event of a positive alert by the dog.

5.5.2.3 Chemical, biological and radiological training

Agencies should also consider providing employees with awareness training for chemical, biological and radiological weapons and hazards.

6. Procedural elements

Transit agencies need to establish procedural elements to develop a consistent routine for checkpoint screenings, to articulate responsibilities and prohibited behaviors, and to meet applicable legal standards. Supervisors and subordinate officers should have responsibilities appropriate to their levels. Likewise, agencies should clearly delineate duties and responsibilities if random screening teams are a combination of sworn law enforcement and transit agency security personnel.

> **NOTE:** The following procedural elements are specifically designed for carry-on inspection programs targeting explosive devices. Any programs incorporating an expanded scope involving searches for other types of deadly weapons and dangerous instruments may require program modifications and further legal review. Conversely, using only technology or K-9 detection of closed items to detect the presence of chemicals related to explosives concedes that the screening is limited to explosive devices.

6.1 Supervisory responsibilities

Supervisors assigned to checkpoints have a higher level of responsibility and must actively manage checkpoint activities. The types of procedures that should apply include the following:

- Review checkpoint procedures and assignments with team.
- Discuss the purpose of the checkpoint and tactics (i.e., what is being done, why it is being done and what is being looked for).
- Determine the appropriate manner for physically establishing the checkpoint for the facility (e.g., where to set up a table, where to post signage).
- Ensure that whenever possible, checkpoints are set up to allow for inspections prior to passengers' entry into the transit system.
- Ensure that passengers are aware that they may decline consent to the screening by not entering the facility (e.g., use posted signage, public address announcements, or a bullhorn or other amplifying device at checkpoint approaches).
- Determine potential contingency requirements for the facility so the checkpoint team is aware of roles and action they may have to take. This should specifically include the procedures for suspicious packages.

> **NOTE:** Supervisors should immediately take control and direct activity in the event of emergency contingencies such as suspicious packages or suspected explosive devices.

- Establish the frequency rate of people subject to inspection, using the following guidelines:
  - The rate should be systematic, nonarbitrary and non-individualized, with a systematic numerical system the best choice (e.g., every passenger with an item, every fifth passenger with an item, every eighth passenger with an item).
  - Frequency can be based on factors such as the volume of people into or present at the facility or police personnel on hand to perform inspections.
  - Supervisors may vary the frequency of inspections based on commuter flow, either increasing or decreasing the number of inspections as appropriate.
- Document the checkpoint (either in a routinely used field memo book or other appropriate manner), including the following:
  - time and location of the checkpoint
  - personnel assigned
  - systematic frequency rate used, including time frame
  - any modification to the frequency rate, including the time and reason for changing
  - whether explosive trace detection equipment is used, and if so what brand, model, etc.
  - whether an explosive detection canine is used, and if so the identity of the dog and handler
- Advise personnel that they have no discretion in varying the selection frequency rate set by the supervisor.
- Advise personnel that they may not use profiling (racial, ethnic, gender, or other demographic factors) to select people for inspection.
- Advise personnel that they may deviate from selection restrictions only if there is probable cause or reasonable suspicion regarding a particular person or group of people.

NOTE: The terms “probable cause” and “reasonable suspicion” are applied with respect to accepted police practice and constitutional legal standards.

6.2 Checkpoint personnel responsibilities

The following general rules may apply when conducting a transit checkpoint. It is important to note that these rules could vary based on the local laws within a given jurisdiction:

- Ensure that explosives trace detection equipment is properly calibrated and in working order, if used. A second trace detector should be available to rescreen items that return a positive analysis.
- Establish checkpoints at points prior to passenger point of entry (if possible).
- Activate body-worn camera in accordance with agency protocols.
- Provide notice of inspections using signage and/or announcements at all stations.
- Inform each selected person that they may not enter the transit asset unless they consent to an inspection of their carry-on. (The transit system is a public place, but access is conditional.)
- Request consent to inspect from the individual.
  - Consent must be voluntary.
  - A denial of consent to inspect results in refusal of entry into the transit facility.
- Allow individuals to refuse the inspection and exit the transit facility.
  - If an individual refuses to submit to inspection, request that they leave the transit facility.
- A refusal to permit inspection does not constitute probable cause for an arrest or reasonable suspicion for a forcible stop. However, the individual should not be permitted access to the transit facility with the uninspected item. (A refusal to grant consent is not automatic grounds for further police action.)
- A refusal to consent, coupled with other factors, may raise the level of suspicion and prompt further attention and inquiry by law enforcement officers.
- Depending on local laws, a person who refuses to leave the transit facility or attempts to avoid the checkpoint and enter the system may be subject to arrest or summons.

NOTE: This is contingent on the available existing laws for the area in which the inspection occurs—for example, a law or code that allows police to arrest someone for refusing to follow a lawful police order.

- If consent is granted, then the inspection should be as minimally intrusive as possible to ensure that the carry-on does not conceal an explosive device.
- Inspect only those carry-ons capable of harboring an explosive device.
- If a checkpoint inspection reveals a suspicious item, immediately notify the supervisor in charge and initiate applicable suspicious package protocols.

Personnel conducting screenings should be instructed to avoid specific, locally relevant behaviors while conducting administrative checkpoints. This is important to provide a concrete basis for ensuring that the activity is conducted in accordance with applicable legal standards and therefore does not violate civil rights or is not being used as a subterfuge for improperly expanding police powers regarding routine crime control activity. Personnel conducting the screenings should also be clearly aware that this type of restrictive behavior applies only to the initial non-suspicious checkpoint inspections. The following activities describe typical restrictions:

- Removing non-suspicious individuals any significant distance from the entry point where the checkpoint is or to a nonpublic location.
- Detaining people any longer than needed to determine that their carry-ons do not contain an explosive device.
- Inspecting wallets, purses or other carry-ons that are too small to contain an explosive device.
- Looking intentionally for other contraband:
    - If other illegal contraband is observed (drugs, weapons, etc.) during the proper random security inspection (administrative search), then the matter should be addressed by or referred to local law enforcement with jurisdiction in the location for further inquiry and action, as appropriate.
- Reading or attempting to read any written or printed material.
- Conducting self-initiated checkpoints at non-designated transit facilities.

NOTE: The procedural guidelines presented in this section are primarily guidelines for the initial screening process. Should the suspicion level be raised because of a positive reading or any other circumstances, these guidelines, including any recommended prohibitions, do not in any way limit law enforcement from fully exercising their normal coercive authority to detain, question and investigate an individual (SQF, arrest, etc.). Additionally, an agency should seek counsel guidance on whether the following information should be completed: asking for or taking any personal information from an individual; recording names, personal information or any demographic information; and recording any racial, ethnic or gender-based data about the individuals inspected. Some agencies have requested this type of information for statistical purposes in program oversight to ensure that improper profiling based on proscribed demographic factors is not taking place.

6.3 Inspections without use of technology or K-9 detection

When conducting a checkpoint without the use of explosives trace detection technology or explosive detection dogs, the screeners must rely on a visual inspection of carry-ons. The following guidelines should be used:

- It is preferable and least intrusive to have the individual show the officer what is in the carry-on.
- Officers may open the carry-on and physically inspect and manipulate the contents if objects inside are obstructing the view (including opening interior compartments) only to ensure that an explosive device is not present. The following guidelines apply:
    - Use common sense.
    - Be minimally intrusive.
    - Inspect only for an explosive device.
    - Inspect only those areas inside the carry-on capable of holding an explosive device.

NOTE: If illegally possessed items (e.g., weapons, illicit drugs) are observed in plain sight during a valid administrative search, then proper police action, including seizing the items and arresting the owner, may result. This holds true regardless of the scope of the screening process (i.e., explosives only or expanded scope).

6.4 Inspections with the use of technology

When conducting a checkpoint with the use of explosives trace detection technology, a visual inspection of the inside of the carry-on is replaced by a chemical analysis of the exterior. Additionally, some agencies equip at least one member of screening teams with a personal radiation detector. The following guidelines should be used:

- Direct the individual to place the carry-on on a table and stand back.
- Utilize the technology device to physically evaluate the carry-on.
- Follow the prescribed protocols and procedures to evaluate the sample.
- Don’t allow the individual to retain possession of the carry-on while it is being inspected.
- Don’t open the carry-on and physically inspect the contents, unless directed by a competent authority.
- If there is a positive reading or alarm, use a common-sense approach to rule out innocently possessed “positive” items or nuisance alarms.
- If there is a positive reading, it minimally establishes reasonable suspicion toward the subject individual. The following guidelines apply:
    - Rescreen the item(s) using a different trace detector.
    - The person may be subjected to SQF procedures.
    - Officers may detain the subject for a reasonable amount of time to conduct an investigation.
    - If the investigation establishes probable cause, an arrest may be made.
- If there is a positive reading in a random inspection conducted by a non–law enforcement security officer, then the preferred approach is to engage a police officer from the transit agency or local jurisdiction to resolve the matter with the subject individual.
- If there is a positive reading, it establishes probable cause to believe that the carry-on possesses evidence of explosives and thus may be seized and searched (consistent with personal safety) without a warrant, based on the exigent circumstances exception to the Fourth Amendment. After a brief investigation and in the absence of additional suspicious behaviors or factors, the carry-on may be opened to visually inspect and clear it, using the following guidelines:
    - Proper suspicious package and explosive device procedures should be followed if it is determined after investigation that the package may contain suspicious materials or devices

(e.g., unusually heavy for its size, wires visible, unusual odors, behavior of the owner is suspicious, etc.).
- Don't physically examine or disturb a suspicious carry-on unless directed to do so by competent authority.
- Don't utilize radios, cell phones or other similar communications in the presence of a suspicious carry-on.
- Don't allow the individual to recover the suspicious carry-on unless the package is determined to be non-suspicious.

NOTE: The fact that a positive reading or alarm occurs does not automatically mean that actual explosive trace evidence is present. Officers conducting an investigation in such circumstances should be aware of known false-positive situations, such as materials used in certain types of professions or certain types of medications and should elicit information from the owner in investigating whether further cautionary actions are necessary. Additionally, agencies that require documentation for SQF power use should include those investigations stemming from positive readings or alarms at transit package screening checkpoints.

6.5 Inspections with the use of K-9 detection

When conducting a checkpoint with the use of K-9 detection screening, guidelines should be substantially similar to those used for explosives trace detection equipment.

7. Checkpoint locations

Assigning checkpoints should normally be done in advance at an appropriate executive or managerial level by the law enforcement provider and/or transit agency security office. Agencies should maintain a chronological record of locations chosen in order to demonstrate that they are being selected in accordance with the stated purpose. This record, including the locations selected for random or selective assignment, times assigned and number of checkpoints, should be treated as sensitive security information and should not be publicly disclosed absent a court order because it outlines strategic deployment information that could be exploited by terrorist planners.

7.1 Random checkpoint assignment

Agencies should select checkpoint locations to indicate a random pattern of assignments. The primary reason for this is to disrupt terrorist preoperative surveillance and reconnaissance and to provide a deterrent factor in terrorist target selection, which traditionally favors predictability in security procedures or the absence of such procedures.

7.2 Selective checkpoint assignment

Selective assignment of checkpoints can be done for a variety of security reasons, including the following:

- Locations and routes determined to be higher risk based on threat and/or assessments (including passenger volume, adjacent off-system targets, etc.). Higher risk sites or routes may include the following:
  - high passenger volume locations
  - intermodal hubs
  - critical transit system components, such as underwater tunnels and major signal control rooms
  - military, police or other sensitive government facilities
  - important economic, commercial or financial centers
  - religious facilities

- Locations and routes selected due to federal, state or local intelligence.
- Locations and routes associated with special events or activities with security concerns. Special events may include the following:
    - political conventions, protest actions and activities
    - malls and shopping areas during holiday shopping seasons
    - sporting, music and other events that attract a large number of people to a venue or location
    - special events, such as fireworks displays, county fairs, etc.

7.3 Checkpoint planning

Checkpoint planning should include an assessment by checkpoint supervisors on how to physically establish the checkpoint, as well as contingency considerations for the location in the event of an incident. Agencies should establish checkpoints prior to the fare payment, although this may not always be possible. Checkpoint locations should also take into consideration passenger volume and space needed to have people step aside for inspections, set up tables and other equipment, and post checkpoint notification signage. If necessary, agencies should take into account the proximity of electrical outlets for communications and other equipment. Checkpoint planning should consider potential incidents such as making an arrest or defusing situations involving emotional people, suspicious packages and location evacuations. Additionally, preparations, including layout, should address the needs of people with disabilities in accordance with applicable requirements of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

There can be significant variations between different modes of transit and screening activity applications. Some systems, such as ferry systems or subway systems with physical fare controls, lend themselves to checkpoints. Other systems, such as bus systems operating on public streets, are more open and may require establishing checkpoints in a more uncontrolled environment. See **Figure 2**.

FIGURE 2
Using Metal Barriers to Create a Screening Checkpoint

Agencies must also account for passenger behavior. Some systems have a constant ebb and flow due to continuously running transit vehicles (e.g., the subway system in New York City). Other systems (e.g., many types of commuter railroads or ferry systems) typically experience a last-minute rush of passengers arriving immediately before the scheduled departure of a transit vehicle.

Agencies should assign personnel involved in checkpoint activity specific team roles in advance. Responsibilities may include the following:

- Counting off people and asking selected people to present their carry-ons for inspection.
- Conducting carry-on inspections and operating detection equipment.
- Securing detainees, if arrests are made.
- Using bullhorns, electronic or video signage, or other communication devices to announce or explain the inspection process to passengers.

7.4 Coordination of security activities

As a component of deploying transit system security activities in a random and unpredictable manner, consideration should be made for the seemingly random overlapping of additional official activities at locations selected for checkpoints. This can provide a force multiplier effect to the checkpoint and generate the appearance of an extensive official presence at checkpoint locations. Overlapping coverage can incorporate facilities and areas adjacent to the transit facility to project a comprehensive display of authority and security capabilities.

Overlapping coverage can include the presence of various types of personnel and patrol forces, including the following:

- uniformed transit agency security personnel
- additional uniformed transit agency operational personnel
- routine law enforcement patrols
- law enforcement SWAT teams
- law enforcement surge activity (where a team of uniformed officers blankets an area)
- specialized law enforcement units, such as K-9, countersurveillance, aviation and command post vehicles
- law enforcement crime prevention outreach personnel
- law enforcement recruitment personnel
- plainclothes law enforcement personnel observing people exhibiting evidence of preoperative surveillance activity or other suspicious activity
- uniformed auxiliary police personnel
- varying types of TSA personnel, deployed under the VIPR program, conducting visible security activities in official uniform and/or covert activities, such as countersurveillance, in plain clothes.

Changing the appearance of personnel deployments in this manner helps to heighten the desired sense of randomness and unpredictability observed by anyone conducting surveillance of law enforcement behavior and considering terrorist activity at such locations.

8. Contingency planning

Contingency planning is a necessary consideration when conducting random security inspections. If personnel detect an explosive device in a carry-on item or the situation is otherwise deemed suspicious, agency protocols for such situations should apply.

Contingency planning should consider the following:

- procedures to respond to suspected or confirmed explosive devices
- procedures to address suspicious packages
- deployment of bomb squads from transit or local law enforcement departments to respond to suspected or confirmed explosive devices
- procedures to respond to discovery of suspected or confirmed chemical, biological, radiological or other hazardous materials
- hazardous materials team deployment
- arrest and detention procedures
- SQF procedures
- emotionally disturbed person procedures
- evacuation of transit facilities, including securing them from entry
- establishing appropriate frozen zones on affected public streets
- suspension of transit service stopping at a facility
- suspension of transit service passing through a facility
- incident command systems and the National Incident Management System
- pre-identification of preferred staging areas, command post locations and routes for emergency response, as they relate to specific transit facilities
- contingency plans for noteworthy sites adjacent to transit facilities
- key people and offices in the transit agency, law enforcement and other potentially involved agencies that should be notified under various situations
- random screening procedures for people with disabilities that comply with applicable requirements of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

Related APTA standards

APTA SS-ISS-RP-007-24, "Security Measures for Elevated Threats"
APTA SS-SIS-S-017-21, "Security Risk Assessment Methodology for Public Transit"

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Definitions

carry-on: Any item or container carried or maneuvered into the system, including but not limited to purses, briefcases, luggage, parcels, toolboxes, bags and other items that are large enough to carry a device that could cause injury, death or damage.

carry-on inspection checkpoint: A location selected for an administrative search of carry-ons.

checkpoint screening: Screening of people or carry-on items selected using a systematic and nonarbitrary methodology (such as every person with an item, every second person with an item, every fourth person with an item, every person entering a heightened security area, etc.), which allows for no selection discretion on the part of screeners.

contraband: Illegal items or substances.

explosive trace detection screening: Utilization of technology to screen people or carry-on items for chemical particles or vapors that may indicate the presence of explosives.

K-9 detection screening: Utilization of canines trained in explosives detection to screen people or carry-on items for chemical particles or vapors that may indicate the presence of explosives.

random checkpoint assignment: The assignment of locations to be screened that are not based on criteria such as area demographics, crime trends, passenger use, intelligence information, special events, etc.

selective checkpoint assignment: The assignment of locations to be screened based on specific strategic factors related to the chosen locations, such as threat intelligence, risk assessments and security concerns.

visual inspection screening: The practice of opening carry-on items to conduct a visual inspection of the contents. This can include physically shifting the contents and opening interior pockets or items large enough to potentially carry a device that could cause injury, death or damage.

Abbreviations and acronyms

ACLU American Civil Liberties Union
K-9 canine used for security or police patrols or the detection of substances
MBTA Massachusetts Bay Transportation Authority
NYPD New York Police Department
SOP standard operating procedures
SQF stop, question and frisk
SWAT special weapons and tactics
TSA Transportation Security Administration
VIPR Visible Intermodal Prevention and Response

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