May 19, 2020

TSA PRA Officer
Information Technology (IT), TSA-11
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598-6011

Dear TSA PRA Officer:

Our organization is troubled by the March 16, 2020 TSA 60-Day Notice for “Agency Information Collection Activities; Proposals, Submissions, and Certification of Identity Form” or as titled in the PDF version, “Intent to Request Approval From OMB of One New Public Collection of Information: Certification of Identity Form (TSA Form 415).” The notice should be withdrawn.

First and foremost, there is no form. How can organizations like ours, or the American people who will be impacted, provide informed comments on a data collection proposal—a specific form—that is not available to comment on?

Furthermore, the notice says TSA published a similar notice about 3.5 years ago “announcing our intent to conduct this collection; however due to continuing policy refinement, TSA never completed the process or finalized the TSA Form 415.” What “continuing policy refinement” has occurred that would limit the ability to alter a form that is currently in use and provide it for not only the public but OMB to see for approval purposes? Or is this a plan to get approval for a form (data collection) that appears to have long been used but never been approved or gone through the notice and comment process?

The TSA should not be allowed to “re-initiate the approval process” when TSA has not bothered to share sufficient information to comment on in this request for public comments. This request and the TSA’s plan for re-initiating the process should be withdrawn—and if presented to the OMB, the OMB should consider the proposal null and void for lack of substance and proper statutory protocol.

The TSA appears to be trying to use this notice as a shield, claiming to go through the proper procedural requirements without actually doing so. The TSA should not try to circumvent the federal Administrative Procedures Act, which requires notice and comment prior to rulemaking, with the notice being an informed notice and the comments being on the actual substance of the items in notice, and then rules written accordingly. Instead there’s a notice with no substance, but apparent plans to act without rules.

Is it possible that TSA is trying to use this ruse of a notice to infringe on the public’s legal right to fly without an ID—as many Americans do each and every year and will continue to do? As the agency’s notice states, “912,500 passengers” are expected to fly without ID each year into the future.

Where is the list of information that passengers will have to supply to the federal government or face being turned away at the gate? This is a very important list, because the possibility of coercion is high, and the government’s databases are deep. Passengers without IDs are typically anxious, many of them because they’ve accidentally forgotten or lost their IDs prior to arrival—or even at the airport. What are these “additional questions concerning what type of physical identification the individual has”? With more than three years to think about it, surely TSA has an answer to this question and could supply
the public with the proposed TSA Form 415. How could the TSA think it valid to issue a request for public comments without making the key issue of the request available for public viewing and comment?

According to the Notice, the only reason for altering the current Form 415 is to “ensure that the alternative identity verification process does not become a means for travelers to circumvent REAL ID requirements.” In other words, this request for OMB clearance of an unseen form is to use police powers to enforce state compliance with the REAL ID Act. We don’t believe TSA has police powers, nor do we support giving such powers to the TSA. Furthermore the federal REAL ID mandate is unconstitutional.

State legislators have long been aware of the unconstitutionality of the federal REAL ID Act and for nearly a decade refused to submit to the unconstitutional demands of the federal government. It was only after the Obama administration’s “you can’t fly” ploy successfully caused sufficient public pressure from scared constituents, combined with the complicity and collaboration of the news media, that state legislators began to abdicate their constitutional responsibility to protect their constituents from an overreaching federal government. Now that most states have conformed to the unconstitutional and unfunded REAL ID mandate, DHS publicly admits on every notice in every airport that a REAL ID is not necessary; a passport will do. Likely they don’t want a public relations disaster when millions are turned away at the airport for having a non-REAL ID driver’s license or identification card.

But even DHS does not admit that Americans cannot be forced to produce an ID or lose access to commercial flight, as the thousands who fly every year without an ID can attest. An unconstitutional federal law does not remove a constitutional right. Thus, no state or American must or should accept federal control of movement and access to services (including flight) through a federal identification card called REAL ID. The REAL ID and the REAL ID Act of 2005 are violations of Tenth Amendment rights as clearly noted in 2017 letters to President Trump from Pennsylvania and Missouri legislators.

In conclusion, the TSA cannot claim to the OMB in any way, shape, or form that the TSA has received the public’s informed comments on the proposed data collection activity—the TSA Form 415. There is no form to view and the data elements are nowhere to be found. There is nothing to comment on except the incredible lack of something to comment on.

This is like a restaurant menu that says, “We offer food” and asks the restaurant reviewer to describe the quality of that food without a scintilla of food, detailed descriptions, ethnic genre, or even aroma on which to base such a review.

The TSA notice is a ruse. The TSA appears to be trying to claim a police power without statutory authority. Importantly, the public cannot comment on what it doesn’t see. The OMB should throw out this illegitimate TSA request for approval and the TSA should end this charade, and if they wish, start over so the American public can provide real comments on a real proposal that includes a real form issued through real rulemaking with real authority. Anything else is sheer hubris and should be withdrawn.

Sincerely,

Twila Brase, RN, PHN
President and Co-founder