

**OVERSIGHT OF FEDERAL EFFORTS FOR RAIL
AND SURFACE TRANSPORTATION SECURITY**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JANUARY 18, 2007

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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on January 18, 2007	1
Statement of Senator Carper	63
Statement of Senator Inouye	50
Statement of Senator Klobuchar	61
Statement of Senator Lautenberg	1
Statement of Senator McCaskill	56
Statement of Senator Pryor	3
Statement of Senator Smith	58
Statement of Senator Stevens	2
Statement of Senator Thune	3

WITNESSES

Barrett, Thomas J., Vice Admiral (Ret.), USCG; Administrator, Pipeline and Hazardous Materials Safety Administration, DOT	24
Prepared statement	26
Berrick, Cathleen A., Director, Homeland Security and Justice Issues, GAO ...	30
Prepared statement	31
Boardman, Hon. Joseph H., Administrator, Federal Railroad Administration, DOT	11
Prepared statement	13
Cañas, Hon. Richard L., Director, Office of Homeland Security and Preparedness, State of New Jersey	46
Prepared statement	47
Hawley, Hon. Edmund S. “Kip”, Assistant Secretary, Transportation Security Administration, DHS	4
Prepared statement	5
Hill, Hon. John H., Administrator, Federal Motor Carrier Safety Administration, DOT	21
Prepared statement	22

APPENDIX

Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statement	75
McCain, Hon. John, U.S. Senator from Arizona, prepared statement	75
National School Transportation Association, prepared statement	76
Response to written questions submitted by Hon. Daniel K. Inouye to:	
VADM Thomas J. Barrett	102
Cathleen A. Berrick	105
Hon. Joseph H. Boardman	97
Hon. Edmund S. “Kip” Hawley	79
Hon. John H. Hill	98
Response to written questions submitted by Hon. Frank R. Lautenberg to:	
VADM Thomas J. Barrett	103
Hon. Joseph H. Boardman	97
Richard L. Cañas	106
Hon. Edmund S. “Kip” Hawley	89
Response to written questions submitted by Hon. Mark Pryor to:	
VADM Thomas J. Barrett	104
Hon. Edmund S. “Kip” Hawley	94
Hon. John H. Hill	99
Rockefeller IV, Hon. John D., U.S. Senator from West Virginia, prepared statement	76

OVERSIGHT OF FEDERAL EFFORTS FOR RAIL AND SURFACE TRANSPORTATION SECURITY

THURSDAY, JANUARY 18, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in Room SR-253, Russell Senate Office Building. Hon. Frank R. Lautenberg, presiding.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Welcome all, we're going to get started and I first welcome all of you to the hearing. I've been asked to conduct the hearing this morning by Senator Inouye who is detained for other things, and I'm pleased to do it. It's an odd assignment for a freshman.

[Laughter.]

Senator LAUTENBERG. Anyway, people look at my face and they'll know I'm not a freshman.

And I'm pleased to sit alongside Senator Stevens, with whom I've worked for many years. Unaccustomed as I am to having Senator Stevens sit at the right of me, but we're—I'm pleased to be here with him.

Today we're going to be discussing legislation to provide adequate security protections for rail and highways. And we all know about the billions of dollars dedicated to aviation security every year. But, we're neglecting the security of our surface transportation systems.

At the outset, I'd like to recite a few facts that we ought to consider. More people travel through Penn Station in New York City in a day than those who use the three major airports in the same day. That's the volume of traffic that we're talking about. Every day over 11 million people ride rail in this country. And prior to 9/11, the two major terrorist attacks on our Nation came in the form of truck bombs: the first attack on the World Trade Center was in 1993, and in 1995, the Oklahoma City bombing killed 168 people.

In September 2006, the Senate added provisions to the SAFE Port Act, to improve rail, pipeline, hazmat, truck and bus security. But, the House removed these important provisions and replaced them with a measure on Internet gambling.

We now have an opportunity to finally enact these provisions, and close the lingering security holes. Two weeks ago, Senators

Inouye, Stevens, and many of us on this committee, introduced the Surface Transportation and Rail Security Act of 2007, also known as the STARS Act.

The STARS Act included \$1.2 billion for rail and surface transportation security. The bill will improve the safety of passengers, and protect us against cargo attacks—cargo used for attacks on our society—as they travel by train, truck or bus, and improve the security of pipelines as well.

So, I'm hopeful that the Committee will act quickly on this important security legislation, as it had already been approved by the Senate in the last Congress.

To go over a few housekeeping matters, the hearing's going to operate under the policy adopted by Chairman Inouye, Vice Chairman Stevens. Senators will be allowed seven minutes for the first round of questions, up to two minutes of which may be used for a brief opening statement. And if time permits, members may ask a second round of questions.

And that—Chairman Inouye is scheduled to arrive here soon, and he'll take back his earned chair.

So, I now turn the floor over to Senator Stevens, for any opening statement he wants to make.

Senator Stevens?

**STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA**

Senator STEVENS. Well, thank you very much, Mr. Chairman.

I do welcome all of these witnesses and Mr. Hawley; it's nice to have you. I offered you a bunk in case we have another one next week, but 2 days in a row is heavy duty.

But, I do think it's very appropriate that we take a long look at improving the security of ground transportation, particularly rail and pipeline. And I'm interested in hearing from each one of you about the ways you guess we can enhance security.

Accidents like the train derailment that we've just learned of in Kentucky, on Tuesday, that sparked a chemical fire demonstrate the difficulties in securing and ensuring safety of surface transportation. I do hope that we can study that unfortunate accident. As I understand that local interstate highways were closed down for 11 hours, and the National Guard troops were called in to assist local officials. And, apparently there are still fires burning this morning. Nothing really good comes out of such incidents, but we can certainly try to learn from them. So, I hope that some of you may have some comments concerning that.

I do appreciate what you all do to try and deal with the problem of having a balance between security measures and their affect on the traveling public.

One of the no-nos, I guess, I shouldn't even mention is, is that the air transportation passengers are paying substantially for their security. I haven't heard anyone mention how we're going to pay for the security of ground transportation. I think it must be addressed by this committee.

Thank you very much.

Senator LAUTENBERG. All right, thank you very much.

Senator Thune?

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Mr. Chairman, I too, want to thank you for holding the hearing, and I look forward to hearing what our distinguished panelists have to say and appreciate their being here in what I know are very busy schedules to give us an update on the work that they are doing to help ensure our surface transportation systems are safe and secure.

And as, of course, Secretary Hawley knows—because he was here yesterday—we took a look at the aviation end of this. But obviously rail and other surface transportation is where the bulk of the freight in this country is moved, and obviously we have been blessed—knock on wood—that we haven’t had attacks on trains and buses and subways in this country like other countries have experienced, but that should not impact our diligence when it comes to preparing for possible attacks on this part of our transportation infrastructure as well. So, we have to focus on aviation, but we also have to focus on surface transportation. We can’t neglect either.

And, I hope that the Department of Homeland Security and the Department of Transportation, along with other relevant agencies, are up to that task. I know they’re working very hard at it, and if they need anything from Congress, I hope that they will inform us of that here today. Because obviously, we want to make sure that you all have everything you need to do your jobs, and so, I will look forward to hearing the testimony and posing some questions later on.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Senator Pryor?

**STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you, Mr. Chairman.

I want to join the chorus of Senators who are thanking you and the leadership of this committee for doing this very important—obviously a very important—sector for our Nation’s economy.

So, I want to thank the witnesses for being here today, and I look forward to hearing what they have to say.

Thank you.

Senator LAUTENBERG. Thank you.

Now, I’d like to welcome our witnesses. We’ve got six members of the panel, so we’ll try to deal with it in appropriate form to get as much as we can from each of the witnesses.

We have six excellent witnesses, Kip Hawley, who is the Assistant Secretary for Transportation Security, the head of TSA. He joined us yesterday, we welcome him again today; Joe Boardman, the Administrator of the Federal Railroad Administration; Mr. John Hill, who’s the Administrator of the Federal Motor Carrier Safety Administration; and, Admiral Thomas Barrett, formerly with the Coast Guard, and we welcome him—he’s the Administrator of the Pipeline and Hazardous Material Safety Administration; and, Cathleen A. Berrick, who’s the Director for Homeland Security and Justice Issues at the GAO; and, I especially want to welcome a colleague from New Jersey, Richard Cañas, he’s the Direc-

tor of the Office of Homeland Security and Preparedness for the State of New Jersey. He does a good job.

Thank you for traveling down to Washington today, Director Cañas, I appreciate the local perspective that you're going to bring to today's hearing.

And I want to thank all of you for joining us, and I will now ask you to present the summary of your testimony. I would appreciate it if you can complete your summaries within a 5-minute objective.

Director Hawley?

**STATEMENT OF HON. EDMUND S. "KIP" HAWLEY,
ASSISTANT SECRETARY, TRANSPORTATION SECURITY
ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY**

Mr. HAWLEY. Thank you very much. Good morning, Mr. Chairman, Mr. Vice Chairman and members of the Committee.

I'm please to appear before you today to talk about TSA's efforts at reducing terrorist risks to surface transportation.

It's a pleasure to join my colleagues here today. And to save time for discussion, I'm going to summarize my testimony into four major points.

And they are: Number one, at TSA we look at the transportation system as a network. Aviation, rail, highway, transit, pipeline, ferries are all parts of the network, and we have efforts tailored to each one of them, individually, but it's important to know that we recognize that America's transportation network, as a whole, is important to the national economy and national well-being. And as an end in itself, we take security measures for that entire network.

And second, as we discussed yesterday, our security strategy is based on connecting multiple, flexible layers—many of them apply to the entire transportation system. A plot that's broken up in its early stages—especially before it comes to this country—is the best rail security, the best transit security, best pipeline security, best for everybody. So, efforts directed at supporting and connecting with others in the Government of the United States, as well as our foreign partners, help all parts of the transportation network.

My third point is, that we take advantage of all the work that was done before 9/11, even if it wasn't originally done for security. This panel here, now, this morning, represents that point.

TSA isn't reinventing the wheel. DOT has been working transportation safety issues for a long time. And many of those measures form a very solid security foundation. Our job is to link up with the safety activities, and add value on top of that where there are particular security-specific needs.

Intelligence-sharing, vulnerability analysis, technology sharing, and our Visible Intermodal Protection Response (VIPR) teams are an example of that value-add.

Fourth, and finally, Secretary Chertoff has a risk-based strategy for DHS, and we follow that at TSA and apply it here, in surface transportation. We have completed risk assessments of surface transportation, and identified our top priorities based on threat, vulnerability and consequence.

And they are—the top two—(a) high density passenger transit systems in urban areas with underwater or underground tunnels;

and, (b) highly toxic chemicals in rail cars that are standing, unattended, in high-risk urban areas.

Our mitigation measures include Federal grant priority for the passenger systems—\$171 million in Fiscal Year 2007, and a total of about \$550 million since 9/11—and an innovative and immediate risk reduction approach to freight rail with quantifiable and verifiable performance standards.

And, I'd be happy to answer any questions during the discussion. Thank you.

[The prepared statement of Mr. Hawley follows:]

PREPARED STATEMENT OF HON. EDMUND S. "KIP" HAWLEY, ASSISTANT SECRETARY,
TRANSPORTATION SECURITY ADMINISTRATION, DHS

Good morning Chairman Inouye, Vice Chairman Stevens and Members of the Committee. I am pleased to appear before you today to talk about our efforts in the field of rail and surface transportation security at the Transportation Security Administration (TSA). I would like to highlight some of the important steps that TSA and the Department of Homeland Security (DHS) are taking in partnership with the Department of Transportation (DOT), and our transportation network partners. Many of these important security steps are built upon and fortified by a solid safety foundation that has been developed over the years by our transportation partners and DOT.

Raising the Security Baseline of an Interconnected Network

As we continue to strive to improve the security of these vital transportation systems, we must not forget the principles that make them viable and efficient. Many of these systems were designed with mobility and ease of access as an enabling fundamental underlying their operational success. Our security efforts must work within the framework of these systems and not hamper them. That inherent openness and mobility also presents us with our greatest security challenge.

Intelligence

Non-linear risk drives everything we do. Instead of focusing on predicting the next attack, TSA takes a flexible approach and uses a risk-based methodology to address risk.

TSA pursues a layered approach to security in transportation, including passenger transit, highway, pipeline, and rail security. This approach starts by leveraging the work of other U.S. Government entities that take place way beyond the doors of TSA and even beyond the soil of the United States through effective gathering, analysis, and dissemination of intelligence. As detailed below, we do this by working collaboratively with the transportation and shipper industries, as well as with state and local officials.

The recent disruption of the terror plot in the United Kingdom and of the developing plot targeting underwater tunnels connecting New York and New Jersey illustrate the necessity of this approach. The best defense is one that prevents the terrorists from ever entering the United States. TSA complements other efforts by creating visible, unpredictable deterrence environments to disrupt terrorists' planning capabilities and operational launching of their missions. For example, our aviation system security measures provide a significant barrier to entry for potential terrorists coming to our country. Our government's investments and improvements in terrorism watch lists, border security and intelligence networks significantly impact surface transportation security.

Network Approach and Strategy

To effectively address transportation security, we employ a network approach. The overall transportation system is a network. It has intersections and junctions; and while each transportation mode has its own security challenges, there are common vulnerabilities and mitigation strategies. In an effort to use our security resources efficiently, we work closely with transportation networks to leverage our security impact and determine risk-based priorities.

As we effectively leverage our resources and set security priorities, TSA implements a comprehensive strategy that applies a common methodology across all transportation networks, regardless of mode. That strategy is simple and straightforward. It consists of five elements:

- Assess industry threat, vulnerability, and consequence;
- Develop baseline security standards;
- Assess actual security status against baseline security standards;
- Develop plans to close gaps between actual status and baseline security standards; and
- Develop enhanced systems of security.

Next, let me discuss how this strategy works in practice for the freight rail, passenger rail and rail transit, highway (trucking) and pipeline industries.

Industry Threat Vulnerability and Consequence Assessments (TVC)

The purpose of threat, vulnerability and consequence assessments is to focus efforts on and highlight risk areas. Since September 2001, many Federal agencies and industry partners have been involved in significant efforts to identify the highest risk areas for our security focus. Those efforts have centered on analyzing threats, assessing vulnerabilities and calculating consequences of potential terrorist attacks. Based upon this large body of work and our ongoing analysis, TSA determines the highest areas of risk for each mode of transportation so that we can properly focus on risk mitigation efforts.

Freight Rail-TVC. Over the past several years, TSA has completed a number of freight rail corridor assessments in high threat urban areas. The point of the corridor assessments is to focus on high risk areas and determine the vulnerabilities. We have completed regionally based assessments in New Orleans, LA; Washington, DC; Houston, TX; Buffalo, NY; Cleveland, OH; and several cities in New Jersey including Newark, Elizabeth and Perth Amboy. We are currently assessing Los Angeles, CA and plan to visit additional urban areas in 2007. The results of the initial six assessments demonstrated recognizable trends and risks. We identified railcars loaded with toxic inhalation hazard materials (TIH) sitting unattended as the highest risk potential as a terrorist target. While these shipments represent less than 1 percent of all rail shipments, if attacked they could create an airborne hazard and potentially endanger the lives of people living and working in those communities.

Passenger Transit-TVC. (Amtrak falls within our passenger transit division.) In assessing security in this area TSA is building upon a base of knowledge derived from 37 assessments of readiness to prevent, detect, deter, and respond to terrorist incidents, conducted by the Federal Transit Administration (FTA) and the Federal Railroad Administration (FRA). TSA has a 100 person Surface Transportation Security Inspection (STSI) force that is updating these earlier assessments and conducting additional field rail and passenger transit readiness assessments. TSA has utilized its inspection force to conduct assessments over the past year and a half and will continue to conduct these assessments in partnership with the rail industry and DOT.

The extensive field work conducted by TSA and FTA/FRA in conjunction with the industry has been utilized to set our priorities and identify industry baseline standards. TSA and FTA/FRA assessments, in addition to in-house risk analysis, focus on passenger transit operating procedures and high risk/high consequence assets.

Highway (Trucking)-TVC. TSA has been assessing the security risks of motor carriers through the Corporate Security Review (CSR) program, another form of assessment of industry readiness and vulnerabilities. Based up on our analysis we are focused on Toxic Inhalation Chemicals (TIH) and hazardous chemicals of concern, which include explosives, flammables and other poisonous materials.

Pipeline-TVC. Through the CSR program for pipelines, TSA has identified a number of pipeline systems that pose the highest security risk. TSA will also conduct a pipeline infrastructure study to identify the highest risk pipeline assets.

Baseline Standards

The purpose of baseline standards is to create measurable risk reduction targets.

Freight Rail Baseline Standards. Because the potential risk posed by unattended TIH rail cars in high threat urban areas was identified as the highest risk area in rail, TSA developed a risk reduction goal of reducing the objectively-measured risk of TIH cars in high threat urban areas by 25 percent per year, starting in 2007. That risk factor takes into account car hours, the population of urban areas and the proximity to residential and commercial structures.

TSA has also identified 24 other focus areas as security action items for the rail industry to begin to address. The actions items were released to the industry in June and November 2006. The action items focus on security awareness training, security focused inspections, suspicious activity reporting, control of sensitive information and employee identification. TSA is assessing conformity with the security

action items to evaluate how implementation of the action items reduces objectively measured risk.

Passenger Transit Baseline Standards. Based upon extensive assessments, in-house risk analysis performed at TSA and dialogue with the industry, TSA has developed baseline standards for the industry derived from six fundamental principles. Those principles are:

- Protect high risk/high consequence underground/underwater assets and systems;
- Protect other high risk/high consequence assets and systems identified in vulnerability assessments;
- Use visible, unpredictable deterrence;
- Plan and conduct awareness and response training for key personnel;
- Plan and conduct emergency drills and exercises; and
- Plan and conduct public awareness and preparedness campaigns.

Highway (Trucking) Baseline Standards. TSA has been working closely with a number of chemical shippers to develop a series of baseline security standards for both TIH and hazardous chemicals of concern. Those standards will address specific areas such as vehicle tracking, vehicle attendance, vehicle alarm systems, truck cab access controls, locking fifth wheel on tank trailers and security route and stop areas.

Pipeline Baseline Standards. TSA has been conducting corporate security reviews targeting the top 100 pipeline operators. From the results of these reviews, TSA has developed a series of security standards based upon the best operating practices of those companies. The pipeline standards address areas including security plans, employee security training, access controls and physical access security and employee background investigation.

Assess Security Status. The purpose of assessing security status is to determine how individual operations compare to the baseline standards. The assessment procedures vary depending upon transportation mode. Assessments in rail and passenger transit are conducted by TSA's field inspector force, while highway and pipeline assessments are conducted by TSA's subject matter experts in each network management division. The assessments are structured to target key areas of concern and to capture essential data to evaluate current practice versus baseline standards.

Freight Rail Status. In order to evaluate the security baseline in freight rail, TSA in cooperation with the rail industry is developing a comprehensive database driven system to identify the specific locations where TIH risk is the highest. TSA inspectors will verify attended/unattended status and proximity to high risk structures. In addition to identifying high risk locations, the database will give TSA the ability to identify TIH cars in near real time. This capability will allow us to more effectively respond to emerging threat situations.

Further, TSA inspectors have conducted field interviews with key rail management and personnel. Over 2,600 interviews have been completed, focused on employee security awareness, security procedures and systems to locate and protect TIH cars.

Passenger Transit Status. The TSA inspector force has been conducting assessments of passenger rail transit systems (both commuter rail and other transit systems, including Amtrak). In addition to the TSA assessments, we expect self-assessments from the 50 largest transit agencies to be completed by the end of January 2007. TSA inspectors will then verify and confirm the assessment results. While the data gathered to date is preliminary, it does indicate varying security status among systems. Once data is confirmed by inspectors, we will have a much clearer understanding of how passenger transit systems compare to the six fundamental security principles and guide our plan to help us close those gaps.

Highway (Trucking) Status. TSA conducts highway corporate security reviews and assessments. Those assessments are targeted at companies hauling TIH and other hazardous chemicals of concern. TSA will compare actual practice to baseline standards.

Pipeline Status. TSA will use its ongoing corporate security review process to determine the implementation of baseline standards. TSA will continue to work with individual companies to improve their security status.

Closing Gaps. Once assessments have identified the gaps in actual practice versus baselines standards, TSA develops action plans to close the gaps and takes steps where necessary to close the gaps in all modes. We have a variety of capabilities at our disposal including industry agreements, voluntary measures, security directives, and regulatory action. TSA works with the Office of Grants and Training (G&T) through the Infrastructure Protection Program (IPP) grants program to en-

able transit agencies and other surface transportation entities to apply for Federal funding to address the highest identified risks.

Freight Rail-Close Gaps. In order to reduce the gaps between actual practice and baseline standards, TSA pursued a two-pronged approach. We issued a Notice of Proposed Rulemaking (NPRM) on December 21, 2006, which includes several provisions to strengthen the security of the Nation's freight rail systems in the highest threat urban areas. The proposed rule establishes incident reporting procedures, codifies TSA's inspection authority, requires rail company security coordinators, and most importantly creates a positive chain of custody from beginning to end which requires secure handoffs when cars change hands.

While the proposed rule provides a number of important security initiatives, TSA was not satisfied with the timeframe of rulemaking alone. Risk reduction has a time component and we wanted to reduce the risk faster than rulemaking would allow. As a result, we reached an agreement with the rail industry to reduce unattended TIH standstill car time in high threat urban areas beginning in early 2007. A comprehensive database will be used to identify highest priority risk reduction opportunities and working in conjunction with TSA, the rail carriers will develop site-specific action plans to reduce or remove the TIH risks. In addition to reducing the TIH risks, TSA will work with rail carriers to improve the security performance in the security training and security procedures baseline. TSA is also developing an improvised explosive device (IED) training course for rail employees to be available in the second quarter of 2007.

Passenger Transit-Close Gap. The strategies to close security gaps start with high risk/high consequence assets.

As we know, an attack on underground, underwater, and other critical infrastructure can dramatically increase the consequences of an attack by magnifying the actual impact, complicating the response efforts and substantially prolonging the recovery time.

We must be focused on minimizing high consequence risks. TSA, in partnership with G&T, intends to leverage the Transit Security Grant Program funds to focus on reducing risk and increasing security capabilities in State and local transit systems with the most risk. We are engaged in research to expand our understanding of the vulnerabilities and the consequences of terrorist attacks on our critical infrastructure. We are partnering with the National Laboratories to complete assessments of a prioritized list of transit tunnels and are pursuing mitigation solutions with our industry partners now.

While transit agencies cannot harden every entry point, nor screen every passenger coming into busy stations, they can deploy visible, unpredictable mobile teams that disrupt terrorists' planning capabilities and provide high levels of security. We are accomplishing this by expanding our canine program and leveraging our security network to create surge capacity with Visible Intermodal Protection Response (VIPR) Teams.

VIPR Teams, consisting of Surface Transportation Security Inspectors (STSI)s, canine teams, Federal Air Marshals (FAMs), and advanced screening technology, provide TSA the ability to leverage a variety of resources quickly and effectively. These deployments are designed to raise the level of security in any mode of transportation across the country in heightened security environments. The teams work with local security and law enforcement officials to supplement existing security resources, provide deterrent presence and detection capabilities, and introduce an element of unpredictability to disrupt potential terrorist planning activities. More than 25 VIPR exercises have been conducted at key commuter and regional passenger rail facilities, and more are planned throughout 2007.

Explosives detection canine teams are being trained, certified, and deployed by TSA to passenger transit systems. Since late 2005, TSA's National Explosive Detection Canine Team Program has worked in partnership with passenger transit systems to train, certify, and deploy 53 explosives detection canine teams to 13 major systems in a risk-based application of resources. Forty of these teams are currently in place and the other 13 are projected for training, certification, and deployment in the coming months.

I want to emphasize that our STSI workforce and the canine teams we fund for passenger transit are just the point of the spear. There are literally thousands of transit and rail law enforcement and security officers on duty night and day to provide security where they are needed for these segments of the transportation network. Furthermore, each rail and passenger transit system makes a deliberate and strategic decision when they develop their annual budgets as to where they should apply their revenues to close security vulnerabilities. This approach creates a more effective network of local security rather than deploying a far greater Federal workforce to perform these same functions.

Since the security of these systems is a shared responsibility among Federal, State, and local partners, the Administration has provided significant resources to bolster these security efforts since 9/11. Funds from DHS grants programs may be used for planning, training, exercises, equipment, and other security enhancements. DHS has provided roughly \$18 billion in awards to State and local governments for programs and equipment that help to manage risk.

In addition to visible unpredictable deterrence, TSA believes that training for key personnel is essential to rail as its baseline of security. There are numerous passenger transit training courses available today. TSA is working with FTA to identify the specific type of training required for employees (*i.e.*, train operators, station managers, and control system personnel, among others) in order to provide guidance to systems.

TSA and G&T are using the Infrastructure Protection Program (IPP) grants program to drive improvement in the six security fundamental areas mentioned earlier, including training for key personnel, drills and exercises and public awareness and preparedness.

The \$175 million IPP security grant program is the centerpiece of DHS's inter-agency strategy to close gaps in operator security status and baseline standards. Within the transportation sector the program covers transit, inter-city buses, and trucking security. For purposes of the IPP, "transit" includes Amtrak, which is eligible for \$8.3 million, and commuter ferry systems that are eligible for \$7.8 million. The IPP transit grant guidance emphasized the six fundamentals and we expect to direct transit grants awards based on our system assessments and security fundamental baselines. We use the grants program to close the gaps at high risk properties.

Highway (Trucking)-Close Gaps. TSA is working on a number of strategies to close gaps in performance versus actual standards. We are currently considering a number of voluntary incentive programs and regulatory options.

Pipeline-Close Gaps. TSA has had an extensive working relationship with the pipeline industry. TSA has prepared an employee security awareness training program for all pipeline employees, worked with operators to prepare or improve security plans, conducted site specific visits to evaluate security practices, and developed risk mitigation strategies for high risk assets. This cooperative relationship has resulted in improved conformity to baseline standards.

Enhanced Systems of Security

The final part of our strategy is to enhance the systems of security. As we take actions to close gaps, we also need to improve security technology and practices that many of these technologies apply to multiple modes of transportation.

DHS is developing a number of screening techniques and technologies which may be implemented or deployed quickly to systems facing a specific threat, or in support of major events such as National Special Security Events (NSSEs). Pilot programs to test these technologies are already underway in several major American cities.

Through the DHS Science and Technology (S&T) Directorate's Rail Security Pilot (RSP), DHS has field tested the effectiveness of explosives detection techniques and imaging technologies in partnership with the Port Authority of New York and New Jersey.

The Systems Support Division (SSD) of G&T has conducted operational tests to evaluate manufacturer claims on ballistic resistant trash receptacles and published a report of its findings to help ensure mass transit systems, among others, have the facts needed to guide critical procurement decisions. Similarly, SSD has published a closed circuit television (CCTV) technology handbook to provide a reference point on current CCTV technologies, capabilities and limitations.

Finally, we maintain mobile security equipment, which can fit into two standard size shipping containers, for rapid deployment for use in screening and detection at any major system in the country should the need arise.

In addition to technologies that may apply primarily to passenger modes, TSA is working closely with a number of parties to develop advanced railcar tracking systems with geofenced event-notification capabilities. TSA is also cooperating in efforts to develop next-generation hazardous materials rail cars designed to better withstand terrorist attacks and operating accidents.

TSA is working with selected hazardous material carriers to test truck tracking and control technologies. We are also in the early stages of security technology applications to the pipeline industry. Two specific areas TSA is involved in are blast mitigation and unmanned aerial surveillance vehicles.

Presidential Action and TSA's Objectively Measured Risk Reduction Process

On December 5, 2006, the President issued Executive Order 13416, which builds upon the improvements made in surface transportation security since September 11, 2001, specifically actions taken under Homeland Security Presidential Directive 7, "Critical Infrastructure Identification, Prioritization, and Protection" (HSPD-7). Executive Order 13416 requires the strengthening of our Nation's surface transportation systems by the facilitation and implementation of a comprehensive, coordinated, and efficient security program. As the Federal official with principal responsibility for protecting surface transportation infrastructure, Secretary Chertoff has the lead in implementing this policy in coordination with the Secretary of DOT and the heads of other relevant agencies. The order sets deadlines for key security activities including security assessments of each surface transportation mode and an evaluation of the effectiveness and efficiency of current Federal Government surface transportation security initiatives. We continue to build upon current security initiatives to develop a comprehensive transportation systems sector specific plan, as defined in the National Infrastructure Protection Plan (NIPP). The five-part strategy cited earlier in my testimony is meeting the requirements of the Executive Order.

Annexes to DHS-DOT Memorandum of Understanding

Three annexes to a September 2004 Memorandum of Understanding between DHS and DOT have been completed and signed, evidencing the close and continuous cooperation between TSA and DOT to leverage resources.

The first, between TSA and the Federal Railroad Administration (FRA), memorializes how we will coordinate our programs and initiatives at an agency level to better secure passenger and freight railroad transportation, and improve stakeholder relationships, and to include assisting railroads in prioritizing assets and addressing current and emerging threats and vulnerabilities. While TSA is responsible for rail security and FRA is responsible for rail safety, the annex provides detailed operational guidance to enable the two agencies to avoid duplication and maximize efficiency and cooperation in their planning, inspection, training and enforcement activities.

The second annex is between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and TSA. This annex delineates our respective roles and responsibilities regarding pipelines and hazardous materials transportation security. It discusses sharing data and compliance information between the agencies, coordinating research and regulatory activities, providing joint public information and emergency response materials, collaboration in inspection and enforcement activities, and sharing technical support and budgets.

The third annex is between the Federal Transit Administration (FTA) and TSA. It similarly provides for close and continuous cooperation between the two respective agencies in matters relating to security of the Nation's transit systems.

Together, these annexes allow much more efficient use of the government's time and money, while maximizing the value of what these agencies can achieve for industry and the traveling public.

Summary

TSA has a clear strategy to address surface transportation security. That strategy focuses first on identifying areas of high risk and then establishing baseline security standards to address those risks. Once baseline standards are established, we assess the actual status of security in the transportation industries, and in close coordination with stakeholders, devise strategies for bringing actual practices up to the standards we have established. Finally, we are developing advanced systems of security through a coordinated research and development program, to further enhance security beyond the baseline standards. In furtherance of this strategy, I have established an Office of Transportation Sector Network Management specifically to address the cross-cutting issues that affect all aspects of the transportation sector as a unified whole. They are implementing this strategy through cooperation with stakeholders where appropriate, regulation and inspection where necessary, and through the distribution of grants to assist the industry to implement these objectives we have set forth.

I understand that the Committee is considering new legislation to address further security measures for surface transportation. The Department and TSA look forward to working cooperatively with the Committee as we have done since you first took up the Aviation and Transportation Security Act (ATSA) in 2001. We appreciate your leadership in this area and the support that you have given to TSA.

Thank you for this opportunity to inform you of our efforts in freight rail, commuter rail and other transit, trucking and pipeline security. I would be happy to answer any questions that you might have.

Senator LAUTENBERG. Thank you.
Mr. Boardman?

**STATEMENT OF HON. JOSEPH H. BOARDMAN,
ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, DOT**

Mr. BOARDMAN. Mr. Chairman, Mr. Vice Chairman, members of the Committee, thank you for having me here this morning.

I'm here representing Secretary Peters, and my oral testimony this morning will be focused on FRA's working relationship with TSA, and our efforts in the passenger railroad security area.

In September of 2004, DOT and DHS entered into a Memorandum of Understanding concerning their respective roles on security issues. The MOU notes that DHS has primary responsibility for security, in all modes of transportation, but also recognizes that DOT has responsibilities in the area of transportation security.

TSA and FRA have signed an annex to that memo of agreement, concerning coordination of the two agencies on rail security matters. The annex provides for close cooperation between two—the two agencies on railroad security regulations, legislation, research and development, inspection activities, and response to threats on railroad security.

The agreement provides that if an FRA inspector observes a significant security issue, the information will be provided to TSA and the railroad. And, similarly, if a TSA inspector observes a significant rail safety issue, the information will be provided to FRA and the railroad.

In addition to coordinating day-to-day railroad inspections, FRA has assisted TSA in conducting security assessments in high-threat, urban-area rail corridors carrying significant volumes of TIH materials; and in developing the 27 voluntary security action items that the railroads have agreed to implement to improve security on rail movements of TIH materials.

FRA has one full-time employee addressing rail security matters, and all of our 71 hazmat inspectors and specialists, along with 17 State inspectors devote a portion of their time to reviewing railroad shipper and security plans for compliance with FMSA's security regulations.

FRA's Security Director works on a daily basis with Government agencies and the railroad industry to facilitate communication on security issues, and also participates in security training, reviews security plans, and performs other activities to promote rail security.

Today at FRA, personnel have reviewed more than 6,000 security plans, and conducted over 4,000 inspections for compliance with security training requirements of the FMSA regulations.

In 2007, FRA will work with the American Short Line and Regional Railroad Association to provide hazmat security training, and conduct security reviews at approximately 125 short-line railroads, and conduct at least 15 security training sessions for rail labor organizations, as well as four sessions at the FBI Academy

on railroad security and emergency response for law enforcement personnel.

FRA will explore leveraging the National Labor College, George Meany Training Campus, to assist in providing security awareness training for railroad employee, who are not receiving the security training under FRA's Emergency Preparedness Regulation, or the FMSA security regulation.

FRA requires each railroad that operates intercity or commuter passenger train service, or hosts that operation of such service, to adopt and comply with written emergency preparedness plans prepared by the FRA. The regulation requires railroads providing passenger service to periodically conduct full-scale passenger train emergency simulations, and conduct a debriefing and critique session after actual simulated passenger train emergencies.

The FRA will continue monitoring passenger railroads for compliance with this regulation, and will attend each full-scale simulation, and follow-up review session such as the one that's scheduled for Long Island Railroad this March with the New York City Fire Department.

In 2003, the FRA initiated a review of existing passenger train safety needs. This led to an emergency systems NPRM in August 2006. Emergency communications is one of the main focuses of this particular NPRM. Under the proposal, all existing passenger cars will be required to be equipped with public address systems by 2012, that provides a means for a crew member to communicate to all train passengers in an emergency situation. And all new passenger cars would be required to be equipped with intercom systems that provide a means for passengers and crew members to communicate with each other in an emergency situation.

The proposed rulemaking would also enhance requirements for emergency window exits in passenger cars, and mandate that all passenger cars—including existing cars—have rescue windows for emergency responder access.

FRA is in the process of preparing the final rule, and we expect to do so by the middle of the year.

Moreover, a separate regulatory proposal is also in development, focusing on passenger car emergency signage, low location exit path marking and emergency lighting. This proposal is expected to be published by the end of 2007. Complementing this regulation, Amtrak and commuter railroads have instituted their own security plans and conduct security training. FRA assisted in the development of its security plan, and specifically—in coordination with Amtrak's Inspector General—FRA contracted with RAND Corporation to conduct a systematic review and assessment of Amtrak's security posture, corporate strategic security planning, and programs focusing on the adequacy of preparedness for combating terrorist threats. FRA's Security Director is currently working with Amtrak to implement the recommendations of that RAND study.

FRA inspectors conducted basic security reviews of Amtrak and commuter railroad security, both after the 2004 train bombings in Madrid, and with TSA inspectors after the 2005 transit bombings in London. In both cases, FRA inspectors and TSA inspectors were deployed immediately after the bombings to assess the security

posture of passenger railroads, based on a checklist of major security criteria.

Together, DOT, TSA and the rail industry are helping to ensure that security initiatives and programs are directed at potential threats to the Nation's railroad network. And as rail employers, employees and others responsible for security are prepared to identify and address such threats, FRA looks forward to working with this committee in furthering the safety and security of our Nation's railroad network, and including the drafting of safety and security legislation.

Thank you very much.

[The prepared statement of Mr. Boardman follows:]

PREPARED STATEMENT OF HON. JOSEPH H. BOARDMAN, ADMINISTRATOR,
FEDERAL RAILROAD ADMINISTRATION, DOT

Chairman Inouye, Vice Chairman Stevens, and other members of the Committee, I am pleased to be here today to testify, on behalf of the Secretary of Transportation, about the security of our Nation's passenger and freight railroad network and the efforts that the Department of Transportation (DOT) is making to enhance rail safety and security. The Federal Railroad Administration's (FRA) primary mission is to promote the safety of the U.S. railroad industry and to reduce the number and severity of accidents and incidents arising from railroad operations. Our railroad safety mission necessarily includes our involvement in railroad security issues. The U.S. Department of Homeland Security (DHS) and its Transportation Security Administration (TSA) have primary responsibility for transportation security, with FRA providing support in the railroad sector. FRA works closely with TSA and the railroad industry on a daily basis in addressing railroad security and safety issues, participates in the Government Coordinating Council for Rail, and contributed its expertise to the National Strategy for Transportation Security and the National Infrastructure Protection Plan.

My testimony today will provide some background on FRA's railroad safety program, describe the role that FRA plays in railroad security, and discuss railroad safety and security initiatives. We stand ready to work with the Committee in furthering the safety and security of our Nation's railroad network.

Overview of the Railroad Industry

The U.S. railroad network is a vital link in the Nation's transportation system and is critical to the economy, national defense, and public health. Passenger and freight railroads operate over 170,000 route miles of track and employ over 232,000 workers. The rail system is diverse and expansive. Security risks are inherent in its supporting infrastructure, as well as in the people and products moving through it. Most of the larger railroads have their own police force, and they are supplemented by State and local law enforcement.

Amtrak, the Alaska Railroad Corporation, and commuter railroads provide passenger rail service to more than 500 million passengers yearly. Passenger operators face many challenges in their efforts to provide a secure public transportation environment. By definition, the systems are open, providing numerous points of access and egress leading to high passenger turnover and making them difficult to monitor effectively. Amtrak, for example, operates as many as 300 trains per day serving over 500 stations in 46 States, and Amtrak trains use tracks owned by freight railroads except for operations in the Northeast Corridor and in Michigan.

Privately-owned freight railroads connect industries and businesses with each other across the country and with markets overseas, moving 42 percent of all inter-city freight, measured in ton-miles, including 67 percent of the coal used by electric utilities to produce power, and chemicals used in manufacturing and water purification. Seven Class I railroads haul over 90 percent of the rail cargo in the U.S., with the remaining 10 percent being transported by 30 regional railroads and over 500 local railroads. Typically railroads move about 1.7 to 1.8 million carloads of hazardous materials (hazmat) yearly, with roughly 105,000 of these carloads being toxic inhalation hazard (TIH) materials, such as chlorine and anhydrous ammonia. Over 64 percent of TIH materials are currently transported by rail. The railroads have an outstanding record in moving all goods safely. The vast majority of hazardous materials shipped by rail every year arrive safely and without incident, and train accidents involving a release of hazardous materials that causes death are infre-

quent and rare, even while rail traffic volumes have increased steadily. As discussed below, DOT has an aggressive and comprehensive action plan to address the root causes of hazmat accidents, to examine and improve the integrity of rail tank cars used to transport hazmat, and to improve the railroads' hazmat security plans. In addition, DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) annually provides grant funds to States and Indian tribes to assist in the development, improvement, and implementation of hazmat emergency response plans, and to train emergency responders to respond to hazmat accidents and incidents; details on this program are contained in PHMSA's website (<http://hazmat.dot.gov>).

Maintaining a safe and secure railroad transportation system is essential, and safety and security issues are being jointly addressed by the industry, DOT, and TSA.

FRA's Railroad Safety Program

FRA is the DOT agency charged with carrying out the Federal railroad safety laws. The laws provide FRA, as the Secretary's delegate, with very broad authority over every area of railroad safety. In exercising that authority, the agency has issued and enforces a wide range of railroad safety regulations. Several of FRA's rules have been developed with specific consideration of security concerns. For example, FRA's January 2002 final rule barring most extraterritorial dispatching of U.S. railroad operations is based in part on the agency's concerns about the security of foreign dispatching facilities. Similarly, FRA's rule on passenger train emergency preparedness, discussed more fully below, requires carriers to prepare plans that deal with criminal as well as accidental events. While most of FRA's rules are focused on the safety of railroad operations and not explicitly based on security concerns, they also necessarily have some bearing on security. For example, a railroad inspector performing an inspection required by an FRA safety regulation could potentially uncover a hazardous condition that was intentionally caused by terrorist activity. Similarly, Federal passenger and freight equipment standards are intended to ensure that the equipment can withstand forces of derailments and collisions, whether caused by accidents or deliberate acts, thereby helping to protect passengers, employees, and surrounding communities.

In addition, FRA enforces in the rail mode of transportation the Hazardous Materials Regulations, which are promulgated by PHMSA. These regulations include requirements that railroads and other transporters of hazmat, as well as shippers, have and adhere to security plans and also train their employees involved in offering, accepting, or transporting hazmat on both safety and security matters, as discussed more fully below.

To address the key safety issues facing the railroad industry, in May 2005, DOT and FRA launched an aggressive and ambitious National Rail Safety Action Plan with the following strategy:

- Target the most frequent, highest-risk causes of accidents;
- Focus FRA's oversight and inspection resources more precisely; and
- Accelerate research efforts that have the potential to mitigate the largest risks.

FRA's plan includes initiatives in several areas: reducing human factor-caused train accidents, the largest category of train accidents; acting to address the serious problem of fatigue among railroad operating employees; improving track safety; improving emergency preparedness and enhancing hazmat safety, including evaluating and improving the integrity of tank cars used to transport hazmat; and improving highway-rail grade crossing safety. One of the primary elements of the Action Plan is the implementation of a National Inspection Plan, which uses sophisticated trend analysis to ensure that FRA is properly allocating its inspectors so that they are directing their efforts on areas of greatest safety concern. A summary of the steps FRA has taken in implementing the Action Plan is attached to my statement.

Though the Action Plan is focused on rail safety, rail security will also be improved. In particular, enhancements to hazmat safety and emergency preparedness will result in enhancements to rail security.

FRA's Role in Railroad Security

FRA's involvement in railroad security predates the terrorist attacks on September 11, 2001. From October 1995 (when a deliberate act of vandalism caused a fatal Amtrak derailment near Hyder, Arizona) through March 2006 (when the USA PATRIOT Improvement and Reauthorization Act of 2005 was enacted), FRA helped develop and worked with Congress to secure the enactment of Federal criminal legislation to deter and punish more effectively terrorist attacks against railroads and mass transportation systems. Additionally, in 1998 FRA issued a regulation requiring passenger railroads to prepare, and secure FRA approval of, plans to address

emergencies, including security threats, to train employees on the plan, and to conduct emergency simulation drills, as noted above and discussed more fully below. FRA will be exploring leveraging the National Labor College, George Meany Training Campus, to assist in providing security awareness training for railroad employees who are not receiving security training under FRA's emergency preparedness regulation or PHMSA's security regulation.

Since the September 11 terrorist atrocities, FRA has been actively engaged in the railroad industry's response to the terrorist threat. The railroads have developed their own security plans, and FRA has worked with the railroads, rail labor, and law enforcement personnel to develop the Railway Alert Network, which permits timely distribution of information and intelligence on security issues. Working with DOT's Federal Transit Administration (FTA), we have participated in security risk assessments on commuter railroads, and we have conducted security risk assessments of Amtrak as well. FRA's security director works on a daily basis with government agencies and the railroad industry to facilitate communications on security issues, and also participates in security training, reviews security plans, and performs other activities to promote rail security. For example, FRA intends to conduct at least 15 security training sessions for rail labor organizations in 2007, as well as four sessions at the FBI Academy on railroad security and emergency response for law enforcement personnel.

In September 2004, DOT and DHS entered into a memorandum of understanding (MOU) concerning their respective roles on security issues. The MOU notes that DHS has primary responsibility for security in all modes of transportation but also recognizes that DOT has responsibilities in the area of transportation security. The MOU reflects the agencies' shared commitment to a systems risk-based approach and to development of practical solutions, recognizing that each agency brings core competencies, legal authorities, resources, and expertise to the railroad mission. The MOU requires early coordination between the parties on the development of regulations affecting security. Separate annexes have been signed concerning the implementation of the Homeland Security Council's recommendations concerning TIH materials, and concerning the coordination between FRA and TSA, FTA and TSA, and PHMSA and TSA on security matters.

The FRA-TSA annex provides for close cooperation between the two agencies on railroad security regulations, legislation, research and development, inspection activities, and response to threats to railroad security in order to maximize passenger and freight railroad security while minimizing disruptions to railroad operations to the extent practicable. The agreement provides that if an FRA inspector observes a significant security issue, the information will be provided to TSA and the railroad; similarly, if a TSA inspector observes a significant rail safety issue, the information will be provided to FRA and the railroad. FRA has one full-time employee addressing rail security matters, and all of our 71 hazmat inspectors and specialists, along with 17 State inspectors, devote a portion of their time to reviewing railroad and shipper security plans for compliance with PHMSA's security regulations discussed below.

Freight Railroad Security

Railroads have voluntarily developed and adopted security plans based on comprehensive risk analyses, and the national intelligence community's best practices, that address the security of not only hazmat but of freight in general. The Association of American Railroads (AAR) has established guidance for the major freight railroads in the form of a model strategic security plan. The railroad industry has also developed a detailed protocol (AAR Circular OT-55-I) on recommended railroad operating practices for transportation of high-risk hazardous materials (including TIH). FRA, PHMSA, and TSA have jointly worked with the railroad industry to build upon the railroads' security efforts through vulnerability assessments, development of voluntary security action items, and rulemakings. Additionally, FRA has arranged a conference to permit railroads and chemical shippers to discuss routing options for the movement of TIH materials, as explained more fully below.

A special focus for FRA and DOT, collectively, is the security of hazmat transported by rail. A major initiative has been PHMSA's March 2003 regulation requiring each shipper and carrier of significant quantities (placardable amounts) of hazmat to adopt and comply with a security plan. See 49 CFR § 172.800 *et seq.* Under the PHMSA regulation, security plans must include an assessment of security risks and appropriate countermeasures or mitigation strategies, or both, to address those risks. The plans must, at a minimum, address three specific areas: the security of company personnel; unauthorized access to company property; and the security of hazmat shipped or transported by the company from its origin to its destination. To assist railroads that transport hazmat and shippers that offer hazmat

for transportation by rail to comply with this regulation, particularly small- and medium-sized companies, PHMSA developed a program on how to write and implement security plans for their companies.

FRA recognizes that railroad and shipper employees' awareness and understanding of the PHMSA regulation and procedures governing the safe and secure transportation of hazmat shipments are critical. Therefore, PHMSA's regulation provides for safety and security training for employees engaged in the transportation of hazmat. Specifically, each shipper and carrier of significant quantities of hazmat is also required to conduct two types of security training for its employees: security awareness training that provides an awareness of risks associated with hazmat transportation and methods designed to enhance hazmat transportation security, and in-depth security training concerning the company's security plan and its implementation. These training requirements are also recurrent; employees must receive the required training at least every 3 years. To date, FRA personnel have reviewed more than 6,105 security plans (including plans for shippers by rail and the plans for all Class I freight railroad carriers) and conducted 4,054 inspections for compliance with the security training requirements. Moreover, FRA's security director is currently working with the American Short Line and Regional Railroad Association to provide hazmat security training and conduct security reviews at approximately 125 short line railroads in 2007.

In April 2004, DHS and DOT took specific actions to improve the security of rail shipments of TIH materials. As part of this initiative, DHS and DOT, in cooperation with the railroads, are assessing the vulnerabilities of High Threat Urban Areas (HTUAs) through which TIH materials move by rail in significant quantity. These assessments helped result in the railroads agreeing to voluntarily implement 27 Security Action Items designed to improve the security of rail movements of TIH materials. The Action Items address system security and access control (*i.e.*, practices affecting the security of railroads and their property), as well as en-route security (the actual movement and handling of railcars containing TIH materials), particularly in HTUAs. Full implementation of the Action Items is expected to raise the security baseline for the transportation of TIH materials. Implementation of the first 24 Action Items had begun when they were announced in June 2006, and implementation of the remaining 3 Action Items dealing with HTUAs had also been initiated when they were announced on November 21, 2006.

In August 2004, DOT and TSA published a notice and request for comments in the *Federal Register* asking for input on aspects of TIH rail shipments, the DOT security program requirement, and the need for additional regulation. Following review and consideration of the comments received, PHMSA, in consultation with FRA and TSA, published a notice of proposed rulemaking on December 21, 2006, to revise current requirements for the safe and secure rail transportation of hazmat. *See* 71 FR 76833. Likewise, TSA concurrently proposed enhancements to rail security requirements. *See* 71 FR 76852. Specifically, PHMSA's proposal would require railroads to—

- compile annual data on specified hazmat rail shipments;
- use the data annually to analyze safety and security risks along rail transportation routes where those materials are transported and one possible alternative to each route;
- utilize the analyses in selecting the safest and most secure commercially practicable routes the carrier is authorized to operate over in transporting these materials;
- address the security risks associated with shipments delayed in transit or temporarily stored in transit as part of their security plans;
- notify consignees if there is a significant unplanned delay affecting the delivery of certain types of hazardous material;
- work with shippers and consignees to minimize the time a rail car containing certain types of hazardous materials is placed on track awaiting pick-up or delivery or transfer from one carrier to another;
- notify storage facilities and consignees when rail cars containing certain types of hazardous materials are delivered to a storage or consignee facility; and
- conduct security visual inspections at ground level of rail cars containing hazardous materials to inspect for signs of tampering or the introduction of an improvised explosive device (IED).

PHMSA and FRA will hold two public meetings, one on February 1, 2007, in Washington, D.C., and the second on February 9, 2007, in Dallas, Texas, to obtain oral comments on the proposed requirements.

DHS has provided funding to the Railroad Research Foundation, a nonprofit organization devoted to sustaining a safe and productive railroad industry, to develop a Web-based tool to calculate rail route specific hazmat risks, and assist in route selection decisions. This tool would be available to rail carriers in performing route analysis, and to DOT, TSA, and government emergency planners.

In late 2005, FRA granted a request by the AAR and the American Chemistry Council to convene a section 333 conference to discuss ways to minimize security and safety risks flowing from the transportation by rail of TIH materials. Section 333 of title 49 of the United States Code authorizes the FRA Administrator, as delegate of the Secretary of Transportation, to convene conferences at the request of one or more railroads to address coordination of operations and facilities of rail carriers in order to achieve a more efficient, economical, and viable rail system. Persons attending a section 333 conference are immune from antitrust liability for any discussions at the conference, and can also receive immunity for any resulting agreements that receive FRA approval. The conference has been carefully structured to minimize antitrust concerns involving the chemical manufacturers and shippers. The conference provides the railroads and chemical manufacturers and shippers with the opportunity to meet and discuss approaches to reduce the amount of TIH materials moved by rail, and to enhance the safety and security of TIH materials that are moved. FRA, PHMSA, and representatives from the Department of Justice, the Federal Trade Commission, TSA, and the Surface Transportation Board (STB) are participating in these discussions. The initial efforts of the conference are focused on chlorine and anhydrous ammonia rail transport because they represent over 80 percent of all TIH rail shipments. FRA has met with the rail carriers to discuss modeling and routing options. Further meetings with the rail carriers, as well as separate meetings with the chlorine and anhydrous ammonia shippers, are planned for early this year. In some instances, the projects agreed to at the conference may need the approval of the STB in order to be implemented.

While we must remain ever vigilant to secure hazmat shipments on our Nation's railroads, for the sake of railroad employees and the public whom we all serve, it bears emphasizing that the vast majority of hazmat shipments arrive at their destinations safely. Considering just chlorine, for example, since 1965 (the earliest data available) there have been at least 2.2 million tank car shipments of chlorine—only 788 of which were involved in accidents (0.036 percent of all the shipments). Of those accidents, there were 11 instances of a catastrophic loss (*i.e.*, a loss of all, or nearly all) of the chlorine lading (0.0005 percent of all the shipments). Of the 11 catastrophic losses, four resulted in fatalities (0.00018 percent of all the shipments). For all hazardous materials, in the 12 years from 1994 through 2005, hazardous materials released in railroad accidents resulted in a total of 14 fatalities. While one death is obviously too many, the record of transporting these commodities is very good, and we believe the initiatives underway will further improve upon that record.

Passenger Railroad Security

As discussed earlier, in the area of passenger railroad security, FRA requires each railroad that operates intercity or commuter passenger train service or that hosts the operation of such service to adopt and comply with a written emergency preparedness plan approved by FRA. *See* 49 CFR Part 239. The regulation makes clear that an "emergency" includes a security-related situation. Each plan must address employee training and qualification, and provide for both initial and recurrent training. Additionally, each railroad must establish and maintain a working relationship with emergency responders on its line by taking measures such as developing and making available a training program on the plan and inviting the emergency responders to participate in emergency simulations. The regulation requires railroads providing passenger service to periodically conduct full-scale passenger train emergency simulations (with actual equipment and simulated victims) and conduct a debriefing and critique session after actual or simulated passenger train emergency situations. FRA will continue monitoring passenger railroads for compliance with this regulation and attend each full-scale simulation and follow-up review session, such as one scheduled by the Long Island Rail Road for March with the New York City Fire Department.

In 2003, under the auspices of FRA's Railroad Safety Advisory Committee (RSAC), FRA initiated a review of existing passenger train safety needs and programs for the purpose of developing any necessary recommendations on actions to advance the safety of passenger rail service. The RSAC is a forum for developing recommendations to FRA on rulemakings and other safety program issues, and it includes representatives from all of the rail industry's major groups, State representatives, the National Transportation Safety Board (NTSB), and other stakeholders. As part of this effort, the Passenger Safety Working Group was established,

as well as four smaller task forces, notably the Emergency Preparedness Task Force. The Emergency Preparedness Task Force is specifically devoted to consideration of passenger train emergency preparedness issues, and includes representatives from railroads, rail labor organizations, the NTSB, FTA, and TSA. Its efforts helped lead to the issuance of proposed enhancements and additions to FRA's regulations for passenger train emergency systems (emergency systems NPRM). *See* 71 FR 50276; August 24, 2006.

Emergency communication is one of the main focuses of the emergency systems NPRM. Under the proposal, all existing passenger cars would be required to be equipped with a public address system by 2012 that provides a means for a crewmember to communicate to all train passengers in an emergency situation, and all new passenger cars would be required to be equipped with an intercom system that provides a means for passengers and crewmembers to communicate with each other in an emergency situation. An intercom system could be vital in enabling a passenger to quickly alert a crewmember of a security threat, and the crewmember in turn could contact the appropriate authorities to obtain emergency assistance and use the train's public address system to provide any necessary direction to passengers. The proposed rulemaking would also promote passenger and employee safety in an emergency situation—whether resulting from an accidental or an intentional act—by enhancing requirements for emergency window exits in passenger cars and mandating that all passenger cars, including existing cars, have rescue windows for emergency responder access. FRA is in the process of preparing the final rule, which is expected to be issued by the middle of this year. Moreover, a separate regulatory proposal is also in development within the Emergency Preparedness Task Force, focusing on passenger car emergency signage, low-location exit path marking, and emergency lighting. The proposal will be based on American Public Transportation Association (APTA) standards for passenger safety, will augment current Federal requirements, and is expected to be published by the end of 2007.

Complementing FRA's regulations, Amtrak and commuter railroads have instituted their own security plans and conduct security training. FRA assisted Amtrak in the development of its security plan. Specifically, in coordination with Amtrak's Inspector General, FRA contracted with the RAND Corporation to conduct a systematic review and assessment of Amtrak's security posture, corporate strategic security planning, and programs focusing on the adequacy of preparedness for combating terrorist threats. FRA's security director is currently working with Amtrak to implement the recommendations of the RAND study. APTA is also leading commuter railroads in the development of voluntary industry standards for passenger rail safety and security.

FRA inspectors have conducted basic security reviews of Amtrak and commuter railroad security both after the 2004 train bombings in Madrid and after the 2005 transit bombings in London. In both cases, FRA inspectors were deployed immediately after the bombings to assess the security posture of passenger railroad facilities based on a checklist of major security criteria. In the aftermath of the London bombings, FRA worked closely on these security reviews with TSA's new rail security inspectors. TSA focused primarily on urban rapid transit lines, while FRA inspectors concentrated on commuter and intercity passenger operations; in some situations, inspectors from the two agencies worked jointly. FRA will continue to support TSA in responding to rail security threats.

In partnership with FTA, FRA also participated in security risk assessments on the ten largest commuter railroads and contributed the funding for security risk assessments on three of these railroads. In addition, FRA participated in FTA's "best practices tool kit" initiative, contributing our knowledge of commuter rail operations, infrastructure, and organization to ensure that the recommended security enhancement measures were sound and feasible in a railroad environment. FRA staff worked closely with many of the railroads that receive FTA grant funding, to plan and assist in the development and implementation of security simulations and drills. FRA also devoted staff with both railroad knowledge and facilitation skills to the 17 FTA-sponsored workshops across the country (called "Connecting Communities") to bring together commuter railroads, emergency responders, and State and local government leaders so that they might better coordinate their security plans and emergency response efforts.

Research and Development

FRA conducts and supports research, development, and demonstration projects related to rail safety and rail security through its Office of Research and Development, in cooperation with DHS. Both theoretical and applied research on a wide range of

issues has led to impressive results and tangible technology and process improvements.

A recent example of the application of FRA's research efforts to both rail safety and security is the Passenger Rail Vehicle Emergency Evacuation Simulator, or "Rollover Rig." This device, which began operation in 2006, can rotate a full-sized commuter rail car up to 180 degrees to simulate passenger train derailment scenarios. The Rollover Rig is already enhancing the ability of researchers to test strategies for evacuating passenger rail cars and to evaluate the performance of emergency systems in the cars, such as emergency lighting, doors, and windows. In addition, first responders nationwide now have a unique training tool to practice effective passenger rail rescue techniques safely when a rail car is on its side. FRA developed the Rollover Rig at a cost of \$450,000. New Jersey Transit Rail Operations donated the commuter rail car used by the Rollover Rig, and the Washington Metropolitan Area Transit Authority agreed to house, operate, and maintain the simulator at its emergency response training facility located in Landover, Maryland.

We also continue to look for ways to improve tank car survivability, to reduce the likelihood that a tank car may be breached either by accident or by intentional act. PHMSA's and FRA's efforts to improve tank car survivability have a long and effective history. Working with the industry, all tank cars carrying hazardous materials now have top and bottom shelf couplers, and, as appropriate, tank cars are equipped with head shields, thermal protection, and skid protection for protruding bottom outlets. Tank cars carrying specific product groups, such as TIH and other particularly hazardous substances, are subject to additional requirements which became fully effective July 1, 2006, after a 10-year phase-in period.

Prior to the August 2005 enactment of Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), FRA had initiated tank car structural integrity research stemming from the circumstances of the 2002 derailment in Minot, North Dakota, involving the release of anhydrous ammonia from a tank car punctured during the derailment. Current research involves a three-step process to assess the effects of various types of train accidents (*e.g.*, a derailment or collision) on a tank car. The first phase is development of a physics-based model to analyze the kinematics of rail cars in a derailment. The second phase is development of a valid dynamic structural analysis model; and the third phase is an assessment of the damage created by a puncture and entails the application of fracture mechanics testing and analysis methods. DOT's Volpe National Transportation Systems Center is doing the modeling work now, and FRA will dovetail this ongoing research with the requirements of Section 9005. FRA, in conjunction with PHMSA, hopes to develop new hazardous material tank car safety standards in 2008, and we are currently consulting with railroads, shippers, and car manufacturers and have solicited public comments to assist us in this effort. In this connection, FRA just signed a Memorandum of Cooperation with Dow Chemical Company, Union Pacific Railroad, and the Union Tank Car Company to participate in their Next Generation Rail Tank Car Project and advance rail tank car safety.

Further, in September 2006, FRA awarded \$200,000 to test sample tank car panels with various coatings to determine their ability to prevent penetration from small arms fire, as well as their ability to self-seal and, thereby, mitigate the severity of any incident. FRA developed the project in coordination with the AAR and DHS, which came up with the idea of applying to tank cars a protective coating like that used to enhance the armor protection of military vehicles in Iraq.

FRA has other research and development projects underway related to rail security which we would be happy to discuss with Committee staff.

Conclusion

FRA will continue to support TSA in carrying out its security responsibilities, and work with the rail industry to secure the Nation's freight and passenger railroad network. Together, DOT, TSA, and the rail industry are helping to ensure that security initiatives and programs are directed at potential threats to the Nation's railroad network and that rail employees and others responsible for its security are prepared to identify and address such threats.

Attachment

SUMMARY OF THE STEPS FRA HAS TAKEN TO IMPLEMENT ITS NATIONAL RAIL SAFETY ACTION PLAN

In response to various rail safety concerns, including some recent major train accidents, such as Graniteville, SC, and the lack of substantial improvement in the train accident rate in recent years, *Secretary of Transportation Norman Mineta*

launched the National Rail Safety Action Plan in May 2005. FRA has made real and substantial progress in bringing its aggressive and ambitious National Rail Safety Action Plan to fruition.

To reduce the number of train accidents caused by human factors (the largest category of train accidents), FRA—

- Issued a proposed Federal rule in October 2006 that would address top causes of human factor train accidents (such as failing to return a track switch to its proper position, which led to the Graniteville accident). The final rule is expected to be issued in mid-2007.
- Implemented an ongoing research program to identify human performance problems. Railroads, their employees, and FRA are entering into agreements that permit the employees to report unsafe events that do not result in a reportable accident but could have done so, without the fear of discipline.
- Made available to railroads and their employees a fatigue model that can assist them in developing crew scheduling practices based on the best current science.
- Approved the first positive train control system capable of automatically controlling train speed and movements to prevent train collisions and other accidents—the system will be installed on many BNSF Railway Company (BNSF) rail lines.
- Completed a pilot project, in partnership with BNSF, to develop a low-cost system that electronically monitors, detects, and reports a misaligned switch on mainline track located in non-signaled track territory. BNSF plans expansion of this and other similar systems on other non-signaled lines of their company.

To help prevent track-caused train accidents (the second-leading category), FRA—

- Developed an automated track inspection system that uses high-resolution video to detect cracks in joint bars and that can be deployed on a hi-rail vehicle to detect visible cracks in joint bars without having to stop the vehicle. Testing showed that the high-resolution video system detected visual cracks that were missed by the traditional visual inspections. The system was demonstrated to the railroads during Summer and Fall of 2006.
- Issued a final rule requiring track owners to develop and implement a procedure for the detailed inspection of rail joints in continuous welded rail track.
- Contracted for the construction of two automated track inspection vehicles, to be delivered in February and March, which will bring FRA's fleet to five, allowing FRA to inspect nearly 100,000 track-miles each year, which triples the present capacity. This additional capability will permit FRA to inspect more miles of major hazardous material (hazmat) and passenger routes, while also having the ability to follow up more quickly on routes where safety performance is substandard.

To improve hazmat safety and emergency response capability, FRA improved emergency responders' timely access to hazmat information. As discussed in FRA's testimony today, FRA also accelerated its tank car structural research, hopes to issue new tank car performance standards in 2008, and has issued an NPRM on passenger train emergency systems.

To strengthen FRA's rail safety inspection and enforcement program, FRA has made better use of data to direct FRA safety inspectors and other resources to where problems are likely to arise. FRA's new National Inspection Plan was fully implemented for all FRA safety disciplines in March 2006, and further training will be provided to FRA safety personnel on how to best use the data during the scheduled national technical conferences this year.

To foster further improvements in highway-rail grade crossing safety, FRA—

- Built partnerships with State and local agencies by issuing, in May 2005, and extensively distributing a safety advisory describing the roles of the Federal and State governments and of the railroads in crossing safety. The advisory also reminds railroads of their responsibilities in relation to crossing accident reporting and investigation and offers assistance to local authorities in the investigation of crossing collisions where information or expertise within FRA control is required to complete the investigation.
- Aided the State of Louisiana in developing a crossing safety action plan. This State has consistently ranked among the top five with the highest number of crossing collisions and fatalities. The State approved the plan in April 2006.
- Launched an ongoing public safety inquiry into safety at private crossings.

We would be glad to provide the Committee with additional information on the current status of FRA's implementation of the National Rail Safety Action Plan.

Senator LAUTENBERG. Mr. Hill?

**STATEMENT OF HON. JOHN H. HILL, ADMINISTRATOR,
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DOT**

Mr. HILL. Thank you for inviting me today to discuss the Federal Motor Carrier Safety Administration's role in contributing to the security of truck and bus transportation on our highways.

Following the tragic events of September 11, 2001, FMCSA recognized immediately the risk of terrorism associated with the transportation of hazardous materials.

Within a month, the agency—along with our State partners—began visiting all motor carriers that transport hazardous materials to ensure that they were aware of the potential vulnerability and basic security measures. In 7 months, State and FMCSA staff conducted over 30,000 security sensitivity visits on hazardous material carriers.

FMCSA also worked with the Research and Special Programs Administration—now the Pipeline and Hazardous Materials Safety Administration—to develop regulations requiring hazardous materials and carriers and shippers to develop security plans and train their employees about hazardous materials security. Following implementation of this regulation, FMCSA took steps to educate both the industry, our field staff, and the State enforcement officials.

The agency also developed procedures to check compliance with hazardous materials security regulations in what we call a Security Contact Review. To date, FMCSA has conducted over 4,000 Security Contact Reviews, and we've assessed civil penalties against over 400 entities for failure to comply with the basic security regulations.

In 2004, our agency promulgated regulations to require carriers of certain hazardous materials to obtain a hazardous materials safety permit. The program—applies to carriers that transport high explosives, high route-controlled quantities of radioactive materials, and materials that are toxic by inhalation hazard, and large quantities of liquefied natural gas.

Currently, over 1,100 motor carriers have a current hazardous materials safety permit. The program is an example of an area where security overlaps with FMCSA's safety mission.

FMCSA's primary security activities at this point involve the transportation of hazardous materials. We continue to ensure compliance with security training, and security plans, regulations through our Security Contact Review, and we take enforcement for non-compliance as warranted.

We've met with TSA, and we work with them to ensure that their Corporate Security Review, conducted by their personnel, are not duplicative on the industry for the work that they're doing.

Decisions regarding the routing of hazardous materials is one area FMCSA has identified as relating to security, in addition to the safety issues that were originally the impetus for the regulations.

FMCSA has two sets of regulations governing the routing of hazardous materials: Standards for routing of non-radioactive materials, and requirements for routing of highway route-controlled quantities of radioactive materials. Both parts contain sections set-

ting out requirements States or Indian tribes must follow to establish, maintain and enforce hazardous material routing requirements.

To establish routing designations or restrictions, the State or local government, or Indian tribe, must consider 13 factors. Currently, security is not required to be a factor considered in making routing decisions, and as such, security is not covered in the FMCSA guidance regarding making routing decisions.

Last year, FMCSA began a study to modify existing guidance materials to State and local government, and Indian tribes, in designating routes to ensure the safe and secure transportation of HM. And second, develop tools that will assist these entities in assessing security vulnerabilities of current and proposed hazardous materials routes. We expect to complete this study by the Fall of 2007.

Finally, Mr. Chairman, in conclusion I want to say that as our Nation moves more to secure and protect our citizens from the threat posed by terrorism, it's important that we move deliberately and responsibly to secure our transportation systems without paralyzing them. That is what FMCSA has attempted to do since the tragic events of September 11, 2001, and what we will continue to endeavor to do as we support agencies inside and outside the Department on transportation security initiatives.

We look forward to working with your committee and the other agencies present at the hearing today to implement this important piece of legislation.

[The prepared statement of Mr. Hill follows:]

PREPARED STATEMENT OF HON. JOHN H. HILL, ADMINISTRATOR,
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DOT

Introduction

Chairman Inouye, Vice Chairman Stevens, and Senators of the Committee, thank you for inviting me today to discuss the Federal Motor Carrier Safety Administration's (FMCSA) role in contributing to the security of truck and bus transportation on our highways. I am pleased to appear before you to describe FMCSA's outreach, education, research, enforcement and compliance programs that help improve our homeland security.

Mr. Chairman, the Federal Motor Carrier Safety Administration was created in 1999 with the mission of improving the safety of trucks and buses operating on our Nation's roads. Safety remains the primary mission of our Agency—the primary function of our regulations and our programs. FMCSA also plays a role in the security of the truck and bus industries due to our familiarity with, and oversight of these industries and the close and sometimes overlapping relationship between safety and security. The proposed legislation touches directly on one of the areas where security concerns directly impact our existing regulations—the routing of hazardous materials.

Background

Following the tragic events of September 11, 2001, FMCSA recognized immediately the risk of terrorism associated with the transportation of hazardous materials. Within a month, the agency, with our State partners, began visiting all motor carriers that transport hazardous materials to ensure they were aware of their potential vulnerability and discuss basic security measures. We felt these measures were critical as many of the companies in the trucking industry are small carriers with only a few trucks and lacking the resources to employ full-time security staff. In 7 months, State and FMCSA staff conducted over 30,000 Security Sensitivity Visits on hazardous materials carriers.

FMCSA also began to take other steps to raise awareness about the security risks posed by the transportation of hazardous materials, and indeed the potential for terrorists to use the vehicles we regulate, trucks and buses, as pawns in their plans to inflict terror on our country. Despite the strictly safety mission given to the agen-

cy by the Congress, these measures were deemed justified and indeed critical, particularly before the creation of the Transportation Security Administration (TSA) and in the early days of that organization when they were rightly focused on aviation security.

Among the steps FMCSA took was an outreach campaign aimed at raising security awareness in the trucking industry and outreach to the law enforcement community to make them aware of the potential use of trucks, particularly those transporting hazardous materials, as weapons of terrorism. To complement these outreach efforts, we created a training course called "Trucks n' Terrorism" to make law enforcement officials aware of indicators that should raise suspicions regarding the legitimacy of truck transportation. The agency also worked with the motorcoach industry to address security issues involving transportation of people including conducting a vulnerability assessment of the motorcoach industry and training to raise the security awareness of motor coach drivers and company officials.

Additionally, FMCSA began a significant effort to test technologies that had the potential to improve security, particularly in regard to the transportation of hazardous materials. Many of these technologies such as satellite tracking of vehicles and emergency communication devices were already in use as tools to improve safety or efficiency. FMCSA's Hazardous Materials Field Operational Test demonstrated how these technologies could also be used to improve security and quantified the costs and benefits of these technologies. The Hazardous Materials Field Operational Test also piloted the concept of a public-sector response system. FMCSA provided a copy of the report and its findings to the Department of Homeland Security in 2005. We are working with DHS on further development of this system.

FMCSA also worked with the Research and Special Programs Administration (RSPA), now the Pipeline and Hazardous Materials Safety Administration (PHMSA) to develop regulations requiring hazardous materials carriers and shippers to develop security plans and train their employees about hazardous materials security. Following implementation of this regulation, FMCSA took steps to educate both the industry and our field staff and State partners. FMCSA worked with PHMSA, various industry associations, and the now established TSA to develop a booklet to assist hazardous materials motor carriers, particularly small businesses, in developing an effective security plan. Copies of this document were distributed to every hazardous materials carrier in the FMCSA database.

To promote enforcement of the new regulation, FMCSA developed a 16-hour training course to educate our field personnel and State partners, previously focused solely on safety issues, about basic security practices. The agency also developed procedures for checking compliance with hazardous materials security regulations in what we call a Security Contact Review. To date, FMCSA has conducted over 4,000 Security Contact Reviews and assessed over 400 civil penalties for failure to comply with the hazardous materials security regulations.

In 2004, FMCSA promulgated regulations to require carriers of certain hazardous materials to obtain a hazardous materials safety permit. This program applies to carriers that transport high explosives, high route-controlled quantities of radioactive materials, materials that are toxic by inhalation hazard, and large quantities of liquefied natural gas. Currently over 1,100 motor carriers have a current hazardous materials safety permit. The program is an example of an area where security overlaps FMCSA's safety mission. In promulgating this regulation, based primarily on safety concerns expressed in the legislation requiring this program, the agency did incorporate some basic security requirements. However, it should be made clear that while we developed a regulation that has some security requirements, it was not meant to be a comprehensive security regulation and the materials the agency chose to make applicable to this requirement were based on the legislative intent and safety considerations rather than an in-depth analysis of security risk.

FMCSA's Current Security Role

Much of the security activity I have just described occurred before, or in the early days of the TSA. For the past few years, our Agency has been working with TSA to transfer the primary security responsibility for the truck and bus industries to TSA. This is not to say that we have abandoned any role in security. As recognized in Executive Order 13416, "Strengthening Surface Transportation Security," both Departments have responsibilities in the area of transportation security.

FMCSA's primary security activities at this point involve the transportation of hazardous materials for which Congress gave the Department specific shared responsibility in the Homeland Security Act of 2002. FMCSA continues to ensure compliance with security training and security plan regulations through our Security Contact Reviews and take enforcement action for non-compliance as warranted. We

have met with TSA to coordinate these visits to motor carriers with the Corporate Security Reviews conducted by TSA personnel to ensure there is not duplication of effort or unnecessary burden placed on the industry. We have also begun work to look at including security considerations in our long-standing regulations specifying procedures for States to follow when making hazardous materials routing distinctions.

Our Agency also remains involved in consulting with DHS and TSA on various issues ranging from our joint regulations for background checks for drivers holding Commercial Driver's Licenses with hazardous materials endorsements, implementation of the REAL ID Act, to participation on panels to make decisions about security grants for motorcoach companies.

Hazardous Materials Routing and Route Plans

As I mentioned earlier, decisions regarding the routing of hazardous materials is one area FMCSA has identified as relating to security in addition to the safety issues that were the original impetus for the regulations. FMCSA has two sets of regulations governing the routing of hazardous materials. Standards for the routing of non-radioactive hazardous materials (NRHM) and requirements for routing of highway route-controlled quantities (HRCQ) of radioactive materials (RAM). Both parts contain sections setting out requirements States or Indian tribes must follow to establish, maintain, and enforce HM routing designations.

To establish routing designations or restrictions, a State or local government or Indian tribe must consider 13 factors such as population density, type of highway, type and quantities of HM, emergency response capabilities, exposure, terrain considerations, alternative routes, effects on commerce, delays in transportation, congestion, and accident history. FMCSA has developed guidelines for designating hazardous materials routes or preferred routes for highway route-controlled radioactive materials. Currently security is not required to be a factor considered in making routing decisions and as such, security is not covered in the FMCSA guidance regarding making routing decisions. Last year, FMCSA began a study to: (1) modify existing guidance materials to State and local governments and Indian tribes in designating routes to ensure the safe and *secure* transportation of HM; and (2) develop tool(s) that will assist the these entities in assessing the security vulnerabilities of current and proposed HM routes. We expect to complete the study by the Fall of 2007.

Conclusion

Mr. Chairman, as the Nation moves to become more secure and protect our citizens from the threat posed by terrorism, it is important that we move deliberately and responsibly; to secure our transportation systems without paralyzing them. That is what FMCSA has attempted to do since the tragic events of September 11, 2001 and what we continue to endeavor to do as we support agencies inside and outside the Department on transportation security initiatives. We look forward to working with your committee and the other agencies present at this hearing today to implement this important piece of legislation.

The CHAIRMAN. All right. Thank you very much, Mr. Administrator.

And now, may I recognize Vice Admiral Thomas Barrett, Administrator of the Pipeline and Hazardous Materials Safety Administration.

STATEMENT OF THOMAS J. BARRETT, VICE ADMIRAL (RET.), USCG; ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DOT

Admiral BARRETT. Chairman Inouye, Vice Chairman Stevens, distinguished members of the Committee, good morning. On behalf of Secretary Peters and myself, thank you for the opportunity to discuss security of transportation of hazardous materials, including pipeline security.

First, however, I want to thank you for your leadership and support in passing the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, which the President signed into law last

month. This will significantly improve pipeline safety, and we will implement the law aggressively.

On today's subject, like the Committee, the Department strongly believes there are opportunities to improve surface transportation security for movement of hazardous materials. We follow a systems risk-based approach, recognizing that safety and security are related, and that significant safety and economic consequences can flow from security decisions. Our goal is complete safety, complete security without duplicating efforts, or excessively burdening commerce.

We believe improvements are best developed using an enterprise approach to produce effective measures suited to the demands of an economy that depends on efficient movement of hazardous materials. These materials are essential to our citizens, are used every day across the Nation in farming, manufacturing, medical, pharmaceuticals, consumer products, and thousands of other applications that shape the quality of our lives.

Much progress has been made since 9/11 to improve security of our transportation systems, with the active assistance and direction of the Congress. DOT modal administrations, including FMCSA, have strengthened our relationships with the Department of Homeland Security and TSA, specifically, to enhance hazardous materials security and transportation.

In a recent annex to the MOU between DOT and DHS—which Kip Hawley and myself signed—we have established a joint working group to improve inter-agency coordination at the practical level on both transportation security and safety matters, recognizing that each agency brings core competencies, legal authorities, resources, and expertise to this shared mission.

Enhancing security requires, as Mr. Hawley noted, that we start with the data, understanding the problems, identifying gaps; including gaps in understanding the risks, threats, vulnerabilities, likelihoods and consequences of incidents. Our joint working group is looking at how to leverage the information that each agency collects and possesses, to enhance our understanding of risks connected with hazardous material transportation, and bring that information to bear in an ongoing basis in all elements of our security and safety programs.

Last month, PHMSA and FRA issued a notice of proposed rulemaking to upgrade requirements applicable to the safe and secure transportation of hazardous materials by rail. We propose requiring carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along routes, assess alternate routing options, and make decisions based on those assessments. We will hold public meetings in February to solicit public input on the proposal.

We are also taking a close look at hazmat security plan requirements. TSA and PHMSA recently initiated a project to refine the list of hazardous materials for which security plans are required. We published an advanced notice of proposed rulemaking in September, hosted a public meeting in November, and expect to issue a notice of proposed rulemaking by early summer.

We've also taken a careful look at access to PHMSA's National Pipeline Mapping System, which was removed from public access

after 9/11. We have worked the issues with TSA, pipeline stakeholders, safety advocates and security experts, and developed an approach we believe will minimize risks, while satisfying legitimate public right-to-know concerns. And we expect to restore public access to the revised system in the next several months.

We're also bringing a risk-based systems approach to our research related to security to the Hazardous Materials Cooperative Research Program, now in its first-year of program management by the Transportation Research Board of the National Academies.

Like Congress, we focus on improving the ability of States and local governments to prepare for hazardous materials incidents, whatever their cause. We are proud of our partnerships with the National Association of State Fire Marshals, the International Association of Fire Chiefs, and the International Association of Firefighters. At the end of the month, with them, we will sponsor the next in a series of meetings of emergency responders, hazmat industry representatives and pipeline operators, to strengthen response capabilities and preparedness.

As the Committee considers ways to improve transportation, we will be pleased to work with you to build on the substantial progress that has been made, including lessons that we have learned about the path to a comprehensive, systems risk-based approach.

We do need flexibility to develop and implement solutions. Risk profiles, as you know, can change rapidly, and we must be able to be agile in addressing developments in safety and security. We believe the path forward is an enterprise approach that takes advantage of agency expertise, considers the perspectives of all stakeholders and the public, provides for regular reassessment and refinement as transportation risks, systems and technologies evolve.

Mr. Chairman, I commend you and the members of this committee for your leadership on this important topic, and would be pleased to answer your questions.

[The prepared statement of Admiral Barrett follows:]

PREPARED STATEMENT OF THOMAS J. BARRETT, VICE ADMIRAL (RET.), USCG;
ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,
DOT

Chairman Inouye, Vice Chairman Stevens, Chairman Lautenberg, and distinguished members of the Committee, on behalf of the Secretary of Transportation, I want to thank you for the invitation to appear today.

I would like to take a moment at the outset to commend the Committee for your leadership and support in passing the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Public Law 109-468, which the President signed into law last month. The PIPES Act will save lives and foster economic growth by strengthening the pipeline safety program.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is moving ahead to implement the new authority and fulfill the Act's mandates. We will keep the Committee informed of our efforts and progress.

I appear before you today on another important subject: PHMSA's activities and role in enhancing hazardous materials transportation security.

We understand the Committee is considering options to improve commercial surface transportation security, and we look forward to working with the Committee. Working in close coordination with the Department of Homeland Security (DHS), and with the Department of Transportation's (DOT's) Federal Railroad Administration (FRA) and the Federal Motor Carrier Safety Administration (FMCSA), we are moving forward in that effort on several fronts.

When it comes to improving transportation security, we follow a systems risk-based approach, recognizing that safety and security are connected, and that significant safety and economic consequences will flow from our decisions. The success of our efforts over time lies in our ability to mitigate overall risk, while avoiding undue burdens on transportation systems, operators, and the public. Effective coordination within the Federal Government is essential to addressing security concerns in the way that the American public deserves.

Improvement should be developed in a transparent manner, with the benefit of stakeholder input, to produce practical approaches suited to the demands of an economy that depends on the efficient movement of hazardous materials. We must focus and prioritize our efforts, preventing incidents that pose the greatest overall risk to the public, property, and the environment, and mitigating the consequences of incidents that cannot be prevented.

Multi-Modal Hazardous Materials Program

Hazardous materials are essential to our citizens, and to our economy. These materials fuel automobiles, heat and cool our homes and offices, and are used in farming, medical applications, manufacturing, mining, and other industrial processes. More than 3 billion tons of regulated hazardous materials—including explosive, poisonous, corrosive, flammable, and radioactive materials—are transported each year.

We oversee the safe and secure shipment of over 1.2 million daily movements of hazardous materials moving through the air; on the railroads, seas and waterways; and over the highways. Many of these shipments require transfer between modes. Programs that increase the security of highway infrastructure and intermodal transfer points are required to maintain the security and safety of these movements. Additionally, large volumes of hazmat are moved by pipelines out of the view of most Americans.

These hazardous materials shipments frequently move through densely populated or sensitive areas where an incident could result in loss of life, serious injury, or significant environmental damage. Our communities, particularly the public and workers engaged in hazardous materials commerce, count on the safe and secure transport of these shipments.

Post-9/11 Hazmat Security Requirements

With Congress' active assistance and direction, much progress has been made since 9/11 to improve the security of our transportation systems. Congress confirmed PHMSA's role in the Homeland Security Act of 2002, when it amended Federal law to clarify the agency's responsibility for the "safety, including security," of hazardous materials transportation.

In 2003, we amended the Hazardous Materials Regulations to require shippers and carriers of certain hazardous materials to develop and implement security plans. The regulations established a general baseline for the development and scope of plans, rather than a prescriptive list of specific security measures. Each security plan must include an individualized risk assessment and, at a minimum, address personnel security, unauthorized access, and en route security risks. Plans must be appropriate to the company's individual circumstances, considering the types and amounts of hazardous materials shipped or transported and the modes used for transportation. The regulation establishes a meaningful performance standard for security planning, while providing shippers and carriers with the flexibility necessary to develop security measures addressing their individual circumstances and operational environments.

DOT-regulated pipeline operators are subject to different security planning standards, also requiring the development of site-specific security plans. Most pipeline operators follow a set of consensus guidelines that were jointly developed by PHMSA, pipeline operators, and State pipeline safety agencies following the 9/11 terrorist attacks. The security requirements governing operators of liquefied natural gas (LNG) facilities predate 9/11 and are enforced, along with our other LNG safety standards, by PHMSA and our State partners.

As the Committee is aware, PHMSA also has been actively involved in government-wide security planning and coordination efforts led by DHS. In accordance with Homeland Security Presidential Directives and Executive Orders, we regularly provide technical expertise and consultation on security initiatives with DOT partners in the areas of pipeline operations and hazardous materials transportation. We contributed to the recently-completed National Infrastructure Protection Plan and participate in the Government Coordinating Councils for the Rail, Highway, Chemical and Pipeline sectors.

The PHMSA–TSA Security Annex

Most recently, PHMSA and the Transportation Security Administration (TSA) have established a joint working group to improve interagency coordination on transportation security and safety matters, and to develop and advance plans for improving transportation security. As you know, PHMSA and TSA signed an Annex to the Departmental Memorandum of Understanding (MOU) executed by DOT and DHS. The Annex recognizes TSA's lead role in transportation security and reflects the agencies' shared commitment to a systems risk-based approach and to the development of practical solutions, recognizing that each agency brings core competencies, legal authority, resources, and expertise to this shared mission.

In entering into the Annex, PHMSA and TSA pledge to build on and not duplicate the various security initiatives and efforts already underway. At the same time, we thought it was important to outline the key program elements and approaches necessary to effective Federal action and to use that framework to identify specific areas for improvement.

Enhancing security requires that we start with the data—understanding the problem and identifying any gaps in existing solutions, including gaps in understanding the risks and consequences of incidents. PHMSA's technical staff has knowledge about hazardous materials and transportation systems that can and should be brought to bear in the Federal effort to enhance security.

The joint agency working group established under the PHMSA–TSA MOU Annex is looking at ways to leverage the information that each agency possesses and collects. We are doing this in order to enhance our understanding of all risks connected with hazardous materials transportation and to bring that information to bear on an ongoing basis in all elements of our safety and security programs.

Under Executive Order 13416 and as delineated in the Annex, PHMSA and TSA are looking for ways to improve standards, recognizing that solutions need to be tailored to risks and transportation needs, both of which will change over time. Enhancing transportation security does not necessarily mean that we must impose regulatory requirements. We must be open to the range of possible solutions, driven by information about systems risks and security gaps.

Where it is appropriate to impose new standards, close coordination and consultation between the agencies—and active outreach with stakeholders—will help to ensure effective results. Better communication and outreach with affected stakeholders are important elements of the approach to enhancing transportation security reflected in the MOU Annex.

Inspection and enforcement also present opportunities for improvement. PHMSA and TSA are looking for ways to maximize the use of Federal resources by cooperating in these efforts.

Research and development are important parts of a coordinated Federal strategy. Our joint agency working group will put in place measures to ensure that we are making the best use of Federal resources by sharing research results and collaborating in the development of future projects.

Pending Improvements

Working with our DOT colleagues and TSA, we continue to consider ways to enhance the transportation security of hazardous materials. Last month, PHMSA and FRA issued a notice of proposed rulemaking (NPRM), proposing to revise current requirements applicable to the safe and secure transportation of hazardous materials by rail. Specifically, we are proposing to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail routes, assess alternative routing options, and make routing decisions based on those assessments.

The same notice proposes clarifications of the current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for hazardous materials shipments. We have planned two meetings in early February, one here in Washington and one in Dallas, to solicit public input on the rail security proposals.

In consultation with the other DOT operating administrations and TSA, we also are taking a close look at the scope of our hazmat security plan requirements. In the 3 years since the requirements went into effect, we have gained experience evaluating security risks associated with specific hazardous materials and transportation environments and identifying appropriate measures to address those risks. In response to two industry petitions for rulemaking, PHMSA recently initiated a project to reconsider and refine the list of hazardous materials for which security plans are currently required. The industry petitioners asked PHMSA to amend the security plan regulations to create a distinction between hazardous materials that present a significant security risk while in transportation and the vast majority of

hazardous materials that pose minimal security risks in transportation. To this end, we have initiated a rulemaking project, in cooperation with the DOT operating administrations and TSA; we published an ANPRM on September 21, 2006, and hosted a public meeting on November 30. We expect to issue a proposal by early Summer of 2007.

As we refine our understanding of system risks, we've also taken a careful look at how we regulate access to PHMSA's National Pipeline Mapping System (NPMS). The NPMS is a comprehensive database including geospatial and other information about all PHMSA-regulated liquid and natural gas pipelines and their relationship to populated and unusually sensitive environmental areas. In the immediate aftermath of 9/11, we pulled the NPMS from the agency's website and restricted public access out of concern that information in the system could be used in planning or targeting a terrorist attack. In the meantime, we have taken a careful look at the nature and quality of publicly available information about pipeline facilities and the safety and security implications of providing public access. We have discussed the issues with DHS and all pipeline stakeholders, safety advocates, and security experts, and we have developed an approach that we believe will minimize risk, while satisfying legitimate public right-to-know concerns.

I would like to mention that in the coming months, PHMSA will be rolling out changes to its NPMS website that will permit members of the public to access certain maps and data on a county-by-county basis. The level of detail accessible to the public will make the site useful for emergency response and local planning efforts, helping communities manage risks of development and other human activities near existing pipelines.

Our decision to restore public access to NPMS data illustrates how a data-driven, systems risk-based approach improves risk mitigation. From a systems risk perspective, public access to information is desirable, because it facilitates environmental protection, emergency response, and safety-conscious land use planning. Further, this determination may pave the way for making NPMS data available in efforts to reduce other transportation risks. As we move ahead on the rail routing rule-making, for instance, we will consider whether access to NPMS data concerning environmentally-sensitive areas may be useful in making safety and security conscious rail routing decisions.

With Congress' support, a systems risk-based approach will be carried forward through the Hazardous Materials Cooperative Research Program, now in its first year of program management by the Transportation Research Board of the National Academies. Four initial research projects recently cleared the selection process. They are: (1) Hazmat Commodity Flow Guidance to States and Localities; (2) Enhanced Incident Data Quality for Root Cause Analysis; (3) Assessing Hazmat Emergency Response Capabilities; and (4) Emerging Technologies Applicable to Hazmat Transportation Safety and Security. PHMSA is closely monitoring the progress of that research.

Finally, like Congress, we are focused on improving the ability of States and local governments to prepare for and respond to hazardous materials incidents, whatever their cause. PHMSA is proud of its partnerships with the National Association of State Fire Marshals, the International Association of Fire Chiefs, and the International Association of Fire Fighters. Each organization has assisted in capability building across the country.

At the end of this month, PHMSA and the National Association of State Fire Marshals will co-sponsor another meeting of emergency responders, hazardous materials industry representatives, and pipeline operators. This joint effort covers a variety of initiatives intended to strengthen response capabilities and preparedness, including a recent PHMSA Advisory Bulletin on the appropriate response to ethanol spills and plans for the 2008 edition of the *Emergency Response Guidebook* (ERG). PHMSA publishes and distributes the ERG free of charge to the Nation's first responder community. For years, the ERG has been an important resource for first responders, providing critical guidance during the initial phase of a hazardous materials incident. For the first time, the 2008 ERG will be expanded to include a response section applicable to pipeline incidents.

Closing

Like Secretary Peters, PHMSA takes very seriously our responsibility to ensure the safe and secure movement of hazardous materials across our transportation system. Although we recognize that there is always room for improvement, we believe that we have a strong regulatory framework in place for hazardous materials transportation security. Together with DHS, we seek to achieve the highest level of safety and security possible, while at the same time, minimizing the burden and associated cost.

We look forward to working with the members of this Committee, the Congress and our stakeholders as we embark on a serious and open discussion with all interested parties to further enhance the safe and secure transportation of hazardous materials.

Mr. Chairman, I commend you and the members of this Committee for your leadership on this very important topic. Thank you again for this opportunity today. I am happy to take your questions.

The CHAIRMAN. Thank you very much Admiral Barrett.

And now may I call upon Ms. Cathleen A. Berrick, Director of Homeland Security and Justice Issues, Government Accountability Office.

**STATEMENT OF CATHLEEN A. BERRICK, DIRECTOR,
HOMELAND SECURITY AND JUSTICE ISSUES, GAO**

Ms. BERRICK. Thank you, Mr. Chairman, Mr. Vice Chairman and members of the Committee for the opportunity to discuss the security of the Nation's surface transportation systems, and in particular, passenger rail.

In addition to our passenger rail security work, GAO has recently initiated, or will soon initiate, reviews of additional surface transportation modes, including freight rail, commercial vehicles, and highway infrastructure. We expect to report on the results of that work later this year.

Regarding passenger rail, my testimony today focuses on actions the Federal Government have taken to assess risks to the rail system, and security practices implemented by domestic and selected foreign rail operations.

DHS, in conjunction with its grant-making authority, and DOT, have completed numerous risk assessments of passenger rail systems around the country, and have provided technical assistance and training to rail operators, among other efforts.

DHS has also begun to develop an overall framework to help agencies and the private sector develop a consistent approach for analyzing and comparing risks to transportation and other sectors. TSA has also conducted risk assessments, and is establishing a methodology for analyzing and characterizing risks.

However, although progress has been made, these risk-assessment efforts have not yet been fully coordinated or completed. Until they are, it may be difficult to compare risks within the rail sector, and across different sectors, even outside of transportation, and allocate resources accordingly.

After the 9/11 attacks, FRA and FTA took a number of actions to strengthen the security of rail systems, including providing security training to rail operators and technical assistance. TSA also issued security directives, and piloted explosive detection technology for use in the rail system, recently issued a proposed rule addressing passenger and freight rail security, and has implemented other security programs in partnership with FRA and FTA.

However, some Federal and rail stakeholders question the feasibility of implementing and complying with the rail security directives, claiming that they were not always based on industry best practices, or conflicted with some safety requirements.

Domestic and foreign passenger rail operators have also taken a range of actions to secure their systems. Most have implemented

customer awareness programs, increased the number and visibility of security personnel, and upgraded security technologies.

However, we also observed security practices among certain foreign rail systems, or their governments, that are not currently used—or used to the same degree—by domestic operators. These practices include: the random screening of passengers, and their bags, and the utilization of covert testing to help keep employees alert to security threats. We also found that certain foreign governments maintain a centralized clearing house of rail security technologies and best practices, which is not currently done to the same degree in the U.S. Based on our work, we recommended that TSA reassess established security requirements, and more systematically review and consider for use, security practices used by foreign countries.

Regarding the security of all transportation modes, DHS and DOT signed an MOU intended to improve coordination of security and safety matters, and subsequently completed several related Annexes—a very important step in ensuring a coordinated Federal response to security.

However, we found that DHS has been delayed in issuing its Transportation Sector Specific Plan and supporting plans, which are to identify TSA strategy for securing all transportation modes.

The sector-specific plan is an important step needed to establish and clearly communicate the Federal Government's security strategy to all transportation stakeholders. Our ongoing work on commercial vehicle security has found that commercial vehicle operators are seeking information from the Federal Government on their role and strategy with respect to security. Our work has also shown that, despite several security efforts underway in this area, DHS is in the early stages of defining its security wall.

In summary, we are encouraged by the increased Federal focus on the security of surface transportation modes, and moving forward, a clear strategy, strong Federal coordination and continued leadership will be needed to help ensure that actions and investments designed to enhance security are appropriately focused and prioritized.

Thank you very much.

[The prepared statement of Ms. Berrick follows:]

PREPARED STATEMENT OF CATHLEEN A. BERRICK, DIRECTOR,
HOMELAND SECURITY AND JUSTICE ISSUES, GAO

Mr. Chairman and members of the Committee:

Thank you for inviting me to participate in today's hearing on Federal efforts to secure rail and surface transportation systems. Since September 11, 2001, TSA has focused much of its efforts and resources on meeting legislative mandates to strengthen commercial aviation security. However, TSA has recently placed additional focus on securing surface modes of transportation, particularly in the area of passenger rail security. Surface transportation, which includes passenger and freight rail, mass transit, highways, and pipelines, are inherently open and difficult to secure. One of the critical challenges facing these Federal agencies, and rail system operators they oversee or support, is finding ways to protect rail systems from potential terrorist attacks without compromising the accessibility and efficiency of rail travel. The Madrid commuter rail attacks in March 2004, London rail bombings in July 2005, and Mumbai, India train bombings just last year, highlight the vulnerabilities of passenger rail and other surface transportation systems and made clear that even when security precautions are put into place, these systems remain vulnerable to attack. While securing surface transportation systems is a daunting

task—a shared responsibility requiring coordinated action on the part of Federal, state, and local governments and the private sector—it is important nonetheless to take the necessary steps to identify and mitigate risks to these systems.

As we have reported previously, the sheer number of stakeholders involved in securing surface transportation modes, including passenger rail, can sometimes lead to communication challenges, duplication of effort, and confusion about roles and responsibilities. Regarding passenger rail security, key Department of Homeland Security (DHS) stakeholders with critical roles include the Transportation Security Administration (TSA), which is responsible for securing all modes of transportation, and the Office for Grants and Training (OGT), which provides grant funds to rail operators and conducts risk assessments for passenger rail agencies. Within the Department of Transportation (DOT), the Federal Transit Administration (FTA) and Federal Railroad Administration (FRA) have responsibilities for passenger and freight rail safety and security. In addition, public and private passenger rail operators also share responsibility for securing their systems.

At the Federal level, another significant challenge related to securing passenger rail systems involves allocating resources based on risk. Within and among all modes of transportation, there is competition for resources, as Federal, state, and local agencies and transportation operators seek to identify and invest in appropriate security measures to safeguard these systems while also investing in other capital and operational improvements. Moreover, given competing priorities and limited homeland security resources, difficult policy decisions have to be made by Congress and the Executive Branch to prioritize security efforts and direct resources to areas of greatest risk within and among transportation modes and across other nationally critical sectors.

In this regard, to help Federal decisionmakers determine how to best allocate limited resources, we have advocated, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) has recommended, and the Intelligence Reform and Terrorism Prevention Act of 2004 provides that a risk management approach be employed to guide decisionmaking related to homeland security resources. A risk management approach entails a continuous process of managing risks through a series of actions, including setting strategic goals and objectives, assessing and quantifying risks, evaluating alternative security measures, selecting which measures to undertake, and implementing and monitoring those measures.

My testimony today focuses on the progress Federal agencies and domestic passenger rail operators have made in setting and implementing security priorities in the wake of September 11, 2001, terrorist attacks, and the security practices implemented by foreign passenger rail operators. In particular, my testimony highlights three key areas: (1) the actions that DHS and its component agencies have taken to assess the risks posed by terrorism to the U.S. passenger rail system; (2) the actions that TSA and other Federal agencies have taken to enhance the security of the U.S. passenger rail system; and (3) the security practices that domestic and selected foreign passenger rail operators have implemented to mitigate risks and enhance security. My comments today are based on GAO's September 2005 report addressing the security of the U.S. passenger rail system and selected updates on this program obtained in January 2007.¹ This report was based on work at DHS, DOT and Amtrak, as well as work that included 32 passenger rail operators in the U.S., and 13 passenger rail operators in 7 European and Asian countries. We conducted our work in accordance with generally accepted government auditing standards.

We have been requested by the Chairman of the House Homeland Security Committee to conduct a follow-on review of passenger rail security, which we expect to initiate in the near future. In addition, we have been requested to assess the security of other surface modes of transportation—including freight rail, commercial vehicles and highway infrastructure—which we have underway or will initiate later this year.

In Summary

The DHS Office of Grants and Training has developed and conducted risk assessments of passenger rail systems to identify and protect rail assets that are vulnerable to attack, such as stations and bridges. TSA has also begun to conduct risk assessments, including a threat assessment of mass transit and passenger rail and assessments of individual critical rail assets. While TSA has begun to establish a methodology for determining how to analyze and characterize the risks identified, the agency has not completed a comprehensive risk assessment of the U.S. passenger rail system. Until TSA completes this effort, the agency may be limited in

¹ GAO, *Passenger Rail Security: Enhanced Federal Leadership Needed to Prioritize and Guide Security Efforts*, GAO-05-851 (Washington, D.C.: Sept. 9, 2005).

its ability to prioritize passenger rail assets and help guide security investment decisions about protecting them. At the Department level, DHS has begun developing, but has not yet completed a framework to help Federal agencies and the private sector develop a consistent approach for analyzing and comparing risks to transportation and other critical sectors. Until this framework is finalized and shared with stakeholders, it may not be possible to compare risks across different sectors, prioritize them, and allocate resources accordingly.

Before and after September 11, 2001, FTA and FRA undertook a number of initiatives to enhance passenger rail security, including conducting security readiness assessments, providing grants for emergency response drills and training, and developing security awareness programs for rail passengers and employees. In March 2004, after terrorist attacks on the rail system in Madrid, TSA issued security directives for passenger rail and mass transit. These directives were intended to establish standard protective measures for all passenger rail operators, including Amtrak. However, Federal and rail industry stakeholders have questioned the extent that these directives were based on industry best practices and expressed confusion about how TSA would monitor compliance with the directives. In the 15 months since the completion of our work on passenger rail security, TSA has reported taking additional actions to strengthen the security of the passenger rail system. For example, TSA has tested rail security technologies, developed training tools for rail workers, and issued a proposed rule in December 2006 regarding passenger and freight rail security, among other efforts. TSA has also taken steps to better coordinate with DOT regarding rail security roles and responsibilities. The memorandum of understanding between DHS and DOT has been recently updated to include specific agreements between TSA and FTA and FRA to delineate security-related roles and responsibilities, among other things, for passenger rail and mass transit.

Domestic and foreign passenger rail operators we contacted during our prior work on passenger rail security had taken a range of actions to secure their systems. Most had implemented customer awareness programs to encourage passengers to remain vigilant and report suspicious activities, increased the number and visibility of security personnel, increased the use of canine teams to detect explosives, enhanced employee training programs, upgraded security technology, tightened access controls, and made rail system design improvements to enhance security. We also observed security practices among certain foreign passenger rail systems or their governments that are not currently used by the domestic rail operators we contacted, or by the U.S. Government, which could be considered for use in the U.S. For example, some foreign rail operators randomly screen passengers or utilize covert testing to help keep employees alert to security threats, and some foreign governments maintain centralized clearinghouses on rail security technologies and best practices. While introducing any of these security practices into the U.S. rail system may pose political, legal, fiscal, and cultural challenges, they nevertheless warrant further examination. Since our report on passenger rail security was issued, TSA has reported taking steps to coordinate with foreign passenger rail operators and governments to identify security best practices.

In our September 2005 report on passenger rail security, we recommended, among other things, that TSA establish a plan with timelines for completing its methodology for conducting risk assessments and develop security standards that reflect industry best practices and can be measured and enforced. These actions should help ensure that the Federal Government has the information it needs to prioritize passenger rail assets based on risk, and evaluate, select, and implement measures to help the passenger rail operators protect their systems against terrorism. In addition, we recommended that the Secretary of DHS, in collaboration with DOT and the passenger rail industry, determine the feasibility, in a risk management context, of implementing certain security practices used by foreign rail operators. DHS, DOT, and Amtrak generally agreed with the report's recommendations. As of January 2007, DHS had not provided a formal response indicating if or how it has implemented these recommendations.

Background

Overview of the Passenger Rail System

Each weekday, 11.3 million passengers in 35 metropolitan areas and 22 states use some form of rail transit (commuter, heavy, or light rail).² Commuter rail systems typically operate on railroad tracks and provide regional service between a central

²The American Public Transportation Association compiled this Fiscal Year 2003 ridership data from FTA's National Transit Database. These are the most current data available. Rail transit systems in the District of Columbia and Puerto Rico are included in these statistics.

city and adjacent suburbs. Commuter rail systems are traditionally associated with older industrial cities, such as Boston, New York, Philadelphia, and Chicago. Heavy rail systems—subway systems like New York City’s transit system and Washington, D.C.’s Metro—typically operate on fixed rail lines within a metropolitan area and have the capacity for a heavy volume of traffic. Amtrak operates the Nation’s primary intercity passenger rail service over a 22,000-mile network, primarily over freight railroad tracks. Amtrak serves more than 500 stations (240 of which are staffed) in 46 states and the District of Columbia, and it carried more than 25 million passengers during FY 2005.

Passenger Rail Systems Are Inherently Vulnerable to Terrorist Attacks

According to passenger rail officials and passenger rail experts, certain characteristics of domestic and foreign passenger rail systems make them inherently vulnerable to terrorist attacks and therefore difficult to secure. By design, passenger rail systems are open, have multiple access points, are hubs serving multiple carriers, and, in some cases, have no barriers so that they can move large numbers of people quickly. In contrast, the U.S. commercial aviation system is housed in closed and controlled locations with few entry points. The openness of passenger rail systems can leave them vulnerable because operator personnel cannot completely monitor or control who enters or leaves the systems. In addition, other characteristics of some passenger rail systems—high ridership, expensive infrastructure, economic importance, and location (large metropolitan areas or tourist destinations)—also make them attractive targets for terrorists because of the potential for mass casualties and economic damage and disruption. Moreover, some of these same characteristics make passenger rail systems difficult to secure. For example, the numbers of riders that pass through a subway system—especially during peak hours—may make the sustained use of some security measures, such as metal detectors, difficult because they could result in long lines that could disrupt scheduled service. In addition, multiple access points along extended routes could make the cost of securing each location prohibitive. Balancing the potential economic impacts of security enhancements with the benefits of such measures is a difficult challenge.

Multiple Stakeholders Share Responsibility for Securing Passenger Rail Systems

Securing the Nation’s passenger rail systems is a shared responsibility requiring coordinated action on the part of Federal, state, and local governments; the private sector; and rail passengers who ride these systems. Since the September 11 attacks, the role of Federal Government agencies in securing the Nation’s transportation systems, including passenger rail, have continued to evolve. Prior to September 11, FTA and FRA, within DOT, were the primary Federal entities involved in passenger rail security matters. In response to the attacks of September 11, Congress passed the Aviation and Transportation Security Act (ATSA), which created TSA within DOT and defined its primary responsibility as ensuring the security of all modes of transportation, though its provisions focus primarily on aviation security.³ The Act also gave TSA regulatory authority for security over all transportation modes, though its provisions focus primarily on aviation security. With the passage of the Homeland Security Act of 2002, TSA was transferred, along with over 20 other agencies, to the Department of Homeland Security.⁴

Within DHS, the Office of Grants and Training (OGT), formerly the Office for Domestic Preparedness (ODP), has become the Federal source for security funding of passenger rail systems.⁵ OGT is the principal component of DHS responsible for preparing the United States for acts of terrorism and has primary responsibility within the Executive Branch for assisting and supporting DHS, in coordination with other directorates and entities outside of the Department, in conducting risk analysis and risk management activities of state and local governments. In carrying out its mission, OGT provides training, funds for the purchase of equipment, support for the planning and execution of exercises, technical assistance, and other support to assist states, local jurisdictions, and the private sector to prevent, prepare for,

³Pub. L. 107–71, 115 Stat. 597 (2001).

⁴Pub. L. 107–296, 116 Stat. 2135 (2002).

⁵OGT originated within the Department of Justice’s Office of Justice Programs in 1998 as the Office for Domestic Preparedness (ODP). Pursuant to the Homeland Security Act of 2002, ODP was transferred to DHS in March 2003. See Pub. L. 107–296, § 403(5), 116 Stat. at 2178 (codified at 6 U.S.C. 203(5)). In March 2004, the Secretary of Homeland Security consolidated ODP with the Office of State and Local Government Coordination to form the Office of State and Local Government Coordination and Preparedness (SLGCP). SLGCP, which reports directly to the DHS Secretary, was created to provide a “one-stop shop” for the numerous Federal preparedness initiatives applicable to state and local governments. Recently, SLGCP was incorporated under the Preparedness Directorate as OGT.

and respond to acts of terrorism. OGT created and is administering two grant programs focused specifically on transportation security, the Transit Security Grant Program and the Intercity Passenger Rail Security Grant Program. These programs provide financial assistance to address security preparedness and enhancements for passenger rail and transit systems. During Fiscal Year 2006, OGT provided \$110 million to passenger rail transit agencies through the Transit Security Grant Program and about \$7 million to Amtrak through the Intercity Passenger Rail Security Grant Program.

While TSA is the lead Federal agency for ensuring the security of all transportation modes, FTA conducts safety and security activities, including training, research, technical assistance, and demonstration projects. In addition, FTA promotes safety and security through its grant-making authority. FRA has regulatory authority for rail safety over commuter rail operators and Amtrak, and employs over 400 rail inspectors that periodically monitor the implementation of safety and security plans at these systems.⁶

State and local governments, passenger rail operators, and private industry are also important stakeholders in the Nation's rail security efforts. State and local governments may own or operate a significant portion of the passenger rail system. Passenger rail operators, which can be public or private entities, are responsible for administering and managing passenger rail activities and services. Passenger rail operators can directly operate the service provided or contract for all or part of the total service. Although all levels of government are involved in passenger rail security, the primary responsibility for securing passenger rail systems rests with passenger rail operators.

Assessing and Managing Risks to Rail Infrastructure Using a Risk Management Approach

Risk management is a tool for informing policymakers' decisions about assessing risks, allocating resources, and taking actions under conditions of uncertainty. In recent years, the President, through Homeland Security Presidential Directives (HSPDs), and Congress, through the Intelligence Reform and Terrorism Prevention Act of 2004, provided for Federal agencies with homeland security responsibilities to apply risk-based principles to inform their decisionmaking regarding allocating limited resources and prioritizing security activities. The 9/11 Commission recommended that the U.S. Government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort.⁷ In addition, DHS issued the National Strategy for Transportation Security in 2005 that describes the policies the DHS will apply when managing risks to the security of the U.S. transportation system.⁸ We have previously reported that a risk management approach can help to prioritize and focus the programs designed to combat terrorism. Risk management, as applied in the homeland security context, can help Federal decisionmakers determine where and how to invest limited resources within and among the various modes of transportation.

The Homeland Security Act of 2002 also directed the Department's Directorate of Information Analysis and Infrastructure Protection to use risk management principles in coordinating the Nation's critical infrastructure protection efforts.⁹ This includes integrating relevant information, analysis, and vulnerability assessments to identify priorities for protective and support measures by the Department, other

⁶FRA administers and enforces Federal laws and regulations that are designed to promote safety on railroads, such as track maintenance, inspection standards, equipment standards, and operating practices. FRA exercises jurisdiction over all areas of railroad safety pursuant to 49 U.S.C. § 20103.

⁷National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, D.C.: 2004). The 9/11 Commission was an independent, bipartisan commission created in late 2002, to prepare a complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission was also mandated to provide recommendations designed to guard against future attacks.

⁸The Intelligence Reform and Terrorism Prevention Act of 2004 requires the Secretary of Homeland Security, working jointly with the Secretary of Transportation, to develop, prepare, implement, and update, as needed a National Strategy for Transportation Security and transportation modal security plans. Pub. L. 108-458, § 4001, 118 Stat. 3638, 3710-12 (codified at 49 U.S.C. § 114(t)).

⁹In 2006, DHS reorganized their Information Analysis and Infrastructure Protection division. The functions of the Directorate of Information Analysis and Infrastructure Protection were moved to the Office of Intelligence Analysis and Office of Infrastructure Protection.

Federal agencies, state and local government agencies and authorities, the private sector, and other entities. Homeland Security Presidential Directive 7 and the Intelligence Reform and Terrorism Prevention Act of 2004 further define and establish critical infrastructure protection responsibilities for DHS and those Federal agencies given responsibility for particular industry sectors, such as transportation. In June 2006, DHS issued the National Infrastructure Protection Plan (NIPP), which named TSA as the primary Federal agency responsible for coordinating critical infrastructure protection efforts within the transportation sector.¹⁰ The NIPP requires Federal agencies to work with the private sector to develop plans that, among other things, identify and prioritize critical assets for their respective sectors. As such, the NIPP requires TSA to conduct and facilitate risk assessments in order to identify, prioritize, and coordinate the protection of critical transportation systems infrastructure, as well as develop risk-based priorities for the transportation sector.

To provide guidance to agency decisionmakers, we have created a risk management framework, which is intended to be a starting point for applying risk-based principles. Our risk management framework entails a continuous process of managing risk through a series of actions, including setting strategic goals and objectives, assessing risk, evaluating alternatives, selecting initiatives to undertake, and implementing and monitoring those initiatives. DHS's National Infrastructure Protection Plan describes a risk management process that closely mirrors our risk management framework.

Setting strategic goals, objectives, and constraints is a key first step in applying risk management principles and helps to ensure that management decisions are focused on achieving a purpose. These decisions should take place in the context of an agency's strategic plan that includes goals and objectives that are clear and concise. These goals and objectives should identify resource issues and external factors to achieving the goals. Further, the goals and objectives of an agency should link to a department's overall strategic plan. The ability to achieve strategic goals depends, in part, on how well an agency manages risk. The agency's strategic plan should address risk related issues that are central to the agency's overall mission.

Risk assessment, an important element of a risk-based approach, helps decisionmakers identify and evaluate potential risks so that countermeasures can be designed and implemented to prevent or mitigate the effects of the risks. Risk assessment is a qualitative and/or quantitative determination of the likelihood of an adverse event occurring and the severity, or impact, of its consequences. Risk assessment in a homeland security application often involves assessing three key elements—threat, vulnerability, and criticality or consequence. A threat assessment identifies and evaluates potential threats on the basis of factors such as capabilities, intentions, and past activities. A vulnerability assessment identifies weaknesses that may be exploited by identified threats and suggests options to address those weaknesses. A criticality or consequence assessment evaluates and prioritizes assets and functions in terms of specific criteria, such as their importance to public safety and the economy, as a basis for identifying which structures or processes are relatively more important to protect from attack. Information from these three assessments contributes to an overall risk assessment that characterizes risks on a scale such as high, medium, or low and provides input for evaluating alternatives and management prioritization of security initiatives. The risk assessment element in the overall risk management cycle may be the largest change from standard management steps and can be important to informing the remaining steps of the cycle.

DHS Has Taken Steps To Assess Risk to Passenger Rail Systems, but Additional Work Is Needed To Guide Security Investments

DHS component agencies have taken a variety of steps to assess the risk posed by terrorism to U.S. passenger rail systems. The DHS OGT developed and implemented a risk assessment methodology intended to help passenger rail operators better respond to terrorist attacks and prioritize security measures. Passenger rail operators must have completed a risk assessment to be eligible for financial assistance through the Fiscal Year 2007 OGT Transit Security Grant Program, which includes funding for passenger rail. To receive grant funding, rail operators are also required to have a security and emergency preparedness plan that identifies how the operator intends to respond to security gaps identified by risk assessments. As of January 2007, OGT had completed or planned to conduct risk assessments of most passenger rail operators. According to rail operators, OGT's risk assessment

¹⁰ HSPD-7 directed the Departments of Transportation and Homeland Security to collaborate on all matters relating to transportation security and transportation infrastructure protection. In 2003, DHS designated TSA as the lead agency for addressing HSPD-7 as it relates to securing the Nation's transportation sector.

process enabled them to prioritize investments based on risk and are allowing them to target and allocate resources toward security measures that will have the greatest impact on reducing risk across their system.

TSA has also begun to assess risks to the passenger rail system. TSA had completed an overall threat assessment for both mass transit and passenger and freight rail modes. TSA also conducted criticality assessments of nearly 700 passenger rail stations and had begun conducting assessments for other passenger rail assets such as bridges and tunnels. TSA plans to rely on asset criticality rankings to prioritize which assets it will focus on in conducting vulnerability assessments to determine which passenger rail assets are vulnerable to attack. For assets that are deemed to be less critical, TSA has developed a software tool that it has made available to passenger rail and other transportation operators for them to use on a voluntary basis to assess the vulnerability of their assets. Until all three assessments of passenger rail systems—threat, criticality, and vulnerability—have been completed, and until TSA determines how to use the results of these assessments to analyze and characterize the level of risk (high, medium, or low), it will be difficult to prioritize passenger rail assets and guide investment decisions about protecting them. Finalizing a methodology for assessing risk to passenger rail and other transportation assets and conducting risk assessments are also key steps used in producing the Transportation Sector Specific Plan (TSSP) required by HSPD-7.¹¹ According to TSA, the TSSP and supporting plans for each mode of transportation have been completed and are currently being reviewed by DHS and the White House Homeland Security Council. As of January 2007, TSA had not completed a comprehensive risk assessment of the passenger rail system.

As TSA, OGT, and other Federal agencies, including DOT, move forward with risk assessment activities, DHS is developing a framework intended to help these agencies work with their stakeholders to assess risk. This framework is intended to help the private sector and state and local governments develop a consistent approach to analyzing risk and vulnerability across infrastructure types and across entire economic sectors, develop consistent terminology, and foster consistent results. The framework is also intended to enable a Federal-level assessment of risk in general, and comparisons among risks, for purposes of resource allocation and response planning. DHS has informed TSA that this framework will provide overarching guidance to sector-specific agencies on how various risk assessment methodologies may be used to analyze, normalize, and prioritize risk within and among sectors. Because neither this element nor the framework as a whole has been finalized or provided to TSA or other sector-specific agencies, it is not clear what impact, if any, DHS's framework may have on ongoing risk assessments conducted by, and the methodologies used by, TSA, OGT, and others, and whether or how DHS will be able to use these results to compare risks and prioritize homeland security investments among sectors. Until DHS finalizes this framework, and until TSA completes its risk assessment methodology, it will not be possible to determine whether different methodologies used by TSA and OGT for conducting threat, criticality, and vulnerability assessments generate disparate qualitative and quantitative results or how they can best be compared and analyzed. In addition, coordinated risk assessments will help TSA and others avoid duplicative efforts and determine whether other agencies' risk assessment methodologies, and the data generated by these methodologies, can be leveraged to complete assessments required for the transportation sector.

Multiple Federal Agencies Have Taken Actions To Enhance Passenger Rail Security

In addition to the ongoing initiatives to enhance passenger rail security conducted by the FTA and FRA before and after September 11, 2001, TSA issued security directives to passenger rail operators after the March 2004 terrorist attacks on the rail system in Madrid. However, Federal and rail industry stakeholders have questioned the extent that these directives were based on industry best practices and expressed confusion about how TSA would monitor compliance with the directives. Since the completion of our work on passenger rail security, TSA has reported taking additional actions to strengthen the security of the passenger rail system. For example, TSA has tested rail security technologies, developed training tools for rail workers, and issued a proposed rule in December 2006 regarding passenger and freight rail security, among other efforts. TSA has also taken steps to better coordi-

¹¹ HSPD-7 defines critical infrastructure protection responsibilities for DHS, sector-specific agencies (those Federal agencies given responsibility for transportation, energy, telecommunications, and so forth), and other departments and agencies. The Directive instructs Federal departments and agencies to identify, prioritize, and coordinate the protection of critical infrastructure to prevent, deter, and mitigate the effects of terrorist attacks.

nate with DOT regarding rail security roles and responsibilities. The memorandum of understanding between DHS and DOT had been recently updated to include specific agreements between TSA and FTA and FRA to delineate security-related roles and responsibilities, among other things, for passenger rail and mass transit.

DOT Agencies Led Initial Efforts To Enhance Passenger Rail Security

Prior to the creation of TSA in November 2001, FTA and FRA, within DOT, were primarily responsible for the security of passenger rail systems. These agencies undertook a number of initiatives to enhance the security of passenger rail systems after the September 11 attacks that are still in place today. Specifically, FTA launched a transit security initiative in 2002 that included security readiness assessments, technical assistance, grants for emergency response drills, and training. FTA instituted the Transit Watch campaign in 2003—a nationwide safety and security awareness program designed to encourage the participation of transit passengers and employees in maintaining a safe transit environment. The program provides information and instructions to transit passengers and employees so that they know what to do and whom to contact in the event of an emergency in a transit setting. FTA planned to continue this initiative, in partnership with TSA and OGT, and offer additional security awareness materials that address unattended bags and emergency evacuation procedures for transit agencies. In addition, FTA has issued guidance, such as its Top 20 Security Program Action Items for Transit Agencies, which recommends measures for passenger rail operators to implement into their security programs to improve both security and emergency preparedness. FTA has also used research and development funds to develop guidance for security design strategies to reduce the vulnerability of transit systems to acts of terrorism. In November 2004, FTA provided rail operators with security considerations for transportation infrastructure. This guidance provides recommendations intended to help operators deter and minimize attacks against their facilities, riders, and employees by incorporating security features into the design of rail infrastructure.

FRA has also taken a number of actions to enhance passenger rail security since September 11, 2001. For example, it has assisted commuter railroads in developing security plans, reviewed Amtrak's security plans, and helped fund FTA security readiness assessments for commuter railroads. In the wake of the Madrid terrorist bombings in March 2004, nearly 200 FRA inspectors, in cooperation with DHS, conducted inspections of each of the 18 commuter railroads and Amtrak to determine what additional security measures had been put into place to prevent a similar occurrence in the United States. FRA also conducted research and development projects related to passenger rail security. These projects included rail infrastructure security and trespasser monitoring systems and passenger screening and manifest projects, including explosives detection. Although FTA and FRA now play a supporting role in transportation security matters since the creation of TSA, they remain important partners in the Federal Government's efforts to strengthen rail security, given their role in funding and regulating the safety of passenger rail systems. Moreover, as TSA moves ahead with its passenger rail security initiatives, FTA and FRA are continuing their passenger rail security efforts.

TSA Issued Rail Security Directives, but Faces Challenges Related to Compliance and Enforcement

In May 2004, TSA issued security directives to the passenger rail industry to establish standard security measures for all passenger rail operators, including Amtrak.¹² However, as we previously reported, it was unclear how TSA developed the requirements in the directives, how TSA planned to monitor and ensure compliance, how rail operators were to implement the measures, and which entities were responsible for their implementation. According to TSA, the directives were based upon FTA and American Public Transportation Association best practices for rail security. Specifically, TSA stated that it consulted a list of the top 20 actions FTA identified that rail operators can take to strengthen security. While some of the directives correlate to information contained in the FTA guidance, the source for many of the directives is unclear. Amtrak and FRA officials also raised concerns about some of the directives. For example, FRA officials stated that current FRA safety regulations requiring engineer compartment doors be kept unlocked to facilitate emergency escapes¹³ conflicts with the TSA security directive requirement that doors equipped with locking mechanisms be kept locked. Other passenger rail opera-

¹²TSA issues security related regulations and directives pursuant to its 49 U.S.C. § 114(1) rulemaking authority.

¹³See 49 CFR § 238.235.

tors we spoke to during our review stated that TSA did not adequately consult with the rail industry prior to developing and issuing these directives.

With respect to how the directives were to be enforced, rail operators were required to allow TSA and DHS to perform inspections, evaluations, or tests based on execution of the directives at any time or location. TSA officials stated the agency has hired 100 surface transportation inspectors, whose stated mission is to, among other duties, monitor and enforce compliance with TSA's rail security directives. However, some passenger rail operators have expressed confusion and concern about the role of TSA's inspectors and the potential that TSA inspections could be duplicative of other Federal and state rail inspections. TSA rail inspector staff stated that they were committed to avoiding duplication in the program and communicating their respective roles to rail agency officials. According to TSA, since the initial deployment of surface inspectors, these inspectors have developed relationships with security officials in passenger rail and transit systems, coordinated access to operations centers, participated in emergency exercises, and provided assistance in enhancing security. We will continue to assess TSA's enforcement of rail security directives during our follow-on review of passenger rail security.

TSA Has Taken Other Actions To Strengthen the Security of the Passenger Rail System and Coordinate Its Efforts With Other Federal Agencies

In January 2007, TSA provided us an update on additional actions they had taken to strengthen passenger rail security. We have not verified or evaluated these actions. These actions include:

National Explosive Canine Detection Teams: Since late 2005, TSA reported that it has trained and deployed 53 canine teams to 13 mass transit systems to help detect explosives in the passenger rail system and serve as a deterrent to potential terrorists.

Visible Intermodal Prevention and Response Teams: This program is intended to provide teams of law enforcement, canines, and inspection personnel to mass transit and passenger rail systems to deter and detect potential terrorist actions. Since the program's inception in December 2005, TSA reported conducting more than 25 exercises at mass transit and passenger rail systems throughout the Nation.

Mass Transit and Passenger Rail Security Information Sharing Network: According to TSA, the agency initiated this program in August 2005 to develop information sharing and dissemination processes regarding passenger rail and mass transit security across the Federal Government, state and local governments, and rail operators.

National Transit Resource Center: TSA officials stated that they are working with FTA and DHS OGT to develop this center, which will provide transit agencies nationwide with pertinent information related to transit security, including recent suspicious activities, promising security practices, new security technologies, and other information.

National Security Awareness Training Program for Railroad Employees: TSA officials stated that the agency has contracted to develop and distribute computer-based training for passenger rail, rail transit, and freight rail employees. The training will include information on identifying security threats, observing and reporting suspicious activities and objects, mitigating security incidents, and other related information. According to TSA, the training will be distributed to all passenger and freight rail systems.

Transit Terrorist Tool and Tactics: This training course is funded through the Transit Security Grant Program and teaches transit employees how to prevent and respond to a chemical, biological, radiological, nuclear, or explosive attack. According to TSA, this course was offered for the first time during the Fall of 2006.

National Tunnel Security Initiative: This DHS and DOT initiative aims to identify and assess risks to underwater tunnels, prioritize security funding to the most critical areas, and develop technologies to better secure underwater tunnels. According to TSA, this initiative has identified a list of 29 critical underwater rail transit tunnels.

TSA has also sought to enhance passenger rail security by conducting research on technologies related to screening passengers and checked baggage in the passenger rail environment. TSA conducted a Transit and Rail Inspection Pilot. The pilot was a \$1.5 million effort to test the feasibility of using existing and emerging technologies to screen passengers, carry-on items, checked baggage, cargo, and parcels for explosives. TSA officials told us that based upon preliminary analyses, the screening technologies and processes tested would be very difficult to implement on heavily used passenger rail systems because these systems carry high volumes of passengers and have multiple points of entry. However, TSA officials added that the screening processes used in the pilot may be useful on certain long-distance intercity

train routes, which make fewer stops. Further, TSA officials stated that screening could be used either randomly or for all passengers during certain high-risk events or in areas where a particular terrorist threat is known to exist. For example, screening technology similar to that used in the pilot was used by TSA to screen certain passengers and belongings in Boston and New York rail stations during the 2004 Democratic and Republican national conventions. According to TSA, the agency is also researching and developing other passenger rail security technologies, including closed circuit television systems that can detect suspicious behavior, mobile passenger screening checkpoints to be used at rail stations, bomb resistant trash cans, and explosive detection equipment for use in the rail environment.

More recently, in December 2006, TSA issued a proposed rule regarding passenger and freight rail security requirements. TSA's proposed rule would require that passenger and freight rail operators, certain facilities that ship or receive hazardous materials by rail, and rail transit systems take the following actions:

- Designate a rail security coordinator to be available to TSA on a 24 hour, 7 day a week basis to serve as the primary contact for the receipt of intelligence and other security related information.
- Immediately report incidents, potential threats, and security concerns to TSA.
- Allow TSA and DHS officials to enter and conduct inspections, test, and perform other duties within their rail systems.
- Provide TSA, upon request, with the location and shipping information of rail cars that contain a specific category and quantity of hazardous materials within 1 hour of receiving the request from TSA.
- Provide for a secure chain of custody and control of rail cars containing a specified quantity and type of hazardous material.

Public comments on the proposed rule are due in February 2007. TSA plans to review these comments and issue a final rule in the future.

With multiple DHS and DOT stakeholders involved in securing the U.S. passenger rail system, the need to improve coordination between the two agencies has been a consistent theme in our prior work in this area. In response to a previous recommendation we made,¹⁴ DHS and DOT signed a memorandum of understanding (MOU) to develop procedures by which the two departments could improve their cooperation and coordination for promoting the safe, secure, and efficient movement of people and goods throughout the transportation system. The MOU defines broad areas of responsibility for each department. For example, it states that DHS, in consultation with DOT and affected stakeholders, will identify, prioritize, and coordinate the protection of critical infrastructure. The MOU between DHS and DOT represents an overall framework for cooperation that is to be supplemented by additional signed agreements, or Annexes, between the departments. These Annexes are to delineate the specific security related roles, responsibilities, resources, and commitments for mass transit, rail, research and development, and other matters. TSA signed annexes to the MOU with FRA and FTA describing the roles and responsibilities of each agency regarding passenger rail security. These annexes also describe how TSA and these DOT agencies will coordinate security related efforts, avoid duplicating these efforts, and improve coordination and communication with industry stakeholders.

U.S. and Foreign Rail Operators Have Taken Similar Actions To Secure Rail Systems, and Opportunities for Additional Domestic Security Actions May Exist

U.S. passenger rail operators have taken numerous actions to secure their rail systems since the terrorist attacks of September 11, 2001, in the United States, and the March 11, 2004, attacks in Madrid. These actions included both improvements to system operations and capital enhancements to a system's facilities, such as tracks, buildings, and train cars. All of the U.S. passenger rail operators we contacted have implemented some types of security measures—such as increased numbers and visibility of security personnel and customer awareness programs—that were generally consistent with those we observed in select countries in Europe and Asia. We also identified three rail security practices—covert testing, random screening of passengers and their baggage, and centralized research and testing—utilized by foreign operators or their governments that were not utilized by domestic rail operators or the U.S. Government at the time of our review.

¹⁴*Transportation Security: Federal Action Needed to Help Address Security Challenges*, GAO-03-843 (Washington, D.C.: June 2003).

U.S. and Foreign Rail Operators Employ Similar Security Practices

Both U.S. and foreign passenger rail operators we contacted have implemented similar improvements to enhance the security of their systems. A summary of these efforts follows.

Customer awareness: Customer awareness programs we observed used signage and announcements to encourage riders to alert train staff if they observed suspicious packages, persons, or behavior. Of the 32 domestic rail operators we interviewed, 30 had implemented a customer awareness program or made enhancements to an existing program. Foreign rail operators we visited also attempted to enhance customer awareness. For example, 11 of the 13 operators we interviewed had implemented a customer awareness program.

Increased number and visibility of security personnel: Of the 32 U.S. rail operators we interviewed, 23 had increased the number of security personnel they utilized since September 11, to provide security throughout their system or had taken steps to increase the visibility of their security personnel. Several U.S. and foreign rail operators we spoke with had instituted policies such as requiring their security staff, in brightly colored vests, to patrol trains or stations more frequently, so they are more visible to customers and potential terrorists or criminals. These policies make it easier for customers to contact security personnel in the event of an emergency, or if they have spotted a suspicious item or person. At foreign sites we visited, 10 of the 13 operators had increased the number of their security officers throughout their systems in recent years because of the perceived increase in risk of a terrorist attack.

Increased use of canine teams: Of the 32 U.S. passenger rail operators we contacted, 21 were using canines to patrol their facilities or trains. Often, these units are used to detect the presence of explosives, and may be called in when a suspicious package is detected. In foreign countries we visited, passenger rail operators' use of canines varied. In some Asian countries, canines were not culturally accepted by the public and thus were not used for rail security purposes. As in the United States, and in contrast to Asia, most European passenger rail operators used canines for explosive detection or as deterrents.

Employee training: All of the domestic and foreign rail operators we interviewed had provided some type of security training to their staff, either through in-house personnel or an external provider. In many cases, this training consisted of ways to identify suspicious items and persons and how to respond to events once they occur. For example, the London Underground and the British Transport Police developed the "HOT" method for its employees to use to identify suspicious items in the rail system. In the HOT method, employees are trained to look for packages or items that are Hidden, Obviously suspicious, and not Typical of the environment.

Passenger and baggage screening practices: Some domestic and foreign rail operators have trained employees to recognize suspicious behavior as a means of screening passengers. Eight U.S. passenger rail operators we contacted were utilizing some form of behavioral screening. Abroad, we found that 4 of 13 operators we interviewed had implemented forms of behavioral screening. All of the domestic and foreign rail operators we contacted have ruled out an airport-style screening system for daily use in heavy traffic, where each passenger and the passenger's baggage are screened by a magnetometer or X-ray machine, based on cost, staffing, and customer convenience factors, among other reasons.

Upgrading technology: Many rail operators we interviewed had embarked on programs designed to upgrade their existing security technology. For example, we found that 29 of the 32 U.S. operators had implemented a form of closed circuit television (CCTV) to monitor their stations, yards, or trains. While these cameras cannot be monitored closely at all times, because of the large number of staff that would be required, many rail operators felt that the cameras acted as a deterrent, assisted security personnel in determining how to respond to incidents that had already occurred, and could be monitored if an operator had received information that an incident may occur at a certain time or place in their system. Abroad, all 13 of the foreign rail operators we visited had CCTV systems in place. In addition, 18 of the 32 U.S. rail operators we interviewed had installed new emergency phones or enhanced the visibility of the intercom systems they already had. As in the United States, a few foreign operators had implemented chemical or biological detection devices at these rail stations, but their use was not widespread. Two of the 13 foreign operators we interviewed had implemented these sensors, and both were doing so on an experimental basis. In addition, police officers from the British Transport Police—responsible for policing the rail system in the United Kingdom—were equipped with pagers to detect chemical, biological, or radiological elements in the air, allowing them to respond quickly in case of a terrorist attack using one of these methods.

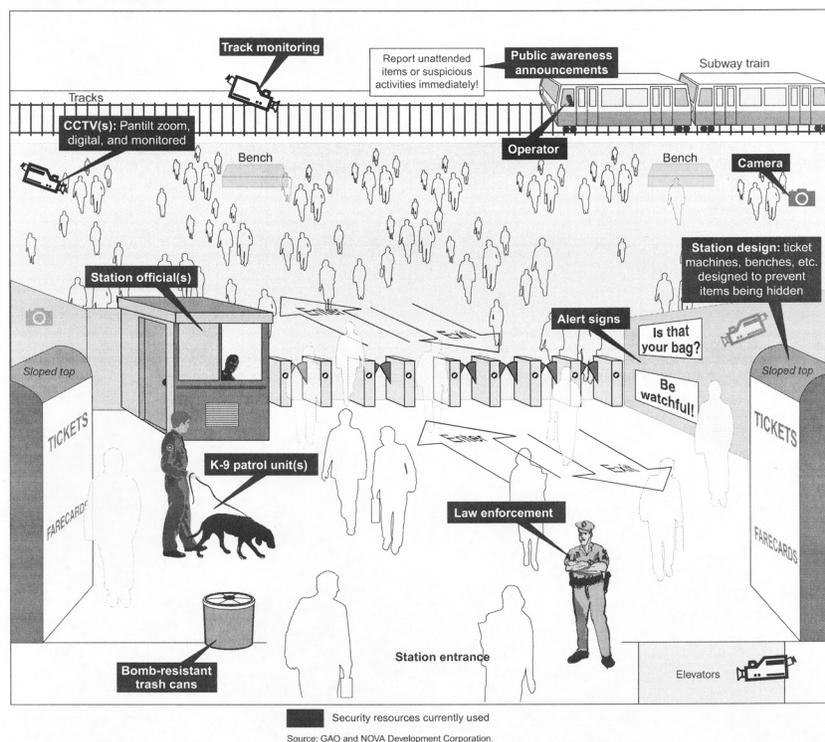
Access control: Tightening access control procedures at key facilities or rights-of-way is another way many rail operators have attempted to enhance security. A majority of domestic and selected foreign passenger rail operators had invested in enhanced systems to control unauthorized access at employee facilities and stations. Specifically, 23 of the 32 U.S. operators had installed a form of access control at key facilities and stations. All 13 foreign operators had implemented some form of access control to their critical facilities or rights-of-way.

Rail system design and configuration: In an effort to reduce vulnerabilities to terrorist attack and increase security, passenger rail operators in the United States and abroad have been, or are now beginning to, incorporate security features into the design of new and existing rail infrastructure, primarily rail stations. For example, of the 32 domestic rail operators we contacted, 22 of them had removed their conventional trash bins entirely, or replaced them with transparent or bomb-resistant trash bins, as TSA instructed in its May 2004 security directives. Foreign rail operators had also taken steps to remove traditional trash bins from their systems. Of the 13 operators we visited, 8 had either removed their trash bins entirely or replaced them with blast-resistant cans or transparent receptacles.

Many foreign rail operators are also incorporating aspects of security into the design of their rail infrastructure. Of the 13 operators we visited, 11 had attempted to design new facilities with security in mind and had retrofitted older facilities to incorporate security-related modifications. For example, one foreign operator we visited was retrofitting its train cars with windows that passengers could open in the event of a chemical attack. In addition, the London Underground incorporates security into the design of all its new stations as well as when existing stations are modified. We observed several security features in the design of Underground stations, such as using vending machines that have no holes that someone could use to hide a bomb, and sloped tops to reduce the likelihood that a bomb can be placed on top of the machine. In addition, stations are designed to provide staff with clear lines of sight to all areas of the station, such as underneath benches or ticket machines, and station designers try to eliminate or restrict access to any recessed areas where a bomb could be hidden.

Figure 1 shows a diagram of several security measures that we observed in passenger rail stations both in the United States and abroad.

Figure 1: Composite of Selected Security Practices in the Passenger Rail Environment



Amtrak Faces Challenges Specific to Intercity Passenger Rail in Securing Its System

In our past work, we found that Amtrak faces security challenges unique to intercity passenger rail systems. First, Amtrak operates over thousands of miles, often far from large population centers. This makes its route system more difficult to patrol and monitor than one contained in a particular metropolitan region, and it causes delays in responding to incidents when they occur in remote areas. Also, outside the Northeast Corridor, Amtrak operates almost exclusively on tracks and in stations owned by freight rail companies. This means that Amtrak often cannot make security improvements to others' rights-of-way or station facilities and that it is reliant on the staff of other organizations to patrol their facilities and respond to incidents that may occur. Furthermore, with over 500 stations, only half of which are staffed, screening even a small portion of the passengers and baggage boarding Amtrak trains is difficult. Finally, Amtrak's financial condition has never been strong—Amtrak has been on the edge of bankruptcy several times.

Amid the ongoing challenges of securing its coast-to-coast railway, Amtrak has taken some actions to enhance security throughout its intercity passenger rail system. For example, Amtrak initiated a passenger awareness campaign, began enforcing restrictions on carry-on luggage that limit passengers to two carry-on bags, not exceeding 50 pounds; began requiring passengers to show identification after boarding trains; increased the number of canine units patrolling its system looking for explosives or narcotics; and assigned some of its police to ride trains in the Northeast Corridor. Also, Amtrak instituted a policy of randomly inspecting checked baggage on its trains. Last, Amtrak is making improvements to the emergency exits in certain tunnels to make evacuating trains in the tunnels easier in the event of a crash or terrorist attack.

Three Foreign Rail Security Practices Are Not Currently Used in the United States

While many of the security practices we observed in foreign rail systems are similar to those U.S. passenger rail operators are implementing, we identified three foreign practices that were not currently in use among the U.S. passenger rail operators we contacted as of September 2005, nor were they performed by the U.S. Government. These practices are as follows.

Covert testing: Two of the 13 foreign rail systems we visited utilized covert testing to keep employees alert about their security responsibilities. Covert testing involves security staff staging unannounced events to test the response of railroad staff to incidents such as suspicious packages or setting off alarms. In one European system, this covert testing involves security staff placing suspicious items throughout their system to see how long it takes operating staff to respond to the item. Similarly, one Asian rail operator's security staff will break security seals on fire extinguishers and open alarmed emergency doors randomly to see how long it takes staff to respond. TSA conducts covert testing of passenger and baggage screening in aviation, but has not conducted such testing in the rail environment.

Random screening: Of the 13 foreign operators we interviewed, 2 have some form of random screening of passengers and their baggage in place. Prior to the July 2005 London bombings, no passenger rail operators in the United States were practicing random passengers or baggage screening. However, during the Democratic National Convention in 2004, the Massachusetts Bay Transportation Authority (MBTA) instituted a system of random screening of passengers.

National government clearinghouse on technologies and best practices: According to passenger rail operators in five countries we visited, their national governments had centralized the process for performing research and development of passenger rail security technologies and maintained a clearinghouse of technologies and security best practices for passenger rail operators. No U.S. Federal agency has compiled or disseminated information on research and development and other best practices for U.S. rail operators.

Implementing covert testing, random screening, or a government-sponsored clearinghouse for technologies and best practices in the U.S. could pose political, legal, fiscal, and cultural challenges because of the differences between the U.S. and these foreign nations. Many foreign nations have dealt with terrorist attacks on their public transportation systems for decades, compared with the United States, where rail has not been specifically targeted by terrorists. According to foreign rail operators, these experiences have resulted in greater acceptance of certain security practices, such as random searches, which the U.S. public may view as a violation of their civil liberties or which may discourage them from using public transportation. The impact of security measures on passengers is an important consideration for domestic rail operators, since most passengers could choose another means of transportation, such as a personal automobile. As such, security measures that limit accessibility, cause delays, increase fares, or otherwise cause inconvenience could push people away from rail and into their cars. In contrast, the citizens of the European and Asian countries we visited are more dependent on public transportation than most U.S. residents and therefore may be more willing to accept intrusive security measures. Nevertheless, in order to identify innovative security measures that could help further mitigate terrorism-risks to rail assets—especially as part of a broader risk management approach discussed earlier—it is important to consider the feasibility and costs and benefits of implementing the three rail security practices we identified in foreign countries. Officials from DHS, DOT, passenger rail industry associations, and rail systems we interviewed told us that operators would benefit from such an evaluation. Since our report on passenger rail security was issued, TSA has reported taking steps to coordinate with foreign passenger rail operators and governments to identify security best practices. For example, TSA reported working with British rail security officials to identify best practices for detecting and handling suspicious packages in rail systems.

Conclusions

In conclusion, Mr. Chairman, the July 2005 London rail bombings made clear that even when a variety of security precautions are put into place, passenger rail systems that move high volumes of passengers daily remain vulnerable to attack. DHS components have taken steps to assess the risks to the passenger rail system. However, enhanced Federal leadership is needed to help ensure that actions and investments designed to enhance security are properly focused and prioritized so that finite resources may be allocated appropriately to help protect all modes of transportation. Specifically, both DHS and TSA should take additional steps to help ensure that the risk management efforts under way clearly and effectively identify priority areas for security-related investments in rail and other transportation modes. TSA

has not yet completed its methodology for determining how the results of threat, criticality, and vulnerability assessments will be used to identify and prioritize risks to passenger rail and other transportation sectors. Until the overall risk to the entire transportation sector is identified, TSA will not be able to determine where and how to target limited resources to achieve the greatest security gains. Once risk assessments for the passenger rail industry have been completed, it will be critical to be able to compare assessment results across all transportation modes and make informed, risk-based investment trade-offs. It is important that DHS complete its framework to help ensure that risks to all sectors can be analyzed and compared in a consistent way. Until this framework is complete, it will be difficult for agencies to reconcile information from different sectors to allow for a meaningful comparison of risk.

Apart from its efforts to identify risks, TSA has taken steps to enhance the security of the passenger rail system. The issuance of security directives in 2004 was a well-intentioned effort, but did not provide the industry with security standards based on industry best practices. It is also not clear how TSA will enforce these directives. Consequently, neither the Federal Government nor rail operators can be sure they are requiring and implementing security practices proven to help prevent or mitigate disasters. While foreign passenger rail operators face similar challenges to securing their systems and have generally implemented similar security practices as U.S. rail operators, there are some practices that are utilized abroad that U.S. rail operators or the Federal Government have not studied in terms of the feasibility, costs, and benefits. In our September 2005 report on passenger rail security, we recommended, among other things, that TSA establish a plan with timelines for completing its methodology for conducting risk assessments and develop security standards that reflect industry best practices and can be measured and enforced. These actions should help ensure that the Federal Government has the information it needs to prioritize passenger rail assets based on risk, and evaluate, select, and implement measures to help the passenger rail operators protect their systems against terrorism. In addition, we recommended that the Secretary of DHS, in collaboration with DOT and the passenger rail industry, determine the feasibility, in a risk management context, of implementing certain security practices used by foreign rail operators. DHS, DOT, and Amtrak generally agreed with the report's recommendations, but as of January 2007, they have not told us what specific actions they are taking to implement them. We will continue to assess DHS and DOT's efforts to secure the U.S. passenger rail system during follow-on work to be initiated later this year.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or other members of the Committee may have at this time.

RELATED GAO PRODUCTS RELEASED SINCE SEPTEMBER 11, 2001

Passenger Rail Security: Evaluating Foreign Security Practices and Risk Can Help Guide Security Efforts. GAO-06-557T. Washington, D.C.: March 29, 2006.

Passenger Rail Security: Enhanced Federal Leadership Needed to Prioritize and Guide Security Efforts. GAO-06-181T, Washington, D.C.: October 20, 2005.

Passenger Rail Security: Enhanced Federal Leadership Needed to Prioritize and Guide Security Efforts. GAO-05-851. Washington, D.C.: September 9, 2005.

Transportation Security: Systematic Planning Needed to Optimize Resources. GAO-05-357T. Washington, D.C.: February 15, 2005.

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Rail Safety and Security: Some Actions Already Taken to Enhance Rail Security, but Risk-based Plan Needed. GAO-03-435. Washington, D.C.: April 30, 2003.

Transportation Security: Post-September 11 Initiatives and Long-term Challenges. GAO-03-616T. Washington, D.C.: April 1, 2003.

Mass Transit: Federal Action Could Help Transit Agencies Address Security Challenges. GAO-03-263. Washington, D.C.: December 13, 2002.

Mass Transit: Challenges in Securing Transit Systems. GAO-02-1075T. Washington, D.C.: September 18, 2002.

The CHAIRMAN. The next witness, the Director of the Office of Homeland Security and Preparedness, State of New Jersey, the Honorable Richard Cañas.

**STATEMENT OF THE HON. RICHARD L. CAÑAS, DIRECTOR,
OFFICE OF HOMELAND SECURITY AND PREPAREDNESS,
STATE OF NEW JERSEY**

Mr. CAÑAS. Good morning, Chairman Inouye, and Vice Chairman Stevens, distinguished Senators. Thank you for asking me to testify on how, together, we can improve rail and surface transportation security.

Current intelligence information clearly indicates terrorists' threat to mass transit, specifically, rail infrastructure, remains high.

In New York and New Jersey region, the most densely populated area in the United States, there have been multiple, specific threats to rail and subway assets. Several terrorist plots have been thwarted since 9/11, and we continue to see numerous incidents of suspicious activity at, or near, New Jersey rail infrastructure. It is clearly one of the highest security priorities for us.

New Jersey's rail system is complex. The state is home to five major public rail organizations, with an annual ridership exceeding 90 million passengers. Policing these systems is a daunting challenge, and since 9/11, one that has depleted our resources.

On the freight rail side, New Jersey has 13 rail companies, connecting more than 900 miles of rail lines with large industries that require hazardous materials trucked, piped and freight-railed to them. The release of any of these toxic inhalation hazards, or TIH, would likely cause serious damage to nearby population and facilities.

Shortly after 9/11, New Jersey began working with the transportation sector to develop industry best management practices for security. And in 2004, these were approved. The passenger rail sector in our state was the first in the transit industry to complete vulnerability assessments. We have also developed, this past year, a comprehensive transportation security strategy for New Jersey.

But our progress has limits. There is a vast gap between what we need to do to enhance transportation security, and what funds we have to accomplish that task.

We are also dependent on the security of our trucking industry, which critically needs to interact with a secure port environment. Once trucks leave the controlled access areas of our ports, they are part of the same open environment as rail.

While waiting for the Federal Government to provide the needed funding for transportation security initiatives, our State has undertaken a number of actions in conjunction with rail, truck and bus carriers that operate in our state. Congress has since responded to the threats facing mass transit, rail, bus and ferry and these systems' overall vulnerability by authorizing transit security grants, which the Department of Homeland Security administers as part of its infrastructure protection program.

And, we are very appreciative of that effort. But the freight—on the freight rail side there are funding gaps. For example, in 2004, TSA undertook a study of the North Jersey rail corridor, and fol-

lowed that up with a comprehensive review of the same area in 2006.

But these reviews were not accompanied by any DHS funding to address vulnerabilities. Nor has DHS, to this point, provided any funding to help bolster the secure movement and storage of hazardous material via freight rail.

For these reasons, we strongly support the provisions of the draft legislation being considered by this committee that recognize the need for additional funding.

Another requirement in our State is the real-time tracking of TIH cargo. New Jersey has seven major rail yards that handle TIH rail cars. Some of these are in our most populous urban areas. The rail companies need to share their tracking information with security agencies. DHS's recent draft freight rail regulations also recognizes this vital need. In this regard, our State has made progress with the freight rail industry, particularly CSX in obtaining this exclusive tracking capability. And I want to publicly commend them for that cooperation.

We also wholly support the provision in the proposed legislation that calls for TSA to oversee all transportation-related measures; heretofore, it has not always been clear which agency is responsible for this oversight.

And we are also in agreement that Amtrak should remain a strong partner in regional efforts for developing critical vulnerability assessments along the corridor. At its stations, and in its tunnels, New Jersey's passenger rail systems run on the same tracks, and use the same stations as Amtrak.

Mr. Chairman, New Jersey has taken many steps to protect its citizens and facilities, and we will continue down that track as fast as we can. Simply, because we must. But New Jersey can only go so far without adequate funding and without uniform standards applied to our sister states. Please note that when I speak of uniform standards, I'm talking about them as a floor—not as a ceiling. We want to remain and maintain our ability to exceed minimum uniform standards when we think it is in the best interests of our citizens' security.

In closing, I want to thank the Chair and the Vice Chair, as well as of the members of the Committee for allowing me to testify. Transportation security is a critical issue that must be discussed and debated at the national stage, and again, I thank you for providing me that opportunity.

[The prepared statement of Mr. Cañas follows:]

PREPARED STATEMENT OF HON. RICHARD L. CAÑAS, DIRECTOR,
OFFICE OF HOMELAND SECURITY AND PREPAREDNESS, STATE OF NEW JERSEY

Good Morning Chairman Inouye, Vice Chairman Stevens and Senators. Thank you for asking me to testify on how together we can improve rail and surface transportation security. There is no question about the priority. I also want to express my gratitude to Senator Lautenberg for his unwavering commitment to transportation security, particularly rail security. I will be commenting briefly on several aspects of the proposed legislation that is before you, and I commend Chairman Inouye, Vice Chairman Stevens, and Senator Lautenberg for sponsoring "the Surface Transportation and Rail Security Act of 2007," which recognizes the need for significant security enhancements.

Current intelligence information clearly indicates that the terrorist threat to mass transit, specifically rail infrastructure, remains high. In recent years, terrorists have

conducted numerous successful attacks on transit systems worldwide. Mumbai, London, and Madrid come readily to mind.

In the New York/New Jersey region there have been multiple, specific threats to rail and subway assets. Several terrorist plots have been thwarted, including a much-publicized plot against the PATH system connecting New York and New Jersey, and two earlier plots directed at the New York City subway system. An individual charged in one of the earlier plots was sentenced recently to 30 years in prison. We continue to see numerous incidents of suspicious activity at or near New Jersey's rail infrastructure, including photography, videotaping, use of hand counters, placement of fake improvised explosive devices and trespassing.

I would like to begin by providing a brief overview of New Jersey's surface transportation system and thus provide a picture of its magnitude and complexities. I will focus my first comments on both the passenger and freight rail sectors.

The passenger rail sector in New Jersey consists of five major public rail organizations: New Jersey Transit, Port Authority Trans Hudson (PATH), Port Authority Transit Company (PATCO), Southeastern Pennsylvania Transit Authority (SEPTA) and Amtrak. Among these five systems, the annual ridership exceeds 90 million passengers. I've attached a more detailed list of the number of lines and their ridership to my testimony. The statistics are impressive indeed. On the other hand, these public and private passenger rail systems are depleted of resources. By that I mean they do not have enough officers, canine units, and technology to properly police and provide security for the heavy passenger loads they carry.

On the freight rail side, New Jersey has 13 rail companies operating within our state. These include three Class I (CSX, Norfolk Southern and Conrail), two Class II and nine Class III railroads, which operate on more than 900 miles of railroad mainline. For those of you not familiar with New Jersey, I must remind the Committee that this activity takes place in the most densely populated state in the union. And that in this most densely populated state, our citizens live and work amidst a concentration of chemical, pharmaceutical, petroleum and other industries, a great number of which require hazardous precursor materials trucked, piped or freight-railed to them.

New Jersey serves as both destination and a point of origin for hazardous materials, which are among the 43 million tons of material transported across our freight lines annually. The release of toxic substances from a rail car in northern New Jersey would likely cause serious damage to nearby populations and facilities.

Shortly after 9/11, the state began working with the transportation sector to develop industry "best management practices," and in 2004 these were approved. These best practices were initiated in some cases prior to the Federal Government or TSA developing its industry best practices. The development of these standards and protocols involved working with the private sector, public transit agencies and the Federal Government. Meanwhile, the passenger rail sector in our state was the first to have the entire transit industry complete the vulnerability assessment using the U.S. Department of Homeland Security's (DHS's) Special Needs Tool Kit, a technical assistance program funded by DHS.

But New Jersey did not stop there. When I became the Director of New Jersey's new Office of Homeland Security and Preparedness last March, Governor Corzine asked me to develop a comprehensive rail security strategy and to begin distributing limited state and Federal funds—based on risk.

Our security forces have increased their presence and patrol of key installations to include specialized canine units. We have also increased the interoperability of emergency responders within subways, tunnels, rail yards and terminals. We have increased the number of "SMART" closed-circuit television (CCTV) cameras and software at equipment yards where commuter rail coach cars and locomotives are stored. We have also initiated regional programs with the State of New York and the NY/NJ and Delaware River Port authorities to maximize the efforts of our limited resources. And finally, we are using scarce state funds to leverage security initiatives against investment justifications funded by DHS.

But our progress has limits. There is a vast gap between what we need to do to enhance transportation security and what funds we have to accomplish that task. Rail, of necessity, operates in an open environment. Mass transit passenger rail, in particular, represents a soft target because it is in the business of moving as many people as possible as quickly and efficiently as possible.

Congress has responded to the threat to mass transit and the system's vulnerability by authorizing Transit Security Grants, which the Department of Homeland Security administers as part of its Infrastructure Protection Program. We are very appreciative of that effort and believe we are using the funds to the best of our ability.

Freight rail carriers also operate in an open environment and are required to transport and safeguard toxic inhalation hazards, or TIH, extremely hazardous materials that are the functional equivalent of chemical plants on rails. DHS has to this point, however, not targeted any similar funding to its Transit Security Grant Program to help bolster the secure movement and storage of these materials.

Much more needs and must be done.

We are also dependent on the security of our trucking industry, which critically needs to interact with a secure port environment and concomitant Federal funding. Once trucks leave the controlled access areas of our ports they are part of the same open environment as rail, buses and ferries and an inclusive strategy for them needs to be considered.

Real-time cargo tracking of rail cars to monitor the movement of TIH cars on New Jersey tracks, yards or on sidings is another example. The rail companies need to share this tracking information with security agencies. In this regard, I cannot overstate the importance of fostering public/private partnerships to achieve our mutual goal of assuring a secure transportation system. I am pleased to report that our office has made some progress in this regard, particularly with the railroad company CSX. They have sought out a partnership, shared their insights on rail-based security threats, and even allowed us to have access to their tracking capability. And I want to publicly commend them for that. Leveraging this success, we intend to seek similar partnerships with other carriers.

Another shortfall involves TSA. In 2004, TSA undertook a study of the North Jersey freight rail corridor. In 2006, TSA followed up with a Comprehensive Review of the same area. These were thorough and well thought out assessments with positive recommendations. But neither of these reviews by TSA came with any funding to address vulnerabilities that were identified.

It is our hope that, as a result of the proposed legislation that this committee is considering, this situation will be set right, and that this committee will support providing funding necessary to close recognized security gaps.

We also wholly support the provision in the proposed "Surface Transportation and Rail Security Act of 2007" that calls for oversight of all security measures by TSA. Heretofore, the agency responsible for oversight has not always been clear.

And finally, the Northeast Corridor line, which connects New Jersey and New York under the Hudson River, handles more than 150,000 NJ TRANSIT and 35,000 Amtrak trips each and every day—relying on a 100-year-old two-track railroad tunnel that provides limited capacity and no redundancy. The Access to the Regions Core Project, including a new commuter rail tunnel under the Hudson will double commuter rail capacity—providing critical system capacity enhancements, desperately needed transportation redundancy, and will be designed to include the latest security features. Moreover, the Amtrak tunnel that we use today is the *only* link from Boston to Washington for intercity trains, as well as for New York and New Jersey commuter trains.

We are also in agreement that Amtrak should remain a strong partner in regional efforts for developing critical vulnerability assessments along the corridor, at its stations or within its tunnels. As you probably are aware, New Jersey's passenger rail systems run on the same tracks and use the same stations as Amtrak.

In closing, I want to thank the Chair and Vice Chair, as well as all the members of the Committee, for allowing me to testify. New Jersey has taken many steps to protect its citizens and facilities by shoring up security on its passenger and freight rail systems. We will continue down that track as fast as we can simply because we must. But New Jersey can only go so far without adequate funding and without uniform standards applied to our sister states. That is why I find the very fact of today's hearing a positive and heartening development. Transportation security is a critical issue that must be discussed and debated on the national stage and, again, I thank you for providing that opportunity.

Attachment

New Jersey Rail Transportation Fact Sheet

NJ TRANSIT	
<i>Rail Operations</i>	
Rail Lines	11
Directional Route Miles	951
Locomotives in Service	133
Revenue cars in service	900
Rail Stations	162

New Jersey Rail Transportation Fact Sheet—Continued

Weekday ridership trips	236,900
Weekend ridership trips	142,100
<i>Light Rail Operations</i>	
Light Rail lines	3
Directional route miles	107
Light rail fleet	72
Light rail stations	52
Weekday ridership trips	45,050
Weekend ridership trips	42,700
PATH (Port Authority Trans Hudson) <i>Port Authority of New York and New Jersey</i>	
Weekday Ridership passengers	215,115
2005 Passenger trips—million	60.7
Route miles—tunnel	7.4
Route miles—surface	6.4
PATCO (Port Authority Transit Company) <i>Delaware River Port Authority</i>	
Weekday Ridership passengers	34,000
Transit Car fleet vehicles	121
Track miles	14.2
Stations	13
AMTRAK	
Trains in Operation Daily	110
Total NJ station usage (annual boardings and alightings)	3,406,215
SEPTA (Southeastern Pennsylvania Transit Authority)	
2005 Annual Ridership—million	299
R3 West Trenton annual passengers (2005)	2,634,530
R7 Trenton annual passengers (2005)	2,852,245
Light rail routes	9
Light rail vehicles	159
Elevated subway routes	2
Elevated subway vehicles	371
Regional rail routes	13
Regional rail vehicles	349

2003 Rail Freight Tonnage—42 million tons.

**STATEMENT OF HON. DANIEL K. INOUE,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Thank you very much, Mr. Director.

I'd like to ask Assistant Secretary Hawley a question. Recently, an Executive Order issued strengthening surface transportation security and that Executive Order requires the Department of Homeland Security and TSA to do some planning assessments and reporting that this committee has been advocating for some time.

However, I'm concerned that your budget of \$37 million this year will be insufficient. Do you believe your agency has enough funding to fulfill your responsibilities under this Executive Order?

Mr. HAWLEY. I do in the current fiscal year for going forward in 2007. And I think a good example of that is how we took the TIH—the Toxic Inhalation Hazard—really dangerous chemicals, and in-

stituted the security arrangement with the railroads that does not cost the Government, but has the effect of reducing the shipments that are standing still.

So, an example of how that works is, rather than us having to pay for fences around cars, if we work with the railroads to make those cars not get into that area, that accomplishes the security objective without the Government having to pay for it.

So, I think, on the rail/TH side, those steps can be taken to implement security without significant Government funding.

The CHAIRMAN. So you believe you have sufficient funds?

Mr. HAWLEY. Yes, sir.

The CHAIRMAN. And do you believe that the President will request supplemental funding?

Mr. HAWLEY. Well, right now in the 2008 budget process—and we'll be back up here in a month to discuss that—but I think the priority that we give to the surface side and the aviation side are a lot closer in terms of our focus in the security measures than the budget dollars would indicate, simply because of the fact that we pay the salaries of all of the people in the TSA in the airports, whereas a lot of other people pay for it in the surface environment.

The CHAIRMAN. You received \$175 million for the Transit Security Grant Program, is that sufficient?

Mr. HAWLEY. Yes, and it was—Secretary recently announced the 2007 allocations of that, and as I mentioned in my statement, that the risk assessment was done in surface transportation and the number one target, for us, in terms of funding and priority is urban, underground, high-density population passenger transit systems. And that's where the priority for that \$171 million is going.

The CHAIRMAN. Thank you very much.

Director Berrick, do you believe that our Government is providing sufficient resources, personnel, regulations to adequately protect our Nation's surface transportation and rail systems?

Ms. BERRICK. In terms of whether or not sufficient resources are being provided, the first point I would make is DHS is—I'm sorry, closer? The first point I would make is, DHS is required to issue a Transportation Sector Specific Plan which, basically, will outline their strategy for securing all modes of transportation. They're also supposed to develop detailed annexes to that.

Since that hasn't been issued, it's difficult to determine, long range, what their ultimate plans and goals are. So, until that's completed, I think it's difficult to identify whether or not the resources that they have are enough.

Another point that we found during our work was, in conducting risk assessments, DHS in issuing grants had a pretty rigorous risk assessment methodology. Separate from that, TSA was also doing risk assessments, and separate from that, DOT was conducting risk assessments within passenger rail to see whether or not they were allocating the limited resources to the rail systems that were most in need. We found at the time that the three parties were not coordinating as much as they could, and they had not yet completed their efforts. So, we made recommendations that these efforts should be coordinated so they're not duplicating efforts, and also so that they can effectively compare risks, since there are limited re-

sources right now, to make sure the money is going in the right places.

The CHAIRMAN. Thank you very much, Director. I will submit the rest of my questions in the record, and submit it to you for your response.

Senator Stevens?

Senator STEVENS. Thank you very much, Mr. Chairman.

I'm reminded of the *Exxon-Valdez* spill. We had, at one time, taken the Appropriations Committee down to Valdez and the industry had shown us their response plan, and they had a series of boats out there. They actually had dumped about 40 barrels of tennis balls, and they showed up how they could scoop those up, and how we were prepared for a spill.

Several years went by, and we had the spill. People couldn't find the right equipment. Local communities weren't prepared. Their communications systems were not interoperable, and they had not had training of new people. They had not really exercised their plans.

Congress has passed an Act that requires all of those things to be done now, and to prove that they've been done.

I wonder about the transportation modes, now. And let me ask you, Ms. Berrick. First—it's my understanding that each one of these agencies has signed a memorandum of agreement that gives TSA the lead role with regard to security under the direction of DHS. Did you review that?

Ms. BERRICK. Yes, we did. And at the time we did our work—we started about a year and a half ago—the MOU didn't exist. And we had made a recommendation earlier that the two parties develop an MOU. They did develop the MOU, since then they have developed annexes for specific transportation areas.

Senator STEVENS. Well, respectfully, it's not two parties, we've got at least five here.

Ms. BERRICK. Right. All of the annexes have not yet been signed. For example, there's no annex between TSA and the Federal Motor Carrier Safety Administration. But there are annexes between TSA and FRA, and TSA and FTA. So, we think that's a great—

Senator STEVENS. Doesn't that mean everyone in the whole surface transportation industry—is waiting for Homeland Security and TSA to do its job? I don't understand how far this MOU goes. Have they turned over the formulation of plans for security in their various areas to TSA and Homeland Security?

Ms. BERRICK. Well, I think the first problem in terms of the views of the transportation stakeholders was, they wanted to know that the Federal Government's role was. They were confused about what DOT was doing, what DHS was doing. So, I think the fact that the MOU was signed with these annexes is a great first step to be clear on what the roles and responsibilities are. And they do provide some good detail that had previously been concerns of stakeholders.

The question now is the implementation of that MOU. The question is also, When is DHS going to issue this transportation sector-specific plan that's going to outline what their overall strategy is? Because there are still some questions among transportation stakeholders on what the long-term strategy is, despite all of the efforts

that TSA and FRA and FTA have underway. There's still that question, Where are we ultimately going, and what's our strategy?

Senator STEVENS. Well, do these agreements require cooperation of the communities along railroad lines, for instance, to be prepared to handle problems—should they develop—in their area? Is there interoperability of communications between the local people and these various Federal agencies? Is there interoperability as far as communications—between the Federal agencies themselves? Did you look into that?

Ms. BERRICK. I—not that specific issue. In terms of the MOU and the annexes, I don't believe it goes into that level of detail. There have been rules, and proposed rules—recently there's been a proposed rule on freight and passenger rail security that provides a lot more detail, and lays out what the requirements are for transportation security operators, but I'll have to defer to my colleagues on the level of detail related to that point.

Senator STEVENS. Well, I don't have time to ask each one of your questions. But, respectfully, let me tell you—we had plans. We had one of the best plans in the world for Valdez. It was dusty, the new people hadn't been trained, the equipment hadn't been inspected—I wonder if we're getting down to that detail. It's wonderful to make plans. But how are they executed, and who has the responsibility for compliance?

We've just passed this Pipeline Security Act. We put the duty on an official, a high-level official, of every company to certify that the action had been taken to carry out the requirements of that Act. Now, has that been done in this area? Is there some responsibility on the people who are operating these systems to comply with all these plans? Or is it just coordination between the Federal agencies?

Do you want to answer that, Mr. Hawley?

Mr. HAWLEY. Yes, please. The Toxic Inhalation Agreement I just mentioned is enforced with inspectors—we have 100 surface transportation inspectors—and we now get the data. We talked about, where are these cars? We now are able to get within 5 minutes where all the TIH cars are. And as part of the data we get, we are able to audit by the numbers, how much time is spent standing in places that we consider vulnerable. So, we actually have the actual data from the railroads, on which we can agree, and assess their performance against the agreement.

Senator STEVENS. OK, my time is up. Let me just say this in my state, 70 percent of the communities can be reached only by air. Every airline passenger pays \$2.50 to get on an airplane, up to \$5.00 on a one-way, up to \$10 on a round-trip. Every single time we move from one city to another, we're paying that. I don't see anything at all, in these plans, that indicate the people that are using these transportation mechanisms are going to contribute towards this security. And I think you have to face up to that. Unless you face up to it, you're not going to have the money.

Respectfully, Mr. Cañas, you're not going to have money unless the passengers are willing to pay something for their security. You cannot rely on the taxpayer all over the country to support these rail systems.

And I ride the Amtrak, I've seen the crowds in these stations, we all know that there's a substantial problem there. But we have to have some way to have people who use these transportation systems to contribute something towards their security.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

I'd like to follow up on that question of the Senator from Alaska as well, because it seems to me, at least, that this is a big issue. And I want to maybe drill down a little bit further. But DOT has their hazmat carrier list, TSA has a No-Fly List, FBI has their list, and it would make sense to me that if individuals are correctly on the No-Fly List, then that person probably shouldn't be authorized to transport hazardous material, either.

And I guess, I would like to know—how close are the Federal agencies from being able to completely synch up their respective lists? And are there State lists that ought to be added to that, as well?

And, Ms. Berrick if, I don't—that's something that you probed in your analysis?

Ms. BERRICK. Thank you. GAO has done reviews of the terrorist watch list, and have identified quality issues with the watch list, and we have reported at the Terrorist Screening Center who owns the Terrorist Screening Center database, the watch lists are extracted from that database. There are a lot of efforts underway doing data scrubs of the data to try to make sure there's no duplication, and really whittle down the list to make sure it's more accurate than what it is now.

Their—they've made a lot of progress recently, they still have a long way to go. But in terms of your specific question on whether or not those lists are coordinated, we didn't look into that, specifically.

Senator THUNE. Anybody else care to comment on that?

Mr. HAWLEY. I can comment on that.

Senator THUNE. Mr. Hawley?

Mr. HAWLEY. They are coordinated, they are in one place—the Terrorist Screening Center is the place in the U.S. Government where all terrorist-related watch lists are, and that is the place that we looked. It's the place where everybody in the community goes for watch list checking. There are different standards for whether somebody can get a Commercial Driver's License or a hazmat endorsement, or a pilot's license, or be able to fly, so there are different rules. But there's one place where everybody has lists, so we do not have the potential loophole that somebody has been identified over here, and then gets permission over here that they shouldn't get.

Senator THUNE. I know this is something that the health care world is trying to address. Different health care providers will have different software packages, but they are trying to figure out ways that they can communicate so patients have access to information. And if patients go to a clinic somewhere else than where they live, that their file could be pulled up. Stakes are obviously a lot higher here, because you're talking about security. And, so I'm glad to

hear there's at least some central point where all of these lists get consolidated, where hopefully there's not the duplication that was talked about earlier.

And I would ask this question of Mr. Hawley or Mr. Barrett, but—and that has to do with the mobile enrollment centers that are in place. I've heard from some drivers in South Dakota that there are still some troubles that they have, getting their hazardous material endorsement. And, I'm wondering if there is anything that can be done to expedite that process for truck drivers who live in rural areas.

Mr. HAWLEY. I'm not familiar that there are problems in South Dakota—I think the system overall, at the national level, is performing a pretty quick turnaround. And, in fact, our success rate in terms of adjudicating disputes is very high. So I will, I'll go back and look at that, what the issue might be in South Dakota. There were some problems when it first started up, but I think every bit of data I've seen recently is that the program is operating well. But I will go back and check.

Senator THUNE. I would appreciate, maybe, if you'd take a look at that.

And the final question I would direct to either Mr. Hawley or Mr. Boardman. Is there any information on how soon electronic tracking devices for cargo shipping containers will become affordable enough to be used on a widespread basis?

Mr. BOARDMAN. I don't think we have, Senator, the exact timeframe that we would put those sensing devices in. But we're making tremendous progress on the kinds of things that we could add to trains today.

For example, on the pneumatic brake, electronic control and pneumatic braking—as each one of those coal trains, for example, were to be outfitted with that, there would be the ability, with the sensors that are available, to provide very specific and immediate information. So, there are a lot of pilot things that are going on at this point in time, and as you're aware, we can also do the rail side checking. But, we think the sensing devices are the better future for us.

Senator THUNE. Thank you, Mr. Chairman.

Thank you, panel.

The CHAIRMAN. Thank you very much.

And next is Senator McCaskill.

**STATEMENT OF HON. CLAIRE McCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. A huge—oh, thank you.

A huge percentage of our rail offices across this country are unmanned. And I know, from personal experience, how easy it is to buy a ticket on Amtrak over the Internet and, get on the train, and no one ever asks you who you are, no one ever touches your bag, no one ever checks to see if you are who you say you are. And, I know, because my kids travel all of the time on Amtrak in my State, and the station in suburban St. Louis is unmanned. So, you know, I—we go on the Internet, it's very easy and user-friendly, and my kids get on the train and off they go, and sometimes they get to the destination and no one ever says, "Boo" to them other

than them giving the conductor the confirmation number off the Internet reservation.

I think that it's fair to make the observation that so much of what we have done in the area of safety after the tragedy of 9/11 is, in fact, reactive, as opposed to proactive. I think, me giving up my shampoo and my lip gel is a good example. And, the interesting thing about these unmanned stations and about the ease of travel without any kind of identification, any kind of checking is—it would be one thing if these were just traveling to unpopulated areas. I mean, those of us who represent rural areas would argue, we need to protect those areas, too. But this train goes through some of the most densely populated areas of St. Louis, and onto the very densely populated area of Chicago. And, it seems to me, that we are just waiting to be reactive again because of the complete ease—why would anyone go and try to wreak havoc with a terrorist activity having to go through a station such as the one in New York, maybe, that has Transit Authority Police everywhere, that maybe is doing random screenings, when all they've got to do is go on the Internet, hop on the train in Kirkwood, and a few hours later, they're in the middle of one of the most densely populated areas in America.

Mr. HAWLEY. Senator, first of all, with Amtrak, we have a very close working relationship with Amtrak and we have done risk assessments, and actually there is a requirement for random I.D. checking. And we, in fact, do run operations with Amtrak. For instance, in October of 2005 in the New York threat where New York Transit Authority put their people in to raise the threat level, to Amtrak, we sent in Federal people to help so there would be a balanced security across the way.

So, we have done risk assessment with Amtrak, we do in fact, do occasional personal screening and baggage screening, and we've run ten—what we call—VIPR Teams, which are visible and unpredictable teams of canines, Federal air marshals, inspectors, some undercover, some overt—that come up in random places that you would not expect, including less densely populated areas, to have that level of unpredictability.

We ran ten of them at Amtrak in Fiscal Year 2006, and so far in 2007 we've run seven. So, we do have—and maybe you haven't seen that, and I understand it's not statistically way up there. But it is something that you cannot count out, that there will not be a Federal air marshal team, covert, somewhere in that Amtrak environment. We have a very close relationship with Chief Proctor, and Amtrak, we share secure communications, they have secure communications so we can talk—and do talk—at the secret level with them. So, there's more to it than meets the eye.

Senator MCCASKILL. It seems so counter-balanced to me, though. It seems as if we have put so much on the airlines, and so little on mass transit, and with all of our focus on being energy independent and trying to do what we can to support mass transit because what it means to some other areas of public policy that are very important. It's ironic that people who have under gone hip replacement or knee replacement have their luggage gone through, for example—my mother had both of her knees replaced, she will never have a time that her carry-on baggage is not gone through

in detail, but yet chances are really, frankly, like winning the lottery that you could get on a train in the United States of America and have any kind of a second glance, whatsoever.

And also, if I could ask Mr. Hill about the NAFTA Super Highway—I'm concerned about safety issues as it relates to how it is going to actually be operated, and this may not be within your realm, but if you all have looked at this issue. You know, folks who live in Kansas City—the idea that these trucks are going to be originating in another country and are not going to have the kind of inspections, I think, most Americans expect at the border. What steps are being taken in this planning to assure safety issues as it relates to the NAFTA Super Highway?

Mr. HILL. I thank you, Senator, for that question.

There are really a couple of issues involved there. First of all, we have the infrastructure side which the Federal Highway Administration's trying to look at congestion relief and build major corridors that will allow for trade to move throughout our country.

In terms of your specific question, in terms of the safety application—we are doing two or three things that I would just highlight to you. First of all, on the training of local police departments in and around the country, we've been working with the International Association of Chiefs of Police to better train—not just people who do truck inspections—but the regular road officers who will be seeing most of these vehicles. We've been putting together a training program with them, we have thirty-three states already involved in that training, and we're trying to make sure that they understand what trucks are supposed to be doing on the highway, and what kind of safety protocols apply to trucks.

Having come from the state police environment, and having done that kind of work, I know that a lot of police officers are unfamiliar with that terminology and protocols. So, we're trying to make sure that they understand it, first of all.

Second, we are working to make sure that all of the safety provisions are verified for any truck that comes into the country—right now they're limited to a border zone, a commercial zone of 20–25 miles, and those trucks are checked rigorously along the Southern border. I think last year we inspected 240,000 of the 940,000 vehicles that crossed at the southern border. So, we're making sure that we have a rigorous safety regime that's in place, and that we're following the requirements set forth in legislation and the 2002 Appropriations Act that deals specifically with the items that we deal with—any trucks that come into the country that go beyond the commercial zone.

Senator McCASKILL. Thank you, Thank you very much.

Thank you, Mr. Chairman.

Senator LAUTENBERG [presiding]. Thanks very much.

I'm going to call on Senator Smith who is the Ranking Member on our Subcommittee on Transportation.

Senator Thune, you've already—OK.

Senator Smith.

**STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Senator Lautenberg, and I look forward to working with you on this very important subcommittee. I enjoy our relationship, and I know it will continue in a constructive way, and this surface transportation issue is very important.

Mr. Hawley, can you tell me off-hand, how many employees are there in TSA?

Mr. HAWLEY. A little short of 50,000.

Senator SMITH. And what percentage of those work in air transportation *versus* surface transportation.

Mr. HAWLEY. A very high proportion, close to, I'd say, the high forties.

Senator SMITH. The high forties—

Mr. HAWLEY. Yes.

Senator SMITH.—working for air?

Mr. HAWLEY. Yes.

Senator SMITH. So, sixty percent, fifty percent work—in air transportation?

Mr. HAWLEY. Much more. Much more. It's—the bulk of it, the bulk of our budget is in air transportation, specifically paying the salaries of our TSOs. And that's because the model is different. We pay for salaries in aviation—transit systems and others pay for it in the other modes.

Senator SMITH. And, the air transportation is paid for through ticket fees, I assume.

Mr. HAWLEY. Forty percent of it.

Senator SMITH. Forty percent of it. How many employees do you have working on surface transportation issues?

Mr. HAWLEY. I'd say a little less than 1,000.

Senator SMITH. And the funding for the thousand employees comes from general revenues, or from the budget we allocate to you?

Mr. HAWLEY. Principally, yes. We have a few user fees on some of our identity programs, but principally, general fund.

Senator SMITH. Did I understand you to say, then, that roughly 90 percent of your employees would be in airports?

Mr. HAWLEY. Involved in that, yes, sir.

Senator SMITH. OK. How do you make the segregation between surface and air? Is it based just on the funding resources?

Mr. HAWLEY. No—

Senator SMITH. Are we devoting enough security to rail?

Mr. HAWLEY.—actually we are, we devote very close to the same attention on, at the top level, for aviation and transit, in the sense of connecting to try to prevent plots. Because plots will develop with a potential target in one, and then have it shift to the other. So, a lot of our effort is in connecting to the intel community, and the law enforcement community, generally, and then moving our assets around to try to cover plots that may start in one of these areas, and then move to another.

Senator SMITH. So, if you find out from Homeland Security or FBI or one of the law enforcement communities that the threat is shifting from airports to rail, you have the flexibility to be able to move the assets?

Mr. HAWLEY. Yes, sir. I think you put your finger on a critically important thing. Our ability to move assets from the aviation community in short units, you know, small amounts of time so as to not divert from the system, but to be able to surge in other places, is critical to being able to supplement the effort already being done.

Senator SMITH. So, to Senator McCaskill's question about not seeing any security in rural rail communities—that's because you haven't received any evidence that there's a threat there?

Mr. HAWLEY. Well, I think the role is different in that after 9/11, the Congress—this committee—elected to create TSA and have Federal officers in the airports, whereas in the rest of the transportation environment, those are paid for by other entities. So, our job there is to connect with the people who are already there.

Senator SMITH. Well, would you come to us if you felt like the threat level was rising, to make sure we do have the needed rail security in place?

Mr. HAWLEY. Yes, and that's very much part of our strategy, is to be able to react immediately, and for instance, we can move, literally, hundreds and even thousands of people in less than a day anywhere in the United States to be able to respond to a threat. So, we do, in fact, drill on that. And if there were to be a specific threat or some need to move, we can move very aggressively, very fast.

Senator SMITH. Do you feel the intelligence information you're getting is timely? Can move quickly enough to protect people traveling on rail?

Mr. HAWLEY. Yes, sir. We participate every morning in the White House counter-terrorism call with all of the other members of the intelligence community. And we then operationalize it before, really, the day starts.

Senator SMITH. So, that intelligence gathering is pretty important for you to do your job?

Mr. HAWLEY. Critical.

Senator SMITH. OK.

Mr. Boardman, I'm very mindful—I travel the country and certainly in my state—that bridges and tunnels are a major safety and security concern on the freight rail system. Many of these structures are very old, and falling apart, and thus can cause significant safety or security concerns.

My sense is we don't have a really good grip on it. And it is also my sense that the Federal Railroad Administration has only a handful of bridge inspectors, the States—for the most part—have neither the authority, or the money, or the resources, for inspection, nor do they have the money to make improvements. Now, I understand the reason for this is that most of these bridges are privately owned, and I'm just wondering if we're getting a handle on this, and if the States or you are working on this. Do you see this as a concern? And, I really want to know what the Federal Railroad Administration is doing to get ahead of the safety and security concerns over railroad bridges and tunnels. What are your plans?

Mr. BOARDMAN. I think, based on the, the particular hearing here in terms of security, one of the things that I think has happened with all bridges in all of the States—whether they are rail-

road bridges or whether they are highway bridges is—there's a coordinating activity that Mr. Hawley talked about with local police, local law enforcement folks, and with State DOTs to look for those bridges that have threats or risks that we need to protect against. And so, in terms of the security end of things, it kind of comes under that umbrella of what he's looking—

Senator SMITH. And are you tied into the same intelligence information as Mr. Hawley?

Mr. BOARDMAN. Yes, we work on a regular basis, we have a full-time Security Director, and in my testimony I talked about—we had 71 different hazmat inspectors whose, part of their job is to look at the security plans. We're working with—not only with TSA on security, we're also working with all the railroad police. So, they also have their—all of the freight railroads—have their own police departments as well that are working on the security and safety issues.

Senator SMITH. Then, as to safety, Mr. Chairman, just a final follow-up.

You know, you go into some tunnels and look at the ceiling, the tiles are falling, and you see cracks in the infrastructure, and you just think, "I hope it holds until we get to the other end." What's being done to repair these, to reinvest in them? To secure them? Some of this infrastructure is really old and deteriorating.

Mr. BOARDMAN. I think they're, they're—all tunnels are inspected on a regular basis, and we do have older tunnels, as you're really talking about. Some of the tunnels are on a public transit system, for example, many of them in the Northeast, that are used both by commuter railroads, Amtrak, and with the freight railroads. And significant public dollars, both from the FTA and from Amtrak have been—and from TSA—are invested in those to make improvements.

When you look at the private tunnels themselves—the ones owned by the freight railroads—it is the freight railroads' primary responsibility to make sure that those tunnels are safe and continue to be operable.

Senator SMITH. And that they're not shortchanging the inspection.

Mr. BOARDMAN. Well, I don't believe so. But, it's something I'll go back and check for you.

Senator SMITH. I appreciate it.

Thanks, Mr. Chairman.

Senator LAUTENBERG. Thanks.

Senator Klobuchar has asked to be recognized and afterward, Senator Carper was able to wait his turn. I left the room because I was filling in for our colleague, Senator Johnson at the Budget Committee, so excuse my absence.

Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you, Mr. Chairman.

I come to the Senate as a former prosecutor, having managed an office of about 400 people, and having some sense of what you have to deal with, with priorities and balancing resources, and people,

and brain power. And I know how difficult that can be. And so I come at this with that viewpoint as a manager.

But also an understanding of how we have to be as sophisticated as the crooks that we are pursuing. And, in my line of work, they went from using crowbars to using computers. And certainly with the terrorists that you try to protect us from every day, and work on every day, you have to think of this idea of adaption—that you can't put crime or terror-fighting systems into place, and then just put them on auto-pilot. That we have to adapt to our changing environment.

So, along those lines, the one question I'm going to ask, and I'll start with you, Mr. Hawley, is what efforts have been made to measure the threats and to prioritize them and to assess the potential methods for meeting the threats and strategies? Along the lines of, how you prioritize this and how you've changed along the last few years since 9/11, in terms of your strategy.

Mr. HAWLEY. The first part of that is, we do a system-overall network look to assure the sustainability of the network itself. So, whether it's the rail system, or the aviation, or whatever—but the total network.

Just skipping right to the punch line—in this particular area is that toxic inhalation chemicals in rail that are left standing unattended is at the top of this list. There's also—just under that, in the transit arena, in densely-populated areas—underground or underwater tunnels. So, those are number one and number two.

So, that's the answer on the priorities. And on the point about the adaptive enemy—what we do is, in the surface arena, we have a baseline of the folks who operate it day-to-day and did operate it prior to 9/11. And we add to that, our TSA resources to provide an X-factor. And a specific example of that is we've created teams of Federal air marshals, air inspectors and other people at TSA both undercover, and not undercover, to run operations in ferries and transit systems in—basically anything you can imagine. And we now run them, on average, of more than one a week, around the country. And, so that is something that nobody knows outside of our world, where they're going to be, and that, we believe, adds a significant level of security, because you really can't be sure that at any point in the system there's not going to be some undercover Federal presence, in addition to everything else that's on top.

Senator KLOBUCHAR. OK, would anyone else like to talk a little about this?

Admiral BARRETT. Senator, I just want to comment. In the areas that we work, which are hazardous materials and pipelines, the approach we take is basically, our term is Integrity Management—basically keeping things in the containers, keeping things in the pipe.

But the planning for that—we expect the operators to have a safety plan, augmented with the security plan we're talking about, expecting them to review it on a regular basis, and update it and target their efforts against the most significant risks.

I think the way forward has to include regular reassessments of the risk profiles, and proper reaction to those both by the operators and by the Federal, State and local agencies that deal with it.

So, I could not agree more with you, and I think, obviously here, we need the flexibility to be able to do that, and as the Committee

and the Congress consider how to approach this issue, I would ask that you figure ways to build that in. And obviously, we'd be very glad to work with you on that. But I think you're absolutely right.

Senator KLOBUCHAR. OK, thank you.

Mr. HILL. Senator, thank you for the opportunity to comment on that question.

Having come from law enforcement and understanding, to some extent, the nature of the question—in our world, in the motor carrier area, we believe if you look around the world, that it's a vulnerability—it's been proven to be to be that case internationally. Our dilemma is, as a safety agency, we have a focus of trying to use our resources to meet certain safety goals, so what we've done is we've really focused it in the high-risk area of hazardous materials where we believe that that threat is less consequential.

And, we've done a couple of things—we've tried to train law enforcement about what to look for. A lot of the things that we find in terms of interdictions or criminal activity, the people who you deploy for those vehicles do not understand the regulatory scheme that's required, so we give police officers the basic tools they need to identify those things. We've found an amazing number of those kinds of incidents already tied to terrorist-related activities.

The second thing that we do is, we've been heavily involved with the permitting process and making sure that, to the extent in our safety mission we can address security, we require companies to understand there are security protocols. We don't specify what kind of plan they have to have, but we say, "You have to have a plan in place," and then we verify compliance with it. Those are two areas that we've tried to engage in, in terms of the motor carrier industry within our safety purview.

Senator KLOBUCHAR. OK, anyone else? One more?

Ms. BERRICK. If I could just add quickly, one of the areas we always look at when we do our transportation security work is always in the context of risk assessments, and how is the Federal Government conducting these, and how is that driving resource decisions.

In terms of surface transportation security, we found that there were a lot of good risk assessment efforts going on within—at the DHS level, and administering grants at TSA level, at FTA and FRA. The issue we talked about, in our work, was the need to coordinate these efforts, as they were all doing it a little bit differently. And even outside of the transportation sector, DHS was doing risk assessments a little bit differently. So, it was difficult to compare risks within the different modes, and across sectors, because they didn't have a common methodology and weren't consistent. So that—we've made recommendations consistently along those lines, that these efforts should be coordinated, not duplicated, and they should be consistent as much as possible.

Senator KLOBUCHAR. Very good. One more?

Mr. BOARDMAN. Senator, I think my response fits very nicely into what you were just told, because we think, at the FRA, that our job in terms of security is really led by the TSA and their look at the risk threats. We absolutely agree with them on hazmat, and also the passenger rail issues.

To add to it, though, that we think, and we know the TSA understands that, as we look at safety issues, they're intertwined together, safety and security. For example, if we are doing a safety risk assessment—and we know that track causes a third of our accidents, we know that human factors cause another third, and so we know what the causes of the accidents are, the particular area.

But when we look at a track, whether that track breaks because of overuse or poor maintenance or it's a vandalism or it's something worse, it can be—we try to protect against that, or a standard against it, for safety, but it still fits into looking at how security impacts it. So, if we have a situation where we think there's something other than normal breakage, then we go to the FBI, we report it to the FBI, we report it to TSA, and we work with them.

And the same way with, as we look at passenger rail transportation is that we're working hand-in-hand with TSA as they look at piloting and experimenting how they would look at screening baggage, making improvements along the entire system.

There—in Amtrak there are over 500 stations in 46 States. And I think your associate Senator, who left us at this point in time, really understands that in many of those areas that are very small—their, it's their only linkage to public transportation and the risk assessment there is very different than it is at Penn Station.

Senator KLOBUCHAR. I understand. And, I just think the importance which you brought up of trying to coordinate this, across the transportation lines, is so important. I know we've done that a lot with law enforcement, and have had some very good results when we put the resources where we see the risks. Thank you.

Senator LAUTENBERG. Thank you, Senator Klobuchar.

**STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM DELAWARE**

Senator CARPER. Thanks, Mr. Chairman.

To our witnesses, welcome, thank you for coming today for your service, and for responding to our questions.

I'm going to ask my first question, then I'm going to make a brief statement and while I make the brief statement, you can think about how to answer the question, if you will.

The question I'm going to ask deals with technology, and how it's better to use technology to protect us in our various sectors whether it's rail, interstate passenger air, whether it's transit, whether it's surface transportation, whatever, pipelines, whatever it might be. So, think about that.

Senator Lautenberg remembers, and my Democratic colleagues remember—almost 2 weeks ago we had a one-day Democratic retreat on the Hill for Democratic Senators—and among our guests that day were former Senate majority leader, George Mitchell, and a former President, Bill Clinton. They spoke separately, and we had an opportunity to talk with them and to exchange ideas and to ask questions.

Ironically, one of the things that both of them talked a good deal about with respect to, to terrorism, tamping down the threat of terrorism, wasn't so much the—what we're doing on these fronts.

We talked about the Middle East, we talked about the need to get serious about a two-state solution in Israel between Israelis

and the Palestinians. And they both pretty much said, to the extent that we don't make progress there, or they don't make much progress, "it really heightens the threat of terrorist attacks against us here and around the world."

I thought there was a lot of wisdom with what they said. And while it's important for us to seriously engage in all of the areas that we're discussing here, I think it's also important for us to keep in mind that this is a—this battle is going to be one—many fronts—and the one that they brought to our attention is certainly a big one.

About a—maybe a year and a half ago, I had lunch with President ABBAS, it was like 5 months after he'd been elected—President of the Palestinians, Palestinian Authority. And he'd been in office 5 months, and he had lunch with several of us here on the Hill. One of the questions I asked him was, "When do you think we ought to put a full-time envoy just to work on, focus on like a laser on getting a two-state solution in the Middle East?" And he said, "Five months ago." And that was in June of 2005. Five months after his election, we still haven't really engaged seriously.

While it's important we do this, and spend a lot of money to try to protect ourselves and our people, it's also important that we attack on that front, as well. It's not the topic of today's hearing, but I always like to preface a conversation like this by reminding us that the best defense is a good offense, and that offense includes a diplomatic offensive.

Having said that, let's go to my question—my question, again, was technology. We're aware of the technology that we're using every time we get on an airplane to try to make us safe—let's talk about the technology that's being deployed with respect to, with the transit rail, whether it's interstate passenger rail, whether it's highways, whether it's our pipelines—I don't care who starts first.

Mr., is it Cañas?

Mr. CAÑAS. Yes, sir.

Senator CARPER. Mr. Cañas, we'll go first to you.

Mr. CAÑAS. I thought I was going to leave unscathed, Senator.

Senator CARPER. You'll still be unscathed, I promise.

Mr. CAÑAS. No, I've been paying attention, because I did hear that DHS places a—underwater tunnels and urban populations on a high priority, and everybody knows we have four of them in our area, and so, we're very sensitive to that.

But on the technology side, I just want to applaud other peoples' comments about putting more on the transit side, on the surface transit than on the air. Clearly, we're up to speed on air, we're not up to speed on the surface.

We don't deploy our technology, it's pretty rudimentary, we're using canine units, we're using the lotto searches here to deter. But as far as the technology we've seen mainly from DHS-deployed in train stations and in bus stations, it still seems like it needs a lot of development before—and it sounds like it's very expensive.

The latest, which we've deployed over the Exchange Plaza in Jersey City is extremely sophisticated and very well-received, except it requires two—at least two to five seconds for every passenger to go through there to be read. And that's enough to create a bottleneck that is unacceptable to "mass transit." So, in that regard, I

think the technology is a little bit behind—I don't know if it may exist, but we certainly welcome anything that would assist us in the mass transit security.

Senator CARPER. All right. Let's just come this way—I don't know if you have a—from GAO's perspective, I don't know if this is the—what you guys focus on.

Ms. BERRICK. Sure, I would like to make a point about technology, and I'll leave the specific programs to the panel members who are more knowledgeable about that.

But, in terms of technology, we actually visited foreign countries in Europe and Asia to see the security practices they were using to secure their rail systems—

Senator CARPER. Which ones?

Ms. BERRICK. There were about 10 different countries. And I think tying that to the results might make that sensitive information, but I can provide that to you separately.

Senator CARPER. All right, thanks.

Ms. BERRICK. One of the areas that we found that was being used in some foreign countries, but isn't done here to the same degree in the U.S., is the government having a centralized clearinghouse of technologies. I mean, even if the Government wasn't pursuing the R&D itself, if it's something the private sector had done—at least they would have a listing of what they felt was effective, and they could point rail operators in the right direction, or in a direction related to good technologies that they should consider.

Because one of the points we heard from rail operators in the United States was that they wanted to know more about technology. So, that was one of the practices we highlighted.

In terms of another innovative-type technology—

Senator CARPER. Sounds like a pretty good idea.

Ms. BERRICK. Yes, yes. Another innovative-type technology that's being used in some foreign countries—we found one rail operator in the U.S. that was doing it, but not to a great degree—is what's called smart CCTV cameras. And this is where the camera—it doesn't have to be monitored by a person, but it will pick up anomalies or certain behavior. For example, if a boat were parked under a bridge, it would signal and alarm someone that they need to come look at the camera, because this is abnormal, or if someone drops off a bag and walks away, and doesn't take the bag with them.

So, we've identified some of those innovative practices that are used in foreign countries that should be considered for use in the U.S.

Senator CARPER. Thank you.

Admiral BARRETT. Senator—

Senator CARPER. Admiral?

Admiral BARRETT. I—two comments. One, on a small scale we—under our Hazardous Materials Cooperative Research Program, which is run by the Transportation Research Board of the National Academies, we do have a project looking at emerging technologies that are applicable to hazmat safety and security. And we're monitoring that closely. But we're trying to engage the National Acad-

emies in terms of identifying technologies that may be emerging that can provide a benefit.

And I think another indicator of the improving—and improved—coordination with TSA, with Mr. Hawley, the joint work group we've got set up—one of the target areas that we're looking at in that group is research and development, to kind of collectively figure out—given what we know about risks and system operation—where either agency might be well served to target research and development efforts in the technology areas.

Senator CARPER. Thanks.

Mr. Hill?

Mr. HILL. Thank you, Senator. Just one point—in your proposed legislation, you talked about the field operations test that was conducted by the Federal Motor Carrier Safety Administration, and I would just highlight to you, that's one example that we've been looking at, different technologies. The industry's quite vast, for example, 1.2 million hazmat loads move daily in this country just by surface transportation.

And so, back in 2004, we tried to work very closely with DHS in developing some of these technologies in a field environment and see, what does work? We looked at everything from cargo tracking, to panic alarms, disabling technologies, things that would allow there to be some way to terminate the terrorist-related event if we saw it happening. And then we implemented a public-sector response center concept, where we worked with four States, so that the information from the technology was reported back to a center.

We did that study, we found, very interestingly—the companies who adopted it found cost savings, in addition to the security features. In other words, it helped them do business better, it helped them keep track of their loads, and so they were able to manage the process. So, we think there are ancillary benefits to applying security technologies.

And then last, I would say, that we work very closely by providing that with DHS, and they're continuing on with those kind of studies, and we're excited about being able to pursue that in this legislation.

Senator CARPER. Thanks.

Mr. Boardman?

Mr. BOARDMAN. Thank you, Senator. I'm just going to tick off what we're doing technology-wise. It's—I think we have a real good list here, we do automatic track inspection, and we've got four cars out there now doing it.

We're adapting that to the high railers for the freight operations which inspect cracks on joint bars. We have a new cooperative agreement, that we announced just this past week, with the Union Pacific Railroad, Dow Chemical and Union Tank Car to use the most modern technology for our new tank car standard that we expect to have in place by January of next year.

We have an approval now of an operating positive train control with a freight railroad with BNSF's system being approved. We have a report that has been issued, and we've got a lot of support for electronic-controlled pneumatic brakes, which will make—not only improvements for us on safety—but it'll also be a security enhancement as well.

We have—the railroad systems themselves, combining all of the radio systems into one operable, interoperable system.

We have a transportation and technology center in Pueblo, Colorado that we meet—use extensively, and completed a crash energy management system, which will help us in survivability. We have a trio workforce today, where all of our inspectors in the field are being deployed with the highest technology that's available today for communication and inspection.

And, I've just got a couple more, Mr. Chairman, we have—

Senator LAUTENBERG. Well, if they are a couple quick ones, fine, but—

Mr. BOARDMAN. We have a—what I think is not necessarily a high-tech tech, but we have very good information today on fatigue management, and how we can work with railroads to have an alert operator, which is a key element of security.

Thank you.

Senator CARPER. But other than that? But other than that?

[Laughter.]

Senator LAUTENBERG. Thank you very much, Senator Carper, thank you.

Senator CARPER. Mr. Chairman? Can I just say one quick thing in closing, very quickly?

Mr. Cañas said earlier there is a vast gap between what we need to do, and the resources with which we have to address these threats. And I think we've already heard today, just in the last 5 minutes, a pretty good demonstration of how we can better address those threats by using technology. And, frankly I'm encouraged by what I've heard.

Senator LAUTENBERG. Thank you very much, Senator Carper. You and I have a very active, and deep interest in what happens with our rail systems, it's crucial to our states' functioning. So, we thank you for your participation.

And I want to review a couple of things, and again, I'm sorry that I had to leave for a bit, but it was necessary. So, I'll just keep you a few minutes more, and watch my own clock as I do it.

Mr. Hawley, your agency's proposal last month barely addressed the many security needs of passenger rail stations and critical infrastructure—bridges, tunnels, and I, frankly, can't figure out what—when we look at rail compared to aviation and, I think you said that 40–60 percent of the funds for security in aviation came from general funds of the Government. Was that correct?

Mr. HAWLEY. For aviation?

Senator LAUTENBERG. For aviation, yes. And that was something around \$4.7 billion spent on security. And, here every day, about 5 times the number of people who fly get on trains. So, we're looking at a total imbalance here in terms of the funding that's available. I think that if we look at what goes to rail as a total of—between grants, and TSA, \$37 million, about \$212 million. Compared to the numbers of people who get on a train, and we've heard about the inadequacy of lots of rail tunnels—I used to be a Commissioner of the Port Authority of New York and New Jersey before I came to the Senate, and one of the first things I did was have a personal inspection of the tunnels. I went through there—scary as it was, because those envelopes are really tight—and found all kinds of

problems with locked doors for safety exits, *et cetera*, poor electrical systems, lights would go out very quickly, very easily, with antiquated systems.

So, when we—I looked at where we’re going, what’s the justification? I think that you said you thought the funds that were available were adequate for rail, do I characterize what you said correctly?

Mr. HAWLEY. For this year’s budget—

Senator LAUTENBERG. For rail security?

Mr. HAWLEY.—for what we are doing. I’d like to elaborate on that when I get a—

Senator LAUTENBERG. Yes, please do.

Mr. HAWLEY. OK. So, the two top priorities and—as you mentioned—the underground tunnels would be number one, and the number two one is the toxic inhalation. And, so what we did, on the risk basis, was say, “OK, those are the top two things, how do we get at them? And, where does the money come from?”

And the first one, in the transit environment is the grant program. And, I’ll come back to that in a second—

Senator LAUTENBERG. Please do.

Mr. HAWLEY.—because, I think you really wanted to get to the rail piece. And so, what we looked at—we said, “OK, how do we attack this problem?” And we said, “What are we most worried about?” And we said, “It’s the really bad TIH, when it gets in an urban environment, and when it stops and is unattended.” So, we did all the risks, and we came down to and said, “That is the piece we want to stop.” Because, when it’s moving, it’s a hard target, it’s unpredictable, *et cetera, et cetera*.

Senator LAUTENBERG. How much was devoted to that, Mr. Hawley?

Mr. HAWLEY. Well, I’m going to get to that—

Senator LAUTENBERG. Please do, so that we can make this a short train ride.

Mr. HAWLEY. Yes, sir. So what we did is we said to the railroads, “How do we get those cars out of that situation? How do we make sure that there just aren’t cars sitting in that situation?” So, that is where we went, to work with the railroads to get them to keep their cars, either attended, or out of these high-threat areas. And that’s not something where we have to spend Federal dollars to build fences, or whatever. But it does accomplish the security goal.

Senator LAUTENBERG. Well, I’m not satisfied, very frankly with your answer. I don’t see us focusing as much as we should on protecting our citizens in the country, by a long shot. We spent, so far, in Iraq, \$300 billion, plus \$100 billion more expected in the next few weeks, and that is not including the amounts that are spent for security throughout the country.

You go to commercial buildings, you go to all kinds of places, where money is spent to protect security. And here, we have several billion people a year riding in passenger rail trains, and the money that we’re spending is barely a blip on the screen. So, I think what’s happening is we are not paying enough attention to this. And I hear you defend and support what you’re doing, and I admire it. I know you work hard at the job. But, we just aren’t meeting the test.

And, when the question, Mr. Cañas, came up—I understand from another Senator—about how these expenses were going to be met. Well, there are sources that are available, obviously, for other kinds of security. Why is one kind of security more important—in terms of lifesaving—than another? To do whatever we can?

We—it's really quite interesting to see that the number of incidents that are directed against rail systems, "Estimated one-third of terrorist attacks around the world repeatedly—reportedly, sorry—target transportation." The majority of these attacks are against public transportation systems, including rail. The vulnerability of surface transportation sector is demonstrated.

There was a Mineta Transportation Institute report that surface transportation systems were the target of more than 195 international terrorist attacks between 1997 and 2000. What does that tell us? Have we been lucky that worse things haven't happened with our system over these years?

So, I think we ought to get with the drill. For instance, Mr. Hawley, your Department failed to meet one of the few trucking security requirements of last year's SAFE Port Act. There was a 90-day deadline that was just passed, for the implementation of a program that required DHS to check the names of truck drivers with access to secure areas of the ports against the terror watch lists, and for citizenship status. Why wasn't it done?

Mr. HAWLEY. The technical systems we talked about earlier in the hearing—some of the technical systems don't talk automatically to each other. And the approach that we're taking is that—rather than try to figure out who's driving into this port or that port—to look at the entire CDL, the Commercial Driver's License population and do a much broader threat assessment for that population, versus the more limited population. In other words, it costs more to try to separate out which ones are going to which port, than it is to do the entire set of the drivers.

Senator LAUTENBERG. What comes first, Mr. Hawley—in this case, chicken/egg kind of reference—the safety of our delicate areas, good targets for terrorism? Or, to make a decision about whether or not it's going to include a large system that will cost less, and so forth, and meanwhile—I don't want to be the one that is to the citizens of the State of New Jersey, "You live in the—those who live in the most dangerous two-mile stretch," or near the two-mile stretch that says the worst area for terrorists, the most inviting target area for terrorists—and it's largely chemicals and transportation to one another, and to say to them, "Look, we're still devising a grand scheme."

I think, Mr. Hawley, when it's—when there's an instruction by the Congress, by the Senate to do something in 90 days that it's not sufficient to say, "Well, we're looking at a larger system." At that time, you should have—I think someone should have said, "It can't be done." So, let's not trifle with a deadline that has no significance. Just ignoring it is not satisfactory, as far as I'm concerned.

Mr. Boardman, perhaps you can answer. When will the Administration request funding to address some of these rail tunnel improvements along the Northeast Corridor? We need to, to do it to safely evacuate people in the event—and I know you've discussed

it with Senator Carper in some detail—but it'd be interesting to me to—we acknowledge that the problem, potentially, of enormous proportion exists there? But when will the Administration say, "You know, we agree enough that we want to put some funds into that." What do we have to do to sound the alarm loudly enough to get some attention?

Mr. BOARDMAN. Senator, I understand the issue. And certainly with you being a member of the Port Authority Board in the past, and I myself have spent some time in the PATH tunnels and also the site access project.

And, one of the things that I was impressed about as I worked on another issue for, just this past year, was the—which was the commuter fee issue, if you remember that. And, looking at the investments that were being made by commuter railroads on the Northeast Corridor that were beneficial to Amtrak. And I think east-side access is a good example of the amount of money that the transit side of the DOT is actually putting in to finish off that project, and make those safety improvements.

And New Jersey Transit is also making a significant investment in the tunnels under the Hudson River. I know they want to make a much more significant investment on the Trans-Hudson Express Tunnels, which would be a—an entirely two different new tubes.

Amtrak has funded about \$500 million a year for capital, or at least that's the number that's used for capital. And we think that Amtrak can spend between \$3 million and \$5 million a year along the Corridor on capital improvements.

Some of those tunnels that are along the Corridor are not in New York and New Jersey, but they're the Baltimore Tunnel and some of the other facilities, and they need substantial investments—not just for safety and health, but also for improvements—especially with the electrical system, and those kinds of things.

I think—one of the things Mr. Hawley said earlier—and I'm not going to dump him back into the issue here—is that there are different models that are being used for the different systems that we operate under. And the transit model grew up very differently—and I grew up with it, with different committees, and how it was financed, and how it was going to be funded, from what Amtrak is funded, for inter-city rail. And I think that there has been a need, because of the demand—and you've identified it—to have them become more cooperative, especially in the Northeast Corridor, in order to meet the demands of the capacity, and to make the improvements.

I think the Administration—the previous one, this one—have been trying to make those investments, full-funding grant agreements, and other things, to make the improvements that are needed.

Senator LAUTENBERG. I think they have to try harder, Mr. Boardman.

I have several other questions, but I know you've been here a long time, and I greatly appreciate it.

I would ask Admiral Barrett about the motor carriers and the—how well are they doing, complying with the security plan requirement of your hazardous materials rules?

Admiral BARRETT. Senator, I think they are doing better all of the time—I'll defer to John, he does more inspections there than I do—I think we did about 5,500 in the last couple of years, you've done a lot more than that. My sense is better that John, that you can—

Senator LAUTENBERG. Mr. Hill?

Mr. HILL. We check compliance with the security provisions through our compliance review process, so we don't really do that at the road side. So, we do a lot of roadside inspections—about 3 million a year—of which hazardous material are a portion of them. But the compliance review process is something that's a little bit more time-consuming.

To answer your specific question: We did 4,000—we've done 4,000 of those specific contact reviews to determine compliance with security. And we've issued about 10 percent rate of civil penalties. So, about 400 instances where they just failed to train their people in security awareness, or they have not put together a plan as they should.

Senator LAUTENBERG. Once again, all these tasks are in front of us, and though it's difficult to cover them all, the fact of the matter is we have enormous responsibility. We talked about the terrorist threat, about the possibility of accidents from hazardous cargo, and we just have to do it, in good conscience, for the sake of our citizenry.

Mr. Cañas, you had a recent proposal to pre-empt States, localities and towns from protecting themselves for—from the risk of hazardous material shipments, and would require rail carriers to evaluate the current routes that they use, and only—and I quote you—"the next-most commercially practical routes."

Now, I've noticed that within a very short distance of this building, this Capitol, this—the center of Government, you see trains going by very closely. And I don't know what they're carrying, but I guess I'm looking at them now with a different view than I might have because of the recognition that hazardous materials are often carried there. And if someone wanted to have an attack where it could do a lot of damage, it would be right there—this proximity of the rail track to the Capitol is excessively close. So, what do we do about current routes, and alternatives?

Mr. CAÑAS. Well, as you know, Senator, New Jersey is an end-user for a lot of this TIH that's railed into our State, so it's not a question of re-routing in New Jersey. In this area, there is a question—probably other panelists can address better as to what the progress is on that.

I would only comment this far, to say that we need to engage the private sector more in this—not only to address Senator Stevens' concern about who pays for some of this oversight—but also to, they have a lot of the tools already in place. They can tell us—if they wish to—where these TIH cars are at any given time, I'm told. Having this capability is extremely important for the security agencies. And, I'm also told by certain companies that they're prepared to share that.

Knowing that, ahead of time, we can preposition our response. If we know that these cars—and we can spot-check—are not along

sidings, or in certain yards, then using the risk-based model, we apply our resources where we feel the risk is greater.

So, having that ability, I believe, is extremely important.

Senator LAUTENBERG. Yes. Mr. Boardman confirmed that, and your commentary—I would ask one last question, and mention that we're going to keep the record open for questions if we submit them—can submit them in writing to you.

Mr. Cañas, you're in charge of our State's homeland security efforts. How do you rate the support and cooperation you receive from TSA, Department of Homeland Security, and—be careful of your language in this response.

[Laughter.]

Mr. CAÑAS. I—well, you know, Senator—with all due respect to my Federal colleagues here, I did spend almost 30 years in the Federal system, so it does sound like heresy when I said that I disagree with some of the comments. I think, for example, I heard that our intelligence is better, and getting better, and the information sharing. I think that's true—from the top down—I don't believe, however, that I agree that our risk-base should be determined by Federal intelligence. I worked with them a long time, and as good as they are, and as great as they are—they really can't tell us down at the local level what our needs are.

I think that we're—right now, we're in the situation of home-grown terrorism, of lone wolves, even criminals, that can endanger us. And that type of information really has to be developed from the ground up. And DHS has a—I would rate them mixed. They've heard us with diffusion centers, they're sending people out to try to obtain local information to feed into the national hoppers, and I commend them for that. It's something we, of course, recognized—and anyone who's worked at the State and local level knows that all risks and all emergencies—like all politics—is local. And it starts at the local basis. We need to start there. And, I think, synthesizing that information is very important.

So, I disagree that the information we're receiving from DHS is very germane to what we need inside the States to—so I think—but they've heard us, that's the good news.

I can also attest that, I'm—our office is new in New Jersey, as well, so I sympathize with the growing pains that DHS and TSA have. They are a relatively new agency in the Federal system, and I think they get mixed marks, but it's a start-up. They've matured, I believe, they're—just the fact that this year they recognized that New Jersey and New York really have the same risk, which Secretary Chertoff recently announced. We've been saying it all along, this is good. They recognize we're contiguous areas.

So, I see flashes of brilliance at times, and other times I see that we're stuck in the same old business.

Senator LAUTENBERG. Did you want to sign where the flashes of brilliance are? I won't ask you that.

We're going to be adjourning, I want to let the record reflect the statement that Senator McCain has put in—wants put in the record, and we'll see that that is done.

The next Commerce Committee hearing will be at 10 a.m., on Wednesday, January 24 on the state of the airline industry, the potential impact of airline mergers, and industry consolidation.

And, I want to thank all of you. While there is, perhaps, disagreement on subjects that, specific things—it doesn't mean that there isn't a deep appreciation, Mr. Hawley—and all of you—for the work you do, that you attempt to do—we've given you huge assignments. Our world was turned around a half a dozen years ago, and it's—we've got to react to reality. And in doing that, it's very hard, because I know each and every one of you is just as anxious to get the job done as I am. I hold no prior position.

So, I thank you very much, this hearing is adjourned.

[Whereupon, at 12:04 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Last year, this Committee's bipartisan efforts strengthened the security of our Nation's ports and maritime vessels, with the passage of the SAFE Port Act, which began a new era in maritime security. Despite this monumental effort, we only completed a third of our job because the final version of the bill failed to include Senate-passed provisions to strengthen rail and surface transportation security.

This Committee remains committed, through its leadership and expertise on these important issues, to enacting legislation this session that would strengthen the security of our railroads, trucks, intercity buses and pipelines.

Toward this end, I, along with Vice Chairman Stevens, Senators Lautenberg, Rockefeller, Kerry, Dorgan, Boxer, Snowe, Pryor, Carper, and others, introduced S. 184, the Surface Transportation and Rail Security Act of 2007, also known as the STARS Act, on January 4, 2007. This bill includes the rail and surface transportation security provisions from the Senate-passed SAFE Port Act, offering Congress a second chance to enact a comprehensive transportation security bill.

The Administration witnesses will testify this morning about S. 184 as well as about their current efforts to strengthen surface transportation security in the void of Congressional direction. By bringing all the Federal agencies with significant responsibility for surface transportation security together at this hearing, the Committee is seeking to gain a complete understanding of what each agency has accomplished, and what remains to be done.

The attacks on critical surface transportation systems in Madrid and London are a constant reminder of what can happen in our communities if we fail to act promptly and effectively. We must address the vulnerabilities and risks facing these systems here at home in a comprehensive and coordinated way before we become the next victim of a successful attack.

The provisions in S. 184 were endorsed unanimously by the Senate in the 109th Congress, as well as by industry and labor. I look forward to working with all the members of the Commerce Committee, particularly Senators Lautenberg and Smith, the Chairman and Ranking Member, respectively, of the Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee, to perfect and enact this legislation as soon as possible.

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Thank you Mr. Chairman. This Committee has the important responsibility of overseeing the security of our Nation's transportation system, including its railways. I think all of us on the Committee have repeatedly expressed our shared support for greater Federal attention and resources to rail and transit security, and I applaud the Chairman for holding today's hearing.

Both Chairman Inouye and I introduced versions of rail security legislation on the opening day of the 110th Congress. While our bills may differ slightly, our goal is the same. The Senate has repeatedly approved rail security legislation, and I am confident we will again in the near future. Unfortunately, the House of Representatives has refused to act on rail security legislation during past Congressional sessions. I remain hopeful that rail security will be made a top priority for the 110th Congress and the Administration.

Mr. Chairman, we have taken important steps and expended considerable resources to secure the homeland since 9/11. I think all would agree that air travel is safer than it was 5 years ago. During the last Congress, we addressed port security in a comprehensive manner. However, we have more to do when it comes to other transportation modes, a fact well documented by the 9/11 Commission. Unfortunately, only relatively modest resources have been dedicated to rail security in recent years. As a result, our Nation's transit system, Amtrak, and the freight railroads remain vulnerable to terrorist attacks.

The Rail Security Act of 2007 that I introduced on January 4th along with Senators Snowe, Biden, and Lieberman would authorize over \$1.2 billion dollars for rail security. More than half of this funding would be authorized to complete tunnel safety and security improvements at New York's Penn Station, which is used by over 500,000 transit, commuter, and intercity passengers each workday. The legislation would also establish a grant program to encourage security enhancements by the freight railroads, Amtrak, shippers of hazardous materials, and local governments with responsibility for passenger stations. It would help to address identified security weaknesses in a manner that also seeks to protect the taxpayers' interests.

As I mentioned earlier, this Committee and the Senate has consistently supported rail security legislation. Most recently, rail security provisions were adopted last Fall as part of the port security legislation. But again, the House failed to allow these important security provisions to move ahead, and the provisions were stripped from the conference agreement. As a result, our rail network continues to remain vulnerable to terrorist attack. That is unacceptable, particularly after seeing the tragic attacks on rail systems in the cities of London, Mumbai, and Madrid, and the devastating consequences of those attacks.

It is essential that we work to protect all the modes of transportation from a potential attack, and I hope the Committee will mark-up rail security legislation expeditiously. This issue is too important to transportation safety to be ignored and for that reason I call on Congress to pass rail security legislation as soon as possible.

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA

Mr. Chairman, thank you for calling this very important hearing, and for shining a light on the crucial legislation a number of us cosponsored and introduced earlier this month, S. 184, the Surface Transportation and Rail Security Act of 2007, or the STARS Act.

We know that we are a nation with enemies, and we know that because of our freedoms and our economy, we are a nation of targets. In the years since terrorists used one mode of transportation to wake us up to their sick motivations and evil designs, we have made strides to protect the people and assets associated with that mode, aviation. Despite the good, bipartisan work by this Committee in the years since September 11 to address the vulnerabilities of our passenger and freight rails, our ports and waterway facilities, and other elements of our transportation infrastructure, I am afraid that some in Congress and in the Administration have not been as diligent in protecting these other modes.

If we are to take our responsibilities as Members of Congress seriously, we must make certain that the trucks, trains, pipelines, and barges carrying hazardous materials are made secure. We must demand action to protect our passenger rail and transit systems so that the tragedies we have witnessed in Madrid, London, and Mumbai are not replayed here. We must do what we can to protect our transportation systems from evil motives and opportunities that we would never have thought to imagine just a few years ago.

It is important for these witnesses to be heard before this Committee, and it is even more important for the Committee to take quick action on the STARS Act. I look forward to voting it out of Committee, and anticipate its timely consideration by the full Senate.

PREPARED STATEMENT OF THE NATIONAL SCHOOL TRANSPORTATION ASSOCIATION

The National School Transportation Association is concerned that the Nation's largest mass transportation fleet has been overlooked in Congress' efforts to secure our transportation system.

Each weekday about 470,000 yellow school buses travel the Nation's roads, about one-third of which are privately owned. Our fleet is 2.5 times the size of all other forms of mass transportation—transit, intercity buses, commercial airlines and rail—combined. During the school year we make more than 50 million passenger trips daily carrying the country's most vulnerable passengers—our children. Our exposure is far greater than public transportation's at 32 million trips daily, yet the school bus industry has received little attention and no funding at all from the Federal Government.

School Buses and Terrorism

School buses have been targets of terrorists not only in countries such as Israel, Thailand, Yemen, and African countries, but also in Canada and the United States.

So far, the attacks in this country have been domestic, but they illustrate the concerns of the industry—and indeed of the country:

- The most notorious case occurred 30 years ago when a gang of armed men hijacked a school bus in California, taking 26 children hostage. The men forced the children and their driver into a buried van and kept them underground for 16 hours, demanding \$5 million ransom.
- In 1995, a man claiming to have a bomb hijacked a school bus with eleven special needs children in Miami. Police killed the hijacker, who turned out to be unarmed.
- In 1996, a 15-year-old boy commandeered a school bus in Salt Lake City and killed the driver. He later killed himself after crashing into a home.
- In January 2002, a school bus driver in Pennsylvania abandoned his regular route and took thirteen children on an unauthorized trip to Washington DC. The driver, armed with a rifle, eluded attempts to find the bus for 6 hours. Despite a massive search by police, the bus wasn't found until the hijacker turned himself in.
- In January 2006, an armed man hijacked a school bus in Los Angeles County, California, forcing the driver at gunpoint to drive 200 miles before the driver outwitted him and escaped.

As Congress knows, buses are a common target of terrorists worldwide. The Federal Bureau of Investigation estimates that 40 percent of attacks on transportation systems are aimed at buses. Additionally, schools in this country have been identified as potential terrorist targets, and TSA has issued warnings of potential terrorist interest in school buses. Buses carrying children are particularly popular targets, for there is little that human beings fear more than a threat to their children.

School buses are iconic symbols of America and of America's unique educational system. As President Bush said in his Homeland Security Presidential Directive 7, it is the policy of the United States to protect our Nation's critical resources against terrorist attacks that could have psychological and symbolic impact and undermine the public's morale and confidence in our national institutions. An attack on school buses would have a damaging psychological effect on this country and would destroy confidence in the Nation's ability to protect our children. Despite the potential for devastating results if terrorists were systematically to target school buses in this country, the Federal Government has not included school transportation in its efforts to provide a secure public transportation system.

School Buses and Security

Like public transit, school buses operate in an open environment. Routes are routinely published at the beginning of the school year and rarely change during the year. School buses make the same stops at the same time every day, making it very easy for anyone to intercept a bus. School bus stops are unprotected, and usually unattended by an adult.

School buses in most states cannot be locked when students are on board; therefore they are vulnerable to penetration by outsiders. School bus drivers have no shield, compartment, or other protection; since they, unlike public transit or intercity bus drivers, are responsible for their passengers, they cannot be isolated from them.

School bus operations vary greatly in their sophistication and their facilities, but the majority operate from unprotected bus yards, where prior to 9/11, the biggest concern was vandalism. Industry officials estimate that bus fleets are grounded on an average of once a week by vandals. While these incidents are usually the result of student pranks rather than serious attempts to cause death or injury, they show how easily a terrorist could access school buses either to use as mobile improvised explosive devices (IEDs) or to implement a hijacking.

In many communities across the country, school buses are the only form of mass transportation available for evacuation of large populations. Security of the school transportation system is important not only to protect the students who ride buses daily, but also to ensure that we are ready and able to respond to critical incidents elsewhere in our communities. Many fleets participate in emergency planning with local government for everything from police responses to nuclear plant evacuation planning. School buses from New York, New Jersey, and Connecticut played an important role in both evacuating people from the impact area in Manhattan on 9/11 and transporting critical workers into the area during the search and recovery period. This is part of a long tradition of service in times of disaster, whether natural or manmade.

Officials in New Orleans have been criticized for not incorporating the school bus fleet into their emergency plans prior to and during Hurricane Katrina. Buses that could have been used to transport residents to safety were instead trapped under water. We all are aware of the consequences in that instance of the failure to recognize the importance of the local school bus fleet.

For the past 4 years, the three national school transportation associations, the National Association of Pupil Transportation (NAPT) which represents primarily public school officials who operate or oversee student transportation in local districts; the National Association of State Directors of Pupil Transportation Services (NASDPTS) which represents primarily state government officials responsible for school transportation; and the National School Transportation Association (NSTA) which represents primarily school bus companies that provide student transportation under contract to public school districts have, worked with the Transportation Security Administration in trying to determine the security needs of the school bus industry. Despite our frequent requests, the agency has been unable to provide a comprehensive vulnerability assessment of school bus operations, as they have done for other modes. The industry has produced some materials, such as the National School Transportation Association's "Top 25 Security Action Items for School Bus Operations" and the National Association for Pupil Transportation's "Security Assessment Tool," and all three associations have posted security information on their websites. In addition, many individual operators have attended security forums at their own expense, and most are involved in their local emergency response planning activities.

Last year the American Trucking Associations and the three national school bus associations collaborated to develop "School Bus Watch," a training program derived from "Highway Watch." In addition, we worked with Consolidated Safety Services, Inc. on a security awareness and training program funded by the Transportation Security Administration. While these programs provide welcome training to school transportation personnel, our industry still lags behind all other modes in asset protection. Fewer than 10 percent of school buses have global positioning systems (GPS) or other vehicle locator systems, fewer than half have surveillance cameras on board, and almost none have redundant or integrated communication systems.

School Buses and Funding

School transportation is funded almost entirely by state and local government. The Federal Government provides no funding source for routine home-to-school transportation or school activity transportation. (In Fiscal Year 2003, the first Federal funds became available for school buses when the Environmental Protection Agency provided \$5 million for grants to reduce diesel emissions as part of their Clean School Bus USA program.)

As state governments are decreasing expenditures, a larger burden falls on municipalities to support school transportation. Some school districts have turned to parents to pay part of the cost of busing their children, and some have wrestled with the possibility of discontinuing school bus transportation entirely—knowing that such a move would not only present a hardship for many families and increase traffic and pollution around schools, but more importantly, would put students at much greater risk as they find less safe ways to get to school.

In this economic climate, finding the means to make significant security improvements to school transportation systems is difficult if not impossible.

Congress acknowledged the importance of school transportation in the USA PATRIOT Act, by specifically including school buses in the definition of mass transportation. But even though all other forms of mass transportation—airlines, rail, transit and intercity buses—have received Federal funding for security improvements, school transportation has received none.

In the past 3 years, school bus operators have spent almost \$12 million annually on increased security training. But if we are to make significant improvements in school transportation security, we must go beyond training to capitol investments in facilities and equipment. Some of the priorities of the industry are:

1. Electronic security devices for the bus, such as vehicle tracking, secure communications, and video monitoring that allow the driver to signal trouble, and allow sources outside the bus to locate the vehicle and assess the nature of the harmful activity.
2. Robust and interoperable communications systems that allow drivers and supervisors to signal and communicate with other agencies, such as law enforcement, on a regional or state level.

3. Security for bus storage areas, including fencing, electronic gates, lighting, and monitoring systems that restrict access to buses and bus facilities and alert operators to intruders.

These are needs that neither school bus operators nor local boards of education can fund alone. If we are to provide security for the 25 million children transported on school buses daily, we must have help from the Federal Government. In the past 4 years, Congress has provided security funding of \$22 billion for commercial aviation, \$876 million for ports and shipping, \$387 million for public transit bus and rail, \$51 million for trucking, \$49 million for intercity bus, and \$15.5 million for Amtrak. The largest transportation system in the country, carrying its future, has received nothing. Our children deserve better.

Fiscal Notes—School Bus Security

Assumptions:

- 470,000 school buses nationwide
- 15,000 school bus facilities nationwide
- 7 percent of school buses currently have GPS or other vehicle locating systems
- 2 percent of school buses currently have electronic student tracking systems
- 42 percent of school buses currently have video surveillance systems
- 14 percent of school buses currently have door locks
- 85 percent of school buses currently have two-way communication, generally radios
- 15 percent of communication systems are interoperable with other agencies
- 49 percent of school bus parking facilities are fenced and lighted
- 16 percent of school bus parking facilities have video monitoring
- 8 percent of school bus parking facilities are monitored by a guard

Costs

[dollars in millions]

GPS: \$900/bus for hardware plus \$30/month communication expense	
437,000 buses × \$900	\$393.3
437,000 × 30 × 12	¹ \$157.3
Bus video surveillance: \$2,500/bus	
272,600 buses × \$2,500	\$681.5
Two-way radios: \$900/bus plus \$3,000/base station	
70,500 buses × \$900	\$63.5
2,250 stations × \$3,000	\$6.75
Facility fencing, lighting, gates: \$100,000/25-bus facility	
7,650 facilities × \$100,000	\$765
Electronic monitoring of facilities: \$6,000/facility (hardware)	
12,600 facilities × \$6,000	\$75.6
Total capital expense	² \$2

¹ Annually.

² Billion.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO HON. EDMUND S. "KIP" HAWLEY

Question 1. The Department of Homeland Security was appropriated \$175 million for this year's Transit Security Grant Program (TSGP). I understand that only \$8 million of that total will be available for Amtrak, and that none of these funds will be awarded to freight railroads, despite being made explicitly eligible for such grants through the appropriations bill. We know that both Amtrak and our freight railroads have significant vulnerabilities. Can you explain why so little of this available funding is going to Amtrak and the freight railroads?

Answer. The Department of Homeland Security (DHS) used a risk-informed allocation model to evaluate the relative risk to the transportation systems. The Transit Security Grant Program (TSGP) risk formula is comprised of threat and vulnerability/consequences variables. The DHS risk assessment methodology considers critical infrastructure system assets, and characteristics that might contribute to their risk, such as: intelligence community assessments of threat; potentially affected passenger populations and the economic impact of attack. The relative

weighting of variables reflects DHS's overall risk assessment and Fiscal Year (FY) 2007 program priorities (for example, presence of underwater and underground systems). Specific variables include unlinked passenger trips, number of underground track miles, number of underwater tunnels and location-specific intelligence community risk analysis. Amtrak was allocated \$8.3 million based on its risk profile.

Question 2. Did the Department complete the comprehensive transportation systems sector specific plan by December 31, 2006, as required by the Executive Order?

Answer. The Transportation Sector-Specific Plan (TSSP) is part of DHS's National Infrastructure Protection Plan (NIPP). In June 2006, DHS signed the NIPP as the comprehensive Critical Infrastructure and Key Resources (CI/KR) planning framework required by Homeland Security Presidential Directive 7 "Critical Infrastructure Identification, Prioritization, and Protection" (HSPD-7). The transportation systems sector was one of 17 CI/KR sectors outlined in HSPD-7. The NIPP deadline for all 17 CI/KR sectors was December 31, 2006. On May 21, the Secretary announced the completion of all 17 sector specific plans (SSPs), of which the TSSP was one. Executive Order 13416, *Strengthening Surface Transportation Security*, also required the TSSP by December 31, 2006 but placed an additional requirement of surface transportation modal plans 90 days after the TSSP was released. The modal plans were released together with the TSSP on May 21.

Question 3. Will the President be requesting additional funding in the FY 2008 budget to reflect his policy, set forth in the Executive Order, that the "security of our Nation's surface transportation systems is a national priority, vital to our economy, and essential to the security of our Nation." The current funding levels do not seem to reflect this sense of priority.

Answer. The Executive Order states that surface transportation security is a priority, but it is a shared responsibility. The Transportation Security Administration (TSA) supports the President's Fiscal Year (FY) 2008 budget request. The budget request accurately reflects the funding necessary to carry out different approaches to different modes of transportation and includes funding in TSA's budget as well as in the budgets of other components.

Surface transportation infrastructure is approximately 85 percent privately owned and operated, and receives security funding from multiple streams (*e.g.*, operating revenue, State, local, private, as well as Federal funding). Surface transportation security is a shared responsibility among a variety of stakeholders, including State, local, and Federal agencies, and private owners and operators. As the Executive Order outlines, the appropriate role for the Federal Government includes assessing the security of the overall surface transportation system and developing guidelines and requirements to address high priority gaps, ensuring the effective sharing of surface transportation-related security information, assessing compliance with guidelines and requirements, and ensuring that Federal surface transportation research and development efforts for security are based on the needs of these systems and prioritized according to the ever evolving terrorist threats. The Federal Government also provided grants to these systems based on the priorities identified through assessments and threats.

The rail and mass transit modes do not allow for the same type of approach used for aviation where sealing off an area of the airport to those who have been screened is feasible. Rail and mass transit systems operate over a broad geographic spread with numerous stations and transfer points providing the efficiency and fast-pace that are essential to moving thousands of passengers, particularly during daily rush hours. The point defense approach taken at the airports is neither practicable nor desirable for surface transportation. Rather, an integrated strategy, tapping the strengths of the Federal Government, State and local governments, and passenger rail and mass transit agencies, must be pursued.

Funding comparisons should also include:

- The commitment of Federal funds to intelligence activities to identify terrorists and detect their activities before they can present a threat or achieve their objectives;
- The commitment of Federal funds to capital improvements of passenger rail and mass transit systems that integrate security enhancements;
- The availability to transit agencies to use 1 percent of Federal Transit Administration grants for training and exercises, approximately \$40 million annually;
- The ability of states to allocate State Homeland Security Grant program funds to rail and transit system security;
- Direct grants to transit providers under the transit security and intercity bus security grant programs;

- The law enforcement agencies—either maintained by transit agencies or provided by State or local government—providing law enforcement and security services for passenger rail and mass transit systems operating within and/or through their respective jurisdictions; and
- Information sharing efforts that ensure security awareness is maintained at the Federal, State and local, and transit agency levels—such as the Public Transit portal of the Homeland Security Information Network that is maintained and operated at no cost to the transit community; the fee-funded Information Sharing and Analysis Center maintained by the American Public Transportation Association, now integrated into the Public Transit portal of the Homeland Security Information Network; and State and local intelligence fusion centers.

Federal funding contributes to all of these efforts, and will continue to do so, as part of a comprehensive, integrated strategic approach aligning the efforts of a range of entities and programs at the Federal, State, and local government and transit agency levels.

Question 4. In your testimony, you suggested that significant personnel could be shifted from TSA's aviation security force to help secure surface transportation systems. How many aviation security employees could be available at any given time for such work without impacting the security of our aviation system?

Answer. The Transportation Security Administration (TSA) has undertaken several initiatives to increase our security footprint at the Nation's airports. These efforts include the Behavior Detection Program, the Airport Direct Access Screening Program, and the Bomb Appraisal Officer Program. Each of these programs requires a commitment of manpower beyond basic screening functions. TSA could support limited multi-modal contingency operations through the use of overtime, diversion of manpower from non-primary screening functions, and the use of non-Transportation Security Officer personnel (*e.g.*, Aviation Security Inspectors). Specific availability of manpower would be heavily impacted by system requirements at a particular time (*e.g.*, Holiday Operations) and airport security requirements resulting from a given Threat Condition.

Question 5. In your written testimony, you discuss the work of the Surface Transportation Security Inspection (STSI) teams in assessing rail and transit systems. Is there enough funding through the Department's Transit Security Grant Program (TSGP) to fund improvements for all the risks and vulnerabilities that are identified through this program? If not, how are rail and transit system supposed to address these risks and vulnerabilities?

Answer. The Department of Homeland Security (DHS) Transit Security Grant Program (TSGP) is currently the primary vehicle for providing funding assistance for security enhancements to public transportation agencies in the United States. The TSGP employs risk-based prioritization consistent with DHS policy. This approach applies TSGP resources to strengthen the security of the Nation's transit systems in the most effective and efficient manner.

Through TSGP, DHS has thus far allocated \$573 million to 60 of the Nation's mass transit and passenger rail systems in 25 States and the District of Columbia. The TSGP employs risk-based prioritization consistent with the Department's strategic framework articulated in the National Infrastructure Protection Plan (NIPP) and the Transportation Sector Specific Plan (TSSP). Rail transit systems have been divided into two tiers based on risk. Particular emphasis is placed on the passenger volume of the system and the underwater and underground infrastructure of the rail transit systems. Tier I systems apply for a portion of a regional allocation, either as individual agencies or as part of regional projects that mitigate the vulnerability of high-risk, high-consequence assets. Grants for systems in Tier II are competitively awarded based on the ability to reduce risk, cost effectiveness, and the ability to complete the proposed project with the funds awarded.

Based on the results of security assessments conducted by the Transportation Security Administration's (TSA) Surface Transportation Security Inspectors (STSI) and prior assessments conducted by Federal entities and passenger rail and mass transit agencies, DHS has identified a set of risk-based priorities that it believes address the security needs of transit agencies and result in the overall enhancement of security in their systems. Eligible transit systems are encouraged to use TSGP funds to address the following risk-based priorities, as applicable:

1. Protection of high risk/high consequence underwater/underground assets and systems;
2. Protection of other high risk/high consequence assets and systems that have been identified through system-wide risk assessments;
3. Use of visible, unpredictable deterrence;

4. Targeted counter-terrorism training for key front-line staff;
5. Emergency preparedness drills and exercises; and
6. Public awareness and preparedness campaigns.

Area security assessment results indicate a need for more focused effort in security training for transit agency employees. Although an extensive Federal security training program has been implemented since 9/11—17 security courses, more than 500 deliveries, and more than 78,000 transit employees trained—the assessment results indicated wide variations in the quality of transit agencies' security training programs and an inadequate level of refresher or follow-on training. Well-trained employees are a security force multiplier for security efforts implemented by transit agencies. This year, to elevate the level of training, bring greater consistency, and assist agencies in developing and implementing training programs, TSA produced and disseminated a Mass Transit Security Training Program and made training a targeted priority for the TSGP.

The program identifies specific types of training at basic and follow-on levels for particular categories of transit employees. Presented in a readily understandable matrix, it provides effective guidance to transit agency officials in building and implementing training programs for employees working in their systems. To support execution of such training programs, the Transit Security Grant Program offers pre-packaged training options agencies may obtain with grant funding. Agencies taking advantage of this program have their applications expedited for review and approval. This initiative aims to expand significantly the volume and quality of training for transit employees during 2007. Thus far, 21 agencies have applied for training under this initiative among the Tier II systems alone for Fiscal Year (FY) 2007 TSGP funding. Nine other transit agencies proposed training in their standard FY 2007 TSGP applications.

Equipment acquisitions, drills and exercises, employee training programs, and public awareness programs that focus on mitigating these risks represent appropriate applications of TSGP funding. Transit systems may use TSGP funding to acquire equipment that applies technological solutions to security vulnerabilities, such as explosives detection systems and surveillance cameras. In order to assess and enhance the transit system's capability to respond under the variety of security scenarios that could reasonably be expected to occur on its operation, the emergency drill and exercise program should test operational protocols that the transit system plans to implement in the event of a terrorist attack (specifically, an improvised explosive device or chemical/biological/radiological/nuclear device), natural disaster, or other emergencies, and consist of live situational exercises involving various threat and disaster scenarios, table top exercises, and methods for implementing lessons learned.

TSA believes current funding of the TSGP enables achievement of strategic priorities to enhance security in the passenger rail and mass transit mode. In addition, grants to State and local governments through the State Homeland Security Grant program and Urban Area Security Initiative are available for training, equipment, and exercises related to transportation security projects at the discretion of State and local homeland security leadership in coordination with their State and Urban Area Homeland Security strategies. Over \$8.5 billion have been awarded to State and local governments through these programs and an additional \$1.3 billion will be awarded in FY 2007.

Question 6. What was the total amount in grant funding requested by transit and rail systems in FY 2006 during the application process for the Department's Transit Security Grant Program (TSGP)?

Answer. The total amount in grant funding requested by transit and rail systems in Fiscal Year 2006 was \$151,445,422.

Question 7. I understand that the current rail security guidelines issued by your Department last year are voluntary. How are railroads complying with these guidelines? Do you intend to make them mandatory?

Answer. In June 2006, the Department of Homeland Security's (DHS) Transportation Security Administration (TSA) and the Department of Transportation's Pipeline and Hazardous Materials Administration and Federal Railroad Administration issued a set of Security Action Items for the rail transportation of toxic inhalation hazard materials. In October 2006, TSA began to measure the degree of implementation of these action items by the Nation's rail carriers. The initial measurements focused on the seven action items having the highest impact on security at the ground level. TSA Surface Transportation Inspectors visited over 150 individual rail facilities and interviewed over 2,700 front-line employees to determine how well the security action items were being applied in the field. The level of implementation was measured as either—High (3), Medium (2) or Low (1). In general, the level of

implementation was rated as medium. An analysis of the individual interviews and inspector reports showed that the rail carriers had done a better than average job of educating their employees in security awareness and their role in the detection and deterrence of security-related events.

At this time, TSA is in the process of evaluating the implementation of ten additional security action items. The results of these surveys will provide a factual knowledge base which will drive policy decisions. Several of the action items were deemed critical to freight rail security and have been incorporated into the Notice of Proposed Rulemaking that was issued by DHS/TSA in December 2006.

Question 8. I understand that your recent Notice of Proposed Rulemaking (NPRM) on rail security requires that rail cars carrying certain hazardous shipments would have to be attended at all times during transit. Today, it is common practice for railroads to allow their trains to sit unattended while changing train crews. How would this proposed rule affect this practice?

Answer. The proposed rule would eliminate this practice in High Threat Urban Areas (HTUA) and curtail it in areas that lead into HTUAs.

The Transportation Security Administration's (TSA) analysis of the freight rail industry indicated that there is a security vulnerability in the practice of leaving unattended rail cars, and in some cases entire trains, carrying certain hazardous materials, for eventual pickup by either railroad carriers or by the consignees (receivers). TSA plans to address this vulnerability through the proposed chain of custody requirements in the Notice of Proposed Rulemaking (NPRM). The chain of custody provisions propose positive control and handoff of certain hazardous materials shipments at points where rail cars are initially received by the rail carrier, where they are interchanged with other railroads, and at the final point of delivery.

Since the highest risk occurs when a rail car is in or near an area of high population density, TSA's proposed chain of custody would affect railroad carriers conducting transfers within HTUAs or transfers where rail cars may enter an HTUA. The rule also covers all shippers and receivers in an HTUA. TSA has proposed to secure the chain of custody of certain hazardous shipments throughout the rail supply chain.

Question 9. What is the status of TSA's Transportation Sector Specific Plan (TSSP) and annexes for each mode of transportation? What has been the cause of TSA's delay in issuing these plans? Without these plans in place, how can we have confidence that the agency's security efforts are appropriately targeted?

Answer. The Transportation Sector-Specific Plan (TSSP) is part of DHS's National Infrastructure Protection Plan (NIPP). In June 2006, DHS signed the NIPP as the comprehensive Critical Infrastructure and Key Resources (CI/KR) planning framework required by Homeland Security Presidential Directive -7 "Critical Infrastructure Identification, Prioritization, and Protection" (HSPD-7). The transportation systems sector was one of 17 CI/KR sectors outlined in HSPD-7. The NIPP deadline for all 17 CI/KR sectors was December 31, 2006. On May 21, the Secretary announced the completion of all 17 sector specific plans (SSPs), of which the TSSP was one. Executive Order 13416, *Strengthening Surface Transportation Security*, also required the TSSP by December 31, 2006 but placed an additional requirement of surface transportation modal plans 90 days after the TSSP was released. The modal plans were released together with the TSSP on May 21.

The plans were developed with extensive participation from and in partnership with the Government Coordinating Council and Sector Coordinating Councils. As partners in security, it was essential that the TSSP and modal plans were developed with their input.

TSA utilizes the broad range of intelligence it receives, as well as the domain awareness gained through the risk-based assessments, to inform the development of strategies and programs to improve security in other modes of transportation and to prioritize and direct resources.

Question 10. What steps has TSA taken to implement the recommendations made by the GAO in its September 2005 report on passenger rail security? Why has your agency not submitted the required letter to Congress detailing how you will implement these recommendations?

Answer. The Transportation Security Administration (TSA) has implemented, or is in the process of implementing, the Government Accountability Office (GAO) recommendations in the September 2005 report. Below are the GAO recommendations and TSA actions to address them.

GAO Recommendation 1: Establish a timeline for completing the Department's framework for analyzing sector risks and ensure that the risk assessment methodologies used by sector-specific agencies are consistent with this framework.

The National Infrastructure Protection Plan (NIPP) establishes the risk assessment framework for the protection of critical infrastructure and key resources. The Transportation Sector Specific Plan (TSSP) reflects a coordinated effort integrating Federal entities operating through Government Coordinating Councils (GCCs) with transportation stakeholders operating through Sector Coordinating Councils (SCCs). Modal annexes for passenger rail/mass transit and freight rail have been developed in a similar coordinated effort with the stakeholders in the respective modes. The risk management strategy for the TSSP and its modal annexes aligns with the NIPP framework.

GAO Recommendation 2a: Establish a plan for completing its methodology for conducting risk assessments that includes timelines and addresses how it will work with passenger rail stakeholders and leverage existing Federal expertise in Department of Homeland Security components, including the Office for Domestic Preparedness, as well as the Department of Transportation modal administrations, including the Federal Railroad Administration and the Federal Transit Administration.

At the operational level, TSA conducts security assessments under the Surface Transportation Security Inspection Program. The purpose of assessing security status is to determine how individual operations compare to the baseline standards. Assessments in rail and passenger transit are conducted by TSA's field inspector force. The assessments are structured to target key areas of concern and to capture essential data to evaluate current practice versus baseline standards.

Through the Baseline Assessment and Security Enhancement (BASE) program, Surface Transportation Security Inspectors (STSIs) assess a transit system's security posture on the 17 Security and Emergency Preparedness Action Items, jointly developed and disseminated by TSA and FTA in coordination with the Mass Transit Sector Coordinating Council and Transit Policing and Security Peer Advisory Group. Particular emphasis is placed on the six core Transit Security Fundamentals that are also funding priorities under the Transit Security Grant Program. The BASE program aims to elevate security generally, expand TSA's awareness and understanding of security posture in the passenger rail and mass transit mode, enable more effective targeting of security programs and technical assistance to elevate security, and facilitate sharing of best security practices.

As of April 20, 2007, TSA STSIs have completed BASE assessments on 35 of the top 50 passenger rail and mass transit agencies by passenger volume. Assessments are in progress at six more of the top 50 systems. The ongoing effort aims to complete assessments on the Security Action Items of the top 50 transit agencies during Fiscal Year (FY) 2007. Work will commence on the transit agencies ranked 51 to 100 during FY 2007, continuing into FY 2008 for completion. Targeted follow-up assessments will measure progress in improving performance in implementation of the Security Action Items, particularly the six Transit Security Fundamentals.

The information derived from the BASE assessments enables more effective targeting of security programs and technical assistance to elevate security. Through this process, TSA also identifies best security practices for sharing with the passenger rail and mass transit community, further enhancing security posture. The thorough review of security programs and procedures affords the systems assessed the opportunity to review the state of their security program and identify strengths and weaknesses. This information can guide the effective application of available security resources, focus collaborative efforts with TSA, and facilitate the preparation of funding requests through security grant programs.

An example of the application of assessment results in prompt development of security programs is the training initiative under the Transit Security Grant Program (TSGP). BASE assessment results demonstrated a need for improvement in security training of front-line employees. TSA, in coordination with its Federal partners at the Department of Homeland Security (DHS) Office of Grants and Training and the Federal Transit Administration, developed the Mass Transit Security Training Program. The program identifies specific types of training at basic and follow-on levels for particular categories of transit employees. Presented in a readily understandable matrix, it provides effective guidance to transit agency officials in building and implementing training programs for employees working in their systems. To support execution of such training programs, the Transit Security Grant Program offers pre-packaged training options agencies may obtain with grant funding. Agencies taking advantage of this program have their applications expedited for approval to ensure funds are delivered within 90 days of submission. This initiative aims to expand significantly the volume and quality of training for transit employees during 2007. Thus far, 21 agencies have applied for training under this initiative among the Tier II systems alone for FY 2007 TSGP funding. Nine other transit agencies proposed training in their standard FY 2007 TSGP applications.

That is the objective—through regular reviews of security posture in light of prevailing threats, to ensure security resources at all levels—Federal, State, and local government, passenger rail and mass transit agencies—are applied in the most effective ways to deter, detect, and prevent terrorist attacks.

GAO Recommendation 2b: Evaluate whether the risk assessment methodology used by the Office for Domestic Preparedness should be leveraged to facilitate the completion of risk assessments for rail and other transportation modes.

To promote interagency coordination and information sharing on risk assessment activities and to bring the assessment methodologies within a consistent framework and leverage the existing methodologies, DHS, and its Federal partners have formed the Federal Risk Assessment Working Group, the Interagency Mass Transit Security Information Program, and the Risk Assessment Policy Group. These groups work together to coordinate Federal risk assessment activities and to promote consistency in risk assessment approaches. The National Preparedness branch of the Federal Emergency Management Agency, formerly the DHS Office of Grants and Training, has participated as well in the development of the BASE program.

GAO Recommendation 3a: Develop security standards that reflect industry best practices that can be measured, monitored, and enforced by Transportation Security Administration rail inspectors and, if appropriate, by rail asset owners. This could be accomplished by using the rule-making process, with notice in the *Federal Register* and an opportunity for interested stakeholders to comment, to promulgate long-term regulations that incorporate these standards.

Security and Emergency Management Action Items

In addition to the two security directives issued by the TSA in May 2004, TSA and the Federal Transit Administration (FTA), in coordination with other public and private security partners, have recently conducted a comprehensive update of the Security and Emergency Management Action Items issued by the FTA in the immediate aftermath of September 11. The newly enhanced action items are in part based on industry effective practices and represent a systematic and measurable approach to elevate baseline security posture and enhance security program management and implementation. The action items cover a range of areas including security program management and accountability, security and emergency response training, drills and exercises, public awareness, protective measures for Homeland Security Advisory System (HSAS) threat levels, physical security, personnel security, and information-sharing and security.

Threat Level Protective Measures

The Threat Level Protective Measures, also issued recently by TSA and FTA, provides a comprehensive systems approach and framework for transit agencies to use in integrating their security and emergency management systems with DHS Homeland Security Advisory System's five color-coded graduated threat conditions. These protective measures are also based in part on transit and passenger rail providers' effective practices.

Through the BASE program, STSIs review and monitor the implementation of the action items. This initiative aims to elevate security posture and readiness throughout the mass transit and passenger rail mode by implementing and sustaining measurable baseline security standards applicable to the operating environment and characteristics of mass transit and passenger rail systems.

Transit Security Fundamentals

In its security assessments, TSA focuses particular attention on six Transit Security Fundamentals that provide the foundation for a successful security program. The fundamentals are:

1. Protection of high-risk underwater/underground assets and systems;
2. Protection of other high-risk assets that have been identified through system-wide risk assessments;
3. Use of visible, unpredictable deterrence;
4. Targeted counter-terrorism training for key front-line staff;
5. Emergency preparedness drills and exercises; and
6. Public awareness and preparedness campaigns.

TSA has distributed a self-assessment checklist to each of the top 50 agencies covering six fundamental areas that provide the foundation for an effective security program. To date, 42 of the top 50 agencies have responded. The remaining eight are expected to report shortly. Expansion to the agencies ranked 51 to 100 will follow.

Tunnel Security Action Items

To mitigate the potential catastrophic consequences of a terrorist attack against underwater transit and rail tunnels, the interagency Tunnel Risk Mitigation Working Group under the leadership of TSA issued the Tunnel Security Action Items in 2007. These recommended measures derive from the experience gained in Federal security assessments and the ongoing work to identify and prioritize tunnels and develop a strategic plan to mitigate risk. The interagency group is working closely with the transit industry to ensure the implementation of protective measures to mitigate risk in transit tunnels. TSA security assessments of passenger rail and mass transit agencies with tunnel infrastructure include review of protective measures implemented to mitigate risk.

Notice of Proposed Rulemaking

TSA issued a Notice of Proposed Rulemaking (NPRM) in December 2006. Although it primarily focused on security in transporting toxic inhalation hazard material by freight rail carriers, the NPRM proposes some requirements for passenger railroad carriers, rail transit systems, and hosts of other passenger rail services. The proposed requirements include designation of a primary and at least one alternate Rail Security Coordinator to serve as the point of contact with TSA on security matters and communications and to provide oversight to the railroad carrier or rail transit system's compliance with security requirements and implementation of security initiatives. Additionally, in recognition of the vital importance of information indicating terrorist planning and preparation, the rule further requires all passenger rail carriers and rail transit systems to report potential threats or significant security concerns to TSA. The NPRM also details TSA's authority concerning inspection of facilities and operations of covered entities. This NPRM provided ample time for comment by stakeholders and the public at large. A public meeting was held on February 2, 2007, to provide further opportunity for comment. TSA is reviewing the comments received and making appropriate changes, if any, to the proposed rule. This proposed rule will further facilitate the BASE inspections and the review and monitoring of any future voluntary and/or required security standards TSA might put in place.

Standards Development

The Federal Government is engaged with the American Public Transportation Association (APTA) Security Standards Policy and Planning Committee to develop security standards. The security standards development effort brings together security professionals from the public transportation industry, business partner representatives, and the Federal Government in a collaborative effort to develop consensus-based standards to enhance security in transit systems. Federal participants consist of the subject-matter experts from DHS Office of Grants and Training, TSA, FTA, and the Federal Railroad Administration. Public transportation stakeholder participants consist of members of the APTA Security Standards Policy and Planning Committee, officials from mass transit and passenger rail systems and industry businesses and research organizations. Working groups are established to focus on specific security areas and concerns, including mass transit and passenger rail systems, facilities and operations.

Draft standards are developed in a format that is consistent with American National Standards Institute requirements and are posted for comment and then approved by consensus. Federal participation in the consensus-based efforts is effected through the GCC/SCC framework and Critical Infrastructure Partnership Advisory Council (CIPAC) process. The approved standards are then put forth as "recommended practices" and supported by the American Public Transportation Association for voluntary adoption by the transit industry.

GAO Recommendation 3b: Set timelines for completing the memorandum of understanding modal agreements for rail, mass transit, and research and development, which both the Department of Homeland Security and the Department of Transportation have agreed to pursue.

In September 2005, DHS and the Department of Transportation (DOT) executed an annex on public transportation to the Memorandum of Understanding (MOU) entered into the prior year by DHS and DOT. Pursuant to this annex, DOT and DHS agreed to coordinate their programs and services (including risk assessments, grants, training, exercises and technical assistance) to better assist transit agencies in prioritizing and addressing their current and emerging security-related needs. The areas of coordination identified in the annex include training courses; awareness programs, *i.e.*, the Transit Watch; forums to encourage and facilitate communications and information-sharing, *i.e.*, the Safety and Security Roundtables; drills and exercises; emergency preparedness and security forums, creating a comprehen-

sive source for transit system officials to turn for information about available Federal security and preparedness resources (*e.g.*, information on grant funding availability, training, technical assistance, and effective practices), risk assessment and security reviews, and interoperable communication. In support of the MOU annex implementation, eight working groups have been established under an Executive Steering Committee. The annual plan for 2007–2008 cooperation between the parties has been drafted and is currently undergoing interagency coordination. The interagency working groups continue to facilitate the implementation of a unified strategic approach to transit security. This approach aims to:

- Advance focused efforts to mitigate high consequence risk;
- Expand employment of random, unpredictable deterrence; and
- Elevate the security baseline by building security force multipliers through training, drills and exercises, and public awareness campaigns

Public and private partners are working together to evaluate technology needs of Mass Transit and Passenger Rail industry and to develop and coordinate research and development as well as testing and evaluation of commercial off-the-shelf and other existing technologies. Under the Public Transportation Annex of the DHS/ DOT MOU discussed earlier, TSA leads the Mass Transit Technology Project Management Team consisting of representatives from the Office of Grants and Training, FTA, and DHS's Science and Technology Directorate (S&T) (as applicable). This subgroup allows for coordination and sharing of ongoing work, discussion of stakeholder needs based on individual agency outreach through their programs, and leveraging of resources to expand the work done in technology by the agencies.

Presently, a variety of technologies are on the market or being tested, such as intrusion detection, video surveillance, anomaly detection, and chemical/biological/radiological/nuclear detection. TSA, along with its public and private partners, is working to identify technology gaps and conduct research and development to provide technological solutions. This process between government and industry will aid in ensuring that a collaborative strategic process for technology research, development and deployment is maintained. The Federal partners are also harnessing the information gained from completed developmental testing and other use experience to provide the transit community a security technology information resource to guide procurement decisions.

Through stakeholder tours of S&T's Transportation Security Laboratory, interagency informational tours, and other meetings, TSA and its Federal partners exchange information on planned research, development, testing, and evaluation efforts, projects, and needs and challenges with the stakeholders and scientific/technology community. The results are developed into broad requirements submitted to S&T for research and development. Furthermore, TSA participates in the Integrated Project Teams (IPT) held by S&T across a variety of critical infrastructure and potential threats. These IPTs provide a means to submit technology requirements for funding and coordinate requirements with other DHS internal stakeholders (*i.e.* Customs and Border Protection, U.S. Coast Guard) to eliminate duplication of effort and share experience and knowledge. TSA and industry representatives also participate in bi- and multi-lateral international meetings and working groups on technology that focus on sharing of information on a specific technology or broad technology needs and requirements. TSA and its partners are working on a plan to utilize Homeland Security Information Network (HSIN)-Public Transit Portal as the tool to provide government and the industry with a list of available technologies and products relating to the protection of mass transit and passenger rail.

GAO Recommendation 4: To help strengthen the security of passenger rail systems in the United States and potentially leverage the knowledge and practices employed by foreign rail operators, we recommend that the Secretary of the Department of Homeland Security, in collaboration with the Department of Transportation and the passenger rail industry, take the following two actions:

- Evaluate the feasibility of establishing and maintaining an information clearinghouse on existing and emergency security technologies and security best practices used in the passenger rail industry both in the United States and abroad.
- Evaluate the potential benefits and applicability—as risk analyses warrant and as opportunities permit—of implementing covert testing processes to evaluate the effectiveness of rail system security personnel; implementing practices used by foreign rail operators that integrate security into infrastructure design; and implementing random searches or screening of passengers and their baggage, pending the results of an ongoing joint Federal and industry review of the impact of random screening on passenger rail operators.

Effective implementation and use of the HSIN is critical to the success of Federal information-sharing efforts. DHS established HSIN for stakeholders to use in the various SCCs. The network includes a Public Transit Portal, intended for use as an information-sharing and exchange resource for transit systems throughout the country. An often expressed concern of transit system security officials is the absence of a single source or “one stop shop” for Federal information on transit security. The Public Transit Portal on HSIN has been developed to meet this purpose as the gateway to Federal information updates and resources for the mode and information and material developed by the Public Transit Information Sharing and Analysis Center (ISAC). Feedback from mass transit and passenger rail systems will help ensure information products meet security needs. A concerted effort to populate the site with useful and timely information is ongoing.

A key component of the portal is the Mass Transit Resource Center. The Resource Center provides a comprehensive database for the transit industry to access information on a broad spectrum of subjects pertinent to transit security, material not readily available in a consolidated format elsewhere. TSA uses the Portal to provide timely security alerts, advisories, and information bulletins to passenger rail and mass transit agencies. Technology updates constitute an important component of this resource. Overall, the Resource Center covers more than 20 subject areas of security interest to the public transportation community, reflecting the feedback received from stakeholders on the type of information they require to meet the security mission.

Technology must be fully incorporated into the security operations of mass transit and passenger rail agencies. Presently, a variety of technologies are on the market or being tested, such as intrusion detection, video surveillance, anomaly detection, and chemical/biological/radiological/nuclear detection. TSA, along with its public and private partners, is working to identify technology gaps and conduct research and development to provide technological solutions. The Federal partners are also harnessing the information gained from completed developmental testing and other use experience to provide the transit community a security technology information resource to guide procurement decisions. This resource will be a key component of the Public Transit Portal in the HSIN, meeting a specific requirement of Executive Order 13416, “Strengthening Surface Transportation Security.”

On the international front, TSA engages extensively with its foreign counterparts on rail and transit security matters with the aim of sharing and gleaned effective practices for potential integration in the domestic strategic approach. TSA conducts and maintains these efforts in collaboration and coordination with the Department of State, DHS component agencies, and other Federal agencies on projects involving transportation security within international and regional organizations.

Engagement within the Group of 8 (G8) and with the European Union, the Asia Pacific Economic Cooperation, and the Mexican and Canadian governments fosters sharing of effective practices and technologies in mass transit and passenger rail security. The expanding cooperation in this area has culminated in creating an international working group on land transport security outside of any preexisting forum with preliminary focus on passenger rail and mass transit security. The United States will support this collaborative effort by providing information on most effective security practices and the effectiveness of security technologies.

TSA also participates in the Rail and Urban Transport Working Group in support of technology information-sharing across five countries. The membership of this group consists of the United States, United Kingdom, Canada, France, and Israel. In this forum, technology and operational experts come together to share information on technology testing and evaluation projects.

Through the Joint Contact Group, the United States and the United Kingdom engage in a bilateral cooperative effort to develop and promulgate best practices in rail and mass transit security, with the objective of developing security solutions applicable on a wider international basis. This group also explores opportunities to encourage broader private sector involvement in the protection of soft targets, such as through training of mass transit employees.

Another international initiative focuses on vetting suspicious packages detected in transit systems. This joint effort, involving TSA STSIs, Los Angeles law enforcement representatives, and British security officials, will bring training, experience, and lessons learned to the American participants from a British program known as Hidden and Obviously Typical (HOT) of suspicious packages. This program enhances the ability of the trained personnel to identify indicators of security concerns with packages left unattended in transit and rail facilities and vehicles.

TSA will continue a dynamic effort to engage with international counterparts, whether through bilateral arrangements or broader forums and working groups, and

advance sharing of lessons learned and best practices to enhance security in passenger rail and mass transit systems.

One of the six Transit Security Fundamentals discussed earlier in this response is the implementation of emergency preparedness drills and exercises. DHS funds transit agencies' conduct of and participation in drills and exercises as a priority under the TSGP. Through periodic drills and exercises, transit agencies test the effectiveness of security and emergency management plans and integration with regional security partners, such as law enforcement entities and State and local government agencies. Covert testing has potential value as part of an overall security engagement approach with particular transit agencies. TSA has developed proposals for this activity. Coordination for testing with a particular system is ongoing.

Question 11. Why does the TSA rail security proposed rulemaking for hazardous materials rail shipments not include anhydrous ammonia rail shipments? The freight rail industry considers anhydrous ammonia as a Toxic-by-Inhalation-Hazard (TIH) substance, but I understand that TSA decided against including this chemical in the proposed rule.

Answer. Anhydrous ammonia is covered by the proposed rule. In domestic transportation, the Hazardous Materials Regulations Table, column 8, Special Provisions, lists it as a 13. The 13 designation indicates that it shall be marked as "inhalation hazard" on each shipping paper. The Department of Transportation/Pipeline and Hazardous Materials Safety Administration considers anhydrous ammonia as a toxic inhalation hazard.

Question 12. Your agency recently issued the final rule for the implementation of the Transportation Worker Identification Credential (TWIC) program in the maritime sector. Do you plan to roll this program out to the surface transportation sector in the future? If so, how would the program work for the trucking and rail industries?

Answer. All of these components rely on state-of-the-art technology. Technology programs always require comprehensive testing, and the Transportation Worker Identification Credential (TWIC) is no different. Therefore, the Transportation Security Administration (TSA) is currently focused on a rigorous program to test TWIC in the maritime sector before it can be considered for use in other modes of transportation. The TWIC network has five components:

- The Pre-Enrollment website component allows workers to schedule appointments and provide biographic information ahead of time to make enrollment easier.
- The Enrollment workstation component captures a worker's biometric and biographic information and submits the information for security processing.
- The TWIC system includes components that route applicant information for Security processing, store data, conduct data integrity checks, and manage status on TWIC cards.
- The Screening Gateway component is a TSA enterprise asset that conducts security threat assessments, working with the Federal Bureau of Investigation, Citizenship and Immigration Services, and TSA's Colorado Springs Operations Center. It is important to note that the Screening Gateway is used across all of TSA's vetting programs.
- Finally, the Card Production component electronically loads an applicant's information onto a TWIC smart card and then physically produces the card.

All system components must work together to conduct and complete accurate and timely security threat assessments. Rigorous performance testing is the only way to ensure that TWIC is ready to be introduced on a large scale. The program must not negatively impact commerce—or people's livelihoods. After we have had an opportunity to assess operations in the maritime sector, we can make recommendations about whether it is appropriate to expand this program into other industries.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
HON. EDMUND S. "KIP" HAWLEY

Question 1. Why didn't your agency's rail security proposal address the many security needs of passenger rail stations, and critical infrastructure like bridges and tunnels?

Answer. The Transportation Security Administration (TSA) has acted on multiple fronts to address the security needs of passenger rail stations and critical infrastructure. TSA and its Federal partners at the Department of Homeland Security (DHS)

and the Federal Transit Administration (FTA) have conducted numerous assessments in the rail and mass transit modes.

- In the aftermath of the 9/11 attacks, FTA completed vulnerability assessments of 37 of the top 50 transit agencies in the country, as measured by passenger volume. The assessments provided information that enabled transit agencies to undertake security enhancement activities with Federal grants and other funding sources. Additionally, the assessment approach and the results informed TSA's security programs, including development of the Surface Transportation Security Inspection Program and the Baseline Assessment for Security Enhancement (BASE) program, discussed in more detail below.
- DHS Office of Grants and Training required assessments for all grant recipients under the Transit Security Grant Program (TSGP), covering more than 60 of the largest transit agencies in the Nation.
- TSA has completed over 2,600 criticality assessments for systems across the Nation, including 848 for rail systems and 1,778 for mass transit systems.
- 50 Site Assistance Visits have been completed across the Nation's mass transit, bus, tunnel, and terminal systems.
- 132 Buffer Zone Protection Plans have also been completed.
- Through the Office of Grants and Training, the Department has provided technical support to over 25 major transit systems, as well as Amtrak, to assist these agencies in developing risk management strategies to guide the expenditure of scarce security dollars.
- In High Threat Urban Area (HTUA) rail corridors, DHS components are conducting assessments where hazardous materials may pose significant risks. Thus far, assessments have been completed in high Toxic Inhalation Hazard (TIH) volume metropolitan areas such as Northern New Jersey, Houston, and New Orleans. These assessments review passenger operations in the urban area rail corridors. The results lead to initiatives to elevate security for all rail, passenger and freight, operating in the corridors assessed. This program continues with the objective of completing assessments of all HTUA rail corridors throughout the country.

Through the Surface Transportation Security Inspection Program (STSIP), TSA has deployed 100 inspectors, assigned to 19 field offices across the country, to provide support to our Nation's largest mass transit systems. These officials perform frequent inspections of key facilities including stations and terminals for suspicious or unattended items, among other potential threats. Through the Baseline Assessment and Security Enhancement (BASE) program, Surface Transportation Security Inspectors (STSIs) assess a transit system's security posture on the 17 Security and Emergency Preparedness Action Items, jointly developed and disseminated by TSA and FTA in coordination with the Mass Transit Sector Coordinating Council and Transit Policing and Security Peer Advisory Group. Particular emphasis is placed on the six core Transit Security Fundamentals. The BASE program aims to elevate security generally, expand TSA's awareness and understanding of security posture in the passenger rail and mass transit mode, enable more effective targeting of security programs and technical assistance to elevate security, and facilitate sharing of best security practices.

TSA and FTA have coordinated to offer STSI support to conduct the required security audits and reviews by State Safety Oversight Agencies under title 49, Code of Federal Regulations, part 659. Through this initiative, which commenced in August 2006, STSIs have thus far assisted the state oversight agencies in audits conducted in the BART system (San Francisco-Oakland), New Jersey Transit (Newark subway) and the Port Authority Transit Corporation of Pennsylvania and New Jersey. TSA devoted a full day to discussing further development of this joint effort at the annual conference of State Safety Oversight Agencies sponsored by FTA in September 2006. Coordinating assessment activity to integrate BASE reviews with State Safety Oversight audits prevents "audit fatigue" among affected transit agencies.

STSIs also offer the Security Analysis and Action Program (SAAP), which constitutes a systematic vulnerability assessment of a mass transit or passenger rail system. The program utilizes several different tools to identify vulnerabilities based on specific scenarios, such as an improvised explosive device on a passenger train. SAAPs can be conducted on individual critical infrastructure facilities or entire rail systems, with particular emphasis on critical control points.

Finally, inspectors review design plans for systems under construction. STSIs conducted such an assessment on the Phoenix rail transit system to assess the ade-

quacy of its security design and recommend improvements that can be accomplished during the final stages of construction.

Question 2. Your Department failed to meet one of the few trucking security requirements in last year's SAFE Port Act. That provision simply required the DHS to check the names of truck drivers with access to secure areas of ports against terror watch-list and for citizen status. Why wasn't it done? When will it be done?

Answer. Section 125 of the Security and Accountability For Every Port Act of 2006 addresses a population on which no government entity, association, or industry organization maintains information. Generally, each port Terminal Operator has contracts with a number of transportation companies that provide drivers and trucks to transport containers from secure areas to staging areas. Neither the Terminal Operator nor the trucking companies know which drivers may enter a port on any given day or at all. Most trucking companies do not have all of the information necessary for the Transportation Security Administration (TSA) to successfully complete the vetting on each of their drivers to submit. There are over 500,000 trucking companies, many of which are independently owned and operated and tend to be highly transient with no single company affiliation.

As there is no way to isolate the population covered by section 125, TSA is evaluating other methods of compliance. TSA recently entered into a Memorandum of Understanding with the Department of Transportation's Federal Motor Carrier Safety Administration to obtain minimal biographic data on all 10 million Commercial Drivers License holders in the country to conduct name-based security threat assessments that are intended to identify those who might be on security watch lists or in the country unlawfully. We continue to explore various alternatives as to how we might best complete these assessments within current resources.

Question 3. Of the \$175 million Congress appropriated for rail and transit security grants this year, DHS has only made \$8 million available to Amtrak, which carries 25 million passengers a year. Has TSA performed an assessment of Amtrak's security needs?

Answer. The Transit Security Grant Program (TSGP) employs a risk-based methodology to determine its funding priorities. This approach applies TSGP resources to generate the highest return on investment and, as a result, strengthen the security of the Nation's transit and passenger rail systems in the most effective and efficient manner. Funding priority is given to high-density rail transit systems with significant underground infrastructure and underwater tunnels. Based upon ongoing intelligence analysis, extensive security reviews, and Congressional direction, DHS has focused the bulk of its available transit grant dollars on the highest-risk systems in our country's largest metropolitan areas.

TSA believes that the funds provided to Amtrak for Fiscal Year (FY) 2007 will enable Amtrak to create a sustainable, risk-based effort for the protection of critical Amtrak infrastructure, including bridges and tunnels, from terrorism. A total of \$8,309,537 was awarded to Amtrak through the FY 2007 TSGP: Amtrak Security Supplemental. These funds will help strengthen security along the major Amtrak corridors on the East and West Coasts, at the company's hub in Chicago, Illinois, and throughout its southeastern and southwestern service areas. In addition, risk and vulnerability assessments of the major corridors and stations are being conducted to identify, prioritize and mitigate specific vulnerabilities. The funds may be used by Amtrak for security projects in the Northeast Corridor (the National Capital Region, Philadelphia, New York City/Northern New Jersey and Boston), at its Chicago, Illinois, hub and in certain jurisdictions in the West Coast Service Area (Seattle, Portland, Sacramento, Oakland, San Jose, Los Angeles, and San Diego) and the southeastern and southwestern United States (Kansas City; St. Louis; Denver; Charlotte; Norfolk, Virginia, Area; Atlanta; Jacksonville; Ft. Lauderdale; Miami; Orlando; Tampa; Memphis; New Orleans; Oklahoma City; Dallas/Fort Worth; San Antonio; Houston; El Paso; and Tucson).

Question 4. What work has TSA done to assess the security needs of the Nation's critical transportation infrastructure, including bridges and tunnels (both rail and vehicles)?

Answer. The Transportation Security Administration's (TSA) Highway and Motor Carrier Division has ambitiously pursued the security assessment of the Nation's critical bridges and tunnels in a program that began more than 3 years ago. TSA's Corporate Security Review (CSR) program has conducted transportation security preparedness visits to State-level departments of transportation in 37 of the 50 states, both identifying critical structures and helping the stewards of those structures to identify and address security vulnerabilities. In addition, TSA's Highway and Motor Carrier program office has actively partnered with the U.S. Department of Transportation's (DOT) Federal Highway Administration (FHWA) to assist in

blast modeling on highway structures and preparation of prospective “hardening” standards for new construction. We anticipate that by the close of 2007, all 50 States will have been subjected to the interactive CSR visits. These programs have been widely acclaimed by the American Association of State Highway and Transportation Officials (AASHTO) as both helpful and popular with security specialists in each state. In 2007, we also anticipate a much closer review of the 11 international bridges that link the United States with our Western Hemisphere neighbors.

In the passenger rail and mass transit mode, TSA has led a coordinated inter-agency effort on multiple fronts to assess the security needs of critical infrastructure. The programs and initiatives include the following:

Surface Transportation Security Inspection Program

Under the Surface Transportation Security Inspection Program, TSA has deployed 100 inspectors. Assigned to 19 field offices throughout the United States, the inspectors cover the key rail and mass transit facilities in their regions. The program has focused on nationwide outreach and liaison activities with the rail industry and initiatives aimed at identifying the security needs of passenger rail and mass transit systems and enhancing their security posture. These efforts include assessment programs specifically intended to assist the agencies in identifying and mitigating their security gaps and elevating the security baseline throughout the mode.

Through the Baseline Assessment and Security Enhancement (BASE) Program, inspectors review the implementation by mass transit and passenger rail systems of Security and Emergency Management Action Items, which were recently updated by TSA and the Federal Transit Administration. This initiative aims to elevate security posture throughout the mass transit and passenger rail mode by identifying gaps in the implementation of baseline security measures adaptable to the operating circumstances of any system. Additionally, the STSI Program offers the Security Analysis and Action Program (SAAP), which constitutes a systematic vulnerability assessment of mass transit or passenger rail systems. The program utilizes several different tools to identify vulnerabilities based on specific scenarios, such as an improvised explosive device (IED) on a passenger train. SAAPs can be conducted on individual critical infrastructure facilities or entire rail systems, with particular emphasis on critical control points.

Targeted Security Training Initiative

The BASE assessment results indicate a need for more focused effort in security training for transit agency employees. Although an extensive Federal security training program has been implemented since 9/11—17 security courses, more than 500 deliveries, more than 78,000 transit employees trained—the assessment results indicated wide variations in the quality of transit agencies’ security training programs and an inadequate level of refresher or follow-on training. Well-trained employees are a security force multiplier for security efforts implemented by transit agencies. To elevate the level of training generally, bring greater consistency, and assist agencies in developing and implementing training programs, TSA produced and disseminated a Mass Transit Security Training Program.

The program identifies specific types of training at basic and follow-on levels for particular categories of transit employees. Presented in a readily understandable matrix, it provides effective guidance to transit agency officials in building and implementing training programs for employees working in their systems. To support execution of such training programs, the Transit Security Grant Program offers pre-packaged training options agencies may obtain with grant funding. Agencies taking advantage of this program have their applications expedited for approval to ensure funds are delivered within 90 days of submission. This initiative aims to expand significantly the volume and quality of training for transit employees during 2007.

Connecting Communities

This is another initiative that helps TSA assess the security needs of mass transit and passenger rail systems by bringing the Federal transportation security partners together with State, local, and tribal government representatives and the local first responder community. This provides a forum (2-day workshops) to discuss security prevention and response efforts, identify gaps, and ways to work together effectively to prepare and protect their communities. These forums enhance information and intelligence sharing among partners in transportation security to facilitate prevention and ensure the capacity for rapid and flexible response and recovery to all-hazards events. TSA partners with the FTA on Connecting Communities. These forums also help clarify the role of Federal, State and local emergency management offices to facilitate efficient planning, preparedness and response coordination. In support of this regional engagement effort, area National Joint Terrorism Task Force rep-

representatives will provide presentations on their activities and coordination responsibilities.

Safety and Security Roundtables

TSA, FTA, and the DHS Office of Grants and Training co-sponsored the fifth Transit Security and Safety Roundtable in December 2006. The roundtables bring together the security coordinators and safety directors from the Nation's 50 largest transit agencies and facilitate dialogue between the government, police and safety and security departments, and industry leaders on how best to address current transit safety, security and emergency management challenges. The roundtables provide a forum for mass transit and passenger rail safety and security officials to share effective practices and develop relationships to improve coordination and collaboration. Roundtables occur twice each year, generally in late spring and late fall.

Interagency Tunnel Risk Mitigation Working Group

This interagency effort brings together subject matter experts from a range of relevant fields among DHS and DOT organizational elements to identify, assess, and prioritize the risk to mass transit and passenger rail systems in the United States with underwater tunnels and to assist transit agencies in planning and implementing protective measures to deter and prevent attacks and blast mitigation and emergency response strategies in the event of a terrorist attack and/or all hazards incident or event. Through regular meetings, this working group has developed mitigation strategies, engaged stakeholders, analyzed and applied the results of risk assessments, prepared statements of work for testing and modeling programs, and integrating the overall risk mitigation effort for a cohesive, coordinated, and effective approach. The initiative has:

1. Identified and assessed risk to underwater tunnels.
2. Prioritized tunnel risk mitigation based on risk to drive grant funding to the most pressing areas.
3. Developed strategies for funding future technology research and development aimed at producing novel approaches to this challenging problem.
4. Produced and disseminated recommended protective measures transit agencies may implement to enhance security with available resources or through targeted grant funding.

To advance this concerted effort, the Transit Security Grant Program has made projects to protect high risk underwater and underground assets and systems a top funding priority.

Question 5. What are the top 10 rail security vulnerabilities which remain on the Northeast Corridor rail line?

Answer. The top rail security priorities in the Northeast Corridor area, encompassing the multiple means of public transportation in operation, consist of the following:

- Obtain concurrence in the Boston, New York/New Jersey, Philadelphia, and Washington, DC, regions on security priorities for funding under the Transit Security Grant Program.
- Hardening and security enhancement for passenger rail tunnels.
- Integration of security into design and construction in all passenger rail and mass transit capital improvement projects.
- Regional coordination of Federal, State, and local authorities and passenger rail and mass transit agencies to expand employment of the full range of available security resources in random, unpredictable manner for maximum deterrent effect.
- Implement joint security enhancement deployments of TSA Visible Intermodal Prevention and Response teams on passenger rail and mass transit systems throughout the Northeast Corridor.
- Coordination of security and emergency response plan and activities between Amtrak and mass transit and passenger rail providers.
- Expanded security training for front-line employees, consistent with the training program disseminated under the Transit Security Grant Program.
- Completion Baseline Assessment for Security Enhancement program reviews of the major passenger rail and mass transit systems in the Northeast Corridor.
- Advance risk-based deployment of TSA-certified explosives detection canine teams.

- Assess power grid infrastructure and work with affected passenger rail systems to ensure security enhancements to minimize threat of intentional acts to cut power and shut down operations.

Question 6. Will the Administration request enough security funding for Amtrak in the FY 2008 budget?

Answer. The Transportation Security Administration (TSA) supports the President's Fiscal Year (FY) 2008 budget request. The Administration request for Amtrak funding is not under TSA's purview but that of the Department of Transportation.

However, the Department of Homeland Security (DHS) leverages targeted security grants to close the gaps at high risk properties. Through the Transportation Security Grant Program (TSGP), TSA is driving improvement in the six security fundamental areas, including training for key personnel, drills and exercises and public awareness and preparedness. DHS has provided more than \$573 million to date to 60 of the country's rail mass transit, ferry, and intra-city bus systems in 25 states and the District of Columbia. Through the Intercity and Passenger Rail Security System, Amtrak is being provided \$8.3 million in FY 2007 awards for security enhancements to intercity passenger rail security initiatives and coordination efforts with local and regional transit systems. Prior to this grant cycle, Amtrak has been awarded \$13.6 million through this program.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
HON. EDMUND S. "KIP" HAWLEY

Question 1. Last year, Congress passed the Port Security Improvement Act of 2006 that requires the Secretary of Transportation, in conjunction with the Secretary of Homeland Security to issue regulations within 18 months to: (1) verify the legal status of licensed commercial drivers in the United States, (2) implement commercial driver's license and anti-fraud program, and (3) for the Secretary of Homeland Security to draft guidelines to improve compliance with Federal immigration and customs laws applicable to foreign-based commercial motor vehicles and their operators.

What is the status of these regulations and guidelines?

Have you given any thought as to how to accomplish these regulations and guidelines to reduce CDL fraud, verify the legal status of current CDL holders, and improve compliance with immigration and customs laws for foreign truckers?

Answer. The Transportation Security Administration (TSA) recognizes that the primary statutory oversight of commercial drivers lies with the U.S. Department of Transportation and, as such, we defer to the Secretary of Transportation to address the primary issues of this question. TSA and the Department of Homeland Security, however, are actively involved in assisting our Federal colleagues with these tasks in a number of ways. First, TSA issued a rule early in 2003 to satisfy Section 1012 of the USA PATRIOT Act, which has vetted more than 2.5 million commercial drivers who are authorized to carry hazardous materials. TSA is exploring ways to subject the remaining 10 million commercial driver's license (CDL) records to a name-based vetting process by TSA that is intended to identify those who might be on security watch lists or in the country unlawfully. In addition, the Department of Homeland Security has issued a notice of proposed rulemaking to initiate implementation of the "Real ID Act" passed by Congress in 2005 addressing security recommendations of the 9/11 Commission. The rule, once final, will lead to identity verification of drivers in the United States in those States that implement the "Real ID" guidelines and can significantly cut down on license fraud. Since every CDL issued in the Nation is an enhancement of the State's base license, CDL security will be enhanced as well.

Question 2. TSA has repeatedly testified that it uses a risk-based methodology for allocating resources. Yet, TSA has not completed a comprehensive risk assessment of the Nation's passenger rail system. Why has this assessment not been completed to date, and when can we expect it to be completed?

Answer. The Transportation Security Administration (TSA) has looked across all modes of transportation and set risk-based priorities. These priorities are used to focus TSA's attention and resources on the most critical issues. TSA has conducted or participated in various risk analyses that compare risks across different transportation modes, including most recently the DHS Strategic Homeland Infrastructure Risk Assessment (SHIRA). Surface transportation, transit, and rail are currently high priorities for TSA, and TSA has been working continuously to update and expand its assessments of threats and vulnerabilities in the surface transportation sector. TSA uses these assessments in conjunction with our security partners in gov-

ernment and industry to mitigate risk by operationalizing intelligence and addressing vulnerabilities.

Headquarters Analysis

TSA's layered approach to security seeks to identify and deter threats well before they reach the Nation's airports, railways, highways, mass transit, ports and pipelines. Transportation-specific intelligence is critical to TSA's overall risk-based security strategy, and its products provide a threat framework to prioritize security resources and operationalize intelligence. Two of TSA's operational programs have field units—the Office of Security Operations, which is responsible for both aviation Transportation Security Officers (TSO) screening and surface inspector operations, and the Office of Law Enforcement, which is responsible for the Federal Air Marshal Service (FAMS). These elements incorporate intelligence into their operations and plans on a daily basis, acting or deploying on the basis of the latest information.

TSA also coordinates closely and shares information with other Department of Homeland Security (DHS) components, the intelligence and law enforcement communities, other government departments and agencies, such as the Department of Transportation (DOT), and the transportation industry. These security partners provide intelligence and, especially in industry, are often well-positioned to operationalize transportation-specific intelligence by adjusting their business or security operations.

TSA's Office of Intelligence has produced classified and unclassified annual threat assessments for each transportation mode and the cargo/supply chain sector since 2004. These reports are disseminated throughout TSA, DHS, and private industry. Other Office of Intelligence products include:

- Transportation Intelligence Gazette
- Special Threat Assessments
- Weekly Field Intelligence Report
- Suspicious Incidents Report
- Intelligence Notes
- Transportation Situational Awareness Notes

TSA is also conducting specific analyses related to underwater mass transit tunnels. In October 2006, an Underwater Tunnel Working Group was established consisting of members from various DHS and DOT entities. This interagency team has taken significant steps to identify vulnerabilities of underwater tunnels and implemented aggressive mitigation strategies to protect high-risk and high-consequence tunnel infrastructure in both the short and long term.

Field Assessments

At the field level, TSA and its Federal partners at DHS and the Federal Transit Administration (FTA) have conducted numerous assessments in the rail and mass transit modes, described below:

- In the aftermath of the 9/11 attacks, FTA completed vulnerability assessments of 37 of the top 50 transit agencies in the country, as measured by passenger volume. The assessments provided information that enabled transit agencies to undertake security enhancement activities with Federal grants and other funding sources. Additionally, the assessment approach and the results informed TSA's security programs, including development of the Surface Transportation Security Inspection Program and the Baseline Assessment for Security Enhancement (BASE) program, discussed in more detail below.
- DHS Office of Grants and Training required assessments for all grant recipients under the Transit Security Grant Program (TSGP), covering more than 60 of the largest transit agencies in the Nation.
- TSA has completed over 2,600 criticality assessments for systems across the Nation, including 848 for rail systems and 1,778 for mass transit systems.
- 50 Site Assistance Visits have been completed across the Nation's mass transit, bus, tunnel, and terminal systems.
- 132 Buffer Zone Protection Plans have also been completed.
- Through the Office of Grants and Training, the Department has provided technical support to over 25 major transit systems, as well as Amtrak, to assist these agencies in developing risk management strategies to guide the expenditure of scarce security dollars.

TIH Rail Assessments

TSA conducts vulnerability assessments of High Threat Urban Area (HTUA) rail corridors where toxic inhalation hazard (TIH) shipments are transported. Over the last year, detailed region-wide rail corridor assessments were completed in Houston, Buffalo, and northern New Jersey, and a fourth assessment is in the early stages of completion for the Los Angeles area. The HTUA corridor assessments provide site-specific mitigation strategies and lessons learned as well as tactics that can be modified for use at the corporate or national level. HTUA corridor assessments supported the development of the Recommended Security Action Items (SAI) issued by DHS and DOT on June 23, 2006. These performance-based SAIs were developed to foster an enhanced security posture in the freight rail mode in general and specifically targeted the transport of TIH materials. These practices have been agreed to in binding commitments by the Nation's railways, and form the basis for pending regulation.

Surface Transportation Security Inspectors (STSI)*BASE Reviews*

TSA has deployed 100 inspectors, assigned to 19 field offices across the country, to provide support to our Nation's largest mass transit systems. Within the last year, the STSI program has conducted 26 BASE reviews as part of a program to conduct security reviews of the 50 largest transit systems nationwide. These officials perform frequent inspections of key facilities including stations and terminals for suspicious or unattended items, among other potential threats. The BASE process reviews security procedures put in place by a transit (rail and bus) system to assist in evaluating the performance of its security system.

TSA and FTA have coordinated to offer STSI support to the conduct of required security audits and reviews by State Safety Oversight Agencies under title 49, Code of Federal Regulations, part 659. Through this initiative, which commenced in August 2006, STSIs have thus far assisted the state oversight agencies in audits conducted in the BART system (San Francisco-Oakland), New Jersey Transit (Newark subway) and the Port Authority Transit Corporation of Pennsylvania and New Jersey. TSA devoted a full day to discussing further development of this joint effort at the annual conference of State Safety Oversight Agencies sponsored by FTA in September 2006. Coordinating assessment activity to integrate BASE reviews with State Safety Oversight audits prevents "audit fatigue" among affected transit agencies.

Additionally, inspectors review design plans for systems under construction. STSIs conducted such an assessment on the Phoenix rail transit system to assess the adequacy of its security design and recommend improvements that can be accomplished during the final stages of construction.

Security Action Items (SAI)—Non-Regulatory Inspections

To gain an understanding of the degree of implementation across the Nation, railroad carriers of TIH materials, DHS and DOT agreed to conduct SAI Implementation Surveys (SAIS) of freight rail operations. These surveys are conducted by STSIs. The surveys are not compliance inspections, but rather assessments to determine the depth and degree of employee security awareness and security action item implementation. The results of the SAI Surveys will be reviewed and the data used to guide future policy decisions regarding the security of hazardous material rail shipments. Since October 2006, STSIs have conducted 165 field site visits of freight railroad yards and facilities and interviewed 2,600 front-line railroad workers.

Security Analysis and Action Programs (SAAP)—Risk Assessments

STSIs conduct Security Analysis and recommend an Action Program. SAAPs are full risk assessments of transit and rail systems. They are not compliance inspections. An SAAP assessment rigorously analyzes the likelihood and consequence of the threat stream matrix for the rail environment and analyzes the effectiveness of countermeasures to manage risk effectively. SAAPs leverage the DHS Vulnerability Identification Self Assessment Tool (VISAT).

The STSI program has completed full SAAP assessments on the following rail systems:

- Virginia Railway Express
- Alaska Railroad
- Tri-Met (Portland, Oregon)

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
HON. JOSEPH H. BOARDMAN

Question 1. Your agency and the Transportation Security Administration (TSA) completed an annex to the existing Department of Homeland Security/Department of Transportation Memorandum of Understanding in September, 2006. Can you tell us how this agreement has changed the relationship between your two agencies?

Answer. FRA and TSA have always had an excellent, cooperative working relationship. The annex on rail security has simply codified and enhanced that relationship. Prior to executing the rail security annex with TSA, the two agencies have coordinated on a number of projects. Since 2004, FRA has provided technical support and expertise to TSA for its ongoing security assessments of rail transportation corridors in High Threat Urban Areas. In 2006, FRA, TSA and PHMSA together drafted and issued to the rail industry a set of security best practices, known as Security Action Items, for the transportation of certain hazardous materials. FRA, TSA and PHMSA also coordinated closely on the two recently issued notices of proposed rulemaking (NPRM) on rail security, circulating drafts of the proposed rules among the three agencies. FRA has added TSA as a member of FRA's Railroad Safety Advisory Committee, the group that assists FRA in developing its safety regulations, in order to ensure that FRA's regulations advance both rail safety and security. From the time that DHS was created, FRA and TSA realized that close coordination was essential due to the great overlap between safety and security, and the two agencies have worked closely together since then.

Question 2. Are FRA safety inspectors and TSA surface security inspectors undertaking rail inspections together as the Annex contemplates?

Answer. FRA and TSA regularly consult on rail security matters and continue to leverage the skills and resources of each agency as needed. For example, FRA inspectors provide technical expertise and support to TSA during vulnerability assessments of rail transportation corridors in High Threat Urban Areas. The two agencies, in consultation with the rail industry, have also collaborated to issue a list of recommended Security Action Items for the rail transportation of toxic inhalation hazard materials. FRA and TSA are currently working together to assess the level of implementation of the Security Action Items across the industry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
HON. JOSEPH H. BOARDMAN

Question 1. The recent Administration proposal to preempt states, localities and towns from protecting themselves from the risk of hazardous materials shipments would require rail carriers to evaluate the current routes they use, and only "the next most commercially practical" routes. Why limit this analysis to only one contingency?

Answer. On December 21, 2006, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (NPRM) proposing to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. PHMSA and FRA jointly drafted the NPRM, and coordinated closely with TSA in its development. The purpose of the proposal is to help minimize transportation system risk and societal risk. The proposal would require rail carriers to identify and collect data on all of the routes the carrier uses to transport certain high-risk hazardous materials. Specifically, each rail carrier would identify the rail line segments over which these commodities are transported. As the carrier deems appropriate, line segments could be aggregated into logical groupings, such as between major interchange points. The rail carrier selected line segment(s) are considered the route used for rail routing analysis. Within each route, the commodity data must identify the route location and total number of shipments transported. The rail carrier must then assess the safety and security risks associated with those routes. Rail carriers would also be required to identify and analyze the next most practicable alternative route, if any is available, over which they have authority to operate, for each of the primary routes identified.

Unlike truck routing, with its web of interstate highways, toll roads, bypasses, and two-lane rural roads crisscrossing the country, within the rail system there are only a limited number of alternatives. The NPRM proposes to require rail carriers to analyze only the next most commercially practicable route because commercial and operating factors limit the number of routes available to a rail carrier. Even

the largest rail carriers will have, at most, two or three possible routes between any two given points. As used in this proposal, "commercially practicable" means that the route may be utilized by the railroad within the limits of the railroad's particular operating constraints and, further, that the route is economically viable given the economics of the commodity, route, and customer relationship. The question of commercial practicability must be reasonably evaluated by each rail carrier as a part of its analysis based on the specific circumstances of the route and proposed traffic. The NPRM also contains provisions requiring DOT access to data, route analysis, and route selection. This will provide DOT with basic oversight of, and insight into, route analysis performed by carriers. If the chosen route is found not to be the safest and most secure, commercially practical route, FRA may require use of an alternative route.

Question 2. As the Secretary's representative on the Amtrak Board of Directors, will you ensure that the Administration requests sufficient funding for Amtrak's security needs in the FY 2008 budget?

Answer. The FY 2008 budget request for Amtrak includes \$800 million in direct subsidies and \$100 million to fund a program of matching grants to the States to undertake capital investment projects for passenger rail services that States believe important. This direct subsidy amount includes \$300 million for Amtrak's operating costs and \$500 million for Amtrak's capital investments. This level of support is appropriate in providing Amtrak with the incentive to reduce costs, rationalize services and pursue innovations to make its services more efficient and effective. By making the hard choices necessary to reform its operations, Amtrak will be able to fund essential rail passenger service needs including the railroad's security needs.

Question 3. Does the US DOT intend to fund Amtrak's security needs from the railroad's operating grant?

Answer. Amtrak receives a grant for security enhancements from the Department of Homeland Security under the Infrastructure Protection Program grants. Amtrak will need to fund its highest-priority security needs from the resources available to the corporation, including the operating and capital grants from the Federal Government, revenues and other funding available to it.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
HON. JOHN H. HILL

Question 1. Your agency has yet to sign a security annex with the TSA covering your respective roles for truck security. Are you working on such an annex now? If so, when will it be completed?

Answer. No. Currently, there is no effort ongoing to develop such annex. Based on the Department-level Memorandum of Understanding (MOU), FMCSA and the Transportation Security Administration (TSA) continue to have a clear understanding of the security-related roles and responsibilities of each agency. This has been proven with the coordination of several security-related initiatives that have been developed over the last several years.

Question 2. Is FMCSA involved with TSA's truck tracking pilot project to test the feasibility of a centralized truck tracking center and the Missouri pilot program to gather information on companies' ability to protect surface transportation assets? Can you give us a progress report on these pilot programs and describe your agency's involvement?

Answer. FMCSA is involved in TSA's truck tracking pilot by providing subject matter expertise in the areas of examining existing and emerging technologies. With respect to the Missouri pilot, FMCSA coordinated with TSA's Highway Motor Carrier Programs office to facilitate the initiation of TSA's Corporate Security Reviews (CSRs). The specific progress on these pilot programs should be obtained from TSA's Highway Motor Carrier Programs.

Question 3. In your testimony, you state that FMCSA has assessed over 400 civil penalties for failure to comply with the hazardous materials security regulations. Can you tell us what type of non-compliance you have found and what more needs to be done to ensure motor carrier compliance with these important regulations?

Answer. Carriers not in compliance with the hazardous materials security regulations generally have security plans in place but the plans are missing one or more of the components specified in the regulations (personnel security, unauthorized access, or en route security). Others fail to follow the actions in their security plan. Smaller carriers found to be in non-compliance are more likely than larger carriers to have no security plans in place. FMCSA has discovered security training as an area that requires more attention by motor carriers to reduce non-compliance. Civil

penalties have been assessed for lack of security training as well as deficiencies in security plans. FMCSA minimizes non-compliance by providing recommendations and outreach materials.

Question 4. Has adding security contract reviews and the other FMCSA security initiatives to your agency's list of responsibilities taken away from your resources for truck safety? Do you feel that TSA needs to take over some of the motor carrier security work, or perhaps reimburse your agency for the work it is now doing to ensure that your primary safety mission is accomplished?

Answer. Following the tragic events of September 11, 2001, FMCSA shifted resources away from strictly truck safety activities to address security issues, particularly with respect to hazardous materials. FMCSA activities included conducting over 30,000 educational visits with hazardous materials carriers to raise their security awareness, developing security outreach for law enforcement, carriers and drivers, and investigating technologies that had the potential to improve security in the trucking industry. The agency also trained our field investigators on the security plan regulations for hazardous materials carriers and began conducting security compliance visits, called Security Contact Reviews.

As the TSA has increased the scope of its activities with respect to commercial vehicle safety, FMCSA has transitioned to the role of providing TSA with our subject matter expertise regarding the truck and bus industries. While the agency does still devote resources to Security Contact Reviews, this is now done in conjunction with our safety visits, resulting in efficiencies for the agency and the motor carrier industry through fewer on-sight visits.

RESPONSE TO QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
HON. JOHN H. HILL

Question 1. Last year, Congress passed the Port Security Improvement Act of 2006 that requires the Secretary of Transportation, in conjunction with the Secretary of Homeland Security to issue regulations within 18 months to: (1) verify the legal status of licensed commercial drivers in the United States, (2) implement commercial driver's license and anti-fraud program, and (3) for the Secretary of Homeland Security to draft guidelines to improve compliance with Federal immigration and customs laws applicable to foreign-based commercial motor vehicles and their operators. What is the status of these regulations and guidelines?

Answer. FMCSA plans to publish a Notice of Proposed Rulemaking (NPRM) addressing the SAFE Port Act provisions assigned to the agency by August 2007.

Question 1a. Have you given any thought as to how to accomplish these regulations and guidelines to reduce CDL fraud, verify the legal status of current CDL holders, and improve compliance with immigration and customs laws for foreign truckers?

Answer. The Security and Accountability For Every Port (SAFE Port) Act of 2006 requires FMCSA to issue regulations to implement the recommendations in the June 4, 2004, Department of Transportation (DOT) Office of the Inspector General (OIG) memorandum regarding legal status verification for CDL drivers. The Act also requires the agency to issue regulations to implement recommendations in the February 7, 2006, OIG report *Oversight of the Commercial Driver's License Program*. The Act requires the completion of rulemaking within 18 months of the date of enactment.

The June 4, 2004, OIG memorandum entitled "Need to Establish a Legal Presence Requirement for Obtaining a Commercial Driver's License" (Control No. 2004-054), recommended that FMCSA establish a legal presence requirement for obtaining a CDL. The report said that all CDL applicants should demonstrate either citizenship or lawful permanent residence in the U.S. before a State may issue a CDL. The February 7, 2006, "Report on Federal Motor Carrier Safety Administration Oversight of Commercial Driver's License Program" (Report Number MH-2006-037) contains the following three broad recommendations to detect and prevent fraudulent testing and licensing activity in the CDL program:

1. Direct the States to report on the final disposition of all suspect drivers identified by the States. These disposition reports should emphasize but not necessarily be limited to instances where there is specific or direct evidence that the driver participated in a fraudulent activity to obtain the CDL;
2. Determine that State CDL programs are out of compliance, under Federal regulations, if the State fails to impose adequate internal controls to prevent fraud or fails to take or propose necessary corrective action; and

3. Impose sanctions, under Federal regulations, against those States that fail to establish adequate fraud control measures for their CDL programs.

Prior to the enactment of the SAFE Port Act and in response to earlier statutory mandates (TEA-21 and SAFETEA-LU), previous OIG recommendations, and in order to increase uniformity in the CDL program, FMCSA had begun drafting a Notice of Proposed Rulemaking (NPRM) on Commercial Driver's License Testing and Commercial Learner's Permit Standards to address sixteen distinct issues in the CDL program. To effectively address the new SAFE Port Act provisions within the established statutory timetable, FMCSA will incorporate the requirements in this rulemaking.

Question 2. I also understand that FMCSA is considering a "pilot program" to allow some long-haul Mexico-domiciled motor carriers to operate with full access throughout the United States. Under what authority can the Department propose and implement such a pilot program?

Answer. The North American Free Trade Agreement (NAFTA), as implemented by Congress, requires the United States to allow Mexican trucks to operate on our highways. This is the Department's authority for implementing the cross-border commercial motor vehicle transportation pilot program.

Prior to NAFTA's ratification, Congress imposed a moratorium on the issuance of new grants of operating authority to motor carriers domiciled in a contiguous foreign country or owned or controlled by persons of a contiguous foreign country (Section 6, Public Law 97-261). The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. The terms of NAFTA, Annex I, provide that the moratorium on licensing Mexican motor carriers to operate within the United States will be lifted by the President in phases. The President lifted the moratorium in 2002.

Section 350 of the Fiscal Year 2002 DOT Appropriations Act (Public Law 107-87) prohibited the expenditure of appropriated funds for reviewing or processing applications by Mexico-domiciled carriers to operate beyond U.S. municipalities and commercial zones on the U.S.-Mexico border until FMCSA undertook several specified actions. As the requirements of Section 350 have been addressed, FMCSA may process the applications of long-haul Mexico-domiciled carriers pursuant to FMCSA's authority to register motor carriers in 49 U.S.C. § 13902(a).

With the understanding of the Government of Mexico, FMCSA will initially process a limited number of applications to allow the agency to thoroughly and deliberately evaluate agency procedures and oversight plans.

Question 2a. What are the specific features of this pilot program to allow Mexican trucks to conduct long-haul operations in the U.S.?

Answer.

1. A one-year pilot program.
2. Up to 100 Mexican motor carriers will participate.
3. Up to 100 U.S. carriers may also participate in the pilot program.
4. All Mexican participants must have basic safety management controls in place.
5. FMCSA will conduct safety audits and compliance in reviews in Mexico to comply with Section 350 of the 2002 Appropriations Act. All other Section 350 requirements will also be met.
6. Participating Mexican motor carriers, commercial motor vehicles, and drivers will be subject to all Federal Motor Carrier Safety Regulations requirements while operating in the United States.
7. Participation is limited to non-hazardous property motor carriers. No hazardous materials or passenger transportation is authorized under the pilot program.
8. Participating Mexican motor carriers will be monitored throughout the duration of the project.
9. FMCSA will have the ability to revoke or suspend provisional operating authority during the program if Mexican carriers are not operating safely.
10. The Department is working closely with the Government of Mexico on the program.
11. After completion of the program, DOT will evaluate the pilot program and make recommendations to the Secretary on next steps.

Question 2b. Do you see foreign (particularly Mexico) domiciled trucks and truck drivers as a greater security risk than U.S. carriers?

Answer. FMCSA has no information that would indicate Mexican motor carriers or drivers will pose a greater security risk than U.S. motor carriers or drivers. Mexican commercial motor vehicles are more likely than their U.S. counterparts to receive an inspection from FMCSA or State inspectors. In addition, Mexican carriers crossing into the U.S. are required to undergo an examination by U.S. Customs and Border Protection.

Question 2c. If foreign-based trucking companies are allowed to enter U.S. markets, will they be required to pay the same apportioned fuel taxes, registration fees, and other user fees that U.S. trucking companies are required to pay?

Answer. Yes.

Question 2d. Would these foreign carriers be required to register with the International Registration Plan (IRP) and the Internal Fuel Tax Agreement (IFTA) as U.S. carriers do to ensure their payment of state fuel taxes and registration fees?

Answer. Yes. FMCSA has worked with the States and the IRP and IFTA programs to ensure their systems can accommodate Mexican motor carriers.

Question 3. S. 184 requires TSA and DOT to develop a program to encourage the motor carriers transporting hazardous materials to equip their trucks with wireless communications technology that provides continuous communications, vehicle position and location and tracking capabilities, and an emergency broadcast capability. In Arkansas, we have J.B. Hunt Transport Services, one of the leading innovators in the use of information technology in the transportation sector. While I applaud J.B. Hunt for their leadership in this area, nationally there are still many small motor carriers that may not be able to afford this equipment. What are your views on these technologies and how would you envision these technologies working to improve security?

Answer. FMCSA became aware of many technologies that could improve the safety, security, and efficiency of hazardous materials (HM) transportation after September 11, 2001. FMCSA completed an operational test (HM Op Test) that applied these technologies in the highway transportation of HM and documented the costs and benefits of these technologies. The HM Op Test demonstrated that deploying technologies such as wireless communications results in some security benefits for motor carriers. Further we were able to measure safety and efficiency benefits for the motor carriers employing these technologies. The results of the test were transmitted to the Transportation Security Administration in January 2005. Since the HM Op Test, FMCSA has been encouraging the industry to use these technologies.

Question 3a. Do you consider requiring the installation of this wireless communications technology to be necessary?

Answer. While FMCSA has examined these technologies in real-world environment, our test was limited and it is difficult to conclude the necessity to require the installation of the wireless communications. FMCSA believes that TSA's Hazmat Truck Security Pilot Program will yield additional information to guide this decision, but would defer to the Department of Homeland Security to determine if regulatory action is warranted.

Question 3b. How should DOT encourage motor carriers to install this equipment?

Answer. DOT has been encouraging the use of this equipment by presenting the results of our HM Op Test at a wide variety of industry and transportation research-related forums. We believe that calling attention to the efficiency benefits experienced through the use of technologies such as wireless communications will result in wider use of security technology, in addition to safety and security benefits.

Question 3c. How will DOT address the interoperability of their equipment and the motor carriers' equipment?

Answer. DOT will work with DHS to ensure any security technology required is compatible with the safety equipment already installed on commercial motor vehicles.

Question 4. Commercial Drivers License holders are being required to go through multiple security screening programs. Drivers applying for a Hazardous Materials Endorsement (HME) must undergo a Security Threat Assessment. TSA issued a final rule implementing the Transportation Worker Identification Credential (TWIC) for maritime facilities and there is another screening process for truckers transporting air cargo. Each of these security requirements costs money. Do you plan to roll the TWIC program out to the surface transportation sector in the future? If so, how would the program work for the rail and trucking industries?

Question 4a. How does the security screening for HME certification differ from TWIC?

Question 4b. Can Commercial Drivers get one security certification that covers them all for intermodal transportation?

Answer 4–4b. The security screening or background check requirements are a responsibility of the TSA. Therefore, TSA is uniquely qualified to respond to the specific questions and explain the relationship of its security screening requirements.

Question 5. FMCSA's primary mission is to prevent truck accidents and improve truck and bus safety. FMCSA is additionally involved with truck security, undertaking what are known as Security Contract Reviews to assess truck security programs, and other security outreach and training activities. There is some concern that these additional security responsibilities take away from FMCSA's available truck safety resources.

Has adding Security Contract Reviews and the other FMCSA security initiatives to your agency's list of responsibilities taken away from your resources for truck safety? Do you feel that TSA needs to take over some of the motor carrier security work, or perhaps reimburse your agency for the work it is now doing, to ensure that your primary safety mission is accomplished?

Answer. Following the tragic events of September 11, 2001, FMCSA did shift resources away from strictly truck safety activities to address security issues, particularly with respect to hazardous materials. FMCSA activities included conducting over 30,000 educational visits with hazardous materials carriers to raise their security awareness, developing security outreach for law enforcement, carriers and drivers, and investigating technologies that had the potential to improve security in the trucking industry. The agency also trained our field investigators on the security plan regulations for hazardous materials carriers and began conducting security compliance visits, called Security Contact Reviews.

As TSA has increased the scope of its activities with respect to commercial vehicle safety, FMCSA has been transitioning to a role of providing TSA with our subject matter expertise regarding the truck and bus industries. While the agency does still devote resources to Security Contact Reviews, this is now done in conjunction with our safety visits, resulting in efficiencies for the agency and the motor carrier industry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
VADM THOMAS J. BARRETT

Question 1. Admiral Barrett, can you tell us how well carriers are complying with the security plan requirement of your HM–232 rule? Is your agency, or other DOT modal agencies, taking enforcement actions against carriers who do not have plans or whose plans are insufficient?

Answer. Yes. The largest hazardous materials carriers have developed security plans in accordance with the HM–232 requirements. The rate of compliance among smaller carriers is improving as companies understand and gain experience with the regulations. The HM–232 regulations establish a general baseline for the development and scope of plans, rather than mandating a prescriptive set of specific security measures, that must be followed by companies that transport hazardous materials (hazmat) or offer hazmat for transportation in commerce. Each security plan must reflect an individualized risk assessment and, at a minimum, address personnel security, unauthorized access, and en route security risks. These rules were promulgated in 2003 and are enforced by PHMSA, the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Railroad Administration (FRA). All three agencies address security plans in their inspections and take enforcement actions against hazmat carriers and offerors that have not developed plans or whose plans are insufficient. Most inspection and enforcement activity involving rail and motor carriers is conducted by FRA and FMCSA, respectively.

Question 2. Your agency recently announced a proposed rule that would reduce the list of hazardous material of which carriers are required to develop security plans. If such a change was made, would this also impact the truck driver's hazardous materials endorsement or other hazardous materials safety processes required by the Department?

Answer. No. We are not considering reducing the list of materials that are subject to the Department's general safety rules for hazardous materials transportation. Specifically, we are not considering relaxing the requirements (established under regulations promulgated and enforced by FMCSA) that truck drivers who transport placarded quantities of hazardous materials obtain a hazmat endorsement (HME) on their commercial driver's licenses. The HME requirement ensures that these individuals have the knowledge and training necessary to protect themselves, the public, and the environment from exposure to hazardous materials during transportation and in emergencies.

Because of its scientific basis and wide acceptance in the transportation industry, the list of materials triggering the HME requirement provided a logical starting point for regulations intended to protect against transportation security risks posed by the intentional release of hazardous substances. The same triggering list was incorporated into the security plan rules adopted in 2003 and, by operation of law, as implemented in regulations issued by the Transportation Security Administration (TSA), is linked to the security background check requirement for truck drivers.

As we have gained more experience with these new requirements, we believe it is time to consider narrowing the list of materials and quantities that trigger additional security-specific requirements, without changing the scope of our basic safety rules. Last fall, PHMSA issued an Advanced Notice of Proposed Rulemaking, in response to two industry petitions for rulemaking suggesting that the regulations should create a distinction between hazardous materials that “present a significant security risk while in transportation and the vast majority of hazardous materials that pose no significant security risk in transportation.” If adopted, such a change would apply only to the security plan requirements in 49 CFR Part 172, Subpart I. It would not change the HME regulations, and it would not affect other hazardous materials safety requirements in the HMR.

PHMSA also has been working with FMCSA and TSA to evaluate the list of materials for which a driver security background check is required under existing law and regulations. As with the security plan requirement, we understand concerns that the triggering list may be broader than necessary to address security-specific risks. Because we are not considering any change in the scope of the HME requirement (which is incorporated by reference into the existing statutory mandate), any proposal to narrow the list of materials that require a background check would require legislative action.

Question 3. Have you discussed the possible implications of further stratifying hazardous materials regulations based on security risk with the other DOT modal agencies?

Answer. Yes. On transportation security issues we work very closely with the other modal agencies that enforce the HMR—FRA, FMCSA, and the Federal Aviation Administration (FAA)—in addition to TSA. Given their enforcement responsibilities and modal expertise, FRA, FMCSA, and FAA have an important voice in any decision about the scope of the HMR, including the current proposals to more narrowly target security-specific risks.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
VADM THOMAS J. BARRETT

Question 1. How well are motor carriers complying with the security plan requirement of your hazardous materials rule HM-232?

Answer. Generally speaking, we believe the rate of compliance is good and improving. Overall, we find that most motor carriers, including the largest trucking companies, have plans in place that comply with the HM-232 rules. Where we find violations, these increasingly involve plans that do not contain all of the elements required under the rules, as opposed to situations in which the carrier has no plan in place.

Question 2. What enforcement action is being taken involving this requirement? What actions have been taken against carriers who do not have plans or whose plans are insufficient?

Answer. Where appropriate, PHMSA and FMCSA assess civil penalties against carriers and offerors that have not complied with the HM-232 rules, whether by failing to adopt a plan altogether or by failing to address mandatory subjects in their security plans. Both agencies target civil enforcement based on risk and use inspections and other means to assist motor carriers in developing appropriate security plans. For example, during 2006 PHMSA cited 244 security violations in approximately 1,750 inspections for all activity types (shipper's, restesters, manufacturers, carriers and rebuilders); FMCSA cited 1,051 security violations in approximately 6,000 inspections of motor carriers and shippers.

Question 3. Your agency's recent proposal to preempt states, localities and towns from protecting themselves from the risk of hazardous materials shipments would require rail carriers to evaluate the current routes they use, and only “the next most commercially practical” routes. Why limit this analysis to only one contingency?

Answer. In this rulemaking (Docket HM-232E), we have proposed a requirement that we believe will reduce the overall risks posed by the movement of certain hazardous materials by rail, without imposing an undue burden on transportation. Our

proposed rule would require rail carriers that move certain high hazard materials to conduct a thorough analysis of the comparative risks of particular commodity movements via the carrier's selected routes and, in each case, the next most practicable alternative route over which it has authority to operate. This limitation on the required route analysis reflects a proposed balancing of interests and the inherent limitations on routing alternatives in the railroad industry. Unlike truck routing, with its web of interstate highways, toll roads, bypasses, and two-lane rural roads crisscrossing the country, within the rail system there are only a limited number of route alternatives. In addition to requiring carriers to identify and analyze routing alternatives, the NPRM also proposes to require rail carriers to grant DOT access to data, route analyses, and route selection. This would provide DOT with basic oversight of and insight into route analyses performed by carriers. If a chosen route is found not to be the safest and most secure commercially practicable route, DOT would be authorized to require use of an alternative route. As with all aspects of the proposal outlined in the NPRM, we will consider all comments in evaluating the adequacy of our proposal to limit the required route analysis to one comparative route.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
VADM THOMAS J. BARRETT

Question 1. PHMSA is responsible for the safe and secure transportation of hazardous materials by all modes of transportation. Under the Hazardous Materials Emergency Preparedness Grant Program, PHMSA issues grants to first responders to become better prepared to deal with hazardous material accidents. How much money does PHMSA grant for first responder preparedness?

Answer. PHMSA is authorized under existing law to distribute approximately \$27 million in Hazardous Materials Emergency Preparedness (HMEP) grants in FY 2007, and the Administration's budget proposed full funding of this program (\$28.4, including administrative expenses). Under the FY 2007 continuing resolution, however, PHMSA is required to hold spending for this program at the level authorized and appropriated for FY 2006 (\$14.3 million).

The HMEP grants program provides Federal financial and technical assistance to states and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to develop, improve, and implement emergency plans; to train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; to determine flow patterns of hazardous materials within a state and between states; and to determine the need within a state for regional hazardous materials emergency response teams.

Since 1993, PHMSA has awarded all states and territories and 45 Native American tribes planning and training grants totaling \$125 million. These grants helped to: (1) train 1,843,000 hazardous materials responders; (2) conduct 7,545 commodity flow studies; (3) write or update more than 41,344 emergency plans; (4) conduct 9,452 emergency response exercises; and (5) assist 18,907 local emergency planning committees. HMEP grants are funded through registration fees paid by hazmat carriers and offerors.

Congress reauthorized the HMEP grant program in 2005 through the "Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005" (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), P.L. 109-59, 119 Stat. 1144, August 10, 2005). Recognizing the need for increased attention and funding for the HMEP program, the Act increased the authorization level for this program from \$14.3 million to approximately \$28.4 million, beginning in FY 2007.

Question 1a. Is this a critical need that needs additional attention or is the right amount of funding available?

Answer. HMEP grants serve a critical need in preparing communities and first responders for emergencies involving hazardous materials transportation. PHMSA believes the funding level authorized by the Congress in 2005—which would have doubled the size of the program to \$28.4 million this year—was warranted. The Administration proposed to fund the program at its full authorized level this year; but the continuing resolution limits our spending to the FY 2006 program level (\$14.3 million).

The HMEP training grants are essential for providing adequate training of persons throughout the Nation who are responsible for responding to emergencies involving the release of hazardous materials. An estimated 800,000 shipments of haz-

ardous materials make their way through the national transportation system each day. It is impossible to predict when and where a hazardous materials incident may occur or what the nature of the incident may be. This potential threat requires state and local agencies to develop emergency plans and train emergency responders on the broadest possible scale.

There are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services providers. Due to the high turnover rates of emergency response personnel, there is a continuing need to train a considerable number of recently recruited responders at the most basic level. Volunteer fire fighters, the backbone of the Nation's rural hazmat response capability, typically have less than a 3-year service-turnover rate, making the need for hazmat response training among this group even greater. In addition, training at more advanced levels is essential to ensure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
CATHLEEN A. BERRICK

Question 1. Director Berrick, do you believe the Federal Government is providing sufficient resources, personnel, and regulations to adequately protect our Nation's surface transportation and rail systems?

Answer. As we have reported, the Department of Transportation (DOT), Department of Homeland Security (DHS), and Transportation Security Administration (TSA) have all taken actions to strengthen the security of the Nation's passenger rail system and other surface transportation modes, including providing Federal grant funding to industry stakeholders to strengthen security. However, there are two critical steps that DHS and TSA need to complete before they or others can make a sound assessment of whether resources devoted to surface and rail transportation systems are sufficient—or more appropriately, are allocated to rail and surface transportation modes in a risk-based manner, recognizing that there is limited Federal funding to be allocated across many sectors and not any one sector or area can be made completely secure. First, until TSA completes a comprehensive risk assessment of the U.S. passenger rail system and other surface modes of transportation, it will be limited in its ability to determine whether the resources, personnel, and security efforts it directs toward these systems are appropriate given the relative risks. Second, until TSA issues the Transportation Sector Specific Plan (TSSP), as required by DHS' National Infrastructures Protection Plan and Executive Order 13416, and issues supporting plans for each mode of transportation based of these risk assessments, the agency lacks a clearly communicated strategy with goals and objectives for securing the overall transportation sector, including passenger rail and other surface modes. Such a strategy is important so that transportation operators know what the Federal Government's role and strategy is with respect to security, as well as the role and actions expected of them. A strategy is also important so that Congress and others can review this strategy, raise any questions they may have with it, and ultimately hold DHS and TSA accountable for its implementation.

Question 2. Director Berrick, do you have any ideas that you could share with the Committee regarding why it has taken so long for the DHS and the TSA to develop their "transportation sector-specific plans"? Has this delay significantly held back these agencies' ability to prioritize and address rail and surface transportation security vulnerabilities and risks?

Answer. We have not assessed the reasons for, or impact of, TSA's delay in issuing the TSSP, so we cannot comment on whether the delay has significantly affected TSA and other Federal efforts to prioritize and address rail and surface transportation security needs. According to TSA, the work that is needed to support the development of the plan has been conducted, and the plan is currently undergoing review before it can be issued. TSA also stated that it is moving forward with security efforts for surface transportation systems despite the lack of an issued plan. We will assess potential impacts that the lack of the TSSP has had on efforts to secure surface transportation systems during our ongoing reviews of commercial vehicle and freight rail security, as well as our planned follow-on review of passenger rail security. Although we haven't assessed the reasons for or impact of TSA's delay in issuing the TSSP, as mentioned in response to *Question 1* above, such a strategy is important so that transportation operators know what the Federal Government's role and strategy—or "end-state"—is with respect to security, as well as the role and actions expected of them. A strategy is also important so that Congress and others

can review this strategy, raise any questions they may have with it, and ultimately hold DHS and TSA accountable for its implementation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
RICHARD L. CAÑAS

Question 1. As the head of our State's homeland security efforts, how would you rate the support and cooperation you receive from the Transportation Security Administration and the Department of Homeland Security?

Answer. As I know firsthand from my experience in N.J., establishing a new Department does not come without growing pains, and I believe this is the case with both DHS and the TSA. Our experience has been mixed. We've had some very expeditious and helpful responses for technical assistance and also had helpful answers from the Office of Grants and Training to help unravel the very complex grant process. On the other hand, sometimes DHS and TSA don't understand what state and local needs are. For example, at one point early on, DHS did not include NJ TRANSIT in Philadelphia's mass transit working group, because they were unaware that NJT ran trains and buses into Philadelphia. This had an impact on funding allocations within the region. Thankfully, this has been corrected.

But there has been maturation. For instance, I was very encouraged by the regional approach that the Secretary and Department announced earlier this month regarding the Urban Area Security Initiative (UASI) grant program—in which they treated northern New Jersey and New York City as a contiguous region. Additionally, when we think these agencies may be off-base, we are not shy about making our needs known. And, though they may not always give us the answers we want, they are responsive.

Question 2. Do you believe the Federal Government needs to do more to protect the surface transportation system from potential terrorist attack? If so, what would you specifically recommend?

Answer. The surface transportation system is a large and diverse community and is not all at the same level of risk. You have roadways, bridges, tunnels, trucks, trains (passenger and freight), pipelines, motor coach and school buses.

In New Jersey, for example, we have:

- 6,337 roadways, bridges and tunnels;
- 20,000 independent trucking companies that call N.J. home through the international register;
- 723 members of the New Jersey Motor Truck Association;
- About 1,000 miles of interstate and 400 intrastate high-consequence natural gas pipelines; and
- More than 100 motor coach companies.

We have been working with DHS/TSA in each of these areas.

The key, however, is risk. We strongly support DHS when its attention and funding are based on risk. To his credit, Secretary Chertoff has indicated repeatedly that addressing the highest risks is his priority.

One of the things I would recommend to improve transportation security is to ensure that the private sector remains engaged and becomes a real partner—not from a regulatory standpoint—but from the ability to leverage homeland security investments. The private sector holds most of the critical infrastructure and they are making investments. But DHS must do a better job of including the private sector and leveraging their investments to maximize all of our security efforts.