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CONTROLLING RESTRICTED AIRSPACE: AN EXAMINATION OF THE MANAGEMENT AND COORDINATION OF OUR NATIONAL AIR DEFENSE

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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CONTROLLING RESTRICTED AIRSPACE: AN EXAMINATION OF THE MANAGEMENT AND COORDINATION OF OUR NATIONAL AIR DEFENSE

THURSDAY, JULY 21, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in room 2154 Rayburn House Office Building, Hon. Christopher Shays (acting chairman of the committee) presiding.

Present: Representatives Davis of Virginia, Shays, Mica, Duncan, Miller, Issa, Porter, Foxx, Waxman, Cummings, Kucinich, Clay, Watson, Van Hollen, Ruppersberger, Higgins, and Norton.

Staff present: Melissa Wojciak, staff director; David Marin, deputy staff director/communications director; Keith Ausbrook, chief counsel; Jennifer Safavian, chief counsel for oversight and investigations; Anne Marie Turner, counsel; Rob White, press secretary; Drew Crockett, deputy director of communications; Grace Washbourne, professional staff member; Teresa Austin, chief clerk; Sarah D'Orsie, deputy clerk, Leneal Scott, computer systems manager; Andrew Su, minority professional staff member; Earley Green, minority chief clerk; Jean Gosa, minority assistant clerk.

Mr. SHAYS. Good morning and welcome to the Committee on Government Reform's hearing on the United States' restricted airspace and how the Federal Government coordinates the protection of that space.

While we are all aware that restricted airspace exists across the national capital region, restricted airspace is also scattered throughout the United States. It includes such obvious places as Camp David and Crawford, TX to military bases.

There can be temporary flight restrictions put in place during certain sporting events and of course, depending on the President's location. It is incumbent on pilots to be aware of these areas and they learn of them through the FAA Notices to Airmen.

To give you a sense of what we are talking about, we have two maps on display. One map shows all the restricted spaces and prohibited areas in the United States, including military bases.

If you look at the coastal areas of the United States, you can see there is a contiguous air defense identification zone [ADIZ] which encompasses the entire U.S. water border. There is also an ADIZ surrounding Alaska and Hawaii. These zones are in place for defense purposes and they establish requirements for incoming inter-

national flights, including providing an established flight plan before entering the ADIZ.

The other map shows the restricted airspace over the national capital region. In total, the D.C. prohibited airspace is approximately 20,000 square miles. The map shows two rings around the region. The inside ring is the flight restricted zone [FRZ]. The FRZ is the 15 miles around Ronald Reagan National Airport, or DCA. Included within the FRZ is prohibited airspace over the White House, the National Mall, the U.S. Capitol, the Naval Observatory and Mount Vernon, VA.

The outside ring is the ADIZ. The D.C. ADIZ is a 30-mile radius around DCA which spans out to Dulles, BWI, and the Andrews Air Force Base. At the top left of the map you can see the bottom of a circle. This is the 3-mile prohibited airspace for Camp David in Thurmont, MD, which would be expanded when the President is at Camp David.

These maps of restricted airspace look daunting. It may seem even more daunting when we take into account the many departments and agencies responsible for watching this airspace. That is why we are here today, to better understand how these entities are working to manage and coordinate their efforts to protect and defend the United States restricted airspace.

One of the best steps taken in this effort was the creation of the National Capital Regional Coordination Center [NCRCC]. Housed in Herndon, VA, the NCRCC is an interagency group that monitors D.C.'s prohibited airspace 24 hours a day, 7 days a week.

The Washington, DC, area is the only area of the country with such a center. The Department of Defense, FAA, the Secret Service, Customs, and Border Protection and the U.S. Capitol Police, along with the TSA, which acts as the executive agency, are represented at NCRCC full-time. During major events or search operations, the Federal Bureau of Investigations, the U.S. Park Police, the Coast Guard and local law enforcement, including D.C. Police, are also NCRCC participants.

Each agency or department at NCRCC is responsible for its own mission and jurisdiction as it relates to airspace security. However, the participants work together in identifying airspace that are violated or may violate prohibited airspace. While the response to each possible aircraft violation is decided by each government entity independently of the others, the information is immediately shared by all participants at the NCRCC. That, at least, is our understanding of how it works.

I know the Government Accountability Office [GAO], has some concerns about how well the coordination and information sharing actually functions. According to NCRCC statistics, updated as of July 17, 2005, there has been 3,495 airspace incursions in the National Capital Region since January 17, 2003. These statistics are on the overhead. Airspace incursion can include a variety of incidents, including as you see on the overheard, FRZ violations, Camp David TFR violations, and penetrations of prohibited airspace; 655 out of the 3,495 incursions resulted in the decision to launch or divert Government assets to intercept an aircraft.

As many of you know, occasionally these airspace violations lead the Capitol Police or the Secret Service to evacuate the Capitol

complex and the White House. While none of us are particularly fond of the evacuations, to say the least, I think it is important to note that only 3 times out of the 3,495 incursions has that happened.

Despite the work of the NCRCC, there are still questions to be asked regarding coordination of the U.S. airspace. Today, GAO is releasing an unclassified version of their report on the interagency management of restricted airspace.

GAO asks some important questions: How is air defense working without a single Government agency taking the lead? How do we adequately determine a threat to the prohibited airspace when agencies and departments have different definitions of what constitutes a threat?

How will DOD, FAA, and DHS continue to work to improve information sharing? I believe these are all valid questions that merit discussion and these agencies will have a chance to respond to GAO's concerns.

In the Washington area we have three commercial airports, countless general aviation airports. We are pleased to welcome general aviation back to Reagan National—all of this aviation combined with the flight restriction we see on the maps clearly show that protecting America's airspace, particularly around the Nation's Capital, is a challenge.

As the committee responsible for oversight of the Federal Government and the District of Columbia, it is our obligation to ensure these agencies are working seamlessly together. A fast, coordinated response is absolutely vital if we are ever again faced with an aircraft with hostile intent.

Thank you for your patience in listening to the statement. This is the chairman's statement.

[The prepared statement of Chairman Tom Davis follows:]

Opening Statement of Chairman Tom Davis
Government Reform Committee Hearing
"Controlling Restricted Air Space: An Examination of the Management and Coordination of Our National Air Defense"
July 21, 2005

Good morning and welcome to the Committee on Government Reform's hearing on the United States' restricted airspace and how the federal government coordinates the protection of that space.

While we are all aware that restricted airspace exists across the National Capital region, restricted airspace is also scattered throughout the United States. It includes such obvious places as Camp David, and Crawford, Texas, to military bases. And there can be temporary flight restrictions put in place during certain sporting events and of course, depending on the President's location. It is incumbent on pilots to be aware of these areas, and they learn of them through FAA Notices to Airmen.

To give you a sense of what we are talking about, we have two maps on display. One map shows all the restricted spaces and prohibited areas in the United States, including military bases. If you look at the coastal areas of the U.S., you can see there is a contiguous U.S. Air Defense Identification Zone, commonly known as ADIZ, which encompasses the entire U.S. water border. There is also an ADIZ surrounding Alaska and Hawaii. These zones are in place for defensive purposes, and they establish requirements for incoming international flights, including providing an established flight plan before entering the ADIZ.

The other map shows the restricted airspace over the National Capital Region. In total, the D.C. prohibited air space is approximately 20,000 square miles. The map shows two rings around the region. The inside ring is the Flight Restricted Zone, commonly known as the FRZ. The FRZ is the 15 miles around Ronald Reagan National Airport (DCA). Included within the FRZ is prohibited airspace over the White House, the National Mall, the U.S. Capitol, the Naval Observatory, and Mount Vernon, Virginia. The outside ring is the ADIZ. The D.C. ADIZ is a 30-mile radius around DCA, which spans out to Dulles, BWI and Andrews Air Force Base. At the top left of the map, you can see the bottom of a circle. This is the 3-mile prohibited airspace for Camp David in Thurmont, Maryland, which would be expanded when the President is at Camp David.

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interagency group that monitors D.C.'s prohibited airspace 24 hours a day, seven days a week. The Washington, D.C. area is the only area of the country with such a center. The Department of Defense (DOD), FAA, the Secret Service, Customs and Border Protection, and the U.S. Capitol Police, along with TSA, which acts as the Executive Agency, are represented at NCRCC full time. During major events or surge operations, the Federal Bureau of Investigations, United States Park Police, the Coast Guard, and local law enforcement, including D.C. Police are also NCRCC participants.

Each agency or department at NCRCC is responsible for its own mission and jurisdiction as it relates to airspace security. However, the participants work together in identifying aircraft that have violated or may violate prohibited airspace. While the response to each possible aircraft violation is decided by each government entity independently of the others, the information is immediately shared by all participants at the NCRCC. That, at least, is our understanding of how it works – I know the Government Accountability Office (GAO) has some concerns about how well the coordination and information sharing actually functions.

According to NCRCC statistics, updated as of July 17, 2005, there have been 3,495 airspace incursions in the National Capital Region since January 27, 2003. These statistics are on the overhead. An airspace incursion can include a variety of incidents, including as you see on the overhead, FRZ violations, Camp David TFR violations, and penetrations of prohibited airspace. 655 out of the 3,495 incursions resulted in the decision to launch or divert government assets to intercept an aircraft.

As many of you know, occasionally, these airspace violations lead Capitol Police or the Secret Service to evacuate the Capitol complex and the White House. While none of us is particularly fond of the evacuations, I think it is important to note that only 3 times out of 3,495 incursions has that happened.

Despite the work of NCRCC, there are still questions to be asked regarding the government's coordination of the United States' airspace. Today, GAO is releasing an unclassified version of their report on the interagency management of restricted airspace. GAO asks some important questions: How is air defense working without a single government agency taking the lead? How do we adequately determine a threat to the prohibited airspace when agencies and departments have different definitions of what constitutes a threat? How will DOD, FAA, and DHS continue to work to improve information sharing? I believe these are all valid questions that merit discussion, and these agencies will have a chance to respond to GAO's concerns.

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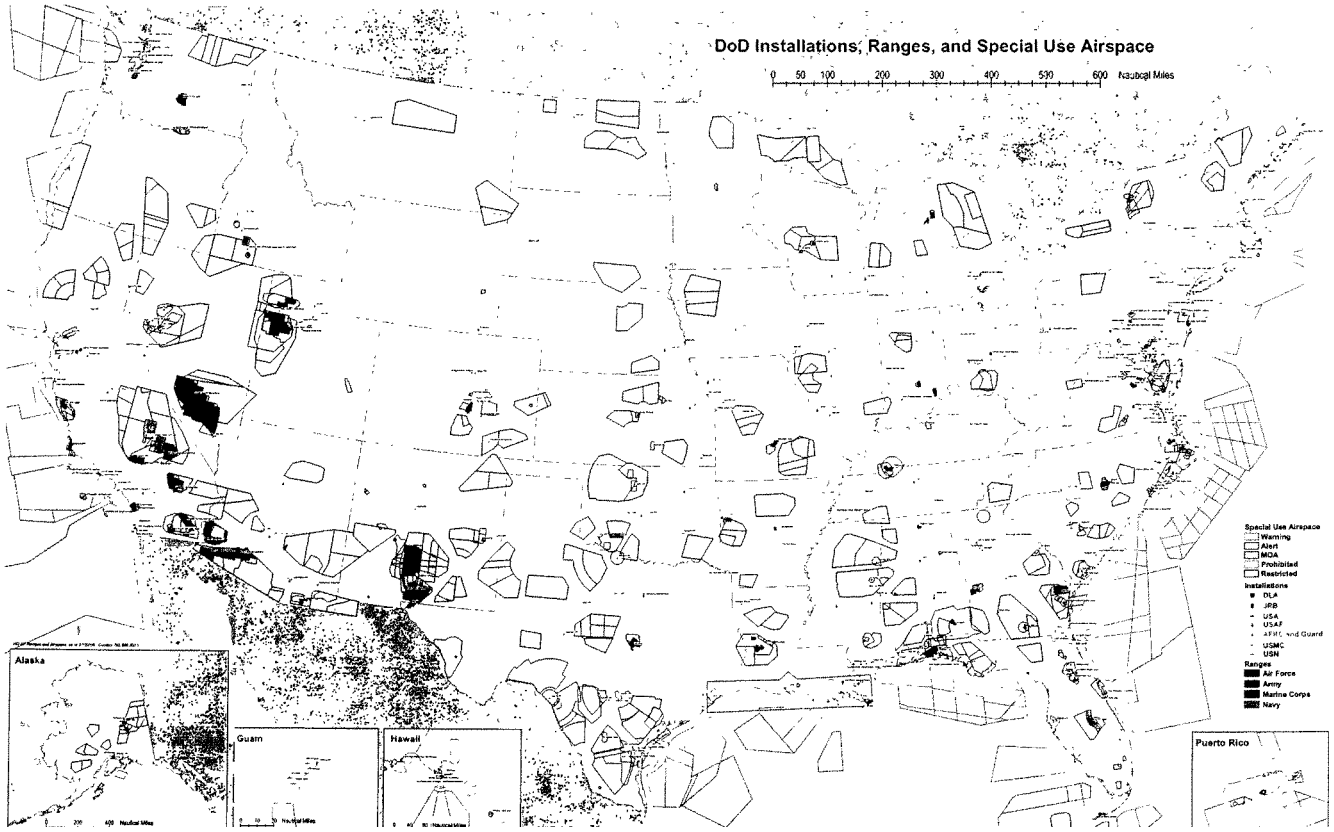
seamlessly together. A fast, coordinated response is absolutely vital if we are ever again faced with an aircraft with hostile intent.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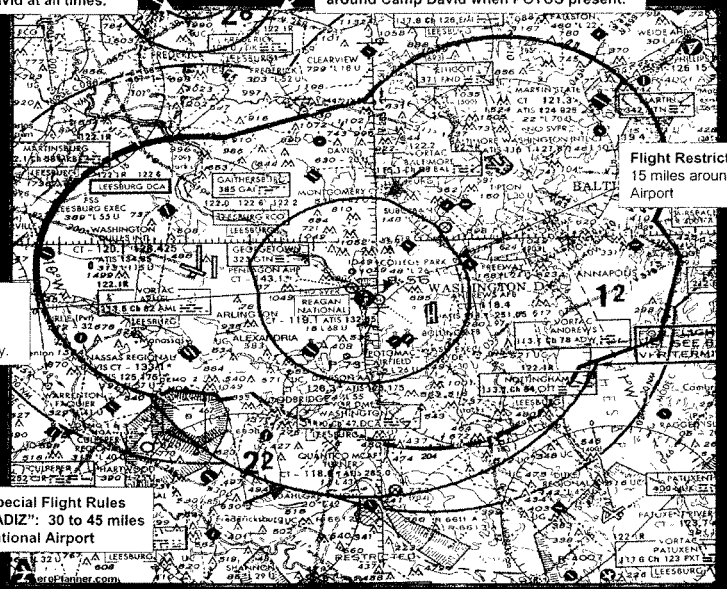
National Capital Region Airspace



Transportation Security Administration

NCRCC Statistics

Activity to Date: 1/27/03 - 07/17/05

- 3,495 Airspace Incursions
  - 2,341 NCRCC Case Files Opened
  - 1,486 FAA Pilot Deviations Filed
- 166 FRZ Violations
  - 127 NCRCC Case Files Opened
- 137 Thurmont (Camp David) TFR Violations
  - 126 NCRCC Case Files Opened
- 53 Penetrations of Prohibited Airspace
  - 23 P-40 (Camp David)
  - 30 P-56 (White House / Mall / Capitol Building)
- 665 Launches or Diverts to Intercept Aircraft

Mr. SHAYS. I now yield to the ranking member, Mr. Waxman, for any statement he would like to make.

Mr. WAXMAN. Thank you, Mr. Chairman. Thank you to all the witnesses who are going to be appearing before the committee.

Almost 4 years after the horrific attacks on our country of September 11, 2001, we are still trying to shore up vulnerabilities to our Nation's air defense. I know it is a formidable effort. Yet we know that despite our best efforts thousands of violations of restricted airspace have occurred, some of them dangerously close to high risk targets and large populations.

The way our current system is working, agencies have only minutes to react when a plane enters a restricted area. Clear coordination, command and control structures and plans are essential in responding quickly to a situation.

Most of these violations, however, are accidental. Pilots can better avoid restricted airspaces, but they need updated information on no-fly zones and temporary restricted areas.

In some cases the administration's zeal to keep information secret from the public has undermined national security rather than enhanced it. This is also true for air security.

This week the Congressional Quarterly Weekly reported that the Federal Aviation Administration placed restricted airspace around the Nation's nuclear power plants, but would not tell pilots where the power plants were located. The locations, they said, were considered sensitive security information.

How are pilots supposed to stay away from high risk targets if they are not told where those targets are? Eventually, FAA softened its order and now allows the Pilots Association to post maps indicating the general areas pilots are supposed to avoid.

However, new FAA advisory notices remain vague instructing pilots to avoid the airspace near all power plants, refineries, industrial complexes, military facilities and other similar facilities.

So, Mr. Chairman, not only do we need to reexamine our aviation security policies so that there are improvements in Federal planning and cooperation, but we can also better communicate the growing number of restricted airspaces to the public and aviation community.

By doing so we can focus our attention on those who intend to harm us and avoid as many of these false alarms as possible.

I want to thank the chairman again for calling this hearing. I understand it is the first time that any congressional committee has examined the progress of Federal agencies in controlling restricted airspace since September 11th. I believe our discussion today will improve our national air defense.

I look forward to the witnesses' testimony. Thank you.

[The prepared statement of Hon. Henry A. Waxman follows:]

Statement of Rep. Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives
Hearing on
"Controlling Restricted Airspace: An Examination of the Management and Coordination of Our National Air Defense"

July 21, 2005

Good morning, Mr. Chairman, and thank you to each of the witnesses for appearing before the Committee today.

Almost four years after the horrific attacks on our country of September 11, we are still trying to shore up vulnerabilities to our nation's air defense. I know it is a formidable effort.

Yet we know that despite our best efforts, thousands of violations of restricted airspace have occurred, some of them dangerously close to high-risk targets and large populations. The way our current system is working, agencies have only minutes to react when a plane enters a restricted area. Clear coordination, command and control structures, and plans are essential in responding quickly to a situation.

Most of these violations, however, are accidental. Pilots can better avoid restricted airspaces, but they need updated information on no-fly zones and temporary restricted areas. In some cases, the Administration's zeal to keep information secret from the public has undermined national security rather than enhance it. This is also true for air security.

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So, Mr. Chairman, not only do we need to re-examine our aviation security policies so that there are improvements in federal planning and preparation, but we can also better communicate the growing number of restricted airspaces to the public and aviation community. By doing so, we can focus our attention on those who intend to harm us, and avoid as many of these false alarms as possible.

I want to thank the Chairman again for calling this hearing. I understand it is the first time that any congressional committee has examined the progress of federal agencies in controlling restricted airspace since 9/11, and I believe our discussion today will improve our national air defense.

Thank you and I look forward to hearing the testimonies of the witnesses today.

Mr. SHAYS. I thank the gentlemen for his statement. At this time the Chair will recognize Mr. Duncan.

Mr. DUNCAN. Thank you very much, Mr. Chairman. I don't have a formal opening statement. You have covered the topic more than adequately. I would just simply say that, you know, we have over 700 million passengers flying commercially in this country and millions more flying in general aviation. The bulk of those are in the eastern half of the United States.

So, we have a very crowded airspace, especially in this region. This is a very difficult problem. I am pleased that you are looking into this in the way that you are and I look forward to hearing from the witnesses. Thank you very much.

Mr. SHAYS. I thank the gentlemen. At this time the Chair would recognize Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. Of course, I have a special interest in this hearing and regret that because of other hearings I won't be able to be here the entire time.

But because this is the Nation's Capital and because these incidents have begun to happen with just a little regularity, this is an important hearing for getting to the bottom of it. Since we are all amateurs at this, we have never had to deal with a situation like September 11th, we need to systematically look at what needs to be done, kind of the zero budgeting way. If you started from scratch, what would you do?

I am concerned about the coordination of airspace. The only people who seem to know what to do are the people in the jets who get up pretty fast, ready to shoot somebody down, the last thing we want to have happen, of course.

I am pleased that somehow, and I don't know if this is an accident or not, the planes that have penetrated the space have been small planes. I would be very interested to know whether or not there is some way, something in our system that we keep with planes we really feel, the September 11th planes, from doing the same thing or if we have just been lucky.

Mr. Chairman, I must say that coordination has a purpose and the purpose is to save lives on the ground. What strikes me as particularly amateur is the evacuations. The evacuations have been wholesalely from the Capitol, and from these buildings when we have had very small planes.

Now, you don't have to be a native Washingtonian to know that among the most secure buildings in D.C. are the sub-basements of the Capitol and of some of our office buildings because they are old, you know, when buildings really used to be very solidly built, and to wonder whether or not the best place, if there is a penetration of airspace, is to be out there in the open saying is it coming down, or to follow the advice that now the security officials are giving everyone in the case of an event, if you hear of any event, stay in place and listen.

Of course, we have evacuated because the Capitol Police have told us to evacuate. But I must say, it runs against my—forgive the use of the non-technical word—common sense, to be out in the open when we are dealing with what appears to be a small plane. Or did we not know it was a small plane and why didn't we know it before we said evacuate?

If we said evacuate, was that the right thing to do whenever there is something overhead or only when there are certain kinds of things overhead? Again, the coordination in the air is for a purpose. It is to preserve lives on the ground. I am not convinced that the evacuations of the Capitol have been designed to or would have had the effect of preserving lives on the ground.

I am not sure whether the President was evacuated or the White House was evacuated to the outside or whether they were taken to a basement. But I do think that is all part and parcel of coordination.

Finally, let me say the historic District Building or the historic city hall of the District of Columbia is within a stone's throw of the White House. When these evacuations occurred, they are supposed to occur around that endangered area. I would think that they would involve not only the White House and the Capitol, but other parts of the city that are in close proximity.

These are some of the questions I would want the panel to answer. I thank you very much.

Chairman TOM DAVIS [presiding]. Thank you. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. Thank you also for conducting this hearing. First of all, I appreciate, as chairman of the House Aviation Subcommittee, Government Reform taking a look at this. You do have broad jurisdiction over all of the agencies and I think it is important that this type of review take place.

We did, after the so-called Ernie Fletcher flight last year, conduct a hearing. We looked at some of the problems that had occurred in sort of a disjointed effort in detecting planes and then alerting folks and the different agencies that were involved.

I think you outlined here in your briefing paper the corrective actions that have been taken by the various agencies. I think it is important that we still look at problems that we continue to have.

I know that there are proposals being drafted and we are trying to work with folks to look at possibly adjusting some of the penalties. The information I have is that in 2003 there were 998 violations and in 2004, 600 violations into the National Capital airspace.

Only a very few folks received penalties. We may need to look at that. I don't favor exorbitant fines. We were trying, before September 11, on the Aviation Subcommittee, to actually open up some more of the airspace because we have more airplanes in the air and we have limited corridors in which to fly.

Again, I don't favor exorbitant fines. I think we have to look at intent and disregard for rules and law. In that case I'm in favor of throwing the book at offenders.

We are going to take up legislation maybe as early as September, but in the fall, to consider increasing the fines. They are currently, I guess, $1,100 and it is discretionary within FAA. That is for an incursion in 30 to 45 miles in the ADIZ zone, air defense zone.

A possible 90-day suspension is the current penalty. That may have to in fact be toughened up. The flight restricted zone which again comes in a lot closer, 15 miles, there are proposals to increase fines. Some of them that we are looking at may be as much as $100,000 to 5 years and without any discretion of imposing the

fine. So, those are some of the things that we are looking at that would certainly get people's attention.

Again, there can be unintentional violations of airspace. There may be a need in weather and other conditions to get into airspace. There are still concerns. We have had actually two tests of the system.

The Fletcher flight was one of the faster ones. It was a small jet. It was going around 240 miles an hour. Even at that speed, you can reach the Capitol within 20 minutes from outside the zone.

Smaller aircrafts, again we can track. We have some warning time. However, we haven't been tested by a large aircraft traveling at 500 miles an hour. That will give us a very short window of opportunity.

I know that they are looking at these planes that either get off course or are off course even further out than the 50-mile zone. I think that is something that we have to consider.

The thing that concerns me is the approach. First of all a terrorist is not going to abide by our rules of flying at certain levels and speeds. They are going to come in at treetop level. We haven't had that experience, except we did have one where a small aircraft did hit the White House under the Clinton administration, or a tree in front of the White House, to be more specific. So, we still have that threat.

Then we have the threat of a large aircraft coming in at 500 miles an hour with a very limited warning time. Finally, we have a disconnect still. We have FAA, DOD, TSA, DHS and Secret Service who have much better coordinated their efforts. I'm not sure how you solve this, how different folks go on alert like the Capitol and that needs to be addressed.

The Capitol Police did order the last evacuation, but others did not. The District of Columbia, again we have a disconnect there in notifying police. Others are at risk, the District police and District officials.

Also, again the most important one is DOD becoming engaged to take down an aircraft. We haven't had that experience yet. That may be in the future. But we do face a number of challenges. I appreciate your letting me mention some that we are looking at from our subcommittee standpoint.

I yield back.

Chairman TOM DAVIS. Thank you very much. The gentlemen from Maryland.

Mr. CUMMINGS. Mr. Chairman, thank you very much. In light of the fact that we have been going at it a while, I will be very brief.

I am very pleased, Mr. Chairman, that you have scheduled this hearing. September 11th illustrated the deadly intent and capability of terrorists who seek to destroy us.

In the post-September 11th world our Nation must be fully prepared to protect the homeland by effectively and efficiently managing our national air defense. Intelligence reports indicate that terrorist elements continue to consider another September 11th style attack against U.S. targets where aircraft are used as missiles.

In light of this kind of threat, flight and airspace restrictions are essential to help in the Department of Homeland Security, the Department of Defense and the Federal Aviation Administration who

primarily share the charge to prevent or rapidly respond to an aircraft that has violated restricted airspace. Unfortunately, the 3,400 violations of restricted airspace since September 11th clearly demonstrate deficiencies in our national air defense.

More specifically, the violations point to a need to standardize Federal agencies roles more clearly and to improve communications. For example, on May 11, 2005 a student pilot violated a restricted airspace, necessitating a red threat level designation and a frightful evacuation of the U.S. Capitol. Disturbingly, although the risk and gravity of the airspace violation were designated severe according to the homeland security advisory system, the President and the Mayor of Washington, DC, were not informed of the incident until the episode ended.

In evaluating the management and coordination of our national air defense, the GAO reported commendable improvements since September 11th, but identified information sharing and coordination problems that must be resolved. For example, the GAO found that there is no standardized definition of an airspace violation among agencies and that the FAA, the North American Airspace Defense Command utilize distinct data bases to track airspace violations.

It seems a step in the right direction would be to address these challenges with common sense solutions that would improve our monitoring capabilities and management of a Federal response to an aviation threat. It seems just as sensible that Congress seriously consider GAO's recommendation that one agency be given the responsibility of responding to restricted airspace violations.

Mr. Chairman, while we need not be an expert to understand the disastrous impact another September 11th style attack would have on our society and our economy. The American people expect more from us than understanding. They expect for us to get it right when it comes to securing our national air defense and protecting their communities and families from those who seek to do us harm.

With that, Mr. Chairman, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement

Representative Elijah E. Cummings, D-Maryland

Hearing Entitled: "Controlling Restricted Airspace: An Examination of the Management and Coordination of Our National Air Defense"

Committee on Government Reform
U.S. House of Representatives
109th Congress

July 21, 2005

Mr. Chairman,

Thank you for calling this critically important hearing to assess our nation's ability to monitor and control restricted airspace.

The tragic events of September 11th illustrated the deadly intent and capability of terrorists who seek to destroy us. In the post 9/11 world, our nation must be fully prepared to protect the homeland by effectively and efficiently managing our national air defense.

Intelligence reports indicate that terrorist elements continue to consider another 9/11 style attack against U.S. targets where aircraft are used as missiles. In light of this kind of threat, flight and airspace restrictions are essential to helping the Department of Homeland Security, Department of Defense, and Federal Aviation Administration (FAA) who primarily share the charge to prevent or rapidly respond to an aircraft that has violated restricted airspace.

Unfortunately, the 3,400 violations of restricted airspace since 9/11 clearly demonstrate deficiencies in our national air defense. More specifically, the violations point to a need to

standardize federal agencies' roles more clearly and to improve communications. For example, on May 11, 2005, student pilots violated restricted airspace necessitating a red threat level designation and a frightful evacuation of the Capitol. Disturbingly, although the risk and gravity of the airspace violation were designated severe according to the Homeland Security Advisory System, the President and Mayor of Washington D.C. were not notified of the incident until the episode concluded.

In evaluating the management and coordination of our national air defense, the GAO reported commendable improvements since 9/11, but identified information sharing and coordination problems that must be resolved. For example, the GAO found that there is no standard definition of an airspace violation among agencies and that the FAA and the North American Aerospace Defense Command (NORAD) utilize distinct databases to document airspace violations.

It seems a step in the right direction would be to address these challenges with common sense solutions that would improve our monitoring capabilities and management of a federal response to an aviation threat. It seems just as sensible that Congress seriously consider GAO's recommendation that one agency be given the responsibility of responding to restricted airspace violations.

Mr. Chairman, while we need not be an expert to understand the disastrous impact another 9/11 style attack would have on our society and economy, the American people expect more from us than understanding. They expect us to "get it right" when it comes to securing our national air defense and protecting their communities and families from those that seek to do us harm.

I look forward to the testimony of today's witnesses and yield back the balance of my time.

Chairman TOM DAVIS. Thank you. Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. I appreciate the gravity of the statements made by yourself, by the ranking member and other members on this committee.

I would like to take a slightly different tack in my remarks and that is I would like to ask the witnesses to also recognize that America has a tradition of being a leader in aviation that includes a strong tradition of non-commercial pilots, sport, aerobatic, commuter, and the $100 hamburger pilots of which I am one. For those of you who aren't private pilots, that is a $2 hamburger and $98 worth of fuel and maintenance to get to the hamburger stand.

Complying with Homeland Security's desire to minimize aircraft in or around our cities while still allowing the freedom that has given us self-trained pilots in every war of the previous century is a balancing act. I believe we need to modernize communication requirements for aircraft without unreasonably restricting the right of Americans to fly anywhere, anytime, whether it is for a business meeting or to fly friends and family to a hamburger stand on the other side of the mountain, just for the joy of seeing this great land from the air.

I would certainly hope that as we are looking at the security needs of our Capitol and other areas we would recognize that incrementally, as your map shows, we have first taken airspace and said that it would be under control. Then we made it restricted.

Today, we are moving toward saying that if you live in a city, essentially you are going to have to drive for an hour or two to get to your airplane so that you can travel. It doesn't make a whole lot of sense. There's no question that the technology exists today to provide better alerts of restricted airspace even to the training pilot.

My background in technology shows me that although they are not presently on board our aircraft, there is no question that you can have an alert beacon similar to our collision avoidance that would come on when you enter restricted airspace, requiring no radio contact and so on.

Now, I recognize that many sport pilots choose to have the minimum aviation assets on board and they may not do that. But for those who fly modern aircraft and would like to comply with the rules, but at the same time, have a difficult time.

Camp Pendleton and San Onofre Nuclear Power Plant are both in my district. Ten years ago, if there were no operations at Camp Pendleton, overflights were routinely granted. Today that is never granted.

As a result, every small aircraft must either fly significantly inland along high meetings or fly over the ocean. There is a very narrow band for any pilot flying at low altitude between being outside of San Onofre and Camp Pendleton's restricted space and being too far away from land to safely land if they were to have an engine failure.

So, on behalf of the vast majority of flights taken, and the vast majority are taken by single engine fixed aircraft, I would hope that now and in the Q and A session that we can look at how to balance that while maintaining the safety in and around our major cities.

With that, I yield back.

Chairman TOM DAVIS. Thank you. Are there any other members who wish to make opening statements?

Mr. RUPPERSBERGER. Mr. Chairman, not an opening statement. I have one, but this is an extremely relevant issue. One of the main reasons with respect to our air in the Capitol region is unfortunately the Capitol is a target for terrorists.

It seems to me that the teamwork approach, whether it is NORAD which is in charge of controlling the security of the airspace, whether it is TSA or FAA, all these organizations coming together, we need to focus on what needs to be done to protect.

Now, we have had incidents in the past where we have had violations, where we have had over 10,000 people running into the streets. I think it is very important when we analyze and come up with a plan that we look at what we have done when in fact there was a possible attack. Did we pull the trigger too quickly? Do we need 24/7 jets in the sky, at least during these difficult periods?

I mean these are issues that I would hope we can address in this hearing. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. Do any other Members wish to make opening statements?

If not, we will move to our first panel. Thank you for being with us. We have Ms. Davi D'Agostino, Director of Defense Capabilities and Management at the U.S. Government Accountability Office accompanied by Mr. Brian Lepore who is the Assistant Director.

Thank you both for being with us. I want to thank both of you for taking the time, working so hard to declassify your report so that we could have this hearing today.

I also want to point out that because the classified report will not be released until September 2005, our second panel of witnesses have graciously allowed GAO to testify first so we understand the limits of what we can talk about today.

I am going to remind the Members that if the witnesses can't fully answer some of your questions because they might be classified, the committee will take all questions for the record.

It is our policy that we swear in all people before they testify.

[Witnesses sworn.]

Chairman TOM DAVIS. You may be seated. Ms. D'Agostino, take whatever time you need and then we'll open it up for questions.

STATEMENT OF DAVI M. D'AGOSTINO, DIRECTOR, DEFENSE CAPABILITIES AND MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE, ACCOMPANIED BY BRIAN LEPORE, ASSISTANT DIRECTOR DEFENSE CAPABILITIES AND MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. D'AGOSTINO. Thank you very much. Good morning, Mr. Chairman and members of the committee. We are pleased to be here today before you to discuss the results of GAO's work on the interagency response to violations of U.S. restricted airspace.

While much progress clearly has been made since September 11, 2001, we believe there are still opportunities to enhance our Nation's airspace security.

My remarks today are from the unclassified portions, as you mentioned, of our classified report, which we will be issuing shortly.

As you know, intelligence agencies believe that terrorists remain highly interested in U.S. aviation, both commercial and general aviation, to attack airports or to use aircraft to attack targets, including critical infrastructure.

As you noted in your opening remarks, since September 11th several Federal agencies such as the Federal Aviation Administration [FAA], the North American Aerospace Defense Command or NORAD, and the Transportation Security Administration [TSA] have made noteworthy advances to protect our Nation's airspace.

I believe the next panel will elaborate further on their progress.

I would also add that we were impressed that the FAA and NORAD took actions to correct certain problems we identified during the course of our review.

Today I will focus on first, how restricted airspace is protected; second, key gaps we identified in the interagency process to respond to violations; and third, the agency's comments on selected recommendations on our draft report and our response.

Let us start with how restricted airspace is protected. FAA reported that between September 12, 2001 and December 31, 2004 there were about 3,400 restricted airspace violations, most of which, about 88 percent of which were committed by general aviation pilots.

Our diagram, if you will look at our diagram, and we provided copies to the Members, shows the concept of restricted airspace where the larger circle is restricted airspace and the center is the protected asset or potential target. If a violation is imminent or underway responding agencies have very limited time to decide what actions to take. However, they need enough time to determine the pilot's intent. In addition, NORAD and Homeland Security need time to order, scramble and launch aircraft, if necessary, to intercept the violator.

Our diagram shows an aircraft deviating from its originally planned flight path. As you can see, in one example the aircraft is making an incursion that in the end is non-threatening. They go in and out of the restricted area. In the other example the aircraft is making a threatening incursion by heading directly at the protected asset.

Agencies take specific actions depending on the nature of the violation. For example, FAA can report a restricted airspace violation based on its radar tracking. If the offending aircraft deviated from its planned flight path but was not heading directly toward the protected asset, they may simply monitor the aircraft and try to contact the pilot.

On the other hand, if NORAD or FAA perceives the aircraft to be a threat, NORAD or Homeland Security can alert their aircraft and attempt to interdict the violator. At the same time, FAA would continue to try to contact the pilot and monitor to assure safety of the airspace. If the violating pilot does not divert and continues to operate in a threatening manner, the NORAD pilot can be ordered to engage the violating aircraft.

Clearly, the process for responding to a violation can include many agencies. There are seven principal agencies, each simultaneously responding according to their own procedures.

The agencies have made great strides to enhance air security, including setting up, as you mentioned, an interagency coordination center known as the National Capital Region Coordinating Center [NCRCC] and an interagency teleconferencing system for real time communication, coordination and sharing of information for responding to violations known as the Domestic Events Network [DEN].

While these interagency tools are functioning, we identified some gaps that need to be addressed. Before we turn to some of the gaps we identified, we need to recognize up front that it is not possible to prevent all protected airspace violations.

Airspace security measures could be challenged purposely. In addition, some pilots simply do not check to see if they will be flying in or near restricted airspace. Such challenges highlight the need for clear policies and procedures and optimal interagency coordination.

Our review identified these key gaps in the interagency process: First, there is no leadership over and no organization in charge of the end-to-end interagency process of responding to violations. We noted also the lack of an over-arching concept of operations plan or other relevant document to guide the interagency process of responding to violation in all U.S. airspace.

Third, the lack of key interagency policies and procedures for either the NCRCC or the DEN. Fourth, no formal agency information-sharing protocols and procedures. For example, sharing segments of data on violations and aggregated information on FAA's enforcement actions would be beneficial. Fifth, the lack of common definitions for use in this time-critical interagency operation.

Now I will discuss the agency's comments on selected recommendations we made in our classified draft report. Homeland Security and Defense disagreed with our draft report recommendation to appoint one agency to be in charge, largely because of concerns about command and control over their resources. Nevertheless, the aim of our recommendations is to ensure that someone is available and accountable to resolve the interagency issues and problems in a timely and effective manner.

Next, Transportation, Defense and Homeland Security agreed with the general recommendation to establish information-sharing protocols. DOD disagreed with a specific recommendation to discuss with FAA sharing segments, not all, of FAA's pilot deviation data base with NORAD.

DOD cited concerns over the appearance that it would be collecting information on U.S. citizens. We appreciate DOD's concerns and certainly did not recommend information sharing that would run afoul of existing laws and policies.

We believe segments of FAA's data base could be shared within the law and that DOD and FAA should explore that possibility. Our work showed that this is particularly important in light of the fact that NORAD's air defense mission, which includes tracking aircraft in U.S. airspace, could benefit from segments of the infor-

mation as additional input into deciding how to allocate their limited resources around the country.

In conclusion, while much progress has been made, we have found that the interagency effort to secure U.S. airspace could be enhanced by proactive leadership with accountability, an over-arching strategy and plan, clear interagency policies and procedures, formal agency information sharing protocols, and common definitions.

Today, nearly 4 years after the September 11th attacks, we believe it is time to treat airspace security as a national program with an eye toward balancing commercial and security needs and applying risk management principles.

Mr. Chairman, this concludes my oral summary. At this time we would be happy to address any questions.

[The prepared statement of Ms. D'Agostino follows:]

United States Government Accountability Office

GAO

Testimony
Before the Committee on Government Reform, House of Representatives

For Release on Delivery
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HOMELAND SECURITY

Agency Resources Address Violations of Restricted Airspace, but Management Improvements Are Needed

Statement of Davi M. D'Agostino, Director
Defense Capabilities and Management

GAO-05-928T

July 2005

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-05-928T, a testimony before the Committee on Government Reform and Oversight, House of Representatives

HOMELAND SECURITY

Agency Resources Address Violations of Restricted Airspace, but Management Improvements Are Needed

Why GAO Did This Study

Securing and defending U.S. airspace is an interagency mission that depends on close interagency coordination and information sharing. GAO was asked to review (1) the threat assessment for U.S. aviation, (2) violations of restricted airspace since September 11, 2001, (3) agencies' individual or coordinated steps to secure U.S. aviation, and (4) interagency policies and procedures to manage the response to restricted airspace violations. GAO will issue a classified report responding to this request later this year. To keep this testimony unclassified, GAO focused on the latter three questions.

What GAO Recommends

GAO recommended that the Secretaries of Defense, Transportation, and Homeland Security strengthen the interagency process for managing the response to violations of restricted airspace by determining whether an organization should be in charge, developing interagency policies and procedures, information sharing protocols, and common definitions. DHS and DOD disagreed that one agency should be in charge, largely from command and control concerns. DHS concurred or partially concurred with the other recommendations; DOD nonconcurred with most of the rest. The Department of Transportation concurred with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-05-928T

To view the full product, including the scope and methodology, click on the link above. For more information, contact Davi M. D'Agostino, (202) 512-5431, dagostinod@gao.gov.

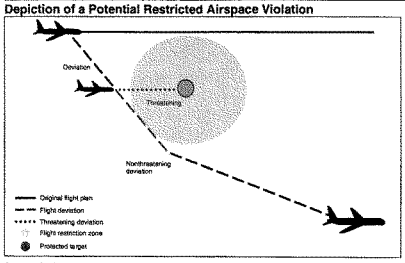
What GAO Found

The Federal Aviation Administration reported about 3,400 violations of restricted airspace from September 12, 2001, to December 31, 2004, most of which were committed by general aviation pilots. Violations can occur because (1) pilots may divert from their flight plan to avoid bad weather, (2) the Administration may establish newly restricted airspace with little warning, and pilots in the air may be unaware of the new restrictions, or (3) pilots do not check for notices of restrictions, as required. Also, terrorists may deliberately enter restricted airspace to test the government's response or carry out an attack.

Federal agencies have acted individually or have coordinated to enhance aviation security. For example, the Transportation Security Administration (TSA) established a national operations center that disseminates operational- and intelligence-related information, and has enhanced passenger and checked baggage screening, secured cockpit doors, and assessed the risk to some, but not all, commercial airports. Also, few general aviation airport owners have conducted risk assessments. The North American Aerospace Defense Command's mission was expanded to include monitoring domestic air traffic and conducting air patrols. Collectively, the agencies are operating the National Capital Region Coordination Center to secure the National Capital Region.

GAO identified gaps in the simultaneous, time-critical, multi-agency response to airspace violations. While it may not be possible to prevent all violations or deter all attacks, GAO identified some gaps in policies and procedures. Specifically, the agencies were operating without (1) an organization in the lead, (2) fully developed interagency policies and procedures for the airspace violations response teleconferencing system, (3) information sharing protocols and procedures, or (4) accepted definitions of a violation. As a result, opportunities may be missed to enhance the security of U.S. aviation.

Depiction of a Potential Restricted Airspace Violation



Source: GAO.

Chairman Davis and Members of the Committee:

I appreciate the opportunity to be here today to provide results of GAO's work on violations of restricted airspace and the interagency response. Specifically, I will discuss the unclassified results from our classified report on violations into restricted airspace that we will issue in September 2005.

As you know, because of intelligence assessments since the September 11, 2001, attacks, the United States has established additional temporary flight restrictions over important sites such as selected governmental operations, national events, and critical infrastructure.[1] Established by the Federal Aviation Administration (FAA), temporary flight restrictions and other special use airspace measures are national airspace management tools used to restrict flights into protected airspace. The intent of establishing restricted airspace is to reduce the number of flights in that airspace to only those authorized so that the FAA, the Department of Defense (DOD), the Department of Homeland Security's (DHS) Transportation Security Administration (TSA), and other agencies can more readily identify an unauthorized aircraft and, if needed, take actions to deter or defeat it.

Intelligence agencies believe that terrorists remain highly interested in attacking U.S. aviation with commercial or general aviation aircraft, in attacking an airport, or in using aircraft to attack targets. Intelligence agencies differ in their assessments of how significant the threat is from the use of certain general aviation aircraft in an attack. Our prior work has shown that the success of interagency efforts depends on melding multi-organizational efforts through central leadership, an overarching strategy, effective partnerships, and common definitions.[2] Securing and defending U.S. airspace is a key example of an interagency mission that depends on close coordination and information sharing between and among the agencies that share this mission. As many as 7 key government organizations can be simultaneously involved in responding to a violation of restricted airspace. TSA is responsible for ensuring that only authorized

[1] Critical infrastructure is defined as systems or assets, whether physical or virtual, so vital to the nation that the incapacity or destruction of them would have a debilitating impact on national economic security, national public health, or safety.

[2] GAO, *Homeland Security: Key Elements to Unify Efforts Are Underway but Uncertainty Remains*, GAO-02-610 (Washington, D.C.: June 7, 2002).

pilots, cabin crewmembers, or passengers gain access to an aircraft. Once airborne, FAA becomes the lead agency and is responsible for managing traffic entering into or operating in U.S. airspace to ensure safe operations by monitoring aircraft movements using radar and maintaining communications with the pilots. Either DOD's North American Aerospace Defense Command (NORAD) or DHS is called in to enforce airspace security if TSA or FAA cannot prevent someone from taking control of an aircraft without authorization or flying into restricted airspace without authorization. During a violation, these agencies carry out their responsibilities simultaneously. This was the case during the incursions into the National Capital Region restricted airspace during May 2005.

Today I will provide our findings on (1) violations of restricted airspace since September 11, 2001, (2) agencies' individual or coordinated steps to secure U.S. aviation, and (3) interagency policies and procedures to manage the response to violations of restricted airspace. I will also summarize our recommendations and the agency comments.

Summary

The FAA reported about 3,400 violations of restricted airspace nationwide from September 12, 2001, to December 31, 2004, most of which were committed by general aviation pilots. Violations can occur because (1) pilots may need to divert from their planned flight path to avoid bad weather and may consequently enter restricted airspace; (2) the FAA may establish the restricted airspace with little warning, and pilots already in the air may be unaware of the new restrictions; and (3) pilots may not check FAA notifications of new restrictions, as required.[3] Also, terrorists might deliberately enter restricted airspace to observe the government's response or to carry out an attack. Most violations of restricted airspace occur in the eastern United States due to heavy air traffic in the area and the large amount of restricted airspace. Moreover, most violations of restricted airspace in the eastern United States occur in the National Capital Region. General aviation accounts for about 88 percent of all violations nationwide. We did not review the actions taken by FAA against pilots who violate restricted airspace, although we do describe the actions FAA can take.

[3] "Each person shall, before conducting any operation under the Federal Aviation Regulations (14 C.F.R. Chapter 1), be familiar with all available information concerning that operation, including *Notices to Airmen* issued under §91.139," 14 C.F.R. pt. 91, SFAR No. 60 – Air Traffic Control Emergency Operation.

Since September 11, 2001, federal agencies have acted individually or have coordinated to secure U.S. airspace and address the threat:

- TSA secured commercial aircraft, limited potential access to commercial aviation aircraft and facilities, and conducted risk assessments of some facilities.
- FAA has increased its use of temporarily restricted airspace for national security purposes and has issued over 220 Notices to Airmen[4] to identify the location of restricted airspace. In addition, the FAA established the Domestic Events Network,[5] an interagency teleconferencing system that permits the agencies to communicate about and coordinate their response to violations of restricted airspace.
- NORAD increased air patrols and improved airspace monitoring.
- Collectively, the agencies were operating the National Capital Region Coordination Center to bring key agencies together to secure the airspace over the National Capital Region.

We identified gaps in the management of the interagency response to airspace violations. Individual agency and interagency progress and coordination to secure airspace is noteworthy. However, we recognize that it may not be possible to prevent all violations of restricted airspace or deter all attacks. Airspace security measures could be challenged. Moreover, in some cases pilots do not check on airspace restrictions, as they are required to do. Such challenges, along with the complexity of several agencies simultaneously carrying out their respective agency responsibilities, highlight the need for clear policies and procedures and optimal interagency coordination for the most timely and effective management of the nation's airspace security and violations of restricted airspace. Nevertheless, potential gaps remain:

- TSA officials told us that the agency has conducted risk assessments[6] at some but not all of the commercial airports in the United States.[7]

[4] Pilots are required to check *Notices to Airmen* before beginning their flights to avoid any temporary flight restricted zones during their flights. These notices contain the specific locations and times that airspace is restricted.

[5] While our report discusses management of restricted airspace violations, the mission of the Domestic Events Network also includes managing the response to hijackings, suspicious activities, and other events.

[6] Risk assessments involve assessing a facility's threats, vulnerabilities, and critical assets to determine where resources should be targeted to reduce risk.

- While each agency commands and controls its own resources, no one organization leads the interagency response to airspace violations. TSA, FAA, and DOD officials told us that at the National Capital Region Coordination Center no one organization is in the lead because, depending on the nature of the airspace violation, each of the agencies simultaneously carries out its responsibilities during the phases of the violation. TSA is the executive agent for the Center, but TSA officials said that they only resolve or "deconflict" agency issues and do not see themselves as being in charge.
- The agencies have not developed policies and procedures over who has access to the Domestic Events Network, and FAA personnel told us that under certain circumstances, they could be cut out of conferences if these conferences go above a certain security classification and different communication systems are used.
- As threat conditions warrant, the agencies may take additional steps to secure the airspace outside the National Capital Region but they have not begun to develop an overarching plan for such airspace.[8] As a result, interagency coordination may be hampered.
- Agency database records documenting violations were not routinely shared among FAA, NORAD, or TSA, or with FAA's Strategic Operations Security Manager, because the agencies have not established information sharing requirements and protocols. We reviewed FAA data and identified information we believe agencies could use to better secure U.S. airspace. Because data are not routinely shared, these agencies may miss opportunities to enhance security.
- The potential for confusion about what constitutes an airspace violation exists among the agencies because they do not have a common definition of an airspace violation. As a result, the agencies may be unaware of the scope and magnitude of the problem, making it more difficult to allocate resources efficiently.

We made several recommendations to DHS, DOD, and the Department of Transportation to strengthen the interagency process for managing the response to violations of restricted airspace. DHS and DOD nonconcurred with our recommendation that the three secretaries should determine whether one agency should manage the interagency process of responding to violations of restricted airspace, primarily because of concerns about command and control. DHS and Transportation concurred or partially

[7] On this review, we did not evaluate the adequacy of TSA's risk assessment tools; however, in other reviews GAO is assessing various aspects of TSA's risk management approaches.

[8] Airspace outside the National Capital Region is protected for National Security Special Events and Presidential movements, and when intelligence warrants protection.

concurred with most or all of our recommendations. DOD nonconcurred with most of our recommendations.

Background

After the terrorist attacks on the United States on September 11, 2001, federal agencies took immediate steps to secure U.S. airspace. FAA grounded all air traffic and DOD ordered Air Force fighter jets to fly patrols over selected U.S. cites to deter and respond to any additional attacks. In the months after the attacks, the President developed certain national strategies and directives, and Congress established TSA and gave it the responsibility to provide security for all modes of transportation. Congress also later passed and the President signed legislation to protect the homeland against air, land, and maritime threats, including creating the DHS to coordinate and lead the national homeland security effort. After the attacks, interagency coordination increased as FAA, NORAD, TSA, their parent cabinet departments, and other agencies with homeland air defense or security roles and missions worked together to meet the overall goal of protecting U.S. airspace.

NORAD and the FAA have historically been the main contributors to protecting U.S. airspace. FAA's primary mission is to safely manage the flow of air traffic in the United States, but it contributes to air security through its control of U.S. airspace. About 17,000 FAA controllers monitor and manage airspace, support the coordination of security operations, and provide information to military and law enforcement agencies when needed. Within NORAD, Continental North American Aerospace Defense Command Region personnel monitor radar data on aircraft entering and operating within continental U.S. airspace. NORAD also conducts air patrols in U.S. airspace.

Different Classes and Use of Airspace

According to FAA, the agency divides airspace into four categories: controlled, uncontrolled, special use, and other.[9] Controlled airspace may include special flight restrictions and will have specific defined dimensions, including altitude ranges, or vertical boundaries, and surface area, or horizontal boundaries. Any aircraft operating within controlled airspace must comply with rules governing that airspace or be subject to enforcement action. Controlled airspace is further divided into classes ranging from A through E. Each class of airspace has its own level of Air

[9] 14 C.F.R. pt. 99 (2005).

Traffic Control services and operational requirements that pilots must follow in order to enter and operate in it. For example, to operate in class A airspace, pilots must have air traffic controller clearance to enter and must have communication equipment on board to permit communication with air traffic controllers. In lesser-restricted airspace, pilots can navigate by landmarks. Controlled airspace can be further classified with special flight restrictions. In uncontrolled airspace, class G, air traffic controllers have no authority or responsibility to control air traffic.

FAA also reserves airspace for special purposes, called Special Use Airspace, which is normally established to protect important infrastructure, including military installations. An Air Defense Identification Zone[10] is restricted airspace in which the ready notification, location, and control of aircraft are required for national security reasons.

FAA's other airspace category includes national security areas, military training routes, and temporary flight restriction areas. A temporary flight restriction typically restricts flights over specified areas for a specified period of time. These zones can be established over critical infrastructure, military operations areas, National Security Special Events, and United States Secret Service protectees (e.g. such as the President, whose airspace is protected as he moves throughout the United States).

FAA notifies pilots of temporary flight restrictions through its Notices to Airmen program. Pilots are required to check for notices before beginning their flights to avoid any temporary flight restriction zones during their flights. If pilots violate such a zone, FAA can take actions against them ranging from suspending the pilot's certificate to fly in response to a one-time, first-time violation to revocation of the certificate when the violation is deliberate or otherwise shows a disregard for the regulations.

Temporary flight restrictions are one component of a tiered security aviation system. The system includes ground procedures, such as TSA passenger screening procedures, and in-flight security procedures, including reinforced cockpit doors and Federal Air Marshals on selected domestic and international flights. Temporary flight restrictions are considered passive air space control measures intended to keep the flying public out of the protected airspace so that agencies can more readily identify and respond to pilots exhibiting hostile intent. A temporary flight

[10] 14 C.F.R. pt. 71 (2005).

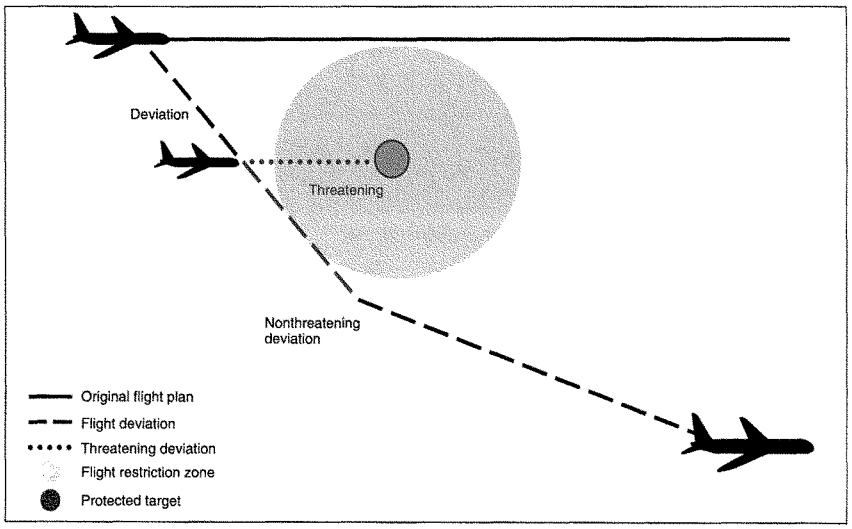
restriction alone will not prevent pilots from entering the protected airspace.

FAA monitors national airspace traffic to ensure safety and has established triggers to help identify suspicious aircraft and pilots. According to FAA procedures, FAA controllers are to advise the pilots to change their course or altitude if they are on a course toward prohibited or restricted airspace without authorization, or if they are circling or loitering over a sensitive area. Sensitive areas include airspace over dams, nuclear and electrical power plants, chemical storage sites, the location of the President, or military facilities. Various forms of suspicious pilot and aircraft activity are being monitored.

If a violation is imminent or underway, responding agencies have only limited time in which to decide what actions to take. Nonetheless, the agencies need sufficient time to try to determine the pilot's intent and, if necessary, to order, scramble, and launch DOD or DHS aircraft to intercept the violator.

The response to a violation is managed using a process of recognition, assessment and warning, interdiction, recovery, and follow-up; which agency takes these actions depends on the specific nature of the violation. FAA can report a violation of restricted airspace based on radar tracking. If the offending aircraft deviates from its planned flight path but is not heading directly toward the protected asset, FAA may monitor the aircraft and try to contact the pilot but not interdict the aircraft. Conversely, if NORAD or FAA perceives the aircraft to be a threat based on its speed, direction, or other information, NORAD can alert its aircraft and attempt to intercept the violator. If successfully diverted away from the protected asset or restricted airspace, Secret Service, FAA, TSA, or local law enforcement officers may meet the aircraft and interview the pilot upon landing, to identify any hostile intent. On the other hand, if the offending pilot does not divert and proceeds to operate in a manner perceived as threatening, the NORAD pilot can be ordered by the appropriate authorities to engage the violating aircraft. Figure 1 shows an aircraft deviating from its planned flight path and shows more highly threatening and, conversely, less threatening violations of restricted airspace.

Figure 1: A Potential Restricted Airspace Violation



Source: GAO.

Violations of Restricted Airspace

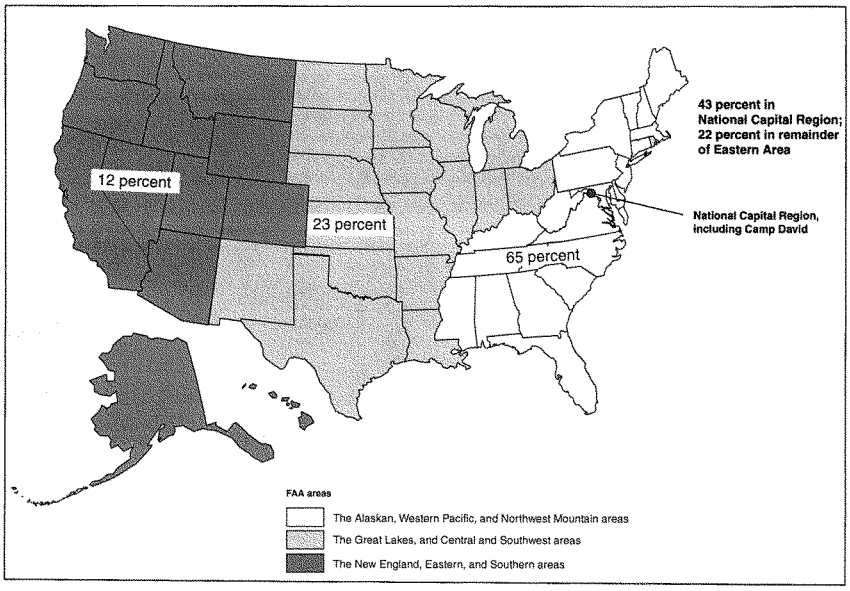
Our review of an FAA database found about 3,400 reported violations of restricted airspace from September 12, 2001, to December 31, 2004, most of which were committed by general aviation pilots. According to FAA, violations occur because (1) pilots may divert from their planned flight path to avoid bad weather, or may make navigational errors and consequently enter restricted airspace; (2) FAA may establish airspace restrictions with little warning, and pilots already in the air may be unaware of the new restrictions; or (3) pilots may not check for notices of new restrictions as required by FAA and may consequently enter restricted airspace without authorization. In addition, terrorists might deliberately enter restricted airspace to observe the government's response or to carry out an attack. FAA investigates pilot deviations into restricted airspace to

determine the reasons for an incident and to determine whether the pilot's certificate should be temporarily suspended or permanently revoked.

Factors That Contributed to Incursions

As the scope of restricted airspace increases, the number of violations generally also increases. In addition, a greater concentration of air traffic, such as in the eastern United States, would affect the number of violations. FAA has worked with the aviation community to inform them of the additional restricted areas. Figure 2 shows the percentage of violations of restricted airspace by area of the United States.

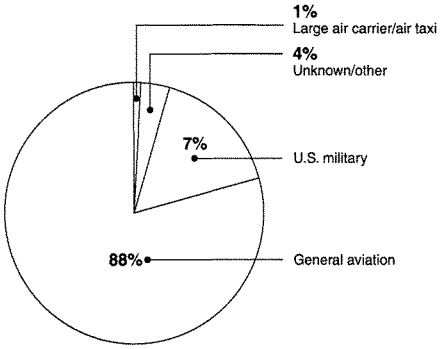
Figure 2: U.S Map With Percentages of Violations by FAA Area September 12, 2001 through December 31, 2004



Source: GAO analysis of FAA data.

General aviation aircraft pilots accounted for about 88 percent of all violations of restricted U.S. airspace between September 12, 2001, and December 31, 2004. Figure 3 shows the percentage of incursions by type of aircraft.

Figure 3: Violations by Type of Aircraft



Source: GAO analysis of FAA data.

Note: Data rounded to the nearest percent. FAA records a violation as unknown when it is unable to identify the offending aircraft. Unknown aircraft may include aircraft that depart from the restricted airspace before authorities can identify them.

According to FAA data, pilot error is the biggest contributor to restricted airspace violations. Pilots may not check for FAA Notices to Airmen that indicate the location of restricted airspace, or FAA may establish such airspace with little warning, and pilots may consequently enter the airspace. Airspace restrictions can move, such as when the President travels. Notices on the location of newly restricted airspace may be issued quickly, and pilots may already be in their aircraft or in the air when the restriction is announced and implemented. Moreover, pilots may fly around bad weather or may experience equipment problems and consequently enter restricted airspace to maintain safe operations.

To reduce violations, FAA has conducted safety seminars, provided a toll-free number for pilots to call and check for restricted airspace, identified

the location of restricted airspace on its Web site, and encouraged pilots to check for and be attentive to notices on restricted airspace.[11]

FAA Actions to Temporarily Suspend or Permanently Revoke Pilot Certificates

When a pilot enters restricted airspace without authorization, FAA investigates and decides what actions to take against the pilot. After the September 2001 attacks, FAA strengthened the actions that it could take. For example, FAA no longer issues warning notices or letters of correction to pilots. Instead, FAA will now suspend a pilot's certificate for 30 to 90 days for a single, inadvertent, first-time violation of a temporary flight restriction area that was established with a notice. The temporary suspension's length depends on the degree of danger to other aircraft and persons or property on the ground, the pilot's level of experience, prior violations record, and certain other factors. If a pilot deliberately enters restricted airspace without authorization, FAA will revoke the pilot's certificate.

Federal Agencies Have Taken Individual and Coordinated Actions to Mitigate the Terrorist Threat to U.S. Aviation

Federal agencies have undertaken individual and coordinated initiatives to secure U.S. aviation by trying to ensure that only authorized personnel gain access to aircraft or airports, expanding efforts to educate pilots about the location of restricted airspace and the circumstances under which they may enter such airspace, improving the monitoring of domestic airspace, enhancing their ability to enforce airspace restrictions, and trying to effectively coordinate a response to each restricted airspace violation in the event that prevention fails. TSA, FAA, and DOD have individually and in a coordinated way directed resources to mitigate the risk of terrorists using commercial aircraft as weapons or targets.[12] Some of the most publicly visible changes are the advent of TSA operations at over 400 airports, which include more rigorous passenger screening procedures.

TSA Has Acted to Secure Aviation

The Aviation and Transportation Security Act, enacted November 2001, authorized TSA to secure all modes of transportation.[13] Since then, TSA has established the Transportation Security Operations Center, a national

[11] We did not evaluate the effectiveness of these efforts.

[12] The resources discussed are not meant to be all-inclusive, but are used to highlight some of the resources that have been provided. Providing an all-inclusive list was beyond the scope of our review.

[13] Pub. L. No. 107-71 (2001).

center that operates around the clock and analyzes and disseminates operational- and intelligence-related information for all modes of transportation. TSA has also enhanced passenger and checked baggage screening, expanded the Federal Air Marshal Service to place more marshals on international and domestic commercial flights, and secured cockpit doors to prevent unauthorized entry to the flight decks of commercial airliners.[14] In addition, the Federal Flight Deck Officers program is training pilots on commercial passenger and cargo aircraft in how to use lethal force against an intruder on the flight deck. In addition, TSA has expanded background checks for more of the aviation workforce.

TSA is also working to fully implement a risk management approach that would include risk assessment tools for targeting resources to improve security. For example, the tool might indicate the level of preparedness of a facility, given probable threat scenarios. The tool may show that, based on a particular threat scenario, a facility's physical security may be vulnerable, or access controls to the facility may be weak. Based on the findings from use of the tool, owners and operators could take actions to reduce these risks.

FAA Has Taken Steps to Monitor Airspace and Support a Coordinated Interagency Response to Violations

After September 11, 2001, FAA established additional temporary flight restrictions over sensitive sites in the United States and established a teleconferencing system to coordinate the nation's response to violations of restricted airspace. Many of the additional temporary flight restrictions were established over selected critical infrastructures. Prior to the attacks, temporary flight restrictions were rarely used for national security purposes. Since the attacks, FAA has issued over 220 Notices to Airmen identifying temporary flight restrictions. In addition, the amount of airspace associated with some temporary flight restrictions has increased both vertically and laterally. For example, presidential temporary flight restrictions around the President have increased laterally from 3 to 30 nautical miles and vertically from 3,000 feet to 18,000 feet.

To alert DOD, TSA, the Federal Bureau of Investigation, and other agencies of suspicious activities or potential violations of protected airspace, FAA established the Domestic Events Network after the September 11, 2001, attacks. As discussed earlier, FAA also increased the sanctions against pilots who enter restricted airspace without

[14] In November 2003, the Federal Air Marshal Service was transferred to Immigration and Customs Enforcement.

authorization, and it has continued to educate pilots about restricted airspace.

NORAD's Mission Has Expanded to Defend Domestic U.S. Airspace

After the September 2001 attacks, NORAD's mission was expanded beyond defending just external airspace to include domestic airspace. NORAD also committed more fighters, refueling, and early warning aircraft to support its expanded mission. These aircraft are part of DOD's Operation Noble Eagle[15] and conduct air patrols over Washington, D.C., New York City, Chicago, Los Angeles, and other cities based on the threat level and threat intelligence received and analyzed. NORAD continually evaluates such information and directs operations such as that of ordering fighters to patrol airspace over these and other cities as appropriate. NORAD can also expand its overall national air defense response levels and commit additional resources according to the threat level.

To facilitate its current domestic military mission, NORAD expanded its ability to monitor domestic airspace. Prior to the September 2001 attacks, NORAD did not monitor domestic airspace. However, following the attacks and the expansion of NORAD's mission to include domestic air defense, the command gained access to FAA's domestic airspace radar system, with a software upgrade. During our review, NORAD was testing replacement software that would allow it to achieve efficiencies in securing domestic airspace. However, air defense-sector radar operations crews we interviewed expressed concerns about the new software. We briefed NORAD officials on these concerns, and the officials responded that they would not accept the software until air defense personnel were satisfied with its performance. Moreover, in addition to normal software development meetings that NORAD had conducted with the users, NORAD also held special meetings to address the air defense-sector personnel's concerns. System testing was scheduled through 2005.

NORAD is also trying to improve the data that it collects and records on violations of restricted airspace. Our review found discrepancies in the numbers of violations of restricted airspace recorded between the air defense sectors and NORAD headquarters. For example, from January through November 2004, the Northeast Air Defense Sector reported 2,069 cases where aircraft were monitored for violations of restricted airspace

[15] Operation Noble Eagle is a DOD-led military mission that began on September 11, 2001, to defend the United States against terrorism or foreign aggression.

and other activities.[16] However, NORAD headquarters had information on only 266, or 13 percent of the cases. NORAD headquarters acted to correct the problem and is implementing a new reporting system and conducting training. NORAD's air defense sectors are primarily responsible for tracking and cataloging restricted airspace violations. NORAD headquarters officials told us that their airspace data had not been shared outside DOD. However, in July 2005, DOD informed us that it is planning to share information contained in its new system with the FAA upon completion of an interagency memorandum of understanding.

Coordinated Agency Initiatives Taken to Secure U.S. Aviation

The agencies have recognized that individual actions alone are not sufficient to respond to violations of restricted airspace, and consequently they have also coordinated their efforts to try and enhance the response to each violation. The agencies have established the National Capital Region Coordination Center to enhance the effectiveness of air security and air defense operations in the national capital region. The center's primary mission is to facilitate rapid coordination and information sharing among participating agencies in preventing, deterring, and interdicting air threats to the region. To facilitate center operations, the participating agencies approved a concept of operations plan in May 2005 that identifies agency roles and missions in securing and defending national capital region airspace and specifies certain interagency operating protocols.

Interagency Management of the Response to Airspace Violations Could Benefit from Closing Gaps in Policies and Procedures

The individual and coordinated agencies' actions represent noteworthy efforts to counter the threat to U.S. aviation and the homeland. However, it is important to recognize that it may not be possible to prevent all restricted airspace violations or to deter all attacks. Airspace security measures could be challenged. In addition, in some cases, some pilots do not consult FAA notices on the location of restricted airspace as required by FAA, and consequently sometimes inadvertently enter restricted airspace without authorization. Although FAA has established stricter sanctions against pilots and stepped up its outreach efforts, violations continued at the time of our review. Consequently, the interagency management of the response to airspace violations could benefit from

[16] NORAD may monitor for other activities if, for example, it receives intelligence information that indicates an aircraft may present a potential threat. Because NORAD data includes information on other airspace activity as well as violations into restricted airspace, NORAD data did not correspond to FAA data for the same time period.

filling gaps in policies and procedures. We also identified gaps in TSA's risk assessment of the aviation sector.

Gaps in TSA Risk Assessments

TSA has made improvements in airspace security; however, TSA does not have complete knowledge of the level of risk existing in the commercial aviation sector. While agency officials told us that they conducted vulnerability assessments, a component of risk assessments, at many of the commercial airports, they had not assessed all of them. TSA officials explained that they had not yet established milestones for specific actions needed to complete the risk assessments. As a result, TSA lacks assurance that some airport managers have taken reasonable steps to enhance security.

General aviation airports and aircraft are also a concern because TSA has generally not assessed the level of security existing at these airports. About 19,000 general aviation airports operate in the United States, and TSA's overall vulnerability assessments at these airports have been limited. Most general aviation airports are not required to provide the same level of screening for pre-boarding passengers as at commercial airports. TSA has reviewed some general aviation airports for vulnerabilities and developed risk assessment tools to enable managers to conduct self-assessments. Nonetheless, the assessments are voluntary, and the completion of these assessments has been limited.[17] Thus, TSA plans to outreach to airport managers to promote use of the tool. In a November 2004 report, we recommended that the Secretary of Homeland Security direct the Assistant Secretary of TSA to develop an implementation plan with milestones and time frames to execute a risk management approach for general aviation, and the agency concurred with our recommendation.

Gaps in the Interagency Management of Violations

While improvements have been made in the overall management response to airspace violations, the interagency response to airspace violations suggests that there are opportunities for further improvement, because these agencies have not formally developed an interagency program to institutionalize the defense of restricted airspace. Specifically, the agencies do not have:

[17] GAO, *General Aviation Security: Increased Federal Oversight Is Needed, but Continued Partnership with the Private Sector Is Critical to Long-Term Success*, GAO-05-144 (Washington, D.C.: November 10, 2004).

- an organization in charge,
- interagency policies and procedures,
- protocols for information sharing, and
- common definitions of restricted airspace violations.

Leadership Over the National Capital Region Coordination Center Is Uncertain

Each agency simultaneously acts and commands and controls its own resources in responding to a violation of restricted airspace. At the same time, TSA, FAA, and DOD officials told us that, at the National Capital Region Coordination Center, determining who leads the interagency response is difficult, may change depending on the nature of the airspace violation, and may shift during the course of a violation, as the agencies monitor the intruder's flight and consider the appropriate response. TSA is the executive agency for the center, but TSA officials said that they only resolve or "deconflict" agency issues and do not see themselves as being in charge of the interagency process for responding to violations of restricted airspace. At the same time, DOD pointed out that the response at the center has little or no effect on NORAD's response, because NORAD and FAA control National Capital Region airspace. Without central leadership, the potential exists for a somewhat slower response to a violation as the agencies decide who is in charge while the violating aircraft continues to operate in restricted airspace.

Interagency Coordination Is Occurring, but Policies and Procedures Are Not Well Established

While the interagency coordination achieved at the time our report was noteworthy, TSA, FAA, DOD, and other agencies had not implemented certain key policies and procedures that are critical to multi-organizational success, particularly when they are acting simultaneously in a time-critical operation. For example, the agencies had not agreed on policies and procedures to specify who has access to Domestic Events Network-initiated conferences, and under what circumstances. Additionally, according to FAA, during a violation FAA personnel may not have access to DOD's classified teleconference systems if the interagency response goes beyond a certain national security classification, because FAA officials may lack appropriate security clearances. In other cases, according to DOD officials, when a secure conference is taking place, FAA officials cannot connect themselves into the conference, the originating party must call them and FAA must subsequently answer the call, in order to participate. If unable to participate, FAA officials told us that they may be unable to effectively manage other aircraft in the area in a timely manner, potentially resulting in aircraft collisions or exposing aircraft transiting the area to danger if the decision is made to shoot down the violator.

Concept of Operations Plan for the National Capital Region Is Completed, but Remaining Airspace Is Not Covered

In April 2005, the agencies completed their interagency concept of operations plan for the National Capital Region Coordination Center, but the concept of operations plan does not address when and how responsibility for response is passed from agency to agency during a violation. Also, the agencies have not begun to develop a plan covering any other U.S. airspace. Such plans outline the general concept of program operations with specific actions and responsibilities to be assigned to participating agencies in a separate, more detailed plan. Without a concept of operations plan, the effective passing of responsibility from one agency to another to respond to a restricted airspace violation cannot be ensured, potentially leading to confusion and a slower response.

Information Sharing Protocols and Procedures Have Not Been Established

Information sharing protocols and procedures have not been established by the agencies or within some parts of FAA. After the agencies complete the response to an airspace violation, FAA and NORAD officials record the violation in separate databases. These databases consist of records of violations that, taken together, could reveal trends indicating testing or training for an attack. However, neither FAA nor NORAD routinely shares even parts of its data with the other. Furthermore, the FAA database was not routinely shared with the agency's own Strategic Operations Security Manager, despite the manager's repeated attempts to obtain access. In May 2005, FAA finally agreed to share parts of the database with its own Strategic Operations Security Manager. Although the FAA database was set up for a different purpose, the manager had previously indicated that he could use information to enhance security; however, he told us that the FAA department that maintains the database had previously refused to provide the information, citing the need to protect pilot information.

We also obtained access to key elements of the database[18] and found information that could suggest approaches to reducing violations of restricted airspace. For example, we could identify aircraft that repeatedly violated restricted airspace and the airports from which the flights originated. Specifically, we found 2 general aviation aircraft that had accounted for 6 violations each, and 29 airports, 17 of which are in Maryland and Virginia, that had accounted for about 30 percent of all airspace violations nationwide. This is the type of information that was not shared with the FAA Strategic Operations Security Manager, but which such an office might find useful in light of intelligence agency threat

[18] FAA excluded pilot information from the key elements we obtained.

assessments about the potential for terrorist use of general aviation aircraft.

Additionally, FAA enforcement actions taken on airspace violations are not routinely shared with other agencies. Since agencies do not have this information, they have little knowledge as to the disposition and effectiveness of their collective efforts, and they may be hampered in their ability to target limited resources effectively. For example, NORAD air defense-sector personnel did not have aggregated or general information about FAA's administrative enforcement actions against pilots who had violated restricted airspace in their sectors.[19]

Common Definitions Have Not Been Accepted

Finally, the potential for confusion exists about what constitutes a restricted airspace violation because no common definition has been accepted. FAA and NORAD, the primary agencies collecting airspace violations data, define it differently. NORAD uses the term "incursion" and defines different types of incursions depending on various factors, including airspeed and direction. FAA uses the term "pilot deviation" and defines it as the actions of a pilot that result in the violation of a Federal Aviation Regulation or a NORAD Air Defense Identification Zone, a category of restricted airspace. However, the terms are not synonymous, and a violation can trigger a response in one agency but not another, even though multiple agencies share the responsibility for restricted airspace security and an appropriate, timely response is critical. Moreover, without a common definition that can be used as a basis for collecting nationwide data, the agencies may not be aware of the scope and magnitude of violations, making it potentially more difficult to target resources efficiently and enhance security.

Conclusions

After the September 11, 2001, attacks, the fragmented missions of agencies involved in securing and defending U.S. airspace converged into a broader interagency mission to protect the airspace. Since September 11, 2001, several involved agencies took actions that represent noteworthy efforts to counter the threat to U.S. aviation and the homeland. TSA has attempted to identify vulnerabilities of aircraft and airports and consequently implemented and continues to implement security enhancements. Although TSA is finishing the development of a risk-

[19] Such information would not have to include privacy information that could be used to identify individual pilots.

assessment tool to assess general aviation threats, TSA has not established milestones with specific actions needed to complete a similar risk assessment for the commercial aviation sector. Until the assessment is completed, TSA may lack complete knowledge as to the level of risk in commercial aviation, and it cannot be assured that commercial aircraft owners and operators at some airports are effectively targeting resources to mitigate the risk of terrorists' using commercial aircraft to attack population centers and critical infrastructure. Because the interagency process to manage the response to restricted airspace violations is a time-critical operation, the implications of not having well-developed policies, procedures, information sharing protocols, and common definitions are serious. In addition, if information and databases are not appropriately shared, opportunities to better target limited resources and proactively identify emerging threats could be missed.

Recommendations for Executive Action

We recommend that the Secretary of Homeland Security direct the Assistant Secretary of TSA to establish milestones with specific actions needed to complete risk assessments applicable to the commercial aviation sector.

We further recommend that the Secretaries of Defense, Homeland Security, and Transportation work together to

- determine the extent to which one agency should be in charge of leading the interagency process of responding to violations of restricted airspace as they occur;
- determine the degree to which interagency policies, procedures, and other guidance on the Domestic Events Network are needed to evaluate its effectiveness and identify potential improvements;
- develop a concept of operations plan or other relevant document to guide the interagency process of responding to violations in all U.S. airspace;
- establish information sharing requirements and protocols; and
- establish common definitions.

In addition, we recommend that the Secretaries of Defense and Transportation work together to determine the extent to which key elements of FAA's pilot deviations database could be shared with NORAD.

We also recommend that the Secretary of Transportation direct the Administrator of FAA to take the following actions:

- Obtain necessary security clearances for appropriate FAA personnel to ensure that they are not excluded from airspace violations conferences that require such clearances; and
- Ensure that FAA shares sufficient data from its airspace violation database (also known as its pilot deviations database) with FAA's office of the Strategic Operations Security Manager to meet the needs of that office.

Agency Comments and Our Evaluation

We received unclassified written comments from DHS, classified written comments from DOD, and unclassified oral comments from the Department of Transportation on the classified draft report that we will issue to you in September 2005. We have included the DHS comments in their entirety in appendix II and the unclassified portion of DOD's comments in appendix III. Each agency also provided technical comments, and we incorporated them in our draft report and this statement where appropriate.

DHS and DOD disagreed with our draft report recommendation that the secretaries of the three departments work together to appoint an organization responsible for determining the extent to which one agency should be in charge of countering violations of restricted airspace as they occur. DHS maintains that each agency should maintain full authority to execute its own portion of the mission that contributes to the interagency effort. DHS and DOD both pointed out that the Interagency Airspace Protection Working Group in the Homeland Security Council addresses interagency coordination issues, and DHS indicated that the working group may be a vehicle for addressing the gaps we identified. We note that, to date, the issues we highlighted in our testimony remain unresolved. Nevertheless, we revised our recommendation to suggest that the secretaries of the three departments work together to determine the extent to which one agency should be in charge of leading the interagency process of responding to violations of restricted airspace. Ultimately, we believe that if the agencies can collectively resolve the issues and gaps we identified in our report, which they acknowledged, then an organization in charge may not be needed.

As discussed above, DHS agreed or partially agreed with the rest of our recommendations, while DOD disagreed with most of the recommendations and agreed with some. Department of Transportation officials agreed with the recommendations in our draft report.

DHS generally concurred with our recommendation to establish milestones with specific actions needed to complete risk assessments

applicable to the commercial aviation sector. In its response, DHS said that it continues to conduct assessments as part of its risk-based management approach. While these are good first steps, we still believe it is also important to establish milestones with specific actions needed to ensure that the assessments are completed within a reasonable time period and are effectively managed. While DHS disagreed with having a lead agency, its comments stated that more could be done to coordinate efforts during violations, but that the focus should be on open communications to ensure flexibility in responding to the violation. DHS told us that the Interagency Airspace Protection Working Group meets regularly and addresses relevant national airspace issues, but we noted that there is still an absence of an air security strategy, plan, or concept of operations, and the issues we found that could enhance air security such as information sharing and common definitions still need to be addressed. DHS concurred with our recommendations to determine the degree to which interagency policies and procedures on the Domestic Events Network are needed; develop a concept of operations for management of the interagency response to violations in all U.S. airspace; and establish information sharing requirements and protocols. With regard to our recommendation to establish common definitions, DHS concurred in part, citing that each agency's mission and command and control processes require that it develop its own definitions for airspace violations. However, DHS agreed to share its definitions with other agencies. We agree that sharing definitions is important; however, it is unclear to us whether simply sharing and not harmonizing definitions would sufficiently reduce confusion during the interagency operation responding to violations of restricted airspace. This is especially a concern in a time-critical function where clear decisions are imperative.

DOD concurred or partially concurred with some of our recommendations and nonconcurred with others. DOD also noted that we omitted from our draft report certain DOD procedures officials supplied to us that integrate DOD's response to violations of restricted airspace with those of other agencies. We acknowledge that DOD has internal procedures that discuss the way DOD interacts with other agencies, and we considered those procedures as part of our analysis. DOD's procedures notwithstanding, we identified a number of potential gaps in the interagency process of responding to violations of restricted airspace that remain unaddressed.

We recommended that the Secretaries of Homeland Security, Defense, and Transportation work together to accomplish five initiatives. First, DOD nonconcurred with our recommendation that the three secretaries work together to identify an organization that would be responsible for

addressing interagency coordination issues. As did DHS, DOD pointed out that the Interagency Airspace Protection Working Group already addresses interagency coordination for homeland air defense. Nonetheless, problems remain. For example, as we point out in our report, information sharing protocols and procedures have not been established, a concept of operations plan for airspace outside the national capital region has not been developed, and common definitions have not been adopted. DOD also pointed out that TSA hosts agencies at the National Capital Region Coordination Center. While true, TSA officials told us that they view their role as one of deconflicting rather than of leading interagency efforts. As stated earlier, we believe that if the agencies can effectively resolve the issues and gaps we identified in the interagency process of responding to violations of restricted airspace without having an organization in charge, then an organization in charge may not be needed.

Second, DOD nonconcurred with our recommendation that the three secretaries work together to determine the extent to which one agency should be in charge of leading the interagency process of responding to violations of restricted airspace as they occur. DOD stated that our report is misleading because it implies that having someone in charge would prevent some airspace violations. DOD also stated that DHS has managed air security by hardening commercial aircraft cockpit doors, placing armed Federal Air Marshals on some flights, and taking other actions. DOD also pointed out that FAA manages airspace for flight safety and DOD defends domestic airspace. DOD stated that all of these missions occur at all times and there is never a "lead change." As discussed above, we revised and clarified our recommendation to suggest that the secretaries of the three departments determine the extent to which one agency should be in charge of leading the interagency process of responding to restricted airspace violations. Our recommendation is intended to enhance the response to violations of restricted airspace and is not premised on the notion that its adoption would prevent the violations from occurring. Moreover, while steps taken by DHS, FAA, and DOD to secure aviation, ensure flight safety, and defend homeland airspace are important contributions, they generally do not contribute to knowing who is in charge of the response as a violation is occurring. Also, we agree with DOD that there is never a "lead change," because the interagency process lacks central leadership. Finally, we did not recommend that a specific agency or individual be in charge. We recommended that the departments study the question of whether it would be advantageous to have someone in the lead. If the departments determined that such a change would be beneficial, they would presumably also determine what, if any, changes in law would be needed.

We acknowledge, however, that if the agencies can effectively resolve the issues and gaps we identified in the interagency process of responding to restricted airspace violations, then an organization in charge may not be needed.

Third, we recommended that the three secretaries determine whether interagency policies, procedures, or other guidance is necessary to evaluate Domestic Events Network performance and identify improvements. DOD nonconcurred and stated that the Domestic Events Network is not designed for decision making. We note that the network is a telephone conferencing system that permits communication between the agencies responding to violations of restricted airspace for the purpose of deciding on the coordinated response. We are not aware that the agencies have evaluated network performance to determine whether enhancements are possible, and our recommendation was intended to promote such an evaluation. We continue to believe that government initiatives benefit from appropriate evaluation of performance, and consequently we stand by our recommendation.

Fourth, we recommended that the secretaries work together to develop a concept of operations plan for management of violations in all U.S. airspace. DOD nonconcurred on the basis that the agencies do not manage violations but respond to them. Nonetheless, DOD agreed that an overall air strategy and identification of roles and missions for each agency should be considered. We agree that an overall strategy for securing U.S. air space would be beneficial, and we believe that if such a strategy is developed, a concept of operations plan or other relevant document would follow. As a result of DOD's comment, we have revised our recommendation to one of developing a concept of operations plan or other relevant document to guide the interagency response to violations of restricted airspace.

Finally, DOD concurred with our recommendations that the secretaries work together to establish information sharing protocols and procedures and establish common definitions.

We had also recommended that the Secretaries of Defense and Transportation work together to determine the extent to which key elements of the FAA's pilot deviation database could be shared with NORAD, and DOD nonconcurred. In its comments, DOD stated that it does not require access to private citizen data contained in the FAA database. We agree that DOD does not require such information. However, we recommended that DOD meet with the Department of Transportation to

determine whether any elements would be useful, and if so, to pursue a means to obtain them. Consequently, we stand by our recommendation.

Department of Transportation officials told us that they agreed with our recommendations and indicated that a national air security policy should be established to outline major goals and responsibilities for each of the agencies with responsibilities for the protection of U.S. airspace. Department officials also stated that without a national policy, the agencies would continue to work without unified, common goals. Transportation officials suggested that a policy coordinating committee be established for air security to address interagency issues. They also agreed that information sharing is critical to enhance air security and told us that they had begun sharing pilot deviations data with the FAA Strategic Operations Security Manager as we had recommended. We agree with the Department's overall comments and believe that this is the type of dialogue that should take place between the Departments of Homeland Security, Defense, and Transportation.

Mr. Chairman, this concludes my testimony. Thank you again for the opportunity to discuss these issues. At this time, I would be happy to address any questions.

Appendix I: Scope and Methodology

In conducting our review of the response to violations of restricted airspace, we visited key offices within DOD, DHS, and FAA that have responsibility for oversight and management of U.S. airspace. We conducted our review in the Washington, D.C., area, at DOD, including the Office of the Assistant Secretary of Defense (Homeland Defense), Defense Intelligence Agency, and Joint Theater Air and Missile Defense Office; DHS, including the Office of Immigration and Customs Enforcement, United States Secret Service, and the Transportation Security Administration, including the National Capital Region Coordination Center; FAA Headquarters, Domestic Events Network, Air Traffic Control System Command Center, and the Potomac Consolidated Terminal Radar Approach Control facility. We also met with the Federal Bureau of Investigation, the Central Intelligence Agency, the National Counterterrorism Center, the National Aeronautics and Space Administration, and the Aircraft Owners and Pilots Association. We did not review ground-based air defense batteries that are also part of the homeland air defense system.

We conducted fieldwork at U.S. Northern Command and NORAD, Colorado Springs, Colorado, as well as NORAD's Northeast Air Defense Sector, Rome, New York; Western Air Defense Sector, Tacoma, Washington; and the Continental U.S. NORAD Region and Southeast Air Defense Sector near Panama City, Florida. In addition, we visited the Air Force's Air Combat Command, Langley, Virginia, and 84th Radar Evaluation Squadron, Ogden, Utah; Immigration and Customs Enforcement's Air and Marine Operations Center, Riverside, California; and FAA's Air Traffic Control Center, Fort Worth, Texas.

To determine the extent to which violations of restricted airspace have occurred since September 11, 2001, we met with NORAD and FAA officials to obtain relevant data from their incursion and pilot deviation databases, respectively, and discussed their methods for determining what constitutes an incursion/pilot deviation. After determining that NORAD's database was not adequate to accurately identify the number of violations of restricted airspace, we obtained relevant portions of FAA's pilot deviation database and performed the analysis necessary to develop the data provided in the report. We reviewed the reliability of the FAA database to determine the numbers of incursions. We (1) performed electronic testing of the data elements needed for our analysis and looked for obvious errors in accuracy and completeness, (2) reviewed related documentation, and (3) interviewed officials knowledgeable about the data. We noted several limitations in the data, including missing values for key data elements and the fact that events might be both over- and under-

reported due to varying definitions of pilot deviations. We were able to partially correct for these problems and consequently determined that the data were sufficiently reliable to illustrate analyses for tracking violations of restricted airspace. However, because we could not fully correct for data errors, the data presented should be considered estimates rather than precise numbers.

To identify the actions taken individually or in coordinated fashion to secure U.S. airspace and aviation and to mitigate the threat since September 11, 2001, we interviewed officials at the National Capital Region Coordination Center; the headquarters of NORAD and its Continental U.S. NORAD Region and the three continental U.S. based air defense sectors, TSA, FAA, and Air Combat Command; and the Air and Marine Operations Center. We discussed and reviewed changes in operational responsibilities and plans of these organizations both pre- and post- September 11, 2001. To better understand these actions, we toured and observed the workings of the National Capital Region Coordination Center, the air defense sectors, the Domestic Events Network, and the Air and Marine Operations Center. While at some of these centers, we observed the agencies' responses to actual violations of restricted airspace, the interaction of the agencies involved in responding, and the steps taken by the various agencies involved to address the violation. We discussed with agency officials the procedures for responding to incursions into restricted airspace and reviewed pertinent documentation relating to those procedures where they existed.

In examining interagency policies and procedures that govern the management of airspace violations, we first reviewed existing GAO work that found that the success of interagency efforts depends on melding multi-organizational efforts through central leadership, an overarching strategy, effective partnerships, and common definitions. We then compared the extent to which agencies with responsibility for preventing or responding to violations of restricted airspace have established an organization in charge, interagency policies and procedures, protocols for the sharing of database records documenting violations of restricted airspace, and common definitions of restricted airspace.

We conducted our review from June 2004 through April 2005 in accordance with generally accepted government auditing standards.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

July 12, 2005

Ms. Davi M. D'Agostino
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. D'Agostino:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report titled, "HOMELAND SECURITY: Interagency Resources Address Violations of Restricted Airspace but Management Improvements are Needed" (GAO-05-472C). Technical comments have been provided under separate cover.

The Department of Homeland Security (DHS) appreciates the work done in this report to identify security issues associated with aircraft incursions into restricted airspace. The Department believes that GAO's identification of areas for improvement will add to the security of aviation within the U.S. airspace. The Department's Transportation Security Administration (TSA) generally concurs with GAO's findings, but will address a few key issues in this letter.

DHS respectfully submits that GAO's emphasis on the need to have one agency in charge of countering violations of restricted airspace may actually hinder rather than facilitate an effective response. It should be noted that the mission of air defense of the United States is assigned to a single agency - the Department of Defense. However, incursions of restricted airspace present a unique challenge since the overwhelming majority of such incursions are caused by pilots operating General Aviation aircraft, i.e., operations other than commercial airlines or military. Although these incursions may represent violations of airspace procedure, they rarely if ever pose a hostile threat even as the possibility remains that they could.

Therefore, determining whether a specific restricted airspace incursion represents a hostile threat is an essential task. Several agencies contribute to this process by sorting (detecting, identifying, and intercepting) unknown or non-compliant contacts that enter restricted airspace. This sorting process declutters the air picture and supports a determination of the potential hostile intent of airspace violators. This effort succeeds best when each agency maintains full authority to execute that portion of its own mission that contributes to this effort and when all agencies fully coordinate and communicate with one another. We fear that arbitrarily assigning lead agency responsibility to one agency will hinder the flexibility of the coordinated effort.

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It should also be noted that there is an interagency body that meets regularly to coordinate airspace security issues, primarily in the National Capital Region (NCR), but also elsewhere in the country as needed. This body is the Interagency Airspace Protection Working Group (IAPWG) whose membership includes several government agencies and such DHS elements as TSA, U.S. Secret Service, Customs and Border Protection Office of Air and Marine Operations (CBP/AMO), and the U.S. Coast Guard.

Most airspace violations are caused by pilots operating General Aviation (GA) aircraft. TSA defines GA as operations other than airlines or military aviation. GA is a diversified segment of the aviation industry which accounts for approximately 77 percent of all flights within the United States, and encompasses a wide array of aircraft, ranging from large business jets and small recreational aircraft to rotorcraft and airships. Additionally, GA consists of a number of different types of operations, from corporate and certain charter flight operations in small aircraft, to aerial observation and crop dusting. Because this industry comprises such a large population and diverse activities, TSA employs a threat based, risk management approach to effectively utilize its resources and focus its efforts. Simply "regulating" all of GA would be cost prohibitive and inefficient. Therefore, it is incumbent when considering TSA oversight for this industry that the segment of the industry being considered is clearly delineated.

It is noted in GAO's report that TSA does not adequately regulate GA. In fact, TSA regulates certain segments of the GA sector. As GAO recently pointed out, the key to long-term success in securing general aviation is a partnership among the federal government, state governments, and the general aviation industry[1]. To that end, TSA and the Federal Aviation Administration (FAA) continue to provide outreach to GA airport operators and pilots throughout the nation. For example, TSA partnered with the Aviation Security Advisory Committee (ASAC) to develop GA security recommendations which were included in TSA's Information Publication A-001, "Security Guidelines for General Aviation Airports." In addition, TSA developed the Airport Watch Program in coordination with the Aircraft Owners and Pilots Association (AOPA) which seeks to improve local awareness through public communication and promotes the reporting of suspicious activity to TSA. TSA regulates certain charter flight operations in small aircraft, instruction of alien flight students and the provision of security awareness training to employees of flight schools. During periods of heightened alerts, TSA may also promulgate additional restrictions based on threat. For instance, in August 2004, when TSA was presented with credible threat information in New York City, TSA mandated requirements for the helicopter tour industry to address the specific threat.

Comments on GAO Recommendations Relevant to DHS

Recommendation 1: Secretary of Homeland Security to direct TSA to establish milestones with specific actions to complete risk assessments applicable to the commercial aviation sector.

DHS generally concurs with this recommendation. Currently TSA performs vulnerability assessments at commercial airports; the assessments include air carrier operations and the

[1] *General Aviation Security: Increased Federal Oversight Needed, but Continued Partnership with the Private Sector is Critical to Long-Term Success*, GAO-05-144, (Washington, DC, December 10, 2004).

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environment they operate within. These assessments are provided to the Federal Security Director and the airport operator and used to improve the overall security posture of the airport. TSA plans to continue this work as part of its risk-based management approach. The vulnerability assessments are reviewed in conjunction with threat assessments and developed into risk assessments. TSA uses these risk assessments as tools to enhance aviation security, including prevention and management of air incursions.

GAO Recommendation 2: The Secretaries of Defense, Homeland Security and Transportation work together to appoint an organization responsible for addressing interagency coordination efforts to include:

a. Determining the extent to which one agency should be in charge of countering violations of restricted airspace as they occur.

DHS concurs in part. DHS is committed to handling airspace violations in the most effective manner possible and agrees more can be done to coordinate efforts during airspace restriction violations. DHS believes that the focus should not be on a single agency leading the response; it is more important that each agency maintain its command and control but allow open communication with the other agencies to ensure flexibility in response and resolution of the violation.

In addition to the coordinated agency response and resolution, there is currently an InterAgency Airspace Protection Working Group (IAPWG) that meets regularly to address issues that affect aviation security. The IAPWG was created after the attacks of September 11, 2001 and works to coordinate and address airspace issues that pertain to the National Capital Region, and addresses other relevant national airspace issues. The IAPWG, which was chartered by the Homeland Security Council, serves as a forum to bring multiple government organizations together as full partners in the cooperative development of procedures and policies to enhance Homeland Air Security. Currently, at the request of the HSC and as per the majority vote of the membership, TSA is chairing the IAPWG.

b. Determining the degree to which interagency policies, procedures, and other necessary guidance on the Domestic Events Network are needed to evaluate its effectiveness and identify potential improvements.

DHS concurs. DHS commends the FAA in its operation of the Domestic Events Network (DEN), as it provides an open line of communication for real time coordination during events. DHS will work with other agencies to determine whether interagency policies, procedures, and other guidance are needed.

c. Developing a concept of operations for management of violations in all U.S. airspace.

DHS concurs. It is important to note that it is ultimately each pilot's responsibility to request the most recent information regarding temporary flight restrictions and to review the latest Notices to Airmen (NOTAM) issued by the FAA before initiating flight operations. However, TSA and the FAA will continue to provide outreach to GA airport operators and pilots to prevent pilot based airspace violations. The outreach campaign

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includes "Pilot Town Meetings," development and dissemination of informational materials throughout the nation, and leveraging government and industry websites.

TSA, in coordination with FAA, and as a member of the IAPWG, will continue to develop a concept of operations to manage airspace violations throughout the nation that relies primarily on risk management principles. Such a risk management approach allows TSA to determine which areas present the greatest vulnerabilities that need to be addressed immediately. Consequently, TSA will continue to enact reasonable, feasible, and effective security measures appropriate to the airspace environment while endeavoring to minimize impacts on the national airspace.

d. Establishing information sharing requirements and protocols.

DHS concurs. TSA works with several agencies through the DEN which was established in response to September 11, 2001 and is maintained by the FAA. The DEN's 24-hour access provides a real time method for hundreds of government entities to share information about the violation, and about how each entity is moving to resolve the violation according to the mission. The DEN, in addition to direct phone calls, text messaging, and face-to-face meetings, provides an atmosphere of information exchange among agencies in an efficient manner. In coordination with other agencies, TSA will continue efforts to enhance information sharing.

e. Establishing common definitions.

DHS concurs in part. Each agency's mission and command and control processes require that the agency develop its own definition for airspace violations. However, in order to promote commonality, TSA will work with other agencies to share definitions.

In conclusion, thank you again for providing this report to assist Congress in better understanding the communication and processes that are associated with airspace violations throughout the United States. We look forward to working with you on future homeland security issues.

Sincerely,

Steven J. Pecinovsky

Steven J. Pecinovsky
Director
Departmental GAO/OIG Audit Liaison

Appendix III: Comments from the Department of Defense

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ASSISTANT SECRETARY OF DEFENSE
2600 DEFENSE PENTAGON
WASHINGTON, DC 20301-2600

HOMELAND DEFENSE

13 JUL 2005

Ms. Davi M. D'Agostino
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. D'Agostino:

(U) This is the Department of Defense response to the GAO draft report, "HOMELAND SECURITY: Interagency Resources Targeted to Address Violations of Restricted Airspace but Management Improvements are Needed," dated June 1, 2005 (GAO Code 350538/GAO-05-472C).

(U) In general, some of the recommendations omitted DoD's specific substantiation of procedures that integrate DoD with other Federal agencies during identification of tracks of interest. This information was provided to GAO auditors during the engagement process. Our comments will focus on these issues. Enclosure 1 deals specifically with the report recommendations for DoD; enclosure 2 provides technical comments on the accuracy and completeness of the report.

(U) Thank you for the opportunity to review the report. Mr. Johnnie Wauchop, Assistant for the Air Domain, Force Planning and Employment, has the lead for this effort in my organization. He may be reached at (703) 693-1968.

Paul McHale

Enclosures:
1. DoD Comments on the Recommendations
2. DoD Technical Comments

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Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Davi M. D'Agostino (202) 512-5431

Acknowledgments

Brian J. Lepore, Lorelei St. James, James F. Reid, James R. Nelson, Carissa D. Bryant, Ronald La Due Lake, Rebecca Shea, Michael C. Zola, Cheryl Weissman, and R.K. Wild made key contributions to this statement.

Related GAO Products

General Aviation Security: Increased Federal Oversight Is Needed, But Continued Partnership with Private Sector is Critical to Long-Term Success. GAO-05-144. Washington, D.C.: September 30, 2004.

Homeland Defense: Progress Made in Organizing to Achieve Northern Command's Mission, but Challenges Remain. GAO-04-622C. Washington, D.C.: September 8, 2004.

Homeland Security: Efforts to Improve Information Sharing Need to be Strengthened. GAO-03-760. Washington, D.C.: August 27, 2003.

Homeland Defense: DOD Needs to Assess the Structure of U.S. forces for Domestic Military Missions. GAO-03-670. Washington, D.C.: July 11, 2003.

Homeland Security: Effective Intergovernmental Coordination is Key to Success. GAO-02-1013T. Washington, D.C.: August 23, 2002.

Homeland Security: Key Elements to Unify Efforts Are Underway but Uncertainty Remains. GAO-02-610. Washington, D.C.: June 7, 2002.

Combating Terrorism: Selected Challenges and Related Recommendations. GAO-01-822. Washington, D.C.: September 20, 2001.

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Chairman TOM DAVIS. Thank you very much. Let me start. Most of us have read in the newspapers different accounts of the interagency process that was used in recent incursions of the National Capital Region. As GAO conducted this study, did you look at any of these incidents and can you comment on what you saw?

Ms. D'AGOSTINO. Mr. Chairman, our work did not focus on a specific incident. We did look into the Kentucky Governor incident. But actually we had completed our review by the time the May 11 incident had occurred and we had begun writing our report. So, we did not dig deeper into those specific cases.

Chairman TOM DAVIS. Does TSA need to do more to identify security vulnerabilities on general aviation aircraft?

Ms. D'AGOSTINO. I think our statement points out areas where TSA could do more. There are 19,000 general aviation airports. It is a rather huge population. They are trying to do a risk-based approach to their effort and they have developed a risk-assessment tool and they have deployed some to general aviation airports, so I think they deserve some credit for that. There may be more that they could do.

Chairman TOM DAVIS. What responsibilities do you think the TSA should have as the executive agent for the National Capital Region's Coordination Center and do you think the TSA if fulfilling its responsibilities? Can you give them a grade?

Ms. D'AGOSTINO. Well, I think as the executive agent TSA describes its own role as one of deconflicting. It is not seeing itself as in charge and it is not clear that they see themselves in a leadership role or in a proactive leadership role.

One of the questions we have is if there were to be an air security strategy or plan put together, who would do the first draft, Mr. Chairman. We would wonder who would do the first draft and then broker the coordination of that draft with a timetable.

That's where we would like to understand whose leadership——

Chairman TOM DAVIS. So, what do you think the National Capital Regional Coordination Center needs? What improvements do they need?

Ms. D'AGOSTINO. I think we pointed out some communication problems. They need a concept of operations plan. Although they have one, it does not go into the kinds of specificity much beyond roles and responsibilities of the individual agencies. So, we think that could be pushed a little further.

Chairman TOM DAVIS. You did identify gaps in the management of the interagency response to airspace violations. What is lacking in the management of the Federal responses? What is lacking? Is it somebody in charge at the end?

Ms. D'AGOSTINO. Right, somebody in charge, an over-arching strategy and plan, information sharing protocols as among the agencies, some clear concepts of operations, how things will be communicated. Our team actually observed the DEN and they observed there's a lot of shouting. When there are multiple incidents it gets very confusing. You can't tell who is talking.

Chairman TOM DAVIS. You ought to see it from this angle. I was meeting with six presidents of nations in Central America. We had a meeting and it just got started. They came in and just literally carried them out, put them in cars and left.

This building was emptied, office buildings around here, not just the legislative branch and Library of Congress, but others. I mean thousands of hours of productivity lost. Of course, at the end of the day it was just somebody who got lost flying over the area.

But you can tell from some of the Members' opening statements, there has to be a better way to do this. There have to be penalties for the violations. I don't know if that starts with education or as people are leaving, to understand it. But it is getting very, very disruptive in terms of both the private sector and the Government sector.

Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman. I welcome the panelists.

I was listening very intently, Ms. D'Agostino, to your testimony and your recommendations. Do you believe that we ought to create—would that be one of your recommendations—that we create a new agency to coordinate all of this? Because it doesn't appear that we are talking to each other, the various agencies involved, and that we are coordinating.

I understand with one incident there were two different agencies that were trying to intercept. Do you think there's a need for a new agency or department?

Ms. D'AGOSTINO. We do not think there's a need for a new agency or department. There are enough agencies and departments now participating in this response. What we do think is that one agency needs to agree to step up to lead the response and be the leader and coordinate the response and smooth out the rough edges.

They are coordinating fairly effectively. Again, it is very striking how far they have come from September 11th in the coordination process. The problem is there are seams there still between and among the agencies and nobody has the job of ironing out those seams and working out those differences and rough edges, as I'm calling it.

Ms. WATSON. Who should do that? Who should make that decision that we need to destroy those seams and have more merging and flowing? Who should do that?

Ms. D'AGOSTINO. I actually think all the agencies believe that they need to work on the seams, but they need to agree on who should lead that effort. The NCRCC, the executive agency is TSA. Both DOD and DHS, in their comments on our classified draft report mentioned a working group, which TSA is also the lead in.

There have been other working groups that DOD has participated in trying to work on some of these problems and get a strategy, get a plan. But their plans, and I know there have been draft plans, have not made it to the final stage.

Ms. WATSON. Well, you mentioned that TSA doesn't realize they have this responsibility or authority. I am trying to gleam from your testimony and your report where do we start this? Who is in charge of it? What language is where that clearly can direct these activities and take into consideration your recommendations? Can you respond?

Ms. D'AGOSTINO. I think it is up to the executive branch to determine who is the right party to be in the lead. I think they would need all the agencies to agree to it and accede to it to make it

work. You know, one candidate is TSA. But we did not recommend a specific organization.

We suggested that the three departments discuss amongst themselves whether it makes sense to have somebody in charge or take the lead, as we finally adjusted our recommendation to say.

Ms. WATSON. I feel a sense of frustration because the last time we had an evacuation we found that there was a plane that some way, accidentally, got into the restricted zone.

We as the policymakers hear nothing about followup. We have to depend on you coming in and reporting to us. So, I would hope that one of the recommendations that would come out of GAO is that whatever this group is, a study group, TSA or the executive branch, inform members so we, too, will know whether we need to put into the process legislation or should the executive branch just start to designate where they would like to see this occur.

Some way, and this goes to the Chair as well, we need to be informed. It should not be a confidential meeting. I am not talking about sharing confidential information with us. But at least followup so we can be alerted and aware and propose corrective legislation.

Thank you very much, Ms. D'Agostino.

Chairman TOM DAVIS. Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. You know, when I look at the map for the Washington, DC, region particularly, you know, I'm struck by the fact that your restricted airspace versus your protection, it all looks very simplistic.

But when we go over it and we actually look at the sectional, what we discover is that there are—to use a word I shouldn't use—a plethora of small airports, some of which were dramatically impacted by September 11th, aircraft stuck on the ground, unable to fly for a long period of time.

From a practical matter, and I'll try to make this a question, a Cessna 150, 152, 172, these small light aircraft, for that matter, any aircraft under 12,000 pounds, single or twin, that operate out of those airports, basically, at the moment that they take off they are in a sense in your zone.

Some of these historically didn't need radios. They all now have radio communication. They will be squawking 1,200 or something.

From a practical standpoint, aren't we over-controlling to assume that there won't be a number of mistakes when somebody takes off and does left traffic versus right traffic or coming in to an approach isn't aligned, talking about a VFR pilot particularly, isn't aligned exactly where they should be on one of these many runways that are in this relatively small area.

Ms. D'AGOSTINO. I don't think that we actually could come to a conclusion that we are over-controlling or not. Again, I think we are very supportive of a risk management approach to controlling the airspace as we are with a lot of other programs that the Federal Government runs. But I don't think we are in a position to make that judgment about whether they are over-controlling or not.

Mr. ISSA. Well, I will bring up something you mentioned earlier. I was not yet a Member of Congress when during the Clinton administration a small Cessna landed at the White House. What it

struck had very little to do with the fact that it was attempting to do what it did, which was land at the White House.

The response at the time was to close Pennsylvania Avenue. Now, I always wondered if that was to make it easier. But it apparently was not.

We have had a long history here in Washington of having reactions that don't seem to line up with the problem. From a practical standpoint these small light aircraft do not represent a large enough risk to have the kinds of evacuations from here, the Capitol, that we have had.

Would that be fair to say that a Cessna 172 cannot have a degree of impact? And we will assume that it doesn't have a thermonuclear weapon that it somehow snuck in. Because you can have that in a pickup truck. You can have that in a car. You wouldn't need an aircraft.

The mass of the aircraft, its carrying capacity in any reasonable, conventional way simply can't do much damage to these buildings as Representative Norton said. Isn't that correct?

Ms. D'AGOSTINO. I would say that it depends on your perspective. No. 1, as you say, a very small aircraft can be loaded with some fairly dangerous material or horribly hazardous material and you don't know whether it does or it doesn't when you are an FAA controller and you are looking at a blip on the screen or when they file their flight plan and get authorization.

The other problem is, about assuming a small aircraft is not a threat, is the Secret Service made it very clear to us in our exit conversations that a small aircraft targeting the President or the Vice President or the White House leadership is still a big threat from their perspective. So, I think we have to think about it from all the different angles and try to pull it apart.

Mr. ISSA. I appreciate that. I appreciate that the Secret Service will not let people go to the restroom when the President is in a room. They cannot walk away from the President under Secret Service control. So, I am very aware of their view and I appreciate it and I think protecting the President is extremely important.

A final question for now: The way we deal with large aircrafts, the upgrading of communication of all fast movers, of all aircrafts, let us say, over 12,000 pounds, can we in fact have an initiative to upgrade the communication with those devices to prevent the Ernie Fletcher type of situation?

I realize you may have some of this already thought out. Can we upgrade that so that we can bifurcate, if you will, outside of the White House, the normal threat of a small light aircraft, let us say, flying over a military base or something versus aircraft capable of inflicting huge damage on large targets?

Mr. LEPORE. Well, it is certainly possible to mandate something like that. I guess one of the challenges that you might all encounter and that you may hear is who would actually pay for that? Who would pay for the cost and how much it might cost to do that?

In the study that we conducted for the committee we didn't actually look at that particular question. That was really outside the scope of the work. But I suspect one of the key issues would be the cost and who would pay for it.

Mr. ISSA. Thank you very much.

Chairman TOM DAVIS. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. I have read through some of the report. You do raise a series of issues that need to be resolved, developing a common concept, really, of even violations, and then sort of who is in charge.

The DOD versus Homeland Security is a tough one. DOD, they have the real enforcement power. They will shoot the plane. Homeland Security really doesn't have that capability. The true enforcement is taking the plane out and getting up there and eyeballing what you have.

We do have a problem with definitions of violations. That also becomes an FAA issue because it applies to all aircrafts. We are not just talking about restricted airspace in our Nation's Capital.

That's another question. Do you favor a different standard for the Nation's Capital or maybe some designated potential targets, nuclear plants? I don't know if New York City is a whole target. How would you separate this out?

Ms. D'AGOSTINO. I think that the executive branch sort of separates them out already as a practical matter. The TSA has made clear that the National Capital region is unique space in all of U.S. airspace because of the Capitol and the White House.

Mr. MICA. Again, for violations you want a separate standard.

Ms. D'AGOSTINO. Yes.

Mr. MICA. They are coming to me right now. I have heard everything from, you know, a $1 million fine on down. We are going to have incursions. I think you and I both have cited—fortunately I think we have had less in the closer area as people become more aware and we have more incidents.

But I have to address the issue of fine and fairness. I raised the issue of intent and also purposely penetrating. Have you given any thought to levels of fines or penalties?

Ms. D'AGOSTINO. We did not look at enforcement actions at all in the scope of our work. We looked only at the interagency operation of dealing with violations.

Mr. MICA. Do you think TSA or Homeland Security should have a say in the level of fine for a violation? Again, you have to have a definition of a violation. You have to have a penalty for the violation.

You know, the guy that just flew across the edge there, what is that worth? Is FAA going to impose the fine? Is Homeland Security? What do you recommend?

Ms. D'AGOSTINO. I don't think it would hurt for the agencies to consult with each other and come up with a proposal that is acceptable to them. You do have to balance this. As I said in my concluding remarks, you need to balance the commercial interests and the freedom of flight, as Mr. Issa pointed out, with the valid and genuine security concerns since September 11th.

Again, we aren't proposing to have the right answer on the right line level for the type of violation or the intent of that. It wasn't in the scope of our review. But it would make sense for people to consult with each other from their different perspectives and weigh the penalties.

Mr. MICA. Did you also find the information I found correct, that there are very few fines imposed?

Ms. D'AGOSTINO. We didn't look at it. But we do know that the people who are actually monitoring the airspace and dealing with the deviations of restricted airspace are interested in knowing what happened to the pilot who were doing the violations?

Mr. MICA. I also use Officer Thompson as an example. If you go out to First and C Street over by the Capital Hill Club, there is a guy by the name of Officer Thompson.

Officer Thompson enforces the letter of the law. If you don't have both hands on your bicycle he will give you a ticket. If you jaywalk and it is not green, he will give you a ticket. Everyone looks twice before they cross that street because he is a tough enforcer.

First, we don't know the definition of the violation and second we don't have a tough enforcement policy and we have different people, as you say, going in different directions. Hopefully, we can get it together a little bit better.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. We will excuse this panel. We will take a 2-minute break and move to the second panel.

Ms. WATSON. Before you do that, Mr. Chairman, may I just make a comment?

Chairman TOM DAVIS. I will let the panel go, but you are welcome to make a comment.

Ms. WATSON. I think all of us are asking the same questions. I notice, Ms. D'Agostino, that you took notes. But this question goes to our committee. We are having kind of this oversight hearing and we really want to know.

Would it be in order, Mr. Chairman, for this committee to put in legislation based on what we have heard today and their report so we can clarify definitions, get definitions and suggest that we do have, whoever responsible for following up on these recommendations, for enforcement and for some way for pilots to understand.

One of the questions I would have asked is when you have violation of airspace simultaneously like what happened on September 11th, what do you do? Who is in charge? Is it DEN and are they effective?

So, my question really goes to the chair. This panel doesn't have to respond. Mr. Chairman, what do you think?

Chairman TOM DAVIS. Well, let us hear from the second panel. I think that's a good question to ask the second panel as well. We could certainly put that in.

Thank you all very much. We will take a 2-minute break and then proceed with the next panel.

[Recess.]

Chairman TOM DAVIS. We will now move to our second panel. I want to thank them for taking the time to appear today. I welcome the Honorable Paul McHale, a former colleague of ours, who is now the Assistant Secretary of Defense for Homeland Defense at the Department of Defense.

We have Major General Marvin Mayes who is the Commander of the 1st Air Force and Continental U.S. North American Aerospace from the Defense Command Region, Department of Defense. Then we have the Honorable Robert Sturgell, who is the Deputy Administrator from the Federal Aviation Administration.

We are also going to hear from Dr. Kenneth Kasprisin who is the Acting Assistant Secretary for Homeland Security at the Department of Homeland Security.

Because of the situation unfolding in London this morning, Mr. Kasprisin won't be able to attend, so I am going to ask that his statement be included in the record.

[The prepared statement of Mr. Kasprisin follows:]

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

TRANSPORTATION SECURITY ADMINISTRATION

STATEMENT OF KEN KASPRISIN
ACTING ASSISTANT SECRETARY

Before the

COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

July 21, 2005

Mr. Chairman, Representative Waxman, and Members of the Committee, good morning. It is my pleasure to be here with you today to testify regarding the Department of Homeland Security's policies for monitoring and responding to threats and violations of restricted airspace. I welcome this opportunity to appear before you, along with my colleagues from the Department of Defense and the Federal Aviation Administration (FAA), to address these important matters.

Although the air defense mission for the United States is assigned to a single organization – the Department of Defense – incursions of restricted airspace present a unique challenge since the overwhelming majority of such incursions are caused by pilots operating general aviation aircraft, that is, operations other than commercial airlines or military. These incursions represent airspace procedure violations and rarely, if ever, pose a hostile threat. Still, the threat possibility remains and each incursion must be handled accordingly.

Therefore, determining whether a specific restricted airspace incursion represents a hostile threat is an essential task. Several agencies contribute to this process by sorting (detecting, identifying, and intercepting) unknown or non-compliant contacts that enter restricted airspace. The sorting process declutters the air picture and supports a determination of the potential hostile intent of airspace violators. This effort succeeds best when each agency maintains full authority to execute that portion of its own mission contributing to this effort and when all agencies fully coordinate and communicate with one another.

The Interagency Airspace Protection Working Group (IAPWG) was created after the attacks of September 11, 2001, to coordinate and address airspace issues that pertain to the National Capitol Region. The working group is chartered under the Homeland Security Council (HSC) Policy Coordination Committee (PCC) for Transportation and Aviation Security, and serves as a forum to bring multiple government organizations together as full partners in the cooperative development of procedures and policies to enhance Homeland Air Security. Participating entities include the Homeland Security Council, the Department of Defense, the Federal Bureau of Investigation (FBI), FAA, the

Transportation Security Administration (TSA), Customs and Border Protection's Office Air and Marine Operations, the Border and Transportation Security Directorate, the United States Secret Service, the United States Coast Guard, the Federal Emergency Management Agency, the National Reconnaissance Office, the Department of State, the United States Capitol Police, and the United States Park Police.

Restricted airspace is established as security circumstances and threat assessments warrant. The Domestic Events Network (DEN), commendably operated by the FAA, provides a continuously open line of communication for coordination during airspace incidents. The 24-hour access provides a means for interested government agencies to share real time information about a violation, including the actions taken by each entity. The DEN, coupled with direct telephone calls, text messaging, and face-to-face meetings, creates an efficient forum for information exchange. As with all aspects of homeland security, DHS continues to review and enhance the information sharing processes.

TSA has conducted vulnerability assessments at selected general aviation airports. Most airspace violations are caused by pilots operating general aviation aircraft. General aviation is a diversified segment of the aviation industry that accounts for approximately 77 percent of all flights within the United States and encompasses a wide array of aircraft, ranging from large business jets and small recreational aircraft to rotorcraft and airships. Additionally, general aviation consists of a number of different types of operations, from corporate and certain charter flight operations in small aircraft, to aerial observation and crop dusting. Because this industry comprises such a large population with diverse activities, simply "regulating" all of general aviation would be cost prohibitive and inefficient. Rather, TSA employs a threat based, risk management approach to effectively utilize its resources and focus its efforts. A summary of the major initiatives follows:

- **Airport Watch Program** -- TSA, in partnership with the general aviation stakeholder associations, implemented a General Aviation Hotline that is the linchpin of the highly regarded Aircraft Owners and Pilots Association Airport Watch Program. The general aviation community does an exceptional job of monitoring airports, aircraft, and supporting facilities for security and safety concerns. We fully endorse the Airport Watch Program and the dedicated efforts of industry stakeholders operating under TSA oversight. Aviation security inspectors encourage the watch program's use when visiting airport managers in the course of their ongoing general aviation outreach program. The hotline provides a mechanism enabling any pilot or airport employee to report suspicious activity to a central federal government contact. It is also cited as a reporting method in the Flight School Security Awareness Training Program.

- **Alien Flight Training** -- Section 113 of the Aviation and Transportation Security Act, P.L. 107-71 (November 19, 2001), mandates that any non-federal U.S. provider of flight instruction seeking to train an alien in the operation of an aircraft weighing more than 12,500 pounds must first ensure their candidates are cleared by the Attorney General. The Department of Justice implemented this requirement with the Flight Training Candidate Checks Program. The Vision 100 – Century of Aviation

Reauthorization Act (Vision 100 Act), P.L. 108-176 (December 12, 2003), transferred oversight of this program from the Department of Justice to TSA. The TSA Interim Final Rule (IFR), codified at 49 C.F.R. §1552, was issued on September 20, 2004, and its requirements became effective in October 2004 for most alien flight training candidates and flight schools. A 60-day exemption applied for aliens who already held a pilot's certificate with the requirements becoming effective on December 19, 2004, for this group. In addition, flight schools are required to provide employees with security awareness training. TSA has developed a training module that flight schools can use to meet this requirement. Of note, the IFR has been refined and clarified through consultation with stakeholders.

- **Charter Operations** -- For public charter operations in aircraft with 61 or more passenger seats, TSA has always required security measures, including screening of passengers and property. TSA currently regulates a large segment of the charter operations in smaller aircraft, as well as scheduled operations in smaller aircraft, through the Twelve Five Standard Security Program. TSA regulates the larger private charter operations through the Private Charter Standard Security Program. The Twelve Five Program covers scheduled, public charter and private charter operations, passenger or cargo, using aircraft with a maximum certificated take-off weight of more than 12,500 pounds while the Private Charter Standard Security Program covers private charter operations using aircraft with a maximum certificated take-off weight of 45,500 kg (100,309 lbs). These programs include requirements for vetting of flight crew, designation of a security coordinator, and checks against terrorist watch lists. Like the Twelve Five Program, the Private Charter Program also requires screening of passengers and their carry-on baggage. TSA has established an inspection regime to ensure the effectiveness of the programs. Additionally, TSA is on track to meet the requirement in section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458 (December 17, 2004), to allow operators of aircraft with a maximum certificated take-off weight of more than 12,500 pounds to request vetting of individuals seeking to charter or rent an aircraft against the watch lists.

- **Corporate Operations** -- In early 2003, TSA launched a pilot project in cooperation with the National Business Aviation Association (NBAA) at Teterboro Airport and Morristown Municipal Airport in New Jersey and White Plains Airport in New York. The initiative was conducted as a "proof-of-concept" to validate an NBAA-proposed security program developed for operators of business aviation aircraft. TSA is currently evaluating the results of the pilots and determining next steps.

- **Temporary Flight Restrictions (TFR)** -- TSA evaluates requests for security-related TFRs based on several criteria, including specific and credible threat and intelligence information, number of people in attendance, and number of air and ground-based defense assets. TFRs are employed to mitigate the threat of an airborne attack against key assets and critical infrastructure on the ground. TFRs largely impact the general aviation community by prohibiting flight in areas of concern. In response to Congressional mandate, the FAA issued a Notice to Airmen that permanently establishes TFRs over four types of sporting events: major league baseball games,

National Football League games, major motor speedway events, and NCAA Division I football games occurring in stadiums with a seating capacity of 30,000 or more. TSA processes requests from general aviation operators for waivers to these TFRs, in accordance with statutory criteria, and works with the FAA to issue these waivers.

- **General Aviation Airports** -- On May 17, 2004, TSA published an Information Publication (IP) entitled, "Security Guidelines for General Aviation Airports." The purpose of the IP is to provide owners, operators, sponsors, and other entities charged with oversight of general aviation airports a set of federally endorsed security enhancements and a method for determining when and where these enhancements may be appropriate. Aviation security inspectors are incorporating the IP into the TSA outreach program to the general aviation community.

- **Vulnerability Assessments** -- TSA is preparing to launch a general aviation vulnerability self-assessment tool that will facilitate the examination of airports and assessment of vulnerabilities. The tool focuses on the characteristics of the facility and inventories its countermeasures. Initially, the tool will be used to assess the approximately 5,600 public use general aviation facilities.

- **National Special Security Events (NSSE)** -- TSA has established an internal organization that deals specifically with NSSE events. This group is responsible for coordinating with other agencies responsible for security of the event and overseeing TSA's role in establishing transportation-related security controls, including conducting vulnerability assessments at local general aviation airports and security outreach programs to educate general aviation pilots on upcoming restrictions.

In the context of aviation security, the National Capital Region presents a special situation. In all decisions involving aviation operations in the NCR, we are ever mindful that the area is an obvious target for terrorists. In a very compressed location rests the seat of Government of the United States – the White House, United States Capitol, the Supreme Court, and supporting buildings that house staff and other Federal courts; the leadership targets – the President and Vice-President, members of Congress, Cabinet members, justices and judges; the headquarters and operations facilities for the Nation's domestic and international security apparatus among the Federal departments; and the monuments, museums, and other national treasures of immense symbolic and historical value to Americans. These concentrated assets represent the lifeblood of the governance of our great Nation and our global responsibility to lead the war on terror and foster the continued spread of freedom and democracy. Assuring their safe and secure operation, under security measures aimed at minimizing vulnerabilities and preventing attacks, is an absolutely essential task.

As part of its effort to protect the NCR, the Department of Homeland Security (DHS) and TSA, in cooperation with other governmental entities, regularly monitors the threat posed to or by particular types of aircraft arriving at or departing from Ronald Reagan Washington National Airport (DCA) and factors continually changing information into its operations and planning efforts. Over the last several months, TSA led a systematic

effort that culminated in the announcement on May 25 of a security plan to resume certain pre-cleared general aviation operations, including charter flights, corporate aircraft, and on-demand operations, at the airport. We wish to thank all those who were instrumental in this achievement, especially members of this Committee and other distinguished members of Congress, our colleagues at the FAA and throughout the Departments of Transportation, Defense, and Homeland Security, and the general aviation industry.

TSA issued the Interim Final Rule (IFR), *Ronald Reagan Washington National Airport: Enhanced Security Procedures for Certain Operations*, on July 15. The IFR establishes specific security procedures for certain general aviation operators seeking access to DCA. A separate IFR – *Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone* – took effect on February 13, 2005, and transfers security responsibility for the nearby Maryland Three airports – College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field – from FAA to TSA. Under this IFR, transient pilots not based at the three airports are allowed access to them if they comply with TSA-mandated security requirements and procedures. It is important to note that the security plans established by these rules will not be inflexibly applied. Throughout, TSA will seek input from those stakeholders in the general aviation community that operate at DCA or support those operations. We will continually monitor how effectively the security measures work and remain open to the adjustment of those measures. As experience with renewed general aviation operations at DCA expands, we will make the necessary adjustments to foster efficiency of operations without compromising the essential security.

The recent violations of the restricted airspace surrounding the NCR have not interfered with nor adversely affected proceeding with the security plan to resume general aviation operations at DCA. They do, however, demonstrate the importance of maintaining enhanced security measures. The volume of high value, high impact potential targets for terrorists in the Washington, D.C., area demands vigilance against the use of an aircraft as a weapon.

A layered airspace security system has been established to protect the National Capital Region. An Air Defense Identification Zone (ADIZ) surrounds Washington, D.C. In order to fly within the ADIZ, operators must follow specific procedures before and during the flight. The FAA, which is the lead agency for monitoring compliance of air traffic in the ADIZ, works closely with TSA, DHS, and stakeholders to assess and refine procedures for entering and operating within the ADIZ. There is also an inner ring of airspace, known as the Flight Restricted Zone (FRZ). These flight restrictions are outlined in FAA Notice to Airmen 3/2126.

The National Capital Region Coordination Center (NCRCC) is an integral component of the layered aviation security system for the National Capital Region. The NCRCC is an interagency group comprised of several agencies whose unified actions create a layered situational awareness structure to enhance airspace security for the NCR. Six entities

provide daily representation in the NCRCC: the FAA, the U.S. Secret Service, the U.S. Capitol Police, U.S. Customs and Border Protection, the Department of Defense (DOD), and TSA. Other agencies, such as the FBI, are key participants during major events or surge operations.

The NCRCC monitors the operations of all participating agencies to enhance airspace security within the defined limits of the ADIZ. Each agency that participates within the NCRCC maintains its own organic capabilities and complete command and control over operational and tactical matters that fall within that agency's respective statutory authorities. The NCRCC does not infringe upon an agency's operational or tactical employment of its assets, nor does it have command and control over any participating agency. TSA, as the Executive Agent for the NCRCC, is responsible for disseminating relevant transportation security intelligence, documenting the activities of the NCRCC, and providing the physical infrastructure to accommodate NCRCC operations, to ensure that the participating agencies are fully informed about emerging threats.

When an unidentified aircraft approaches the Washington, D.C., ADIZ, radar operators at one or all of the monitoring agencies, including the U.S. Customs and Border Protection's (CBP) National Airspace Security Operations Center, DOD's Northeast Air Defense Sector headquarters in Rome, NY, and the FAA's Potomac Terminal Radar Approach Control (TRACON) Facility, begin to actively track it. As it enters the ADIZ, one of the monitoring organizations announces the aircraft's presence on the Domestic Events Network (DEN), an interagency open line of communications that is continuously available. Pertinent information about the aircraft is broadcast on the DEN in this initial report. Immediately after the initial report, the FAA's representative in the NCRCC acknowledges the report and establishes a common identifier to be used in interagency communications regarding the track. Once a common identifier has been assigned, the agency representatives in the NCRCC each perform their respective duties.

The TSA representative to the NCRCC has a specific role to play when an unidentified aircraft approaches the ADIZ. He or she is responsible for notifying the Transportation Security Operations Center (TSOC) Command Duty Officer (CDO) of the situation, who in turn decides whether additional notifications are necessary. Where appropriate, the CDO will notify senior TSA and DHS officials. The TSA NCRCC representative also has the responsibility to record a timeline of the events that take place, in addition to monitoring radar feeds to assess the threat. Finally, the TSA representative also monitors the DEN to answer questions from other agencies, to enhance interagency situational awareness, and to gather information for documenting the incident.

To convey a sense of the scope of this operation, there have been 3,493 incursions since the establishment of the NCRCC in January 2003. This has resulted in the opening of 2,339 NCRCC case files and assessment of 1,484 pilot deviations. During this same period, 166 incursions of the FRZ occurred, on which 127 NCRCC case files were opened. Twenty-eight penetrations of the prohibited airspace above the Capitol, the White House, and the National Mall occurred. Alert aircraft launched or diverted 665 times in response to intrusive flights.

The nature of the response to a particular aircraft traveling in the vicinity of protected airspace depends upon the apparent threat presented by the flight. The various entities monitoring air traffic in the Washington, D.C., area constantly track flight paths and speeds to identify potential threats. Communications between these entities ensure all maintain awareness of developing situations. As noted, the DEN is continuously open. If an aircraft presents a profile that may require deployment of intercept aircraft, a classified conference call coordinated by the Defense Department is initiated. Participants in this network include representatives from NORAD, the Continental NORAD Region (CONR), the responsible air defense sector, and various other military command and control elements as well as the TSA Command Duty Officer (CDO), TSA Headquarters (including the Assistant Secretary), the NCRCC, the Homeland Security Operations Center (HSOC), the White House Situation Room, and the National Military Command Center (NMCC). In the NCRCC, both the TSA and FAA watch officers contribute to the coordination of effort via the classified conference call. The FAA watch officer serves as the principal speaker on the DEN.

Through these means, all responsible entities maintain continuous situational awareness. Authorities and assets are readily available for engagement as the situation warrants. They include helicopter and jet aircraft operated by the Customs and Border Protection's Air and Marine Operations (AMO) office and Air Force F-16s at Andrews AFB. Direct communication applying real time information ensures informed decisions are made and appropriate actions taken in response to any potential threat.

The defensive system has worked as intended. In each of the recent incidents, the aircraft have been effectively monitored, tracked, and ultimately diverted away from or escorted out of the protected airspace. The resources, processes, and procedures devoted to this effort reflect the continuous application of lessons learned from experience since the system's implementation.

This does not mean we are insensitive to concerns raised by those on the ground affected by these events. Following the interception and diversion of a Cessna on May 11, 2005, officials in the Washington, D.C., government, including Mayor Anthony Williams, expressed frustration about not being informed about the situation as it developed. As a result, a previously extended invitation to the District to assign representatives to the NCRCC was renewed. Earlier this month, the Washington, D.C., Metropolitan Police began daily participation in the NCRCC, providing a representative for a minimum of 40 hours per week. Additionally, Secretary Chertoff has engaged personally with Mayor Williams to ensure open and direct communications with District officials.

Concerns have also been raised by members of Congress and others who work at and visit Capitol Hill about "all clear" notifications. Some have noted the media reports "all clear" well before Members and staffs are permitted to return to their offices. The U.S. Capitol Police are responsible for determining when the situation allows for a return to the building following an evacuation. I can assure this Committee that the media does not receive an official notification of "all clear" before the U.S. Capitol Police. Indeed,

as noted earlier, the Capitol Police provide daily representation to the NCRCC. They are thus aware of developments in the response to a potentially threatening aircraft as they occur. Considerable work has been done to assure the communication of clear and accurate information to all affected entities, employing voice and text message capabilities.

TSA, in coordination with FAA, and as a member of the Airspace Protection Working Group, will continue to improve the concept of operations to manage airspace violations throughout the nation that relies primarily on risk management principles. Such a risk management approach allows TSA to determine which areas present the greatest vulnerabilities that need to be addressed immediately. Consequently, TSA will continue to enact reasonable, feasible, and effective security measures appropriate to the airspace environment while endeavoring to minimize impacts on the national airspace.

Thank you for this opportunity to address the Committee on these matters of importance to security and economic vitality both in the Washington, D.C., area and nationally.

Chairman TOM DAVIS. It is our policy that we swear witnesses before they testify.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you.

Your entire statements are in the record and the questions are based on the entire statement.

Paul, we will start with you. Welcome back.

STATEMENTS OF PAUL MCHALE, ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE, DEPARTMENT OF DEFENSE; MAJOR GENERAL MARVIN S. MAYES, COMMANDER, 1ST AIR FORCE AND CONTINENTAL U.S. NORTH AMERICAN AEROSPACE DEFENSE COMMAND REGION, DEPARTMENT OF DEFENSE; AND ROBERT A. STURGELL, DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

STATEMENT OF PAUL MCHALE

Mr. MCHALE. Mr. Chairman, it is good to be back. I thank you and the distinguished members of the committee for the opportunity to appear once again in front of you.

As you indicated, my formal statement has been submitted for the record, so in the interest of preserving the maximum amount of time for questions, I will present a brief summary with your consent at this point.

Not too long ago we knew who our enemies were and where they lived. The terrorist attacks of September 11, 2001, the Madrid train bombing of March 2003 and most recently the tragic bombings in London have introduced us to the new enemies of the 21st century. In the 21st century, facing a new threat in a more ambiguous and dangerous world, we are in a war with an asymmetric enemy without armies, navies or air forces.

Today a complex network of ideologically driven extremists seek to terrorize our population, undermine our international partnerships and erode our global influence. The threat of catastrophic violence dictates a new strategic imperative we must actively confront, when possible, early and keep at a safe distance those who directly threaten us, employing all instruments of our national power.

Using the total force concept, active, Reserve and Guard, the Department of Defense is postured to deter, defend against and defeat threats to the United States in the air, maritime and land domains. Focusing specifically on the subject of today's hearing, the Bi-National U.S.-Canada North American Aerospace Defense Command, NORAD, represented here today by Major General Mayes who is seated to my left, is responsible for protecting North America from air threats.

Over the last 4 years we have achieved dramatic improvements in our understanding of that air threat. Our military command and control systems have been overhauled. Response assets are deployed for rapid and decisive threat interdiction and our collaboration and coordination with interagency partners have increased significantly.

Prior to September 11th NORAD's surveillance efforts were directed outward from North America, primarily focusing on our country's borders in anticipation of a Soviet air threat.

Today surveillance efforts include airspace over the interior portions of North America, recognizing that threats can now manifest themselves within our own borders.

Carefully defined rules of engagement and a clear chain of command have been established to defeat terrorist air threats. The President has delegated to the Secretary of Defense the authority to take immediate effective action in response to a terrorist air threat.

We have developed a classified conference capability with specific protocols for DOD decisionmaking in the event of a domestic air threat. These classified conferences are routinely monitored by U.S. Government air security organizations. We exercise our command and control systems to ensure that our senior civilian and military leaders are well trained and prepared to exercise their authority.

Since September 11, 2001, under Operation Noble Eagle, the men and women of the U.S. Air Force, the Air Force Reserve and the Air National Guard have secured the skies over major metropolitan areas and our Nation's critical infrastructure on a daily basis. The rotating nature of this coverage, changed daily, denies terrorists the opportunity to pre-plan attacks based on routine schedules. We have conducted more than 41,000 sorties and have scrambled fighters or diverted air patrols toward suspected air threats on more than 1,900 occasions.

The Air National Guard provides more than 90 percent of the daily fighter alert and irregular air patrol requirements of Operation Noble Eagle. Under the control of three NORAD regional commands, we now have air defense alert fighters positioned throughout the United States and Canada that are capable of reaching major population centers and high value infrastructure within minutes. The Department of Defense cannot conduct the air defense mission without critical support from our interagency partners. Our support is fundamental to their success as well.

In the last 4 years we have taken tremendous strides in this arena, reinforcing relationships with existing agencies, specifically and most especially, the Federal Aviation Administration, and forging ties with new ones, especially the Department of Homeland Security and the Transportation Security Administration. Key areas include shared situational awareness and exchange of liaison personnel at headquarters and operation centers and the development of operational responses that reflect a common understanding of air domain threats.

The establishment of robust liaison relationships facilitate daily operations and have significantly improved our ability to address potential air threats. Full-time FAA liaison personnel are located at NORAD Headquarters at Cheyenne Mountain and at the operations complex in Colorado Springs.

DOD and FAA liaisons are also stationed at the TSA-hosted National Capital Region Coordination Center. Operational responses now reflect a common understanding of the full range of threats in our domestic airspace.

Mr. Chairman, my time has expired. Let me just briefly come to a conclusion. DOD conducts military missions in the air defense of the NCR as you heard during an earlier portion of this hearing. We

conduct irregular air patrols. We have a dedicated 24/7 alert fighter response based at Andrews Air Force Base.

We have a dedicated ground missile defense system. We have implemented a visual warning system to provide a laser warning to pilots who stray off course. DOD liaison officers serve at the NCRCC. As previously mentioned DOD has developed a classified conference capability with protocols for DOD's decisionmaking.

Since September 11, 2001, the Department of Defense has implemented substantial improvements in the defense of the U.S. airspace. Our ability to detect, interdict and ultimately defeat air threats is good, but it can get better.

With our interagency partners we continue to improve our air defense capabilities and in that context we welcome the GAO's thorough, credible and constructive report.

I welcome your questions.

[The prepared statement of Mr. McHale follows:]

Statement by

Honorable Paul McHale,

Assistant Secretary of Defense for Homeland Defense

Before the 109th Congress

Committee on Government Reform

United States House of Representatives

July 21, 2005

Introduction

Chairman Davis, Representative Waxman, distinguished members of the Committee: thank you for inviting me to address you today.

Not too long ago, we knew who our enemies were and where they lived. The terrorist attacks of September 11, 2001, the Madrid train bombing in March 2003, and, most recently, the tragic bombings in London, have introduced us to the new enemies of the 21st century. In the 21st century, in a smaller, more ambiguous, and more dangerous world, we are at war with an enemy that has no armies, navies, or air forces. It does not have countries or capitals to strike or liberate. Instead, a complex network of ideologically-driven extremists seeks to terrorize our population, undermine our international partnerships, and erode our global influence. The threat of catastrophic violence dictates a new strategic imperative: we must actively confront – when possible, early and at a safe distance – those who directly threaten us, employing all instruments of our national power.

Protecting the United States

The 2005 National Defense Strategy designates securing the United States from direct attack as our first objective. The Department of Defense (DoD) gives top priority to dissuading, deterring, and defeating those who seek to harm the United States directly, especially enemies with weapons of mass destruction. Homeland defense must be understood as an integral part of a global, active, layered defense. There is no "home game." There is no "away game." In addition to the National Defense Strategy, this year we also completed the Department's first Strategy for Homeland Defense and Civil Support. By articulating strategic goals and objectives, we add coherence and direction to relevant activities across the Department that include deterring and preventing attacks,

protecting critical defense and designated civilian infrastructure, providing situational understanding, and preparing for and responding to incidents.

Air Defense of the United States

Using the Total Force concept – Active, Reserve, and Guard -- the Department of Defense is postured to deter, defend against, and defeat threats to the United States in the air, maritime, and land domains. Focusing specifically on the subject of today's hearing, the bi-national United States-Canada North American Aerospace Defense Command (NORAD) is responsible for protecting North America from air threats. The commander of US Northern Command (USNORTHCOM) is also commander of NORAD; both commands' headquarters are located in Colorado Springs, Colorado.

Since its establishment in 1958, aerospace warning and control have been the cornerstones of the NORAD mission. This mission continuity since the Cold War masks a fundamental redesign of our nation's air defenses, however. Over the last four years, we have achieved dramatic improvements in our understanding of the threat environment for the air domain. Our command and control systems have been overhauled to ensure clarity at all levels. We have worked to ensure that response assets are postured for rapid and decisive interdiction, if required. And our collaboration and coordination with interagency partners have increased significantly.

Strategic vision. Prior to 9/11, NORAD surveillance efforts were directed outward from North America, primarily focused along our country's borders in anticipation of a hostile Soviet air threat. Today, surveillance efforts now include airspace over the interior portions of North America, recognizing that threats can manifest themselves within our borders. Our broader understanding of the threat environment drives the strategic vision articulated in the Strategy for Homeland Defense and Civil Support. Our defenses cannot be passive or reactive or neatly segmented by domain. Instead, we must deploy an active defense-in-depth that cuts across all domains in which an enemy may seek to engage us.

Command and control. Carefully defined rules of engagement and a clear chain of command have been established to defeat terrorist air threats. The rules of engagement reflect the serious potential of lethal engagement with an unarmed civilian aircraft. The President has delegated to the Secretary of Defense the authority to take immediate effective action in response to a terrorist air threat. We have developed a classified conference capability with specific protocols for DoD decision-making in the event of a hostile domestic air threat. These classified conferences are monitored by U.S. Government air security organizations. We routinely exercise our command and control systems to ensure that our senior civilian and military leaders are well-trained and prepared to exercise their authority. While we anticipate this course of action will not be needed, we are ready and trained to execute in our nation's defense, if required.

Response assets. Since September 11, 2001, under Operation Noble Eagle, the men and women of the U.S. Air Force, U.S. Air Force Reserve, and the Air National Guard have secured the skies over major metropolitan areas and our nation's critical infrastructure on a daily basis. The rotating nature of this coverage denies terrorists the opportunity to pre-plan attacks based on routine schedules. We have conducted more than 41,000 sorties and have scrambled fighters or diverted air patrols towards suspected air threats on more than 1,900 occasions. The Air National Guard provides more than 90% of the daily fighter alert and irregular air patrol requirements of Operation Noble Eagle.

Under the control of three NORAD regional commands, we now have air defense alert fighters positioned throughout the United States and Canada that are capable of reaching major population centers and high value infrastructure within minutes. The number of alert fighters can be increased or decreased according to emerging threat levels. Additional details can be provided on a classified basis.

The Department of Defense also plans for the possibility of air-based threats during planned domestic events. During National Special Security Events (NSSEs) designated by the Secretary of the Department of Homeland Security, DoD routinely

provides fighter air patrols, airborne radar assets, and ground support command and control elements working on-site with our interagency partners. During the 2004 G-8 Summit, for example, DoD deployed an integrated air defense system that included fighter aircraft, airborne radar coverage, and ground-based missile point defense. The Department is now in the process of examining whether a standing deployable integrated air defense system should be developed for future NSSEs. Additionally, at the request of the Secret Service, DoD provides air coverage for Presidential and Vice Presidential movements within the United States. The Department also provided air coverage for Presidential candidates during the 2004 election.

Interagency coordination. The Department of Defense cannot conduct the air defense mission without critical support from our interagency partners and our support is fundamental to their success as well. In the last four years we have taken tremendous strides in this arena, reinforcing relationships with existing agencies, such as the Federal Aviation Administration (FAA), and forging ties with new ones, especially the Department of Homeland Security (DHS) and the Transportation Security Administration (TSA). Key areas that reflect significant progress in enhancing the effectiveness of our nation's air defenses include: shared situational awareness through intelligence and information sharing; exchange of liaison personnel at headquarters and in operations centers; and development of operational responses that reflect a common understanding of air domain threats.

Shared situational awareness. We continue to rely on the intelligence community to provide strategic warning of possible threats. The FBI also plays a crucial role in not only warning, but also after-the-fact investigations of air threats. At the same time, new institutions have been established to address areas where information or intelligence exchange was insufficient to address the dynamic nature of today's air threat environment. Specifically:

- TSA's Transportation Security Operations Center (TSOC), located in Herndon, Virginia, serves as a critical hub for the rapid exchange of information within the

federal community for air threat warnings. The TSOC also provides a vehicle for interaction with key private sector entities in the air domain.

- FAA's Domestic Events Network (DEN) provides a 24/7 open unclassified line that facilitates immediate situational awareness for all agencies, and in particular DoD, on any aircraft deviation. This system proves its value on a daily basis and often provides DoD initial data to initiate the classified conference system mentioned above.

Additional integration takes place in the form of radar feeds from the FAA that have been incorporated into the NORAD joint surveillance system. DoD has also reached an agreement with DHS to provide continued funding for long-range radars under a 75/25 percent cost-share arrangement in fiscal year 2005 and a 50/50 percent cost-share in fiscal year 2006.

Liaison arrangements. The establishment of robust liaison relationships facilitates daily operations and has significantly improved our ability to address potential air-based threats. Full-time FAA liaison personnel are located at NORAD headquarters and the Cheyenne Mountain Operations Complex in Colorado Springs, as well as at the Northeast, Southeast, and West regional air defense sectors. DoD and FAA liaisons are also stationed at the TSA-hosted National Capitol Region Coordination Center (NCRCC). Additionally, NORTHCOM and US Pacific Command have established Joint Interagency Coordination Groups (JIACGs) at their respective headquarters. The JIACGs provide immediate, resident access and expertise of key interagency partners to the combatant commanders on a range of operational issues, to include those in the air domain.

Coordinated operational responses. Operational responses throughout the interagency community now reflect a common understanding of the full range of threats in our domestic airspace. Pre-existing and new memoranda of understanding provide for a coordinated interagency response to aircraft hijackings and intercept procedures. The FAA has also issued a formal regulation for civilian and military air traffic controllers to address suspicious aircraft and pilot activities. Hijacking responses are exercised on a

monthly basis with partners in other agencies. Operational responses are also tested routinely in the course of real world events that occur in the air domain on an all-too-frequent basis. For example, DoD air defense assets, along with DHS air assets, provide important pilot intent information when aircraft infringe on restricted airspace in the National Capitol Region (NCR). These efforts are crucial to determining whether a "track of interest" is declared hostile, triggering additional response operations.

DoD Role in Airspace Defense of the National Capital Region.

Airspace defense of the National Capital Region (NCR) represents a particularly complex challenge that is both inter-departmental, bringing together multiple federal partners, as well as inter-governmental, involving authorities at the Federal, State, and local levels. The vast majority of security measures required for defending the airspace over the nation's capital are conducted on the ground prior to an aircraft taking off. These security measures are led by our interagency partners to ensure that aircraft crewmembers and passengers are thoroughly vetted and screened so as not to pose an air threat within the NCR. As my colleagues on the panel will cover those measures in greater detail, I will focus instead on DoD's particular role in air defense against airborne threats to the NCR.

DoD conducts the military mission of air defense of the NCR against hostile or potentially hostile air threats. These efforts include identification of a potential threat, interception of the threat, and, if necessary, engagement of the threat. In order to conduct the NCR air defense mission, the Department provides the following key assets:

- Irregular air patrols, usually in addition to ground-alert fighters stationed at Andrews Air Force Base.
- A dedicated 24/7 alert fighter response based at Andrews Air Force Base, Maryland. These aircraft are capable of launching in minutes to provide intercept, escort, or engagement activities, as needed.

- A dedicated ground missile defense system located within the NCR. This system provides around the clock coverage for critical protected sites. The system is considered a last resort to prevent any hostile air attack.
- Earlier this year, the Department deployed the Visual Warning System (VWS) to warn wayward pilots to immediately contact FAA air traffic controllers and to depart from restricted airspace. The VWS is an eye-safe laser system that can be used day or night. The system is fully operational at several sites, with additional sites to be added in the future.
- DoD liaison officers serve at the NCRCC, hosted by TSA, on a full-time basis.
- As mentioned above, DoD has developed a classified conference capability with protocols for DoD decision-making for a hostile domestic air threat. The Department has provided access to the conference system to key interagency operations centers and the NCRCC to facilitate coordination and maintain situational awareness for agencies with NCR security responsibilities. Further details can be provided in a closed hearing or upon request.

DoD-FAA Cooperation. The relationship between DoD and the FAA merits additional discussion because of the time-sensitive nature of air threats in the NCR. We rely on FAA radar feeds for the military radar picture over the NCR. Due to the constant interaction that FAA radar controllers have with commercial and civil aviation, the FAA is usually the first agency to note a potentially hostile pilot deviation. When DoD does initiate response measures, FAA radar controllers facilitate DoD fighter intercepts by clearing the airspace of other air traffic and expediting clearances to military aircraft to allow rapid changes in direction and altitude.

Several specific changes implemented by the FAA have greatly improved air security and air defense response efforts in the NCR and are worthy of mention:

- Provision of FAA's radar feed from the Potomac Radar facility to the NCRCC so that DoD and other interagency partners can quickly correlate "tracks of interest" occurring on DoD and FAA radars. Had this system been available the incident

involving Governor Fletcher's aircraft in June 2004 likely would not have occurred.

- Routine FAA assistance in facilitating air exercises to keep DoD fighters, ground missile units, and command and control mechanisms operationally ready is essential to the NCR mission. The FAA's recent effort to assist in the deployment of the Visual Warning System is also particularly noteworthy.

DoD-DHS Cooperation. Turning specifically to the NCR airspace effort and our relationships with various DHS agencies, I would like to highlight several areas of cooperation:

- TSA's hosting of the NCRCC has provided a central location to share a common operational picture among all relevant agencies. DoD has a continual presence at the NCRCC. TSA representatives provide critical information on "track of interest" intent in terms of passenger lists, aircraft ownership, and waiver authorization to fly within restricted airspace.
- Coordination efforts by TSA with DoD on the proposed plan to re-open Reagan National Airport to general aviation. We appreciate recognition of DoD's air defense requirements as the plan is developed.
- Customs and Border Patrol's Air Marine Operations provide helicopter and Citation jets for air intercepts in the NCR to help determine pilot intent for low-slow aircraft. Their efforts were essential in preventing poor piloting from becoming a deadly tragedy during recent NCR air incursions.
- DoD and FAA radar information often provides key information for other agencies to implement ground security response measures within the NCR.

Finally, DoD and DHS staffs are working to complete a memorandum of agreement to refine air intercept procedures within the NCR in order to improve command and control and response roles between our two agencies. These efforts will be

further developed and implemented at the operational level between appropriate agencies. Further details can be provided in a closed hearing setting.

Conclusion

Mr. Chairman, I commend you and the members of the House Committee on Government Reform for your interest in, and support of, the Department's homeland defense mission, with a particular focus today on the air domain. Since September 11, 2001, the Department of Defense has made great strides toward improving the defense of United States airspace. Our ability to detect, track, interdict, and ultimately defeat air threats has advanced substantially. With our interagency partners, we continue to improve our ability to make Americans safer at home through a better understanding of the nature of the threat environment, enhanced command and control, additional ready response assets, and improved interagency coordination. I can assure you that the competent, fully-trained professionals who are responsible for the airspace defense of the United States are fully prepared to meet the air challenges that we face today.

Chairman TOM DAVIS. Thank you very much.

General Mayes.

STATEMENT OF MAJOR GENERAL MARVIN S. MAYES

General MAYES. Chairman Davis and other members of the committee, thank you very much for the opportunity to be here on behalf of Admiral Timothy J. Keating, commander of NORAD, NORTHCOM.

It is an honor to appear before you and represent the exceptional men and women of that command. Our professionals are ready to act on a moment's notice to protect and defend our Nation's airspace.

Since 1958, the United States and Canada have defended the skies over North America through NORAD. It is a bi-national command. Using data from satellites as well as airborne and ground-based radar, NORAD monitors, validates and warns of attack against the United States and Canadian homelands by our aircraft, missiles and space vehicles, as well as the emerging asymmetric threat.

The plan ensures United States and Canadian air sovereignty through a network of alert fighters, tankers and airborne early warning aircraft and ground-based air defense assets cued by military and interagency surveillance radars such as those of the FAA and its Canadian equivalent, NAV CANADA.

NORAD forces, as part of Operation Noble Eagle, maintain a steady state quick response posture to counter these potential threats to North America. We conduct irregular air patrols above major metropolitan areas, critical infrastructure facilities, in addition to maintaining an alert force of fighter, tanker and control aircraft.

Our response posture is based on a tiered system and as threat levels intensify, the number of aircrafts and other resources we put on alert increase. Since September 11th we have flown over 41,000 fighter and support aircraft sorties and directed more than 1,900 fighter intercepts in response to potential threats.

Because the U.S. National Capital Region is a symbolic target and contains many elements of our Nation's critical infrastructure it is protected around the clock by multi-layered joint and interagency integrated air defense system. The surveillance, warning and air defense systems of the National Capital Region consists of Army Sentinel radars, the ground-based visual warning system as described by Secretary McHale, Department of Homeland Security helicopters, fixed wing aircraft on alert at Reagan National, Air Force fighters on alert at Andrews Air Force Base and the Army ground-based air defense system which includes medium range Norwegian Advanced Surface-to-Air Missile systems and short-range Stinger and Avenger missiles. These systems augment our fighter defenses by providing assets in place in a quick reaction posture to protect the seat of Government.

The NCRCC, we believe, enhances interagency coordination by providing a venue for all the representatives of the many organizations, all the stakeholders, if you will, in defense of the National Capital Region to sit and watch together. Through the NCRCC, these various agencies have improved their individual situational

awareness by knowing the actions of their defense partners. It is a coordination center, I would point out, and no command and control of forces occurs at the center. You know who the participants are.

We have established a rapid conference call capability to facilitate information sharing among the White House, Department of Defense, FAA, Customs and Border Patrol, AMO, which is the Air Marine Operations Division of Customs and Patrol, and other law enforcement in the event of an airspace violator or a track of interest. These voice networks bring together different levels of decisionmakers from many organizations and increase the situational awareness for all.

Secretary McHale addressed the rules of engagement. I will assure you that they are very precise and very directive and held at the highest level.

Our partnership with the Federal Aviation Administration to improve our surveillance, command and control capabilities has made significant progress. We have full-time FAA representation in most of our command and control centers.

Their Domestic Events Network [DEN], provides us real time situational awareness. It brings together our senior leadership into the decisionmaking cycle at a very early point in any crisis. We have incorporated over 300 new radios in the FAA centers and 39 radars that we did not have prior to September 11th.

On October 1, 2004, the Department of Defense and Homeland Security assumed shared financial responsibility from the FAA for our Nation's long-range radars under a 75–25 cost share formula.

In fiscal year 2006 the radars will be funded under a 50–50 cost share formula and we would like to urge Congress to fully fund the operations and maintenance of both departments to preserve our critical air surveillance network. Without it, we are operating blind.

We continue to make air travel safer through increased airport and aircraft security measures. The action taken on the ground prevents us from having to expend resources in the air.

We support national security events which take a great deal of our resources and have been numerous in number of late, including both political conventions, the inaugural, President Reagan's funeral, and the State of the Union address.

In conclusion, since September 11th we have strengthened our ability to detect and assess and warn and defend of air threats against North America. We will continue to look for ways to refine that process and maximize our ability to detect airspace violators while we minimize the inconvenience to the aviation public.

Thank you very much. I look forward to your questions.

[The prepared statement of General Mayes follows:]

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HOUSE GOVERNMENT REFORM COMMITTEE

STATEMENT OF

MAJOR GENERAL. MARVIN S. "SCOTT" MAYES

COMMANDER, CONTINENTAL U.S. NORTH AMERICAN AEROSPACE DEFENSE COMMAND REGION

BEFORE

THE HOUSE GOVERNMENT REFORM COMMITTEE

21 JULY 2005

UNCLASSIFIED
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UNTIL RELEASED BY THE
HOUSE GOVERNMENT REFORM COMMITTEE

Chairman Davis, Representative Waxman and Members of the Committee:

On behalf of Admiral Timothy J. Keating, it is an honor to appear before you and represent the exceptional men and women of North American Aerospace Defense Command (NORAD). Our professionals are ready to act on a moment's notice to protect and defend our nation's airspace.

Background. Since 1958, the United States and Canada have defended the skies of North America through NORAD, a bi-national command. Using data from satellites, as well as airborne and ground-based radar, NORAD monitors, validates, and warns of attack against the U.S. and Canadian homelands by aircraft, missiles, and space vehicles, as well as emerging asymmetric threats. The Command ensures U.S. and Canadian air sovereignty through a network of alert fighters, tankers, airborne early warning aircraft, and ground-based air defense assets cued by military and interagency surveillance radars, such as those of the Federal Aviation Administration and its Canadian equivalent, NAV CANADA.

Operation NOBLE EAGLE. NORAD forces, as part of Operation NOBLE EAGLE, maintain a steady state, quick response posture to counter potential threats to North America. NORAD conducts irregular air patrols above major metropolitan areas and critical infrastructure facilities, in addition to maintaining an alert force of fighter, tanker, and control aircraft. NORAD aircraft sorties and alert commitments are based on a tiered response system. As threat levels intensify, the number of aircraft on alert and on patrol increase. As the threat is evaluated, air patrol locations and frequencies are reviewed and updated. Since 9/11, NORAD has flown more than 41,000 fighter and support aircraft sorties, and directed more than 1,900 fighter intercepts in response to potential threats.

National Capital Region Integrated Air Defense System. Because the U.S. National Capital Region is a symbolic target and contains many elements of our nation's critical infrastructure, it is protected around-the-clock by a

multi-layered, joint and interagency, integrated air defense system. The surveillance, warning, and air defense systems of the National Capital Region consist of:

- U.S. Army Sentinel radars for low-altitude radar coverage.
- A ground-based visual warning system that uses safety-tested, low-level, and eye-safe beams of alternating green and red lights to alert pilots that they are flying without approval in designated airspace.
- Department of Homeland Security helicopters and fixed wing aircraft on alert at Reagan National Airport to intercept slow, low-flying aircraft.
- U.S. Air Force fighter aircraft on alert at Andrews Air Force Base, Maryland.
- U.S. Army ground-based air defense systems, which include the medium-range Norwegian Advanced Surface to Air Missile System, and the short-range Stinger and Avenger missile systems.

These systems augment our fighter defenses by providing "assets-in-place" in a quick reaction posture to protect the seat of our nation's government, as well as other key locations in the National Capital Region, from air attacks.

National Capital Region Coordination Center (NCRCC). The NCRCC enhances interagency coordination by providing a venue for representatives of the many organizations with a stake in the defense of the National Capital Region to sit watch together. Through the NCRCC, various agencies have improved situational awareness of the actions of their defense partners. The NCRCC is a "coordination center"—no command or control of forces occurs at the Center. Participants include the Federal Bureau of Investigation, Transportation Security Administration, Federal Aviation Administration, U.S. Capitol Police, U.S. Secret Service, U.S. Customs and Border Protection, Office of Air

and Marine Operations and the Northeastern Air Defense Sector, which is a subordinate organization of NORAD.

Conference Calls. We have established a rapid conference call capability to facilitate information sharing among the White House, Department of Defense, Federal Aviation Administration, U.S. Customs and Border Protection Office of Air and Marine Operations and law enforcement agencies in the event of an airspace violator or track of interest. These voice networks bring together different levels of decision makers from many organizations. By doing so, we increase situational awareness for all agencies, increase the decision-making time available to key leaders and shorten the reaction time for NORAD air defense forces.

Rules of Engagement. The President and Secretary of Defense have approved specific rules of engagement to deal with hostile acts within domestic airspace, which help ensure the safety of our citizens and the protection of critical infrastructure. They define what we can and cannot do in responding to a situation. The authority to engage a threat aircraft is assigned to individuals at the highest levels within the Department of Defense. The decision to engage is made by the highest-level engagement authority available. Since 9/11, we have conducted hundreds of Command-level exercises to test these rules of engagement and to train designated authorities. More importantly, these rules of engagement have proved their effectiveness many times in real-world situations. We continue to refine our procedures and coordination with the Department of Homeland Security, the Federal Aviation Administration, civilian law enforcement organizations and other government agencies within the United States and Canada.

Federal Aviation Administration Integration. Our partnership with the Federal Aviation Administration to improve NORAD's surveillance and command and control capabilities has made significant progress. We have full-time Federal Aviation Administration representation in our command center at

NORAD, and the Domestic Events Network provides us real-time situational awareness that brings senior leadership into the decision-making cycle very early in a crisis situation.

The installation of 300 radios in Federal Aviation Administration facilities provides NORAD the means to communicate with interceptors throughout our country. The original plan to integrate 39 Federal Aviation Administration terminal/approach control radars has grown to a total of 45 radars, of which 38 have been fully integrated. The remaining seven are awaiting integration, operational acceptance or have been deferred until aging radars are replaced with a newer short-range system later this year.

On 1 October 2004, the Department of Defense and the Department of Homeland Security assumed shared financial responsibility from the Federal Aviation Administration for our nation's long-range radars under a 75/25 percent cost-share formula for fiscal year 2005. In fiscal year 2006, the radars will be funded under a 50/50 percent cost-share arrangement. We urge Congress to fully fund the operations and maintenance accounts of both departments to preserve our critical air surveillance network until it can be upgraded or replaced.

Partnerships. United States and Canadian civil agencies continue to make air travel safer through increased airport and aircraft security measures. Civilian aeronautical organizations such as the Aircraft Owners and Pilots Association continue to inform and educate the general aviation population regarding airspace procedures and revised flight restrictions. We partner with these groups and the Federal Aviation Administration to raise the awareness of general aviation pilots regarding temporary flight restrictions and other special airspace measures used to protect our nation's citizens and critical infrastructure.

National Special Security Events. NORAD has supported several National Special Security Events to include the 2005 State of the Union Address, 2005

Presidential Inauguration, the Republican National Convention, the Democratic National Convention and President Reagan's State Funeral.

Conclusion. Since 9/11, we have strengthened our ability to detect, assess, warn of and defend against air threats to North America. We will continue to refine our processes and procedures to minimize airspace violations and maximize the effectiveness of our response should an airspace incursion occur. Surveillance and control of U.S. and Canadian airspace remain critical components of our national security strategy. If NORAD joint air defense assets are called into action, we are prepared to employ this last line of defense.

We appreciate the House Government Reform Committee's contribution to the safety and protection of all Americans. I look forward to your questions.

Chairman TOM DAVIS. Thank you very much.
Mr. Sturgell.

STATEMENT OF ROBERT STURGELL

Mr. STURGELL. Good morning, Chairman Davis, members of the committee. I am pleased to represent the FAA before you this morning to discuss the many issues that arise from violations of restricted airspace and how the FAA is working to help pilots understand the complexities of flying in and around such airspace in order to reduce the number of pilot deviations, a few of which have resulted in the evacuation of this building.

Working with my colleagues in the Department of Defense and the Department of Homeland Security, the FAA has a lead on implementing flight restrictions wherever and whenever it is necessary.

Flight restrictions around the National Capital Region have been in place for several years, but other restrictions are put in place around the country as needed by the military or to provide additional security above high profile events. Pilots are required to check to determine if there are restrictions in place that they must comply with as part of their pre-flight planning.

The area around Washington, DC, is highly regulated and pilots must follow a flight plan, be in contact with FAA and Air Traffic Control and continually squawk a discrete transponder code in order for FAA and the other participants of the NCRCC to know exactly who is in the airspace. Since virtually all of the pilot deviations that have occurred in this area have been inadvertent, the FAA is working with the users of the system to help heighten awareness of restrictions and what can happen if they are not complied with.

Even though we have seen a declining trend in the number of violations over the past 2 years, we have increased our educational efforts with the general aviation community. Since June of last year, highly experienced air traffic control specialists have conducted 175 formal outreach programs. These include visits to flight schools, local flying clubs, local law enforcement aviation units and military base units.

Our goal is to educate the pilots to use the system in this area and help them understand how to avoid getting into what could be a very difficult situation. These outreach efforts have been very well received and very well attended. I should mention that our colleagues represented here today are also part of that effort.

We believe the trend is showing a decrease in the number of ADIZ violations is attributable in part to this effort. So, we want to do more. We think training is the key to further reducing violations.

With extremely few exceptions, the pilots who have been properly flown into the restricted airspace around this city have not intended to do so. Some were lost. Some were avoiding weather. All of them would have preferred to avoid the sanctions, the publicity and the other consequences that can result from their mistakes.

So FAA wants to go farther than our current outreach program. By using our existing authority, we want to require training that

will begin with pilots who fly visual flight rules within 100 miles of Washington, DC.

The FAA intends to issue a special Federal Aviation Regulation that gives the pilots in this area 30 days to have accomplished training on the requirements and procedures to operate in the flight restricted zone, the air defense identification zone and other restricted airspace. The training can be accomplished via an FAA safety seminar or through an online course such as those offered by the Aircraft Owners and Pilots Association [AOPA]. The pilot must successfully complete the course and conclude the test in order to be issued a certificate of completion.

The FAA will then require that this certificate be carried by the pilot on any flight within 100 miles of Washington, DC. We think pilot awareness will be further improved by this requirement and over time we will expand that mandatory training on flying in and around restricted airspace to pilots throughout the Nation.

Another part of our effort will include revisiting our sanction guidance on pilot deviations in the District's restricted airspace. Currently our general policy is to propose a certificate suspension for any pilot who penetrates the ADIZ. For a first-time offense, this is generally 30 to 90 days. Now, this can vary depending on the circumstances surrounding the violation as was the case for the pilot who caused the Capitol and the White House to be evacuated on May 11th. His certificate was revoked.

The use of increased sanctions, especially for repeat violators and those who fly into the flight restricted zone may serve to keep this airspace safer and will send a clear message of the need to be aware and comply with the ADIZ rules.

Chairman Mica mentioned some of the things that he is looking at earlier. We expect to be discussing this further with him through the summer.

I think by and large pilots want to comply with the FAA regulations and restricted airspace procedures. We have worked closely with our community, especially in the D.C. area, to make our airspace safe, secure and efficient.

I would like to commend aviation user groups like AOPA who are working hard to help educate their members. Last year, AOPA sent over 4 million e-mails to their members about airspace restrictions. This, in addition to cooperative education efforts with FAA and TSA and a continuing web-based campaign demonstrates the commitment of the general aviation community to proactively address our Nation's security concerns.

I appreciate the congressional interest in how the FAA and the many other Government agencies coordinate their efforts in a time of heightened security. We are all striving to improve what we do and how we keep each other informed.

I appreciate the consistent review, scrutiny, and reevaluation as appropriate. I welcome the opportunity to continue to work with the Congress, GAO, other Government agencies here and the users of the system to keep the airspace safe, secure and efficient.

That concludes my statement. I would be happy to take questions.

[The prepared statement of Mr. Sturgell follows:]

STATEMENT OF ROBERT STURGELL, DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, BEFORE THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, ON CONTROLLING RESTRICTED AIRSPACE; AN EXAMINATION OF MANAGEMENT AND COORDINATION OF AIR DEFENSE

JULY 21, 2005

Chairman Davis, Congressman Waxman, Members of the Committee:

My name is Robert Sturgell, Deputy Administrator of the Federal Aviation Administration (FAA), and I'm pleased to appear before you today to discuss how air traffic is controlled in restricted airspace and how the government manages and coordinates air defense. FAA has always worked to ensure that our nation's airspace is managed efficiently, effectively, and, most importantly, safely. Prior to September 11th, FAA's air traffic management focused primarily on improving communications with users of the national airspace system (NAS) to manage the dynamic weather, traffic, and airport capacity issues that arose to maximize capacity and efficiency without compromising safety. Since September 11th, the FAA has redoubled our efforts to improve communications with our counterpart agencies to ensure that we can respond to the dynamic security issues that may arise at any time.

As security has become a greater focus of managing air traffic, and responsibility for security has been concentrated in the Department of Homeland Security, it is appropriate that a clarification of who controls the airspace, under what circumstances and why should be reviewed and explained. The FAA was created in 1958 to provide a centralized focus for aviation, replacing an ineffective system of diffused authorities that had evolved over time. Prior to 1958, the functions of the FAA were splintered – the

Civil Aeronautics Authority under the Department of Commerce possessed day-to-day air traffic control responsibilities; the Civil Aeronautics Board possessed accident investigation and safety regulatory responsibilities; and an Airways Modernization Board had responsibility for planning and developing a system of air navigation facilities; and an interagency Air Coordinating Committee had, until shortly before, reviewed all matters involving the use of airspace. It was clear that this approach to managing the national airspace was inefficient and ineffectual.

The legislative history of the Federal Aviation Act of 1958 (FAAct) makes clear that Congress wanted one independent agency with "plenary authority" over the nation's airspace. Legislative history notes that the bill to create the FAA is intended to address two fundamental deficiencies in the Federal Government's aviation responsibilities, one of which was a "lack of clear statutory authority for centralized airspace management." The report stated that, "the bill proposes to vest in a single Administrator plenary authority for airspace management. If such authority is once again fractionalized and made subject to committee or panel decision, the evil will be continued." The "evil" that the report alludes to included the problems that developed before 1958 when it was not clear who, *i.e.,* a particular civilian agency or the military, had the sole authority over air traffic, airspace and other aviation safety issues. These problems led to aviation accidents, including midair collisions.

Although Congress passed various statutory amendments, including those relating to the Homeland Security Act of 2002 and the Aviation and Transportation Security Act of

2001, during and after the formation of the Department of Homeland Defense and the Transportation Security Administration (TSA), it did not alter the FAA's status. The current statutory framework for the Administrator's airspace authority and the accompanying legislative history confirm that the FAA continues to be the sole authority for airspace management, air traffic regulatory authority, and use of airspace.

Even in circumstances that potentially affect the national defense, whereby the Secretary of Defense has an interest in articulating the views of the military, it is the Administrator – in consultation with the Secretary of Defense – who decides to establish areas in the airspace that are necessary for national defense. Section 40107(b) of title 49, United States Code, provides that in the event of war, the President may transfer to the Secretary of Defense (by executive order) a duty, power, activity, or facility of the FAA. Executive Order 1161, dated July 7, 1964, directs the Secretary of Defense and the Secretary of Transportation to prepare and develop plans, procedures, policies, programs and courses of action in anticipation of the probable transfer of the FAA to the DOD in the event of war. Furthermore, both Departments are instructed that consistent with the above and in the event of war, these provisions are to be accomplished smoothly and rapidly. To that end, the FAA and the DOD entered into several MOUs setting forth agreements on certain procedures and policies for military exercises and missions. FAA and various parts of the military entered into subsequent MOUs to address a variety of air traffic control issues to accommodate military training operations and military missions. Unlike the statutory provision of § 40107(b), which explicitly provide for the transfer of a duty, power, activity or facility of the FAA to the military in the event of war, no such

provision exists in regard to the transfer of any duty, power, activity or facility from the FAA to any other agency or entity.

With respect to airspace security, the Transportation Security Administration (TSA) works closely with, consults and coordinates with FAA as appropriate, but it has no authority to circumvent FAA's operational control. It is vital that FAA defer to TSA's security expertise in order to facilitate executing security enhancing aviation procedures as necessary. It is equally important that TSA defer to FAA's operational and safety expertise in order to provide to TSA the required support in the manner that is safest for all operators in the NAS. Section 114(g) of title 49, United States Code, clearly underscores that TSA's security role does not preempt or supersede the FAA's own safety and security authority.

It is important to acknowledge and preserve the respective roles and expertise among the DoD, TSA, and FAA. It is equally important that we coordinate our actions and activities together to provide maximum effectiveness.

Recognizing the need to delineate clear lines of authority and responsibility and establish open communication, the FAA and various other agencies have entered into a number of agreements and/or memoranda of understanding. By establishing cooperative interagency relationships that emphasize organizational capabilities, we are improving service to and relationships with each other, other Federal, State, and local agencies, non-governmental stakeholders, and the American public and Tribal Nations. These

agreements define strategic relationships with an aim towards identifying and leveraging respective core competencies, capabilities, resources, and authorities to enhance the safety and security of aviation and commercial space transportation in the United States; to promote efficiency of government and reduce overall costs; to minimize the adverse economic and regulatory impact of measures required of the public and regulated entities; and to achieve national performance security goals for the National Airspace System.

The greatest evidence of the open sharing of information and joint decision making efforts amongst the various agencies as it relates to aviation is the operation of the "DEN," the Domestic Events Network. The DEN is a 24/7 operational center that links the Transportation Security Administration, United States Secret Service, Federal Marshall Service and other components of the Department of Homeland Security, Department of Defense, North American Air Defense Command, U.S. Park Police, U.S. Capitol Police, local law enforcement agencies, and others as needed. It is set up to respond to emergency situations quickly – in real time. It is set up so that operational personnel and political appointees in many agencies can be tied together quickly to share information and rapidly decide on a course of action.

While the DEN monitors events nationwide, the majority of restricted airspace violations occur in and around the Washington, D.C. area. Although there is restricted airspace throughout the country depending on events that are occurring, nowhere is the airspace more regulated on an ongoing basis than here in Washington. Unidentified aircraft operating in restricted airspace are taken very seriously. FAA is a member of the

National Capital Region Coordination Center (NCRCC), a group comprised of representatives of security and military agencies to ensure that, in the event of a threat from an unidentified aircraft, coordinated action can be taken to appropriately address the threat and keep the region safe.

An analysis of what happened on May 11, 2005 will serve as a good example of how FAA interacts with other agencies when an unidentified aircraft approaches Washington, D.C. At 11:28 a.m., FAA and the NCRCC became aware of an aircraft entering restricted airspace from the northeast, approximately 44 miles from Ronald Reagan Washington National Airport (DCA). The FAA's watch officer for key communications working with the DEN, contacted the Potomac Consolidated Terminal Radar Approach Control (Potomac TRACON), which confirmed to participating NCRCC agencies that the aircraft was not in communication with air traffic control, had not filed a flight plan and that its transponder was transmitting a generic, rather than a unique code, which essentially meant that FAA did not know who the aircraft was. At this point, the aircraft was considered to be a track of interest (TOI). Because the aircraft was flying just within and parallel to the northern boundary of the restricted zone, it was not considered an immediate threat and, while it was monitored closely, no intercept action was taken at this point.

The aircraft subsequently turned southbound toward the Flight Restricted Zone (FRZ), the second restricted zone surrounding the Capitol. This information was communicated on the DEN to the participating NCRCC agencies. At this point, the Customs and Border

Protection Office of Marine Operations (AMO) ordered the launch of its Blackhawk helicopter and Citation jet aircraft from DCA. In addition, two F-16 aircraft were scrambled from Andrews Air Force Base. The AMO Blackhawk initially intercepted the aircraft about 10 miles north of the Capitol. When the aircraft continued to proceed south toward the Capitol, the F-16s moved in to intercept. The aircraft was visually identified as a high-winged, single-engine Cessna-type aircraft.

Attempts by the Blackhawk helicopter to signal to the pilots of the Cessna and get them to communicate on an emergency frequency were initially unsuccessful. At noon, the Department of Defense authorized the F-16 pilots to use flares. The flares were dispensed when the aircraft was 6.7 miles from DCA. At this time, the Secret Service and the U.S. Capitol Police made the decision to evacuate the White House and the Capitol, respectively. The Blackhawk continued to signal to the pilots to get them to communicate with them. Ultimately, the Cessna pilots were able to make contact with the AMO Citation on an emergency frequency and the Cessna turned west. The Cessna proceeded through the prohibited airspace over the Naval Observatory with the F-16s in escort. As the aircraft exited the FRZ, the Blackhawk joined the escort north.

The Potomac TRACON reported on the DEN that the pilots were in communication with air traffic controllers at 12:22 p.m. The pilots reported to the controllers that they had been instructed to proceed to the airport in Frederick, Maryland. Escorted by the Blackhawk and the F-16s, the aircraft exited restricted airspace at 12:25 p.m. and landed in Frederick at 12:39 p.m. During the flight, Potomac TRACON controllers

communicated with the pilots several times to tell them how far they were from the airport and to warn them to look for other VFR traffic. Upon landing, the occupants of the aircraft were taken into custody by the FBI, Secret Service, and Maryland state authorities for questioning.

In this instance, we consider the interaction of the agencies to have worked as intended. The communication and interface that took place during this incident were an improvement over the interagency communication that took place during the incident last June involving the Governor of Kentucky's plane which, on approach to DCA, was known to FAA controllers, but appeared as an unidentified aircraft to the other members of the NCRCC. By contrast, on May 11th, the decision to evacuate the Capitol and the White House was made by the U.S. Capitol Police and the Secret Service based on the accurate information that an unknown aircraft operator had penetrated restricted airspace and the FRZ, was heading toward the Capitol, and was not immediately responding to the intercept. Once the aircraft changed direction away from the areas of concern, an all clear was announced. All agencies in the NCRCC learned from the June 2004 event and, as a result, today, both FAA controllers and NCRCC members are seeing and acting on the same information.

It is always appropriate for the Federal Government to review incidents, such as the one that occurred on May 11th in order to determine if improvements in how these incursions are handled can be made. Toward this end, I am aware that the Government Accountability Office (GAO) has prepared a report at the request of Chairman Davis on

the management improvements that are needed throughout government to address violations of restricted airspace. As I've noted, FAA takes these incursions very seriously. We will continue to work with GAO, other federal agencies and Congress to improve airspace security through better coordination, clarification of information and definitions, and development of protocols to share our available information (including data on violations) with eligible recipients.

Finally, I think it is important to note that, although we must continue to be vigilant with respect to these incursions, to date, the overwhelming majority of incursions into restricted airspace around in the Washington, D.C. area were made inadvertently. Of the restricted airspace violations made since September 11th, there was only one instance in which the pilot was found to have penetrated the restricted area intentionally. This violation resulted in the FAA revoking the pilot's certificate. The combination of better pilot education, dissemination of information on airspace restrictions, and enforcement against violators is having an impact on the number of violations taking place. We are open to any recommendations GAO makes to further improve the security of flight restricted zones.

Mr. Chairman, this completes my statement. I will be happy to answer your questions at this time.

Chairman TOM DAVIS. Thank you. Let me just start. Secretary McHale, DOD's new strategy for homeland security and civilian support is critical of FAA radars. It states, "the current radars maintained by the FAA to track air traffic within the U.S. are aging with high maintenance costs, poor reliability and reduced capability to track emerging threats."

Do you have any comments on that statement? Is it true?

Mr. MCHALE. The Department of Defense continues to rely on the FAA radars because the radar picture that is derived from the deployment of those radar collection capabilities feeds directly into the command and control centers throughout NORAD.

So, our eyes and ears throughout the airspace of the United States, our ability to perceive what is happening in the airspace, let me put it that way, is a direct result of the FAA quality radar system. That is an old system. For the most part it is a remnant of the cold war. There are issues with regard to the very substantial expenses that are associated with the upkeep of the FAA radars.

FAA has taken the position that there are better ways for them to execute their civilian administrative deconfliction requirement within the airspace and they have argued that the FAA radars continue to have importance primarily for reasons of national security. Reflecting that analysis, as concerned by General Mayes, the Office of Management and Budget has now assigned the responsibility to the Department of Homeland Security and the Department of Defense to pay for the upkeep of those radars.

Clearly at some point we are going to have to move beyond the FAA radars to maintain comprehensive surveillance in the airspace. In the interim, we seek appropriate funding both for DHS and DOD to maintain what are still the essential surveillance capabilities found uniquely within the FAA radars. We still need them.

Chairman TOM DAVIS. Mr. Sturgell, can you comment on FAA's attempts to update its radars and tell us about the development of the Global Communications Navigation Surveillance System [GCNCSS], the list providing a common air surveillance picture at the National Capital Region's Coordination Center as a requirement?

Mr. STURGELL. Chairman Davis, we have a number of different radar systems within the National Airspace System. There are terminal radars basically and long-range radars which provide surveillance capability.

We have just recently approved a service life extension program for our ASR–9 radars which are largely in the terminal areas. We are acquiring newer digital ASR–11 radars as well. As the General mentioned, we have incorporated some of these radar capabilities into their networks as well.

With respect to the long-range radars which largely border the Nation, they are an aging system. We identified that in the years before September 11th. We operate in the FAA a cooperative aviation system, if you will, depending primarily on the secondary returns from aircraft through the use of transponders.

So, we recognized that we no longer had a need for primary skin paint returns, if you will, of the aircraft themselves which is largely used as a surveillance function.

As the witnesses here have mentioned, that function we maintained until after September 11th. Now it has been transferred to the Departments of Homeland Security and Defense and they are working for funding again, I believe, for a service life extension of their capabilities.

I think within the National Capital Region the radar coverage is extremely good. There are a number of other systems that enhance that capability as well.

Chairman TOM DAVIS. Well, DOD's enhanced airspace security system, their EAS and your GCNSS seem to perform some of the same functions, namely air surveillance for the National Capital Region. Are these two systems compatible and do you need two departments with the same capability?

Does anyone want to take a shot at that?

Mr. STURGELL. I would say that it is my belief that they do provide different types of capabilities, some of which Defense is particularly interested in. I will let them speak to that.

As far as our radars, again, you know, we recognize that D.C. is unique and there is a need for enhanced surveillance here. Our system in general largely is a cooperative system with the airlines through the use of the transponders.

Chairman TOM DAVIS. I am just trying to get the compatibility and overlap. Secretary McHale, do you have any comment on that?

Mr. MCHALE. I think General Mayes may have some comments on this point operationally, but the most fundamental distinction is this: the FAA uses radar to maintain awareness of what aircrafts are in the airspace and to administratively deconflict aircrafts that presumably are flying without any kind of terrorist intent.

We use the same radar and some other radar systems for a different purpose and that is once we determine that an airplane may be under the control of someone with a malevolent intent, a terrorist, we use that radar not only to track the aircraft and maintain awareness of its constantly changing location, but we also use that radar to support some of our air interdiction capabilities.

In a closed session we could talk about that in a little more detail. But we use radar not merely to deconflict the airspace, which is an FAA responsibility, but to track and if necessary shoot down an aircraft that has come under the control of terrorists.

Thank you.

Chairman TOM DAVIS. Ms. Watson.

Ms. WATSON. Thank you, Mr. Chairman. This question goes to General Mayes. The GAO noted a discrepancy in data collection of restricted airspace violations between the air defense sectors and NORAD Headquarters. Headquarters knew only 10 percent of the violations monitored by the regional sectors.

Can you respond to this? What caused the miscommunication and how has NORAD addressed this problem?

Also, in its final report the 9/11 Commission recommended that the Department of Defense and its oversight committee should regularly assess the adequacy of the Northern Command strategies

and planning to defend the United States against military threats to the homeland.

So, in relation to air defense, General Mayes, how are NORAD and Northern Command complying with the 9/11 Commission recommendation?

General MAYES. Thank you for your questions, Ms. Watson. As it pertains to the difference in clicker count, if I might use that term, of the number of events recorded at NORAD versus the Northeast Air Defense Sector, I will tell you that it has to do with upchannel reporting requirements.

The Northeast Air Defense Sector will bump their clicker up on any given target of interest, regardless of tactical action requirements, whereas NORAD only requires upchannel reporting of those TOIs upon which we executed tactical action.

I will give you an example. Let us say a target pops up in the National Capital Region and it is initially unknown, unidentified. It quickly is resolved. We find out who it is and no tactical action is required.

The Northeast Air Defense Sector will record that as an event. NORAD, on the other hand, since there was no tactical action required, it does not require upchannel reporting. So, therefore NEDS would necessarily have many more events recorded than NORAD would.

In regard to your second question, is that is an answer that you were looking for the first one, in regards to the second question about reviewing our strategy, I will tell you that our strategy is in constant review at many levels.

My staff at Tyndall Air Force Base, as the Joint Force Air Component Commander, is specifically responsible for reviewing that air strategy daily and recommending changes to Admiral Keating, who is the commander of NORAD NORTHCOM.

Our recommended changes that have been staffed by me initially are then staffed by his joint staff in Colorado Springs. Any disconnects there are agreed upon.

I will also tell you that on an interagency basis we have an interagency airspace protection working group upon which representatives from all the stakeholders sit. We continually review our protection strategy specifically for the National Capital Region as well as the rest of the Nation.

We review the measures that we are taking. We look at those measures in regards to how they affect the general aviation public. We take input from outside agencies like the AOPA and we evaluate modifications to our current defense strategy in terms of a risk analysis and where possible we will change those procedures to better accommodate the public.

Ms. WATSON. Mr. McHale, and I know you have to leave quickly, but as Assistant Secretary of Defense for Homeland Defense are you satisfied that the various different headquarters and defense sectors are talking to each other with the same language, are reporting so it is clear and there are definitions?

I just heard General Mayes give us how NORAD looks at an incident and how another sector might look at an incident. I certainly would be confused. I think that is what the 9/11 Commission was getting to when they talked about putting this under one head.

How would you respond?

Mr. MCHALE. The current system ensures, as was not the case before September 11, that we throughout the interagency, meaning the various departments of the Government, are now talking effectively to each other.

But the ability to speak effectively to one another is only the first step toward achieving an effective air defense. Regrettably, before September 11 that communication as an element of a larger requirement was not met. The 9/11 Commission recognized that, so one of the first things that we had to do was ensure that the various departments, to include our own, the Department of Defense, had the opportunity and the responsibility to communicate effectively daily, continuously to make sure that our activities were coordinated. We are doing that now.

Without going into great detail, there are representatives of my staff who work full-time over at DHS. There are representatives from NORAD who work full-time at the TSA-led, hosted, NCRCC. So there is extensive communication.

But there are gaps and seams remaining in terms of interagency coordination. When I was subject to confirmation in the Senate, I said that I would never use the word satisfied. I am not satisfied. There are improvements that can be made.

I think the GAO has done a commendable job in pointing out where some of those improvements might be found.

We had some disagreement, I think modest disagreement, but some disagreement with GAO in terms of how they originally phrased some of their recommendations. I will give you one specific example. The phrase was used "in charge of" and we pushed back on that because the military chain of command is clear under the Constitution and by statute. It goes from the President of the United States to the Secretary of Defense to a Combatant Commander. There is no other civilian in that chain of command.

We don't want to turn the decisions of the Secretary of Defense into an interagency dialog. But we can, consistent with preserving the chain of command, insist upon a proactive leadership role in the interagency to make sure that as DOD exercises its military responsibilities, those responsibilities are fully coordinated with, not commanded by, but coordinated with interagency partners.

I think there are still some unmet requirements with regard to that coordination. As noted in the GAO report, I think one of those areas involves leadership of the interagency process outside the NCR. That was one of the main conclusions reached in the GAO report and I think it is a valid conclusion demanding an answer.

Ms. WATSON. Well, I don't think the GAO needs to be looked at as someone that should be defining and clarifying the language in which we talk to each other through the interagency.

They raised the issue. What I am trying to get from you is where is the responsibility for the interagency coordination? Where should it be housed? Are you saying the executive branch?

Mr. MCHALE. Yes. The position that I would preliminarily present, and I think we are still in the process, not only in DOD but throughout the interagency in reviewing this issue, is who should have the role nationwide that has been assigned to the NCRCC, TSA's executive agency at the National Capital Region

Coordination Center? Who should have that responsibility outside the National Capital Region throughout the rest of the country?

Now, I believe, consistent with the GAO report, that TSA ought not to be passive in that executive agency, that there is a leadership responsibility associated with that executive agency; not a command responsibility, but a leadership responsibility, that is what we envisioned within the National Capital Region when we signed the memorandum of agreement.

The question then becomes: Who has that duty nationwide? I believe that we ought to be open to the prospect of expanding that duty from the NCR throughout the Nation under the primary interagency leadership of TSA.

Ms. WATSON. I think you ought to do it.

Chairman TOM DAVIS. Thank you. Mr. Shays.

Mr. SHAYS. Thank you. Thank you, Mr. Chairman.

Secretary McHale, you have been doing a great job. All of you have done a fine job. I happen to know this gentlemen and I appreciate the work he has done.

I would like to ask you, how will the downsizing of the Air National Guard under BRAC and the reduction of the Air Guard assets affect DOD's ability to protect the homeland in the near and long term?

General MAYES. Sir, the BRAC recommendations were reviewed before they came out on a public basis by Admiral Keating's joint staff in Colorado Springs, at headquarters of NORAD NORTHCOM.

As a combatant commander, his interests are in combat capability, not in platforms or units. In reviewing those recommendations alongside the force providers, Admiral Keating has determined that the BRAC recommendations will not affect the ability of NORAD NORTHCOM to complete its mission.

Mr. SHAYS. Would you also answer it, Mr. Secretary?

Mr. MCHALE. One of the factors to be considered in the BRAC process is the potential impact of any individual closure upon homeland defense capabilities. So, it is not only something that one would think is the right thing to consider; by law we are obligated to consider homeland defense implications in making BRAC decisions.

I can assure you from conversations that I had prior to the BRAC recommendations coming out of DOD, we had that kind of dialog. There was a review of the homeland defense implications associated with the proposed closures. Although that process continues, I can tell you with confidence that homeland defense was properly considered in coming up with the list that was recommended by the Secretary to the BRAC commission.

Mr. SHAYS. Thank you. General, it is our understanding that the 1st Air Force operates 24 alert facilities across the United States. I would like you to describe these facilities.

Let me give you all the questions, OK? Describe the facilities. What do they do? Does the alert facility have the right fighter jet assets to perform the air defense mission quickly and effectively?

Two more questions: Which air asset is best suited to the domestic air defense mission and how many of those planes does the Air National Guard have?

If you have forgotten one or two, I will come back to them, but if you could kind of group it together, that would be helpful.

General MAYES. Sir, our alert facilities vary in number depending on our alert posture based on the given threat level. A lot of the aspects of your question, regrettably, are classified, so I can't get into the details of all of them.

But I will tell you that typically at any given alert site there are at steady state, there are two aircrafts on alert with a spare. The facilities required to do that are generally an enclosed secured area, alert barn, as it is referred to. That is manned by the appropriate aircraft crew chiefs, weapons personnel, and of course the pilot force.

The facilities require extensive CON activity to the command and control system so that those aircraft can be ordered into the air with the appropriate rapidity. Their role would be, obviously, to get airborne as rapidly as possible, close on a target of interest, execute diversion signals, first off.

We have several ways of doing that. The international civil aviation organization has agreed upon a certain set of signals that will indicate to an aircraft that he must alter his course of action, perhaps follow the intercepting aircraft to landing.

If the passenger signals do not work, then those aircrafts have flares on board to ensure that we can get the visual attention of a potential violator. Most of our alert airplanes are equipped with both UHF and VHF radios. We attempt at all times to hail those aircrafts, the potential violators, on the appropriate frequencies.

With all of that failing, then our command and control system is such that we can access the highest available engagement authority and provide the situational awareness, a description of the current state of affairs to that engagement authority and then he can make the decision about the final course of action.

Mr. SHAYS. Thank you, General. I am all set.

Chairman TOM DAVIS. Thank you.

Mr. Porter, do you have any questions?

Mr. PORTER. Yes. I know we just have a few moments left. But tell me what triggers your security interest in an aircraft. I know there are some specific things you look at, but what specifically would trigger your interest in an aircraft?

General MAYES. Typically, what would cause an aircraft to be a target of interest would be the fact that it is—well, a couple of different things.

First of all, on the unknown side it would be either not squawking the appropriate code, not flying on its filed flight plan, being in a restricted area where it was not supposed to be, non-compliant with instructions. If it was talking to us and then it didn't comply with instructions it would become a target of interest.

Another way that an aircraft can become a target of interest is if we get through the intelligence fusion from the various agencies including both civilian and military, if we got information that there was a person on the no-fly list or the selectee list, and that comes out of the Terrorist Screen Center, if a person of that nature was on an aircraft, it would be determined to be a target of interest and would merit further scrutiny as it progressed through the na-

tional airspace, or it could be refused entry into the national airspace if it was coming from a different country.

Mr. MCHALE. Mr. Porter, in addition to what the General just mentioned in terms of the physical activity of the aircraft, where it is flying, the altitude, the other indicators of potential threat activity in addition to the information that we receive routinely regarding passengers attempting to board or perhaps on board an aircraft may raise issues of concern.

We also, consistent with the strategy that was quoted by the chairman a few moments ago, see air defense as defense in depth. That is, we want our air defense to begin overseas. So, we have established robust intel sharing relationships with friendly nation states and other sources overseas.

Some of our most significant air defense activity has been triggered by information that we have received concerning specific flights at specific times and specific threat conditions associated with those flights so that we could bring to bear upon those flights a very focused sense of concern.

You may recall a year ago this past Christmas, over a period of 2 or 3 weeks we had that kind of information and it dramatically affected how we deployed and implemented our air defense capabilities, reviewing and in fact intercepting certain flights, well beyond the airspace of the United States of America.

General MAYES. Sir, I might add just one more factor. I will tell you that the FAA, our partners in the FAA, are quite often the first ones to bring to our attention the fact that an aircraft is not compliant with his plan or is squawking the wrong code. So the partnership there is working well.

Chairman TOM DAVIS. Well, thank you all very much. We have votes on so I will dismiss this panel. We will move ahead and adjourn this hearing but I appreciate everybody being here today to answer our questions. We will keep working together.

The hearing is adjourned.

[Whereupon, at 11:52 a.m., the committee was adjourned.]

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