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UPDATE ON FEDERAL RAIL AND PUBLIC TRANSPORTATION SECURITY EFFORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION SECURITY AND INFRASTRUCTURE PROTECTION

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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UPDATE ON FEDERAL RAIL AND PUBLIC TRANSPORTATION SECURITY EFFORTS

Tuesday, February 6, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON TRANSPORTATION SECURITY
AND INFRASTRUCTURE PROTECTION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 311, Cannon House Office Building, Hon. Sheila Jackson Lee [chairman of the subcommittee] presiding.

Present: Representatives Jackson Lee, Thompson, DeFazio, Norton, Clarke, Perlmutter, Lungren, King, Brown–Waite, Blackburn, and Bilirakis.

Ms. JACKSON LEE. [Presiding.] Good morning. The subcommittee will come to order.

The subcommittee is meeting today to receive testimony as an update on federal rail and public transportation security efforts.

Might I take a moment of personal privilege to welcome all of the participating members of this subcommittee as they come into the hearing room. I look forward to both an expansive and extensive opportunity to secure the nation's transportation modes, as well as its critical infrastructure.

I think I will path is daunting, but I believe that we have a great opportunity to do so, and we do so in the name of the security and safety of the American people.

I would like to first of all welcome the ranking member, Ranking Member Lungren, and all of my Transportation Security and Infrastructure Protection Subcommittee colleagues again, and to indicate that I am optimistic that this subcommittee will be active, effective and bipartisan in its approach to securing our nation's transportation system and critical infrastructures.

I also welcome all of the witnesses and thank them for testifying today.

If one would reflect upon where we are after 9/11, certainly what would come to mind is the vastness of the nation's transportation system, and the overwhelming need, particularly in rail and public transportation, for us to assess it and to, of course, make it safe.

The purpose of this hearing is to receive an update on federal government initiatives and improvements in rail and mass transit security in order to assess our nation's preparedness as it relates to future terrorist threats and attacks to our rail and mass transit infrastructure. Each weekday, 11.3 million passengers in 35 metropolitan areas and 22 states use some form of rail transit. In addi-

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tion to the commuter rail systems which provide regional service to America's largest cities, Amtrak operates the nation's primary intercity passenger rail service over a 22,000-mile network and 500 stations in 46 states. In 2005, Amtrak served more than 25 million passengers.

As important as these commuter modes are to delivering Americans to their jobs, similarly, freight rail is vitally important to our nation's economy. Rail moves 40 percent of the nation's freight and contributes billions of dollars each year to the economy. While there are 562 common carrier freight railroads operating in the U.S., there are seven class I railroads, which account for 68 percent of the freight, 89 percent of the employees, and 93 percent of the revenue.

Throughout the world, mass transit systems have long been targets of terrorist attacks. Algerian extremists set off bombs on the subways of Paris in 1995 and 1996. The Irish Republican Army waged a long-running terrorist campaign against the London Underground. Palestinian terrorists have carried out suicide bombings on Israel's buses. Chechen terrorists killed 40 people by bombing the Moscow subway in 2004. And in the first terrorist use of a chemical weapon, a Japanese cult, Aum Shinrikyo, released sarin gas on a Tokyo subway in 1995.

Recent events make it clear that the threat continues. On the morning of March 11, 2004, 10 explosions occurred at the height of the Madrid rush hour aboard four commuter trains. On July 7, 2005, during the morning peak travel hours, three separate explosions ripped through the London Underground, and a fourth explosion occurred on a double-decker bus. These four explosions, the result of coordinated suicide bombings by British-born Islamic extremists, claimed the lives of 56 people and seriously injured 100 more.

Two weeks later, on July 21, 2005, another group of terrorists unsuccessfully attempted to attack London's mass transit system again. On July 11, 2006, a series of seven bomb blasts against a suburban railway in Mumbai, formerly known as Bombay, capital city of the Indian state of Ashara, and India's financial capital, resulted in 207 lost lives and over 700 injured.

The recent attacks serve as a harsh reminder of mass transit and rail security vulnerabilities. Both mass transit and rail systems are public and used by millions of people daily. Because of their size, openness and highly networked character, there are no obvious checkpoints like those at airports to inspect passengers and parcels. Passengers are strangers, promising attackers anonymity and easy escape.

If any of us have engaged in travel on rail recently, we are well aware of the fluidness of rail transit opportunities. Attacks on mass transit, the circulatory system of urban areas, can cause widespread fear, severely disrupting economic activity, killing or injuring large numbers of people, and altering our way of life.

An attack on our freight rail, either the material being transported, such as hazardous materials or vital commodities, or merely the system itself, could severely impact our national economy.

As a result, both mass transit and rail systems are attractive targets. Since September 11, 2001, according to the Memorial Insti-

tute for the Prevention of Terrorism, mass transit systems have been the subject of more than 145 terrorist attacks. Due to their existence in high-population, high-risk urban areas, mass transit systems are also inevitably affected by any terrorist attack that may occur within that jurisdiction, regardless of whether the transit system was the target of the attack.

For example, during September 11, 2001, two of New York City's busiest transit stations were lost, and considerable damage occurred to the tunnel structures, endangering hundreds of lives underground. Certainly, collateral impact is one of the tragedies and the devastating impact of not securing the nation's rail system. Approximately $1.8 billion was needed to rebuild the subway infrastructure that was damaged in the attacks.

I am hopeful that these hearings that we are having today will help us prevent such attacks, or really will wake up America. Pursuant to the Aviation and Transportation and Security Act of 2001, the TSA is responsible for the security of all modes of transportation, including rail and mass transit. TSA, however, has focused the majority of its resources and assets on aviation security for the past 5 years. It is now time to wake up and to recognize that TSA's lack of progress in developing a security strategy for all modes of transportation, mandated by the development of a national strategy for transportation security in the Intelligence Reform and Terrorism Prevention Act of 2004.

Congress needs to recognize that. And this strategy, although due April 1, 2005, was not finalized by TSA until September, 2005. Moreover, the document provided by TSA did not meet the requirements set out by Congress, especially with regards to rail and mass transit security. Furthermore, subsequent congressionally mandated updates were also not met by TSA, resulting in the 9/11 Disclosure Project giving TSA a "C" for its efforts.

I find it completely appalling that this administration seems to be unwilling to act on rail and mass transit security until we are faced with another disaster. I shudder to think that if the Washington, D.C. or New York subway systems were attacked and mass casualties resulted, that we would be thinking that more could have been done to prevent such a tragedy.

It is time now to answer that question: What should we be doing? And we will be desperately trying to figure out how to prepare for a disaster that has already happened if such an incident occurs, and holding hearings after the incident to find out who dropped the ball. I think we need to prepare and prepare now.

We have been blessed thus far that our rail and public transportation have not been attacked. We should make our best efforts to ensure that we do not overlook this blessing. From the terrorist attacks that have occurred around the world, we know that terrorists will target our rail and public transportation system. They will go to all lengths. Despite this admonition, the agency created and funded by Congress to address the issue of transportation security has consistently dropped the ball when it comes to rail and public transportation.

We cannot let the lessons of Madrid, London, and Mumbai go unheeded for the sake of millions of Americans. What we are witnessing with the Transportation Security Administration is a lack

of complete accountability. The TSA is not being held fully accountable for protecting our transportation systems, and this must change.

I acknowledge and appreciate the time that TSA Administrator Kip Hawley has taken to participate in this important hearing. I thank him for his presence. However, we cannot tolerate the TSA's past inaction on this issue to continue for a moment longer, and I look forward to working with the administrator, and I appreciate the openness in which he has expressed his willingness to work with us.

While it is understandable that we have put focus on the safety of air travel, given the events of 9/11, we need to get going on the issues dealing with rail and mass transit. We can't be lopsided. I am pleased that this Congress and Chairman Thompson has decided to do what this administration has thus far proved unwilling to do, and that is to provide a comprehensive framework to secure this nation's rail and public transportation systems and to highlight it, the way it has never been highlighted before.

We thank you, Chairman Thompson.

We owe it to the public to safeguard the modes of transportation and the millions of persons who use this every day. We owe it to our children. I eagerly look forward to the testimony so that our children, who look to us for their safety and security, can be safe and secure as our grandchildren will be as well.

PRPEARED STATEMENT OF THE HON. SHEILA JACKSON LEE

First and foremost, I welcome Ranking Member Lungren and all of my Transportation Security and Infrastructure Protection Subcommittee colleagues. I am optimistic that this Subcommittee will be active , effective, and bipartisan in its approach to securing our nation's transportation system and critical infrastructure. I also welcome all the witnesses, and thank them for testifying today.

The purpose of this hearing is to receive an update on federal government initiatives and improvements in rail and mass transit security in order to assess our nation's preparedness as it relates to future terrorist threats and attacks to our rail and mass transit infrastructure.

Each weekday, 11.3 million passengers in 35 metropolitan areas and 22 states use some form of rail transit. In addition to the commuter rail systems which provide regional service to America's largest cities, Amtrak operates the nation's primary intercity passenger rail service over a 22,000-mile network and 500 stations in 46 states. In 2005, Amtrak served more than 25 million passengers.

As important as these commuter modes are to delivering Americans to their jobs, similarly, freight rail is vitally important to our nation's economy. Rail moves 40 percent of the nation's freight and contribute billions of dollars each year to the economy. While there are 562 common carrier freight railroads operating in the U.S., there are seven Class I railroads, which account for 68 percent of the freight, 89 percent of the employees and 93 percent of the revenue.

Throughout the world, mass transit systems have long been targets of terrorist attacks. Algerian extremists set off bombs on the subways of Paris in 1995 and 1996; the Irish Republican Army waged a long-running terrorist campaign against the London Underground; Palestinian terrorists have carried out suicide bombings on Israel's buses; Chechnyan terrorists killed 40 people by bombing the Moscow subway in 2004; and, in the first terrorist use of a chemical weapon, a Japanese cult—Aum Shinrykyo—released sarin gas on a Tokyo subway in 1995.

Recent events make it clear that the threat continues. On the morning of March 11th, 2004, ten explosions occurred at the height of the Madrid rush hour aboard four commuter trains. On July 7, 2005, during the morning peak travel hours, three separate explosions ripped through the London Underground and a fourth explosion occurred on a double-decker bus. These four explosions, the result of coordinated suicide-bombings by British-born Islamic extremists, claimed the lives of 56 people and seriously injured hundreds more. Two weeks later, on July 21, 2005, another group of terrorists unsuccessfully attempted to attack London's mass transit system

again. On July 11th, 2006 a series of seven bomb blasts against the Suburban Railway in Mumbai (formerly known as Bombay), capital city of the Indian state of Maharashtra and India's financial capital resulted in 207 lost lives and over 700 injured.

The recent attacks serve as a harsh reminder of mass transit and rail security vulnerabilities. Both mass transit and rail systems are public and used by millions of people daily. Because of their size, openness, and highly-networked character, there are no obvious checkpoints, like those at airports, to inspect passengers and parcels. Passengers are strangers, promising attackers anonymity and easy escape.

And attacks on mass transit—the circulatory systems of urban areas—can cause widespread fear, severely disrupt economic activity, kill or injure large numbers of people, and alter our way of life. An attack on our freight rail, either the material being transported (such as hazardous materials, or vital commodities), or merely the system itself, could severely impact our national economy.

As a result, both mass transit and rail systems are attractive targets. Since September 11, 2001, according to the Memorial Institute for the Prevention of Terrorism, mass transit systems have been the target of more than 145 terrorist attacks.

Due to their existence in high-population, high-risk urban areas, mass transit systems are also inevitably affected by any terrorist attack that may occur within that jurisdiction—regardless of whether the transit system was the target of the attack. For example, during September 11, 2001, two of New York City's busiest transit stations were lost and considerable damage occurred to the tunnel structures, endangering hundreds of lives underground. Great care was required to evacuate passengers, locate and rescue trapped transit cars, and communicate instructions. The damage in New York City was so great that in the immediate aftermath of 9/11, Congress appropriated $1.8 billion to rebuild the subway infrastructure that was damaged in the attacks. I am hopeful that through hearings such as the one we are having today, we can prevent such attacks rather than face the tragic consequences of 9/11 again.

Pursuant to the Aviation and Transportation Security Act of 2001 (ATSA), the Transportation Security Administration (TSA) is responsible for the security of all modes of transportation including rail and mass transit. TSA, however, has focused the majority of its resources and assets on aviation security in the past five years.

Congress, recognizing TSA's lack of progress in developing a security strategy for all modes of transportation, mandated the development of a National Strategy for Transportation Security in the *Intelligence Reform and Terrorism Prevention Act of 2004* ("9/11 Act"). This strategy, although due April 1, 2005, was not finalized by TSA until September 2005. Moreover, the document provided by the Department of Homeland Security (DHS) did not meet the requirements set out by Congress, especially with regards to rail and mass transit security. Furthermore, subsequent congressionally mandated updates were also not met by TSA, resulting in the 9/11 Discourse Project giving the TSA a C—for its efforts.

On December 17, 2003, the President issued Homeland Security Presidential Directive (HSPD)—7 on critical infrastructure protection, prioritization, and protection. The Directive required the Department of Homeland Security to develop a National Infrastructure Protection Plan (NIPP) covering 17 critical infrastructures and key resources. This plan was supposed to be completed by December 2004. It was not completed until Summer 2006. Similarly, the Department was supposed to complete a Transportation Sector Specific Plan as part of the NIPP. This plan was also due in December 2004. It has not yet been completed.

On December 5, 2006, the President issued Executive Order (EO) 13416 on strengthening surface transportation security, recognizing the security of the nation's surface transportation systems is vital to economy and security of the nation. In the EO, the President stated that federal state and local and the private sector share responsibility for surface transportation security. The EO calls for implementation of a comprehensive, coordinated and efficient security program. It also states that the Secretary of Homeland Security is the principal federal official responsible for infrastructure protection for surface transportation.

The 9/11 Act, the HSPD–7, and the Executive Order all request that DHS come up with a comprehensive plan for surface security. Those requests still have not been answered—and it suggests strongly that TSA still does not recognize the importance of protecting the nation's rail and mass transit systems.

TSA's failure to assume a leadership position on surface transportation security was recently highlighted in a Senate hearing on rail security. Ms. Cathleen Berrick, of the Government Accountability Office (GAO), testified on the subject before the Senate Committee on Science, Commerce, and Transportation on January 18, 2007. In her testimony, she found that TSA still has not completed a comprehensive risk

assessment of the U.S. passenger rail system. According to Ms. Berrick, this is the key component to prioritizing security investments. In addition, she indicated that there has been turmoil among those in the industry as to whether TSA's actions to this point, namely issuing directives, security technology, training for rail workers, and new proposed rules regarding passenger and freight rail security, are based on industry best practices and to what extent TSA can monitor compliance. The GAO also found that the U.S. is not implementing many of the security options in use overseas, such as covert testing, random screening of passengers and their packages, and centralized research and testing. According to GAO, these methods have not been properly vetted by TSA and should be considered. The general conclusion of the report is that much more leadership and guidance needs to be provided by the federal government to construct a comprehensive rail and transit security plan.

I find it completely appalling that this Administration seems to be unwilling to act on rail and mass transit security until we are faced with another disaster. I shudder to think that if the Washington, D.C. or New York subway systems were attacked, and mass casualties resulted, that we would be thinking that more could have been done to prevent such a tragedy. We will be desperately trying to figure out how to prepare for a disaster that has already happened and holding hearing after hearing to find out where we dropped the ball. The time to prepare is now, and I am committed to securing our nation's rail and mass transit system expeditiously. We have been blessed thus far that our rail and public transportation systems have not been attacked. We should make our best efforts to ensure that we do not overlook this blessing.

From the terrorist attacks that have occurred around the world, we know that terrorists will target our rail and public transportation systems. Despite this admonition, the agency created and funded by Congress to address the issue of transportation security has consistently dropped the ball when it comes to rail and public transportation. We cannot let the lessons of Madrid, London, and Mumbai go unheeded. For the sake of the millions of Americans who use our rail and mass transit systems everyday to go to work, school, and visit friends and family, we have to take charge on this security risk.

What we are witnessing with the Transportation Security Administration is a lack of complete accountability. The Transportation Security Administration is not being held fully accountable for protecting our transportation systems and this must change. I acknowledge and appreciate the time that TSA Administrator Kip Hawley has taken to participate in this important hearing. However, we cannot tolerate the TSA's past inaction on this issue to continue for a moment longer.

While it is understandable that we would put focus on the safety of air travel, given the events of 9/11, what cannot be justified is the completely lopsided attention by the Department to aviation security at the expense of rail and mass transit security. I am pleased that this Congress and Chairman Thompson have decided to do what this Administration has thus far proved unwilling to do. That is, to provide a comprehensive framework to secure this nation's rail and public transportation systems.

We owe it to the public to safeguard the modes of transportation that allow them to carry on with their lives and drive this economy. Millions of men and women ride our nation's rail and public transportation systems everyday; we owe it to them to ensure that they can do so safely and securely. I hope that through today's hearing and our continued efforts on the issue of rail and mass transit security, we can resolve the asymmetric way in which we treat aviation versus rail security and resolve the substantial threat posed by inadequately security on our rail and mass transit system.

I eagerly look forward to all of your testimonies and discussion of these critical issues today. I yield back the remainder of my time.

Ms. JACKSON LEE. I would be happy now to recognize the ranking member of the subcommittee, the gentleman from California, for his opening statement.

Mr. LUNGREN. I thank the gentlelady. I would like to congratulate her in her position as the new chairwoman of our subcommittee. Thank you for moving so quickly on this important issue.

I would also like to thank our government witnesses for their testimony today, and for the initiatives they have already taken to secure our passenger rail and mass transit systems. This is an issue which we visited over the last 2 years. The challenges you face are

obviously enormous. They are unique, as opposed to other modes of transportation and other modes of carrying cargo.

Every day, our nation's commuter, heavy and light rail transit systems carry over 11 million passengers. Amtrak, which has been one of the topics of conversation in Congress going back 25 years, now operates the nation's primary intercity passenger rail service over this 22,000-mile network, carrying another 25 million passengers annually.

It is these millions of passengers traveling over extensive and open rail network, and I underscore that, an extensive and open rail network, which creates such a daunting security task and requires this update of federal rail and public transportation security efforts.

The federal government has divided authority for rail and mass transit safety and security between the Departments of Homeland Security and Transportation. Our witnesses today from the Transportation Security Administration, the Federal Transit Administration, and the Federal Rail Administration are the departmental organizations responsible for identifying and mitigating the safety and security risks to our rail and transit systems.

This division of federal authority creates a corresponding responsibility on Congress to encourage, coordinate and oversee that these agencies continue to secure our rail and mass transit systems. Since 9/11, the Department of Homeland Security has taken many actions to manage risk and improve the security of our nation's rail and transit systems. Along with TSA, it has provided over $18 billion in funding to state and local governments for programs and equipment to help manage their security risks.

For transit security specifically, TSA has already distributed over $585 million in grants, with an additional $175 million announced this year. I think we can applaud that, but we also know that more needs to be done.

Our question is: When you don't have an unlimited budget, how do you make sure that you prioritize and you organize yourself in such a way to be most effective? How do we follow through on the risk-based assessment analysis that this Congress has approved and that the secretary of DHS has spoken of so often? That is an analysis that we have constantly reminded ourselves of, and that needs to be followed in all that we do.

Utilizing our intelligence resources, DHS, TSA has trained and deployed manpower and assets to high-risk areas, developed and tested new security technologies, and performed risk assessments on systems across the country. But I would join the chairperson of this subcommittee in saying that we have not done enough. I don't merely say that about the administration. I say that about us in the Congress.

It is natural, when you have been attacked in the most serious attack on American soil since Pearl Harbor, that you would look at the nature of that attack, and you would look at that environment, and that you would therefore spend a good amount of your time, perhaps an inordinate amount of your time, looking at securing the aviation system from a safety standpoint, from a security standpoint.

Nonetheless, we know that the foe looks for vulnerabilities. If we strengthen one place, they will look for another place that we haven't strengthened as much. As a result, we have to try and keep one step ahead of them. The public and private passenger rail operators also share responsibility for securing their own systems. Most operators have already implemented customer awareness programs encouraging passengers to remain vigilant and report suspicious activities. They have also increased the number and visibility of security personnel, upgraded security technology, tightened access controls, made rail system design improvements to enhance security, and increased the use of canine teams to detect explosives.

But I think we all know more can be done. I have looked at some rail yards and found that they were easily accessible, without any gate or any fencing whatsoever. I know they have patrols. The question is: How often are those patrols there? How effective are those patrols?

And frankly, in one community in which I once lived, Roseville, California, which has the largest rail yard once you are past the Sierras, just by the number of people—well, we used to call them hobos, we use other names now, but people who ride those rails, they get access to those places. I just wonder whether we have done enough, and that is one thing I think we have to look at. We have a more serious issue now than just people riding the rails for free. If some of those people are terrorists bent on doing destruction, that is a completely different problem that we now face.

Because our rail and mass transit systems are open, are easily accessible, and handle millions of customers daily, they are vulnerable to terrorist attacks. Trained rail employees must be our first line of defense. Since 9/11, thousands of employees have undergone security training, including police officers, emergency responders, security personnel, management and frontline employees. This training is absolutely essential, since our rail transit employees will be the first people impacted by a terrorist event.

They will play a key role in managing the terror aftermath, evacuating civilians, and providing first-aid relief. These frontline rail and transit employees also play an important role in preventing such attacks. They are familiar with their surroundings, their work environment, and can report suspicious activity and packages to security personnel.

So as I say, while progress has been made addressing our rail and mass transit security challenges, much, much remains to be done. I look forward to the testimony of our witnesses this morning, and their suggestions for improving the security of these vital transportation systems.

I thank the chairperson for her time.

Ms. JACKSON LEE. I thank the distinguished gentleman from California.

I am delighted as I yield to the distinguished chairman of the full committee to accept your comment that Congress has not done enough, and because of the chairman of the full committee, we look forward to accepting that challenge and doing what is necessary to secure the nation's rails.

With that, I yield to the gentleman from Mississippi, Mr. Thompson, for his opening statement, the chairman of the full committee, 5 minutes.

Mr. THOMPSON. Thank you very much, Madam Chairman. I look forward to working with you on this subcommittee as we work to improve a number of transportation security issues here in America.

I welcome the witnesses today. You have an awesome responsibility heaped upon you, and we want to work as cooperatively with you as possible in this respect. It is absolutely important that we do more.

Both speakers before me have talked from a historical perspective about our rail systems and how important they are. We also know how many people travel the rails every day. But some of us who have an opportunity to go personally on the systems see how different the security is for the rail system than it is for airline systems. Airlines are light-years ahead of rail.

It could possibly be because we have not put enough money into ramping up rail security. I am told that we spend about $9 per passenger in airline security, and about 2 cents per passenger in rail security. Well, at that rate, we will never catch up, the rail systems. But I am also told that some simple things like training the people who work for the rail industry on more security issues would be something better than just giving them a 30-or 45-minute video and telling them to go out and find bad things. We have to come up with a comprehensive training program for rail workers, who said to me that they want to be trained to help. They are there every day.

So I look forward to the testimony, but I am also disappointed with the budget numbers I see for rail security. I want our witnesses to, either in their testimony or as we deal with the questions, see whether or not the money is adequate. Could you do more with more money? If you had more money, what could you do with it to secure our rail systems? It is absolutely important.

Bad people look for vulnerabilities. If we know the vulnerability is around, we need to look at it. We will be marking up, as you know, later this month and into next month a rail security bill. Our ranking member of the full committee has talked about some vulnerabilities in his area. I look forward to working with him on those 10 stations, and some of the others. We have some other tunnels along the way that we have to fortify. We are not going to try to recommend how to do it. We are going to provide resources to come with the best possible technology.

So, Madam Chairman, I look forward to the testimony of the witnesses, and I look forward to moving the ultimate legislation forward so that we can assure those individuals who ride the trains of this country, the subways of this country, that they are safe. But likewise, we want to talk a little bit about individuals who have hazardous cargo moving through their communities, how we can secure those items to make sure that they are also protected.

I yield back the balance of my time.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

It is my pleasure now to recognize the ranking member of the full committee, the distinguished gentleman from New York, Mr. King, for an opening statement.

Mr. KING. Thank you, Ms. Jackson Lee.

Let me join with Mr. Lungren and Mr. Thompson in commending you on your session as chairwoman. I know you will do an outstanding job. I have had the privilege of working with you on a number of committees over the years, and I know the energy and drive you bring to these issues. I certainly look forward to it.

I also want to thank Congressman Lungren for the job that he did during the 2 years that he was chairman of this subcommittee, especially on this issue of rail security. I want to thank Chairman Thompson for the effort that he is going to put into this issue, and also for reaching out to me and agreeing to work on areas of, actually, parochial interest to me, but also I think which have a national impact. I am sure I can count on Ms. Clarke's assistance on those issues.

We come from an area where we have literally hundreds of subway stations, thousands of entranceways and exits, and also millions of passengers. That does not include the hundreds and hundreds of thousands of passengers coming from the suburbs every day. As Chairman Thompson said, there is Penn Station. But again, this is a national issue. There is the issue of train yards. There is the issue of hazardous cargo.

I want to thank the witnesses for being here today. I look forward to their testimony. I want to acknowledge Mr. Hawley for work that he has done, because I think a significant amount has been done as far as rail transit is concerned. I think as a practical matter, if we are talking about risk-based funding and risk-based initiatives, I don't know if we will ever reach the stage where you could have the same level of security on rail as we have on airports, just by their nature. In many ways, it is like comparing apples and oranges.

Having said that, we have to do more to increase the security, but I think we have to realize they are different categories. There are things that can be protected, and others where we can minimize the level of danger, and have layers of protection.

So I look forward to the testimony today. I look forward especially to working with Chairman Thompson as he goes forward with his legislation. I think we can find many areas of common ground. If there are going to be differences, they will be honest differences. Certainly, I will try to find a way to mitigate those differences. But I think on balance, we are definitely going in the right direction. It is a continuation of what Congressman Lungren had done last year. Chairman Thompson and Chairwoman Jackson Lee are bringing extra effort and incentive to it this year, and certainly Mr. Lungren and I look forward to working with you as we go forward.

With that, I yield back the balance of my time.

Ms. JACKSON LEE. Mr. King, we welcome your collaborative effort. We thank you for your service as well. I think the ultimate, if you will, mission is to get something done.

Let me make mention of the fact that other members of the subcommittee are reminded that under the rules, opening statements

may be submitted for the record. I do want to acknowledge the presence of Mr. DeFazio of Oregon and Ms. Clarke of New York, Mr. Bilirakis of Florida, and I know that Ms. Blackburn of Tennessee has joined us for this hearing. We thank them so very much for their presence.

I would like to welcome, again, the first panel of witnesses. As indicated, our interest in this hearing is to secure facts, and as we do that, to explore and develop the right kind of legislation to solve some of the crises we face in rail security.

Our first witness, the Honorable Kip Hawley, is the assistant secretary of the Transportation Security Administration. Mr. Hawley has testified before Congress on numerous occasions regarding matters of transportation security, and brings more than 20 years of transportation and technology experience to TSA.

Welcome, Administrator Hawley.

Second is Mr. Terry J. Rosapep. Mr. Rosapep is a deputy associate administrator at the Federal Transit Administration for the Office of Program Management. He has been with FTA for 5 years and has over 25 years of transportation experience at the municipal and regional levels.

Welcome, too, Deputy Associate Administrator Rosapep.

Third is Michael Haley, the deputy chief counsel in the Office of Chief Counsel of the Federal Railroad Administration. Mr. Haley has been in the chief counsel's office since 1971 and manages a staff of 38 attorneys and support staff, providing legal counsel and support to all FRA officials and programs.

We welcome you as well, Mr. Haley.

Without objection, the witnesses' full statements will be inserted in the record. I now ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Hawley, the administrator of TSA.

Mr. Hawley, welcome again.

STATEMENT OF HON. KIP HAWLEY, ASSISTANT SECRETARY, TRANSPORTATION SECURITY ADMINISTRATION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HAWLEY. Thank you very much. And good morning, Chairwoman Jackson Lee, Ranking Member Lungren and full committee Chairman Mr. Thompson and full committee Ranking Member Mr. King and members of the committee.

I am pleased to appear before you today to talk about TSA's efforts in reducing terrorist risks to surface transportation. It is also a pleasure to join my colleagues and partners from the FTA and Federal Rail Administration here, as well as my colleague, Deputy Administrator Robert Jamison, who was formerly deputy administrator at FTA and acting federal rail administrator.

We look forward to working with this committee on these important issues. I appreciate the thoughtful statements made this morning.

We look at terrorist risk to surface transportation in the same way we do for aviation. Both are highly visible target areas that have previously been attacked and they remain a great concern. At the top level of our security measures, we do not attempt to segregate our efforts by target type, like rail or air. But rather, we en-

gage with our partners in intelligence and law enforcement to disrupt plots at the earliest possible point.

We know that attack planning can start out directed one way and then change as it moves along. The most effective way to stop attacks is at the front end, to find the people at the planning stage and stop them there.

I appreciate the committee addressing these issues so we can get them out on the table and assure the traveling public that, indeed, security for our surface modes of transportation is a very high priority of the government and effective measures are in fact in place.

We are constantly striving to raise the baseline for security. Members of this committee have expressed to me their desire to do more and do it faster. I look forward to working with the committee and our other partners to take up that challenge and achieve more effective security, while preserving the free mobility of the public.

Very quickly, I would like to summarize our security strategy for surface transportation. I mentioned the most important layer is to connect with our network partners and stop plots at the beginning. We work daily with our colleagues in the intelligence community and throughout law enforcement on this, and then connect with transit and rail operating systems with information and suggested actions.

TSA has the general manager for rail, Gil Kovar, who has 30 years of senior-level operating experience and can convert threat information into usable, effective actions at the ground level. TSA has the general manager for transit, Paul Lennon, who also has 30 years in the business, starting as a bus driver with the MBTA in Boston, and most recently as head of security at L.A. Transit.

The second layer is to look at the surface transportation system to see if there are any risks of national significance. Secretary Chertoff has a risk-based strategy for DHS and we follow that at TSA and here in surface transportation. We have completed risk assessments of service transportation and identified our top priorities based on threat vulnerability and consequence. They are, A, high-density passenger transit systems in urban areas with underwater or underground tunnels; and B, highly toxic chemicals in rail cars that are standing unattended in high-risk urban areas.

Our mitigation measures include federal grant priority for the passenger transit systems and an innovative and immediate risk reduction approach to freight rail. Working with state and local authorities, we look at individual transit systems. One of our fundamental principles is to take advantage of all the work that was done before 9/11, even if it wasn't originally done for security. This panel represents the point.

TSA is not reinventing the wheel. DOT has been working transportation safety issues for a long time. Many of those measures form a very solid security foundation. Our job is to link with the safety activities and add value on top of that where there are particular security-specific needs. We do that with intelligence sharing, vulnerability analysis, technology sharing, and our VIPR teams where TSA brings together federal air marshals, canine teams, and TSOs at the invitation of local law enforcement to provide a visible and unpredictable security presence to a variety of surface transportation environments.

Then the federal government makes funds available to state and local authorities for their use in providing what works best for them locally in the security arena. Unlike aviation, where the federal government pays for all the TSA people and federal air marshals at airports around the country, most of the people in the rail and transit environment are paid for locally. The federal support comes in the form of information sharing, surge capacity, technical assistance, and does include direct and flexible financial support.

Since 2003, and including the president's budget for fiscal year 2008, DHS will make available almost $20 billion in funds that can be used to meet priority local security needs. At the same time, DHS will make available nearly $750 million specifically targeted at mass transit security.

That rounds out the basic elements of the transportation security strategy for surface. I would be happy to answer any questions when the time comes.

[The statement of Mr. Hawley follows:]

PREPARED STATEMENT OF THE HONORABLE KIP HAWLEY

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

Raising the Security Baseline of an Interconnected Network

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

Intelligence

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

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

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

Network Approach and Strategy

To effectively address transportation security, we employ a network approach. The overall transportation system is a network. It has intersections and junctions; and while each transportation mode has its own security challenges, there are common vulnerabilities and mitigation strategies. In an effort to use our security resources

efficiently, we work closely with transportation networks to leverage our security impact and determine risk-based priorities.

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

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

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

Industry Threat Vulnerability and Consequence Assessments (TVC)

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

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

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

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

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

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

Baseline Standards

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

Freight Rail Baseline Standards. Because the potential risk posed by unattended TIH rail cars in high threat urban areas was identified as the highest

risk area in rail, TSA developed a risk reduction goal of reducing the objectively-measured risk of TIH cars in high threat urban areas by 25 percent per year, starting in 2007. That risk factor takes into account car hours, the population of urban areas and the proximity to residential and commercial structures.

TSA has also identified 27 other focus areas as security action items for the rail industry to begin to address. The actions items were released to the industry in June and November 2006. The action items focus on security awareness training, security focused inspections, suspicious activity reporting, control of sensitive information and employee identification. TSA is assessing conformity with the security action items to evaluate how implementation of the action items reduces objectively measured risk.

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

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

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

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

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

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

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

Passenger Transit Status. The TSA inspector force has been conducting assessments of passenger rail transit systems (both commuter rail and other transit systems, including Amtrak). In addition to the TSA assessments, self-assessments of 41 of the largest transit agencies have been completed. We expect the remainder to be completed shortly. TSA inspectors are verifying and confirming the assessment results. While the data gathered to date is preliminary, it does indicate varying security status among systems. Once data is confirmed by inspectors, we will have a much clearer understanding of how passenger transit systems compare to the six fundamental security principles and guide our plan to help us close those gaps.

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

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

Closing Gaps. Once assessments have identified the gaps in actual practice compared to baselines standards, TSA develops action plans to close the gaps and takes steps where necessary to close the gaps in all modes. We have a variety of capabilities at our disposal including industry agreements, voluntary measures, security directives, and regulatory action.

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

While the proposed rule provides a number of important security initiatives, TSA believed that additional, speedier steps could be taken. As a result, we reached an agreement with the rail industry to reduce unattended TIH standstill car time in high threat urban areas beginning in early 2007. A comprehensive database will be used to identify highest priority risk reduction opportunities and working in conjunction with TSA, the rail carriers will develop site-specific action plans to reduce or remove the TIH risks. In addition to reducing the TIH risks, TSA will work with rail carriers to improve the security performance in the security training and security procedures baseline. TSA is also developing an improvised explosive device (IED) training course for rail employees to be available in the second quarter of 2007.

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

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

We must be focused on minimizing high consequence risks. TSA, in partnership DHS's Office of Grants and Training (G&T), intends to leverage the Transit Security Grant Program funds to focus on reducing risk and increasing security capabilities in State and local transit systems with the most risk. We are engaged in research to expand our understanding of the vulnerabilities and the consequences of terrorist attacks on our critical infrastructure. We are partnering with the National Laboratories to complete assessments of a prioritized list of transit tunnels and are pursuing mitigation solutions with our industry partners now.

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

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

Explosives detection canine teams are being trained, certified, and deployed by TSA to passenger transit systems. Since late 2005, TSA's National Explosive Detection Canine Team Program has worked in partnership with passenger

transit systems to train, certify, and deploy 53 explosives detection canine teams to 13 major systems in a risk-based application of resources. Forty of these teams are currently in place and the other 13 are projected for training, certification, and deployment in the coming months.

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

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

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

TSA is using the Transit Security Grants Program (TSGP) program to drive improvement in the six security fundamental areas mentioned earlier, including training for key personnel, drills and exercises and public awareness and preparedness.

The $175 million TSGP is the centerpiece of DHS's interagency strategy to close gaps between operator security status and baseline standards. For purposes of the TSGP, "transit" includes Amtrak, which is eligible for $8.3 million, and commuter ferry systems, which are eligible for $7.8 million. The TSGP guidance emphasized the six fundamental principles previously mentioned, as well as efforts in support of the national preparedness architecture. We expect to direct transit grant awards based on our system assessments, security fundamentals, and support of national preparedness. DHS leverages the grants program to close the gaps at high risk properties.

Highway (Bus and Trucking)-Close Gaps. TSA is working on a number of strategies to close gaps in performance versus actual standards. We are currently considering a number of voluntary incentive programs and regulatory options. TSA, in partnership with G&T, is using the Intercity Bus Security Grants Program which was funded at $12 million in FY 2007 to close gaps in the over-the road bus industry and the Trucking Security Program also funded at $12 million in FY 2007 to address security issues in the trucking industry.

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

Enhanced Systems of Security

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

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

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

The Systems Support Division (SSD) of G&T has conducted operational tests to evaluate manufacturer claims on ballistic-resistant trash receptacles and published

a report of its findings to help ensure mass transit systems, among others, have the facts needed to guide critical procurement decisions. Similarly, SSD has published a closed circuit television (CCTV) technology handbook to provide a reference point on current CCTV technologies, capabilities and limitations.

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

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

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

Presidential Action and TSA's Objectively Measured Risk Reduction Process

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

Annexes to DHS-DOT Memorandum of Understanding

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

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

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

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

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

Summary

TSA has a clear strategy to address surface transportation security. That strategy focuses first on identifying areas of high risk and then establishing baseline security standards to address those risks. Once baseline standards are established, we assess the actual status of security in the transportation industries, and in close coordination with stakeholders, devise strategies for bringing actual practices up to the standards we have established. Finally, we are developing advanced systems of security through a coordinated research and development program, to further enhance

security beyond the baseline standards. In furtherance of this strategy, I have established an Office of Transportation Sector Network Management specifically to address the cross-cutting issues that affect all aspects of the transportation sector as a unified whole. They are implementing this strategy through cooperation with stakeholders where appropriate, regulation and inspection where necessary, and through the distribution of grants to assist the industry to implement these objectives we have set forth.

I understand that rail/surface transportation security legislation is a priority for the Committee. The Department and TSA look forward to working cooperatively with the Committee as we have in the past. We appreciate your leadership in this area and the support that you have given to TSA.

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

Ms. JACKSON LEE. Thank you very much, Mr. Hawley, for your testimony.

Mr. Rosapep?

STATEMENT OF TERRY ROSAPEP, DEPUTY ASSISTANT ADMINISTRATOR, PROGRAM MANAGEMENT, FEDERAL TRANSIT ADMINISTRATION

Mr. ROSAPEP. Thank you, Chairwoman Jackson Lee, Ranking Member Lungren, and members of the subcommittee. On behalf of the secretary of transportation and the administrator of the Federal Transit Administration, I am pleased to have this opportunity to update you on FTA's public transportation security program.

America's transit systems are complex, dynamic and interconnected. Comprised of over 6,000 individual transit operators, these systems by nature are open and accessible, and therefore difficult to secure. Each workday, public transportation moves approximately 14 million passengers in the United States.

After 9/11, FTA developed an aggressive transit security initiatives program. Key elements of this program included conducting readiness assessments at the 37 largest transit systems, representing upwards of 90 percent of all transit riders. These assessments provided a comprehensive view of transit system preparedness gaps and additional needs, and helped shaped the development of three important priorities that continue to form the fundamental baseline of transit security, those being employee training, public awareness, and emergency preparedness.

Another key initiative was an outreach efforts called Connecting Communities Security and Emergency Preparedness forums. These forums, held at 18 regions across the country, improved public agency coordination and planning efforts between transit systems, emergency management agencies, law enforcement and other local partners.

Another activity involved deploying technical assistance teams on-site at the 50 largest transit agencies. The tech assistance teams used FTA's top 20 security action items as an assessment tool to help transit agencies identify any gaps in their security programs and develop products to fill those gaps.

Finally, security drill and exercise grants were provided to over 80 transit agencies. These grants help transit agencies plan, conduct and evaluate various types of security exercises, ranging from tabletop programs to large-scale interagency regional drills.

In September of 2005, FTA, the Transportation Security Administration, and the Office of Grants and Training, signed an annex to the DOT–DHS memorandum of understanding regarding security roles and responsibilities. This MOU annex provides a structured framework for close collaboration among the federal partners. FTA, TSA and G&T continue to build upon the initial post–9/11 security initiatives, in partnership with industry stakeholders such as the American Public Transportation Association and local transit agencies.

Key activities now under way include an eyes and ears public awareness toolkit known as Transit Watch. Transit agencies can use these toolkit materials or customize them to their own needs, such as New York City subway system's "See Something, Say Something" message to educate passengers to be mindful of their environment and how to react should they see something suspicious.

In the area of training, the curriculum has been expanded with addition of new security courses such as the terrorist activity recognition and reaction training course for frontline transit employees. To date, almost 8,000 employees have taken this training. Another course titled "Strategic Counterterrorism for Transit Managers" has now been delivered to over 750 managers at local transit agencies.

Another partnership initiative now under way is the Connecting Communities forums. The next phase of our new updated forums has begun. This week, a Connecting Communities forum is being held here in the national capital region at the WMATA training facility in Landover, Maryland.

Reflecting the importance of stakeholder outreach, FTA, TSA, and G&T are conducting semiannual safety and security roundtables to address direct stakeholder outreach. The roundtables bring together the safety and security chiefs of the 50 largest transit agencies, plus other key industry leaders, for peer-to-peer informational exchanges. The last roundtable was held in Newark, New Jersey in December, and the next roundtable is tentatively scheduled for Chicago later this spring.

Finally, we are working with our federal partners to develop security standards that provide transit agencies with consistent industry benchmarks and recommended practices. Leveraging the success of the FTA–APTA process for developing standards in other areas of transit, we are proceeding closely with our federal partners to develop standards in key security areas such as infrastructure protection, risk assessments, and emergency preparedness.

Madam Chairwoman and members of the subcommittee, please be assured that FTA will continue to work closely with Congress and our partners at DHS to strengthen the nation's public transportation security. Thank you for this opportunity to speak today, and I will be happy to answer questions later.

[The statement of Mr. Rosapep follows:]

PREPARD STATEMENT OF TERRY ROSAPEP

Chairwoman Jackson Lee, Ranking member Lungren, and other members of the Subcommittee, thank you for this opportunity to testify today on behalf of the Secretary of Transportation and the Federal Transit Administration (FTA). I am pleased to have this opportunity to update you on transit security and how the U.

S. Department of Transportation's (DOT) initiatives in that area support the Department of Homeland Security's (DHS) transportation security mission.

FTA and Transit Security

America's transit systems are dynamic, interconnected, and composed of over 6,000 local systems. Unlike airports, these systems are also inherently open, and therefore difficult to secure. In New York's Penn Station alone, more than 1,600 people per minute pass through its portals during a typical rush hour. The combination of open access and large numbers of people makes transit systems an inviting target for those who seek to cause the United States harm. The deliberate targeting of the public transportation systems in Tokyo, Moscow, Madrid, and London by terrorists underscores this point.

FTA, the Federal Railroad Administration (FRA), other Federal and state partners, and the transit industry have built a solid foundation for security in the years following the attacks of September 11 by focusing on three security priorities: public awareness, employee training, and emergency preparedness. After September 11, 2001, FTA undertook an aggressive nationwide security program and led the initial Federal effort on transit security. The initial response included conducting threat and vulnerability assessments in 37 large transit systems, 30 of which carry almost 90 percent of all transit riders. The assessments at that time gave us a comprehensive view of transit system readiness, vulnerabilities, and consequences, and identified the three important priorities that continue to form the fundamental baseline of DOT's transit security initiatives: employee training, public awareness, and emergency preparedness.

Today, under Executive Order 13416, FTA, in partnership with FRA and DHS, continues to build upon these priorities as they provide focused benefits to the dynamic, open nature of America's transit network. Employee Training develops the skills of 400,000 front-line transit employees who are the eyes and ears of the transit network and first line of defense against terrorism. Public Awareness programs such as Transit Watch educate passengers to be mindful of their environment and how to react should they see something suspicious. Emergency Preparedness programs build local, collaborative relationships within communities that allow for quick and coordinated response in a crisis. Over the last five years, we have learned that terrorists adapt and change their strategies in response to security measures. But regardless of where an attack comes from or how it is devised, security training of employees and the awareness of passengers can help to prevent or mitigate it.

In 2002, to help guide transit agency priorities, FTA issued a "Top 20 Security Action Item List" to improve transit safety and security operations, particularly with regard to employee training, public awareness, and emergency preparedness. In a joint effort coordinated with the Mass Transit Sector Coordinating Council, FTA, and the Transportation Security Administration (TSA), the Security Action Items for transit agencies were revised in 2006.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) mandates several steps to move transit security forward through collaboration among federal, state, local, and private entities. In September 2005, FTA and two agencies within DHS—TSA and the Office for Domestic Preparedness, now the Office of Grants & Training (G&T)—signed the Public Transportation Security Annex to the DOT/DHS Memorandum of Understanding (MOU) on security. The MOU recognizes that DHS has primary responsibility for transportation security and that DOT plays a supporting role, providing technical assistance and assisting DHS when possible with implementation of its security policies as allowed by DOT statutory authority and available resources. The Annex identifies specific areas of coordination among the parties, including citizen awareness, training, exercises, risk assessments, and information sharing. To implement the Annex, the three agencies have developed a framework that leverages each agency's resources and capabilities.

With the Annex in place as a blueprint, FTA, TSA and G&T have established an Executive Steering Committee. Since 2005, the Executive Steering Committee has interacted with DHS, DOT, FRA and transit industry leaders. This committee oversees eight project management teams that spearhead the Annex's programs. Each of these programs advances one or more of FTA's three security priority areas (public awareness, employee training, and emergency preparedness). We have been implementing the Annex energetically since its inception.

The eight teams are as follows:

1. *Risk Assessment and Technical Assistance Team*

   The Risk Assessment and Technical Assistance team is using a risk-based approach to transit security, working toward one industry model for conducting transit risk assessments. The team issued the "TSA/FTA Security and Emer-

gency Management Action Items" and is developing the Next Generation Security and Emergency Management Technical Assistance Program Master Plan to identify and prioritize industry security needs.

2. *Transit Watch and Connecting Communities Team*

The Transit Watch and Connecting Communities team is reinstating and expanding these two FTA programs, which foster public awareness and coordinated emergency response. The initial roll-out of Transit Watch helped to institute this program at many transit agencies across the country. The next phase of Transit Watch, recently released, includes a focus on unattended bags, Spanish language materials and emergency evacuation instructions. Twelve new Connecting Communities forums are scheduled for 2007; the second forum is being held this week in the National Capitol Region, at WMATA's Turner facility in New Carrollton, Maryland.

3. *Training Team*

The Training team is developing new courses on timely security topics such as security design considerations and National Incident Management System (NIMS) for transit employees, and also working towards developing one integrated security training curriculum.

4. *Safety and Security Roundtables Team*

The Safety and Security Roundtables team works on direct stakeholder outreach. They are responsible for planning two roundtables each year for the safety and security chiefs of the 50 largest transit agencies and Amtrak. The roundtable format emphasizes peer-to-peer informational exchanges among the participants. The last roundtable was held in Newark, New Jersey in December 2006 and the next roundtable is tentatively scheduled for Chicago this spring.

5. *Web-based National Resource Center Team*

The Web-based National Resource Center team is developing a secure library site for information on best practices, grants, and other security matters. Access to the National Resource Center will be available to security chiefs of transit agencies.

6. *Emergency Drills and Exercises Team*

The Emergency Drills and Exercises team is updating the program to incorporate DHS Exercise program guidance. The scope of this effort includes both tabletop exercises and regional field drills.

7. *Annual Plan and Grant Guidance Team*

FTA lends its subject matter expertise to the DHS Infrastructure Protection grant process. In the context of the MOU Annex, FTA is also able to leverage its longstanding working relationships with transit agencies to help TSA vet security initiatives.

8. *Standards and Research Team*

The Standards and Research team's primary focus is the development of industry security standards. This is a critical area because it provides transit agencies with consistent industry benchmarks and recommended practices. Leveraging the success of the FTA, FRA and American Public Transportation Association (APTA) process for developing standards in other areas, FTA is proceeding closely with its Federal partners to develop standards in key areas such as infrastructure protection, risk assessments and emergency preparedness.

I would like to add that FTA also supports security projects through its Urbanized Area Formula Grant Program. Under this program, transit agencies are required to spend at least 1 percent of their annual formula fund allocation on public transportation security, or to certify that they do not need to spend 1 percent of their allocation for such purposes. For transit agencies in Urbanized Zone Areas (UZAs) over 200,000 in population, only capital projects are eligible to count towards the 1 percent security threshold. SAFETEA–LU usefully expanded the definition of capital projects to include security planning, training and emergency drills & exercises. In contrast to TSA's broad statutory authority for security in all modes of transportation, FTA has limited statutory and regulatory authority on security matters, and does not have a dedicated security grant program. Historically, FTA has assisted transit agencies in improving their security practices through training programs, research, technical assistance and oversight activities. FTA and FRA continue to work together to improve passenger rail and rail transit security. FTA will continue to use all of these resources, in close collaboration with TSA and G&T to improve transit security.

Chairwoman Jackson Lee, Ranking Member Lungren, and other members of the Subcommittee, I want to assure you that FTA has, and is, using all of the resources and capabilities in its toolbox to strengthen the joint security initiative formalized

in the September 2005 Public Transportation Security Annex to the DOT/DHS MOU. The MOU Annex expands that toolbox. Since September 11, 2001, transit security has benefited from exceptionally strong partnerships, and genuinely collaborative initiatives, among the industry, different agencies and departments, and the MOU Annex captures that spirit of cooperation.

Please also be assured that the FTA will continue to strengthen public transportation security. We look forward to continuing to work with Congress to achieve the goal of protecting our Nation's public transportation infrastructure. I would be happy to answer any questions you may have. Thank you.

Ms. JACKSON LEE. Mr. Rosapep, thank you for your testimony.

I now recognize Mr. Haley from the FRA to summarize his statement for 5 minutes.

STATEMENT OF MICHAEL HALEY, DEPUTY CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Mr. HALEY. Chairman Jackson Lee, Ranking Member Lungren, Chairman King and other members of the subcommittee, I am pleased to be here to testify on behalf of the secretary of transportation and the Federal Railroad Administration about the security of our nation's passenger and freight rail network and the efforts that DOT is making to enhance rail safety and security.

FRA's primary mission is to promote the safety of the U.S. rail industry and to reduce the number and severity of accidents and incidents arising from railroad operations. Since railroad safety and security are often intertwined, we are mindful of security concerns when conducting safety inspections, drafting railroad safety regulations, establishing our research and development program, and conducting training and outreach to the railroad industry.

DHS and TSA have primary responsibility for transportation security, as reflected in the MOU between DHS and DOT, with FRA providing support in the rail sector. FRA works closely with TSA and the rail industry on a daily basis in addressing railroad security and safety issues, complementing the efforts of other DOT partners.

My written testimony provides and overview of the railroad industry and discusses in detail FRA's key rail safety and security initiatives, including research and development. My oral testimony will be focused on FRA's working relationship with TSA and recent DOT initiatives in the railroad security area.

TSA and FRA have signed an annex to the DHS–DOT MOU. This annex provides for close cooperation between the two agencies on their programs and activities affecting railroad security, including inspection activities, drafting of regulations and legislation, research and development, and response to threats to railroad security.

I am pleased to report that TSA and FRA are working well together to implement the annex. In the railroad security area, as outlined in my written testimony, the freight railroads take railroad security very seriously. Immediately after 9/11, the railroads identified critical infrastructure and developed security plans to protect that infrastructure, their employees and the general public.

In 2003, the Pipeline and Hazardous Materials Safety Administration, PHMSA, required railroads in certain classes and quantities of hazardous materials to develop security plans and to pro-

vide security training for hazardous material employees. All of FRA's 71 hazmat inspectors and specialists, along with 17 FRA certified state inspectors, devote a portion of their time to reviewing railroad and shipper security plans for compliance with the PHMSA regulations.

To date, FRA personnel have reviewed more than 6,000 security plans, including plans for shippers by rail and the plans of all Class I freight railroads, and conducted more than 4,000 inspections for compliance with the security training requirements of the PHMSA regulation. Upcoming reviews will focus on the shortline railroads.

FRA and PHMSA have worked closely with TSA to build upon the railroad security plans and the PHMSA security rule to further enhance rail security. This close collaboration has resulted in the following progress. FRA and PHMSA have assisted TSA in conducting security assessments of high-threat urban area corridors carrying significant volumes of toxic inhalation hazardous materials, more commonly referred to as TIH, and further assessments are planned.

FRA and PHMSA assisted TSA in developing the 27 voluntary security action items that the railroads have agreed to implement to improve the security of rail movements of TIH materials, particularly in high-threat urban areas. The FRA, PHMSA and TSA have worked together in the development of notices of proposed rulemaking documents on railroad security recently issued by PHMSA and TSA. TSA has assisted in the development of an FRA passenger equipment rulemaking.

In addition, FRA and TSA have coordinated on railroad security R&D. The recently issued PHMSA-proposed rule spells out in more detail the hazmat security planning railroads must do. Specifically, the PHMSA proposal would require that railroads compile annually data on specific hazardous material shipments; use the data annually to analyze safety and security risk along rail transportation routes where those materials are transported, and offer one possible alternative to each route; use the analysis in selecting the safest and most secure commercially practicable routes that the carriers are authorized to operate over in transporting these materials; enhance their current security plans to better address enroute security and delays in transit for such materials, including limiting access to the materials, mitigating the risk to population centers, and setting out measures to be taken in the event of escalating threat levels; and finally, requiring carriers pre-trip inspection of hazardous material rail cars to include an inspection for signs of tampering.

As outlined in my testimony, FRA will be conducting a variety of security training courses for rail, labor and law enforcement personnel this year. FRA will also be exploring leveraging the National Labor College George Meany Training Campus to assist in providing security awareness training for railroad employees who are not receiving security training under FRA's emergency preparedness regulation or PHMSA's security regulation.

In the passenger area, FRA requires each railroad that operates intercity or commuter rail passenger service, or that hosts operations of such service, to adopt and comply with written emergency

preparedness plans approved by FRA. The regulation makes clear that "emergency" includes security situations. Each plan must address employee training and qualifications.

Ms. JACKSON LEE. Mr. Haley? Will you try to wrap up in a short order please?

Mr. HALEY. We will follow up to ensure that the emergency preparedness are being complied with, both from a planning and from a training perspective. We have a variety of rulemakings under way that will enhance railroad security, as well as research and development. Those initiatives are set forth in my testimony.

We look forward to working with the subcommittee in furthering the security of the nation's rail network. I would be pleased to answer any questions you might have.

[The statement of Mr. Haley follows:]

PREPARED STATEMENT OF MICHAEL T. HALEY

Chairwoman Jackson Lee, Ranking Member Lungren, and other members of the Subcommittee, I am pleased to be here today to testify, on behalf of the Secretary of Transportation and the Federal Railroad Administration (FRA), about the security of our Nation's passenger and freight railroad network and the efforts that the Department of Transportation (DOT) is making to enhance rail safety and rail security, in support of the Department of Homeland Security (DHS). FRA's primary mission is to promote the safety of the U.S. railroad industry and to reduce the number and severity of accidents and incidents arising from railroad operations. Our railroad safety mission necessarily includes our involvement in railroad security issues. DHS and its Transportation Security Administration (TSA) have primary responsibility for transportation security, with FRA providing support in the railroad sector. FRA works closely with TSA and the railroad industry on a daily basis in addressing railroad safety issues that involve security, participates in the Government Coordinating Council for Rail, and contributes its expertise to the implementation of Executive Order 13416: Strengthening Surface Transportation Security, including providing input for the National Infrastructure Protection Plan and Sector Specific Plans, as well as the National Strategy for Transportation Security.

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

Overview of the Railroad Industry and its Safety Record

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

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

Privately-owned freight railroads connect industries and businesses with each other across the country and (through our ports) with markets overseas, moving 42 percent of all intercity freight, measured in ton-miles, including 67 percent of the coal used by electric utilities to produce power, and chemicals used in manufacturing and water purification. Seven Class I railroads haul over 90 percent of the rail cargo in the U.S., with the remaining 10 percent being transported by 30 regional railroads and over 500 local railroads. Typically, railroads move about 1.7 to 1.8 million carloads of hazardous materials (hazmat) yearly, with roughly 105,000 of these carloads being toxic inhalation hazard (TIH) materials, such as chlorine and

anhydrous ammonia. Over 64 percent of TIH materials are currently transported by rail.

The railroads have an outstanding record in moving all goods safely. See statistical analysis at Appendix A. The vast majority of hazardous materials shipped by rail every year arrive safely and without incident, and train accidents involving a release of hazmat that causes death are infrequent and rare, even while rail traffic volumes have increased steadily. As discussed below, DOT has an aggressive and comprehensive action plan to address the root causes of hazmat accidents, to examine and improve the integrity of rail tank cars used to transport hazmat, and to improve the railroads' hazmat security plans. See summary of the status of implementing FRA's National Rail Safety Action Plan at Appendix B. In addition, DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) annually provides grant funds to States and Indian tribes to assist in the development, improvement, and implementation of hazmat emergency response plans, and to train emergency responders to respond to hazmat accidents and incidents; details on this program are contained in PHMSA's Web site (hazmat.dot.gov).

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

FRA's Railroad Safety Program

FRA is the DOT agency charged with carrying out the Federal railroad safety laws. The laws provide FRA, as the Secretary's delegate, with very broad authority over every area of railroad safety. In exercising that authority, the agency has issued and enforces a wide range of railroad safety regulations. Rail safety and security are interrelated, and FRA considers security concerns when developing rules. For example, FRA's January 2002 final rule barring most extraterritorial dispatching of U.S. railroad operations addresses the agency's concerns about the security of foreign dispatching facilities. Similarly, FRA's rule on passenger train emergency preparedness, discussed more fully below, requires carriers to prepare plans that deal with criminal as well as accidental events. While FRA's rules are focused on the safety of railroad operations, they necessarily have some bearing on security. For example, a railroad inspector performing an inspection required by an FRA safety regulation could potentially uncover a hazardous condition that was intentionally caused by terrorist activity. Similarly, Federal passenger and freight equipment standards are intended to ensure that the equipment can withstand forces of derailments and collisions, whether caused by accidents or deliberate acts, thereby helping to protect passengers, employees, and surrounding communities.

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

In May 2005, DOT and FRA announced the National Rail Safety Action Plan, a blueprint to comprehensively address critical safety issues facing the railroad industry with the following strategy:

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

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

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

The Security Role of FRA and Other DOT Agencies Before and After September 11

FRA's involvement in railroad security predates the terrorist attacks on September 11, 2001. From October 1995 (when a deliberate act of vandalism caused a fatal Amtrak derailment near Hyder, Arizona) through March 2006 (when the USA PATRIOT Improvement and Reauthorization Act of 2005 was enacted), FRA helped develop, and worked with Congress to secure the enactment of, Federal criminal legislation to deter and punish more effectively terrorist attacks against railroads and mass transportation systems. *See* 18 U.S.C. § 1992. Additionally, in 1998 FRA issued a regulation requiring passenger railroads to prepare, and secure FRA approval of, plans to address emergencies, including security threats, to train employees on the plans, and to conduct emergency simulation drills, as noted above and discussed more fully below. In coordination with DHS, FRA will be exploring leveraging the National Labor College, George Meany Training Campus, to assist in providing security awareness training for railroad employees who are not receiving security training under FRA's emergency preparedness regulation or PHMSA's security regulation. FRA also issued comprehensive safety standards for passenger equipment in 1999, including requirements for crashworthiness, fire safety, and emergency systems that help protect against accidental events as well as deliberate acts. See 49 CFR Part 238.

Since 9/11, FRA has been actively engaged in the railroad industry's response to the terrorist threat. The railroads have developed their own security plans, and FRA has worked with the railroads, rail labor, and law enforcement personnel to develop the Railway Alert Network, which permits timely distribution of information and intelligence on security issues. Working with DOT's Federal Transit Administration (FTA), FRA has participated in security risk assessments on commuter railroads, and we have conducted security risk assessments of Amtrak as well. FRA's security director works on a daily basis with government agencies and the railroad industry to facilitate communications on security issues, and also participates in security training, reviews security plans, and performs other activities to promote rail security. For example, in 2007, FRA intends to conduct at least 15 security training sessions for rail labor organizations, as well as four sessions at the FBI Academy on railroad security and emergency response for law enforcement personnel.

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

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

FRA, FTA, and PHMSA have assisted DHS and TSA in the preparation of the National Infrastructure Protection Plan issued in June, 2006, and have actively supported DHS and TSA's efforts to develop Sector-Specific Plans for critical infrastructure protection, as required by Executive Order 13416.

Freight Railroad Security

Freight railroads have voluntarily developed and adopted security plans based on comprehensive risk analyses, and the national intelligence community's best practices, that address the security not only of hazmat but of freight in general. The Association of American Railroads (AAR) has established guidance for the major freight railroads in the form of a model strategic security plan. The railroad industry has also developed a detailed protocol (AAR Circular OT–55–I) on recommended

railroad operating practices for transportation of high-risk hazardous materials (including TIH materials). FRA, PHMSA, and TSA have jointly worked with the railroad industry to build upon the railroads' security efforts through vulnerability assessments, development of voluntary Security Action Items, and rulemakings. Additionally, FRA has arranged a conference under 49 U.S.C. § 333 ("section 333") to permit railroads and chemical shippers to discuss routing options for the movement of TIH materials, as explained more fully below.

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

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

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

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

- compile annual data on specified hazmat rail shipments;
- use the data annually to analyze safety and security risks along rail transportation routes where those materials are transported and one possible alternative to each route;
- utilize the analyses in selecting the safest and most secure, commercially practicable routes the carrier is authorized to operate over in transporting these materials;
- address the security risks associated with shipments delayed in transit or temporarily stored in transit as part of their security plans;

- notify consignees if there is a significant, unplanned delay affecting the delivery of certain types of hazardous material;
- work with shippers and consignees to minimize the time a rail car containing certain types of hazardous materials is placed on a track awaiting pick-up or delivery or transfer from one carrier to another;
- notify storage facilities and consignees when rail cars containing certain types of hazardous materials are delivered to a storage or consignee facility; and
- conduct visual security inspections at ground level of rail cars containing hazardous materials to inspect for signs of tampering or the introduction of an improvised explosive device (IED). PHMSA and FRA have scheduled two public hearings to obtain oral comments on the proposed requirements with a view to issuing a final rule. The first hearing was just held on February 1, here in Washington, D.C., and the second will be held on February 9, in Dallas, Texas.

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

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

While we must remain ever vigilant to secure hazmat shipments on our Nation's railroads, for the sake of railroad employees and the public whom we all serve, it bears emphasizing that all but a very few hazmat shipments arrive at their destinations safely. Considering just chlorine, for example, between 1965 (the earliest data available) and 2005 (the last year for which complete data are available) there have been at least 2.2 million tank car shipments of chlorine—only 788 of which were involved in accidents (0.036 percent of all the shipments). Of those accidents, there were 11 instances of a catastrophic loss (i.e., a loss of all, or nearly all) of the chlorine lading (0.0005 percent of all the shipments). Of the 11 catastrophic losses, four resulted in fatalities (0.00018 percent of all the shipments). For all hazardous materials, in the 13 years from 1994 through 2006, hazardous materials released in railroad accidents resulted in a total of 14 fatalities. While one death is obviously too many, the record of transporting these commodities is very good, and we believe the initiatives underway will further improve upon that record.

Passenger Railroad Security

As discussed earlier, in the area of passenger railroad security, FRA requires railroads that operate intercity or commuter passenger train service or that host the operation of such service to adopt and comply with written emergency preparedness plans approved by FRA. *See* 49 CFR Part 239. Emergencies include security-related situations. Each plan must address employee training and qualification, and provide for both initial and recurrent training of on-board and control center employees to determine the extent of compliance with the plan. Additionally, each railroad must establish and maintain a working relationship with emergency responders on its line by taking measures such as developing and making available a training program on the plan and inviting the emergency responders to participate in emergency simulations. The regulation requires railroads providing passenger service to

periodically conduct full-scale passenger train emergency simulations (with actual equipment and simulated victims) and conduct a debriefing and critique session after actual or simulated passenger train emergency situations. FRA will continue monitoring passenger railroads for compliance with this regulation and attend each full-scale simulation and follow-up review session, as the Long Island Rail Road has scheduled for next month with the participation of the New York City Fire Department.

In 2003, under the auspices of FRA's Railroad Safety Advisory Committee (RSAC), FRA initiated a review of existing passenger train safety needs and programs for the purpose of developing any necessary recommendations on actions to advance the safety of passenger rail service. The RSAC is a forum for developing recommendations to FRA on rulemakings and other safety program issues, and it includes representatives from all of the rail industry's major groups, State representatives, the National Transportation Safety Board (NTSB), and other stakeholders. As part of this effort, the Passenger Safety Working Group was established, as well as four smaller task forces, notably the Emergency Preparedness Task Force. The Emergency Preparedness Task Force is specifically devoted to consideration of passenger train emergency preparedness issues, and includes representatives from railroads, rail labor organizations, the NTSB, FTA, and TSA. Its efforts helped lead to the issuance of proposed enhancements and additions to FRA's regulations for passenger train emergency systems (emergency systems NPRM), to amend both FRA's Passenger Equipment Safety Standards and Passenger Train Emergency Preparedness rules. *See* 71 FR 50276; August 24, 2006.

Emergency communication is one of the main focuses of the emergency systems NPRM. Under the proposal, all existing passenger cars would be required to be equipped by 2012 with a public address system that provides a means for a crewmember to communicate to all train passengers in an emergency situation, and all new passenger cars would be required to be equipped with an intercom system that provides a means for passengers and crewmembers to communicate with each other in an emergency situation. An intercom system could be vital in enabling a passenger to quickly alert a crewmember of a security threat, and the crewmember in turn could contact the appropriate authorities to obtain emergency assistance and use the train's public address system to provide any necessary direction to passengers. The proposed rulemaking would also promote passenger and employee safety in an emergency situation—whether resulting from an accident or an intentional act—by enhancing requirements for emergency window exits in passenger cars and mandating that all passenger cars, including existing cars, have rescue windows for emergency responder access. FRA is in the process of preparing the final rule, which is expected to be issued some time in the near future.

Moreover, a separate regulatory proposal is also in development within the Emergency Preparedness Task Force; this proposal focuses on passenger car emergency signage, emergency lighting, and low-location exit path marking. The proposal under development is based on American Public Transportation Association (APTA) standards for passenger safety and is intended to augment current Federal requirements.

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

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

In partnership with FTA in the first few years after 9/11, FRA participated in security risk assessments on the ten largest commuter railroads and contributed the funding for security risk assessments on three of these railroads. In addition, FRA participated in FTA's "best practices tool kit" initiative, contributing our knowledge of commuter rail operations, infrastructure, and organization to ensure that the recommended security enhancement measures were sound and feasible in a railroad environment. FRA staff continue to work closely with many of the railroads that receive FTA grant funding, to plan and assist in the development and implementation of security simulations and drills. FRA also devotes staff with both railroad knowledge and facilitation skills to the FTA—and TSA-sponsored workshops across the country (called "Connecting Communities") to bring together commuter railroads, emergency responders, and State and local government leaders so that they might better coordinate their security plans and emergency response efforts.

Research and Development

FRA conducts and supports research, development, and demonstration projects related to rail safety and rail security through its Office of Research and Development, in cooperation with DHS. Both theoretical and applied research on a wide range of issues has led to impressive results and to tangible technology and process improvements.

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

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

Prior to the August 2005 enactment of Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), 49 U.S.C. § 20155, FRA had initiated tank car structural integrity research stemming from the circumstances of the 2002 derailment in Minot, North Dakota, involving the release of anhydrous ammonia from tank cars punctured during the derailment. Current research involves a three-step process to assess the effects of various types of train accidents (e.g., a derailment or collision) on a tank car. The first phase is development of a physics-based model to analyze the kinematics of rail cars in a derailment. The second phase is development of a valid dynamic structural analysis model; and the third phase is an assessment of the damage created by a puncture and entails the application of fracture mechanics testing and analysis methods. DOT's Volpe National Transportation Systems Center, part of the Research and Innovative Technology Administration (RITA), is doing the modeling work now, and FRA will dovetail this ongoing research with the requirements of Section 9005. FRA, in conjunction with PHMSA, hopes to develop new hazardous material tank car safety standards in 2008, and we are currently consulting with railroads, shippers, and car manufacturers and have solicited public comments through two public meetings to assist us in this effort. To further these efforts, FRA just signed a Memorandum of Cooperation with Dow Chemical Company, Union Pacific Railroad Company, and the Union Tank Car Company to participate in their Next Generation Rail Tank Car Project.

Further, in September 2006, FRA awarded $200,000 to test sample tank car panels with various coatings to determine their ability to prevent penetration from small arms fire, as well as their ability to self-seal and, thereby, mitigate the severity of any incident. FRA developed the project in coordination with the AAR and

DHS, which came up with the idea of applying to tank cars a protective coating like that used to enhance the armor protection of military vehicles in Iraq.

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

Conclusion

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

Ms. JACKSON LEE. We look forward to working with you, and we thank you for your extensive testimony, which we will review and certainly make it part of the efforts that we wage.

Let me acknowledge the presence of Congresswoman Brown–Waite from Florida, and let me also offer this committee's express concerns and interests in the terrible tragedy that impacted your area with respect to the tornado, and certainly hope that the Department of Homeland Security is performing more than adequately for your needs. Thank you for your presence here this morning.

I thank all the witnesses for their testimony.

I will remind each member that he or she will have 5 minutes to question the panel.

I now recognize myself for questions.

We started out this morning by saying that we wanted to put a mixture together, a formula, a recipe for safety and security for the American people, particularly security that is the jurisdiction of this committee. We want to do it quickly. In order to do it quickly, there are several elements, components of that formula, that recipe. It has to do with personnel. It has to do with training.

Mr. Hawley, allow me to begin my questions on your testimony that mentioned in your testimony on January 18 that TSA employed a little less than 1,000 people for surface transportation issues. Would you be kind enough to break those numbers down for us? It was my understanding that there are only 100 surface transportation security inspectors. That leaves 900.

Let me follow up by saying that you made that statement on January 18. I had hoped it would have been enough time to engage the president who released his budget yesterday and he only requests 288 positions for surface transportation security.

Why did the president seemingly ignore a devastating need, and only request 288 positions, if you are currently employing 1,000? And so as you answer, please break down what the present employees are doing, and why the president asked for only 288 positions.

Mr. HAWLEY. Our budget is broken down into different categories. In the surface transportation category, there are 288 in the budget request, which comes down to 100 of the surface transportation inspectors and 188 of our staff, so that is 288. The 1,000 is a ballpark. We were in the conversation about aviation versus nonaviation. So in that was the overhead that we have in terms of information technology, support services, and intelligence, budget and finance, law—all of that.

But if the specific question is: How many people do you have paid specifically for surface transportation? That number is 288.

Ms. JACKSON LEE. Well, I guess the specific question, and I am going to pass on to another question, but I am going to ask for that in writing. The specific question is: Why so few in the president's budget? Don't answer that at this point. I will seek that in writing.

I do want to go on to a question dealing with training. Congressmen Lungren mentioned a commitment and a need for training, and our bill will hopefully focus on that. But I am wondering why training of rail and mass transit employees are voluntary, unreliable and many times inadequate. What are you doing before this rail bill comes out for that?

And might you also indicate whether you have any established, and when I say "established," defined minorities or women, people of color in any senior management positions for TSA. But would you focus on the training point of it, please?

Mr. HAWLEY. Certainly. On the training, it is an eligible category from the funding that we send out through the various DHS grants, including the transit-specific grants. It is one of the top three, I think as Mr. Rosapep mentioned, that right after 9/11, the primary principles for security to address right away were training, public awareness, and first responder exercise-type stuff. So those three remain our top priority today, and Federal Transit Administration did quite a bit in the years from 2001 up to when TSA was created. It remains our number one priority.

Having said that, I think taking to heart what some of the conversation here today was, what could we do better?

Ms. JACKSON LEE. Is training voluntary?

Mr. HAWLEY. No. We have both rail and transit, so initially when an employee comes on board, they are required to have that training package. It varies by whether it is rail or transit, but I think the opportunity is, based on some of our assessments, as well as the self-assessments of the systems, that this is an area where we need to do more.

Ms. JACKSON LEE. Do you have any comment on the management team that you have, the diversity of women and minorities?

Mr. HAWLEY. Yes. I would be happy to provide that to the committee, but we do in fact I believe have a diverse workforce, A, and leadership team, B. I can provide that for you, obviously, but it is both diverse in terms of male-female, as well as in race, gender and ethnicity. I thank you for bringing it up. It is an affirmative priority of our management team that diversity is itself a goal in our management team.

Ms. JACKSON LEE. My time has expired. I thank you very much.

I yield now to the gentleman from California, the ranking member, Mr. Lungren, for 5 minutes.

Mr. LUNGREN. Thank you, Madam Chairwoman.

Mr. Hawley, I was struck by something you said at the very beginning of your testimony, and that is that the way you analyze threat or risk is not going to the sector first and looking at it in isolation, but rather looking across the board, and the tie-in of intelligence, intelligence analysis, and intelligence application, and the point that you made that the bad guys may start out looking at a vulnerability in aviation and then move that towards something in the area of mass transit.

The reason I bring that up is, I know there has been some discussion on the Hill and some other places about whether or not the rail security grants ought not to come from DOT, rather than from your operation. I wonder if you could briefly talk about that, and talk about how that grant distribution goes at the resent time.

Mr. HAWLEY. Sure. DOT's grant-giving is excellent, so I will just say that at the start. But in terms of security, it really does belong connected on the security side where we can take into account the security priorities based on intelligence and our experience. We clearly work very closely with DOT on the grant process, and they are a very valued partner.

But as you mentioned, the intelligence side of it has led us to prioritize the underground tunnels as a particular primary priority in transit. And having integrated with the other DHS activities involving homeland security I think is a must.

Mr. LUNGREN. Mr. Haley, I noticed in your testimony about proposed regulations. You made reference to the NPRM concerning the transportation of hazardous materials, and in particular the routes that the freight railroads choose to transport the toxic-by-inhalation materials, and that this proposed regulation would require companies to consider security when routing these materials, and to choose the safest and most secure route. That is a subject that has come up for much discussion before in this committee and I am sure other committees.

Can you tell us exactly what the genesis of that was, what it proposes to do, and what are the requirements that the rail company must choose the most secure route, and how does that take into consideration, if it does at all, the economics of that? What I mean by that is, we have to have these materials delivered at a certain place, and if you re-route it somewhere, it is going to be in those other areas. Ultimately, it has to get at the final location.

So how do all those things come into play as you put together this regulation, and as you see it to be implemented?

Mr. HALEY. Thank you for your question.

The original PHMSA rule required that there be enroute security planning. There were comments from the private sector that they desired more specificity as to how that enroute security planning should take place. DOT and TSA went out with a public notice soliciting public comments in August of 2004.

Based on those public comments, we developed the proposed rule, which will require that they gather traffic data, analyze the safety and security of the route that that traffic is moving; select an alternative route that it could be moved over, and analyze the safety and security risk associated with that alternative route; consider whatever mitigation measures they might want to apply to either route; and then select the route that poses the least safety and security risk.

In doing so, we have set forth 27 factors that they are supposed to consider. The economic viability of the movement of the traffic, of course, is a key consideration.

Mr. LUNGREN. Could I interrupt you to ask just one question, because my time is just about ready to expire. It just strikes me that the most dangerous position would be when it is sitting, as opposed

to when it is moving; that is, sitting at a particular spot that may or may not be secure.

Is that brought into consideration? That is, the timeliness, how quickly it can be moved, rather than where it may sit for a while as a "sitting target"?

Mr. HALEY. Surely. The railroads currently attempt and have an economic interest to move the traffic as quickly as possible. Our proposal would not disrupt that. We want them to continue to move the traffic as quickly as possible because, as you said, sitting traffic poses a security risk.

Mr. LUNGREN. Thank you. Thank you very much.

Ms. JACKSON LEE. Thank you very much.

I will now recognize other members for questions they may wish to ask the witnesses. In accordance with our committee rules and practice, I will recognize members who were present at the start of the hearing, based upon seniority on the subcommittee, alternating between majority and minority. Those members coming in later will be recognized in the order of their arrival.

I now recognize the chairman of the full committee, Mr. Thompson, for 5 minutes.

Mr. THOMPSON. Thank you very much, Madam Chairman.

Mr. Hawley, some of us have real concern that as of this date we do not have a federal transit security plan. Can you tell us at what point we can have a document for review by Congress and others?

Mr. HAWLEY. I expect shortly. It is the secretary's specific plan that we have prepared as required, and it is late. The only thing I would say that is a good part of that is that the process itself in putting it together, meaning that it required close, formal, substantive consultation with both our internal government partners, as well as external partners, that process has happened. So the security value is already now on the street. The paperwork has to catch up with it, and clearly it is our hope to get it up as soon as possible.

Mr. THOMPSON. My point is, that sector-specific plan is 3 years overdue.

Mr. HAWLEY. It certainly is late, and I have nothing to say other than it shouldn't be late, and we will get it as soon as we get it.

Mr. THOMPSON. And it was a presidential directive that it be developed. It is 3 years late. But also the 9/11 Act passed and directed TSA to develop a national strategy for transit security. My information is that the document produced is not a comprehensive document. Am I correct?

Mr. HAWLEY. No. The overall strategy is, and it talks about the network that is transportation and how we go after it. The it backs up with the sector-specific plans where the work to that has been done, and the report, as you point out, is still forthcoming. But the overall work has been done on the security strategy.

Mr. THOMPSON. Is it your testimony that that comprehensive transportation strategy exists?

Mr. HAWLEY. Yes. It was published last year, or 2005, the NSTS.

Mr. THOMPSON. Was that embargoed? Well, we will get to that. There is some correction.

The other thing I want to talk a little bit about is the difference between air and rail. Is the system of security, in your mind, where it needs to be at this point for rail?

Mr. HAWLEY. The level of system security for rail, I believe, is strong. It can clearly be stronger. It is our joint goal, I know, to do that. We have announced an agreement with the railroads themselves to immediately implement measures that specifically reduce the threat of TIH in urban areas, that is in place now.

Mr. THOMPSON. If you had all the resources available to you, Mr. Hawley, to provide the security necessary for individuals who ride our rails, what would you do?

Mr. HAWLEY. I think the strategy we have is a good one. I think options that would involve more money would be if we changed the model from a distributed state and local provides the resource, to a federal. But I am not sure that is going to be any better security. It is a different way of paying for it. I think more on the connectivity, more on the training. The primary work is at the intelligence coordination and law enforcement law, and that is really what we will continue to strengthen our work, and a public that is aware and participating. Those don't require a huge amount of money.

Mr. THOMPSON. So do you want transit security to remain a state and local issue, and not a federal issue?

Mr. HAWLEY. I think it is a little bit like a sporting event, where one person has the ball and the other supports.

Mr. THOMPSON. Excuse me. Airline security is a federal issue. Rail security, at this point, is not.

Mr. HAWLEY. I would say they are shared, that they are both shared, and the feds have—

Mr. THOMPSON. Disproportionately shared by the feds in aviation—

Mr. HAWLEY. In aviation—

Mr. THOMPSON. —versus rail. So you would see that remaining just like that?

Mr. HAWLEY. Yes. I think the business model is that so much has been done in transit and rail in the years prior to 9/11, particularly on safety, that when you go around to the transit agencies and see what security they have, that is very professional security. Our interest is what can we do to improve that.

Mr. THOMPSON. But you agree we don't have a plan?

Mr. HAWLEY. No, no, no. I outlined for you?

Mr. THOMPSON. Sector-specific plan.

Mr. HAWLEY. We have not published the sector-specific plan. I outlined at the beginning our priorities in TIH on the ground.

Mr. THOMPSON. Well, when can we expect the published sector-specific plan?

Mr. HAWLEY. I would have liked to have brought it today. It has been completed and is now in the clearance process, and the clearance process involves people getting on board with it. So I can't predict it because it is really—

Mr. THOMPSON. Are these federals getting on board, states or locals?

Mr. HAWLEY. No. We already have our stakeholders, the actual people we work with at the state and local level, at the federal

level, and with the industry. We have them on board. But it is a broad government-wide participation and it is important that everybody be signed on throughout the government.

Mr. THOMPSON. Can you get this committee, and I will back off after this, the present status of where it is, who has signed on, who has not, just for the committee's benefit?

Mr. HAWLEY. Yes, sir.

Mr. THOMPSON. Thank you.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, for probing that.

I would like to acknowledge the presence of Ms. Eleanor Holmes Norton, who has joined us. Thank you very much.

I would now like to yield to the ranking member of the full committee, Mr. King, for 5 minutes.

Mr. KING. Thank you, Madam Chairwoman.

Mr. Hawley, I would like to ask two questions, and then just allow you to answer. The first would be on the VIPR teams, if you could discuss what level they are at, how you look forward to enhancing their use in the future? And also, what is the level of cooperation between the VIPR teams and some of the local police and transit agencies? I know initially they were somewhat reluctant, at least in some instances, to work with the VIPR teams. That is the first question.

The second one is on intelligence. I believe even though we have to do more, we are never going to have full security, and intelligence is absolutely essential. What is the real-time level of cooperation between Charlie Allen, FBI, the JTTFs, local police, and also the private sector? What role do they play as far as sharing of intelligence and perhaps even gathering intelligence?

With that, I would yield back.

Mr. HAWLEY. Taking the intelligence question first, it is very robust. We have a daily interaction on literally the same secure video conference with all the members of the intelligence community and law enforcement. TSA is on it. I am on it personally. So we do have real-time review of up-to-the-minute intelligence and operations every day. And then immediately after that, I meet with the senior leadership team at TSA, including the general manager, as I mentioned, to specifically go over what comes out of the first call. And then their job is to connect to the operators in the private sector or whatever to share that information.

So it is very robust. It is very real. It is 7 days a week. As needed, it can be 24 hours a day. That is on the intel.

On the VIPR teams, this is a real asset for TSA and for our partners, particularly in the transit community where as invited by their local police jurisdiction, when they say they would like to have some surge support, we can provide teams of federal marshals, canine teams, inspectors, transportation security officers, to go provide unpredictable presence and surge capacity.

We have had 45 of them in 2006, and we are going to move them up to more than one a week in 2007. They were at the Super Bowl. They were at the State of the Union, President Ford's funeral. Any major event, it is a fair bet to say we are going to have surge resources to support the local community.

Mr. KING. How much notice do you need to put them in play? For instance, if Chicago or San Francisco and New York asked for them, how soon would it take you to get them in place?

Mr. HAWLEY. That is why we do the drill, is to figure out how we can engage quickly. The normal process would be 48 hours, although in the case of last year and the incident in New York, we supported Amtrak in a matter of hours. In fact, Amtrak, we have already done seven of these teams this year in 2007. So they are designed to be quick application of outside resources. So typically, we like 48 hours, but we can do it within a couple of hours.

Mr. KING. And how receptive are the local police and transit agencies? How have you found them?

Mr. HAWLEY. I think you put it right. Initially, there was hesitation. Does this mean that there are going to be more feds encroaching on our jurisdiction? And then as people realized, "Hey, this is a surge support; this is something I can use," I think it is very warmly embraced, and it is a key part of our program.

Mr. KING. When for instance something happens overseas, like the London bombings of July 7, 2005, how quickly are you tied into that to see if there is going to be a copycat or replication here in the United States?

Mr. HAWLEY. We are immediately. I would just refer to last week, the incidents that turned out to be coincidence here in the D.C. area, plus the well-publicized incidents in the Boston area. We were working that from literally before 6 in the morning, all the way through until it was determined the true nature in Boston. What we do is assess, is the thing in Washington related to what might happen in Boston? So Paul Lennon, in this case, the general manager, connects with other operators to say, "We have had this, it is probably nothing, but just if something happens, be sure to let us know."

So the core of what we do at TSA is that operational readiness and information sharing.

Mr. KING. Do you have a vehicle where the private sector can play a positive role as far as providing intelligence? Or are they just receiving intelligence from you?

Mr. HAWLEY. No. That is very much an important part. Certainly in the aviation arena, there is a lot there. But in transit, that is part of the requirement that we have on security directors, that requires suspicious incident reporting back to us so that we can pour it into the overall government suspicious incident analysis. We think that the people out in the field, including the public, are a tremendous resource in terms of capturing intelligence.

Mr. KING. I realize my time is expiring. I know that the cheers of yesterday have short echoes, but I want to commend you for the great job you did last August with the London blast. Thank you.

I yield back.

Ms. JACKSON LEE. I thank the ranking member.

I am pleased to yield 5 minutes to Mr. DeFazio of Oregon, for questions.

Mr. DEFAZIO. I thank the chair.

As chair of the Highways and Mass Transit Subcommittee, I am pleased with the coordination with this committee, and look for-

ward to developing strategies to enhance our protections on surface transportation issues.

Mr. Hawley, just a phrase or a sentence from the GAO, "However, federal and rail industry stakeholders have questioned the extent to which TSA directives were based on industry best practices." Would you like to comment on that?

Mr. HAWLEY. Sure. That report that you quote from is one I read during my confirmation process, and I found to be really a guide for how we approach dealing with our stakeholders now going forward. So we have a more participative process now in terms of security directives, be they rail, transit, air or anything else, in making sure that what we are requiring is in fact the best way to operationally introduce a desired result.

But also working in the rail industry this time was not through security directive. It was through an agreement that they made that will be followed up by regulatory action. So it is far more participative than perhaps in the past.

Mr. DEFAZIO. And in terms of best practices, both internationally and nationally, are we at the point, I mean, granted, if you look at London, which I think is supposed to have some of the best, given the problems over half of a century, even they were vulnerable. But I mean, have we adopted as far as we can assess the best worldwide practices, both in transit, passenger rail, and freight rail?

Mr. HAWLEY. We definitely share information, particularly in the technology area where in the U.K. they have had some millimeter wave transit pilots. That information has been useful. We share very closely with the U.K. Robert Jamison, who is my deputy administrator, and a former deputy at Transit, went to Mumbai. We have, as you know, representatives around the world whose job is to engage with the other governments. So there is robust sharing. I am not sure that anyone has solved the security of an open system. It has to be different layers.

Mr. DEFAZIO. Again, you are talking about the millimeter wave, but I want to be sure. Can you assure me that you are assessing any and all potentially, you know, of the effective technology? And that we are not being constrained.

I was disturbed to hear that your plan, as you were being questioned by the chairman, is being reviewed by individuals. That usually means the trolls who live under the bridge at OMB who are afraid that either it costs too much for industry or it costs too much for the government, and has budgetary implications. They don't care about the security. I want to be sure that you are not being constrained in those ways.

Mr. HAWLEY. No. In the secretary's specific plan, it is not really a budget document. Frankly, I don't think that there is any huge problem. It just is slow. But as far as looking at technology, we have the science and technology group at the department who do have wide resources and connectivity to the scientific community around the world, and then we get the products of those as they get solid.

Mr. DEFAZIO. So do you have a way? I mean, we have a center where we are doing aviation. Where are we doing technology for surface? The same place?

Mr. HAWLEY. No. That is a very good idea, that I have heard suggested, and we are looking at, is having the same kind of technology clearinghouse in the transit arena. It is some of the feedback we have gotten from transit communities, and a value-add that we could perform, that could be improved on what we are doing now.

Mr. DEFAZIO. You will have to give us a plan, or if you need money or something to do that, let us know, because I am very anxious to do that.

Back to best practices, you talked about stakeholders. We have heard some complaints, particularly from labor, who are often the most informed people on the spot involved in the movement of people or freight, doing the maintenance, that they don't feel that they have been integrated very well into the best practices approach.

Mr. HAWLEY. Well, I think it is a concern that we listen to. We have used our rail inspectors to go out and interview 2,600 people, including the frontline employees, as well as some managers. The feedback that comes from that does indicate that more needs to be done on training. Madam Chairman, Robert Jamison passed me a note to say I misspoke on my answer about security training being required. Apparently, that is not the case specifically, so therein perhaps lies an opportunity.

But the issue of not only the initial training, but the repetitiveness of it and the refreshing of it, I think is an open area and is something that we look forward to working with industry on and perhaps further regulation as needed.

Mr. DEFAZIO. Okay, thank you.

Thank you. My time has expired, Madam Chairman.

Ms. JACKSON LEE. I thank the gentleman.

Just before yielding, allow me to yield myself 1 minute.

Mr. Hawley, I am glad Mr. Jamison passed you a note, because I think we left on the point that it was voluntary, and I said "inadequate." So I would like to allow you just to forthrightly say on the record again, security training is what as it relates to employees as relates to rail?

Mr. HAWLEY. It is provided by the company and not required by the government.

Ms. JACKSON LEE. Okay.

And is it ongoing? Is it a one-time training? I think you said that when they come in, they get some initial training.

Mr. HAWLEY. I think it depends on the carrier. There are a number of training programs prepared originally by the Federal Transit Administration that TSA funds, and we make it available for localities to train. What they actually do with it is up to them under those?

Ms. JACKSON LEE. As you indicated, therein lies a serious opportunity. I just wanted to point out that that issue is something that we need to pay attention to.

Mr. HAWLEY. Yes, absolutely.

Ms. JACKSON LEE. Thank you, Administrator.

I now turn to the gentleman from Florida for 5 minutes, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Madam Chairman. I appreciate it very much.

I have a couple of questions for Mr. Hawley. To what do you attribute the absence of terrorist attacks on mass transit and public transportation systems in the United States since 9/11? And then also, to what extent have the TSA efforts played a role in preventing such attacks?

Mr. HAWLEY. There have been attacks in the transit area that have been stopped. The FBI announced a major one last year. There are constant efforts that are undertaken by the intelligence, military and law enforcement communities. However, there is nothing that I can go out and say, "this is the reason why a successful attack has not yet been done."

I think that an open system does make it possible that an attack will happen, and that is what we work all the time on. It is the vigilance. It is the preparedness. It is the teamwork among all the players that I think has provided an effective level of security. It is not a perfect level of security, but the difference between 9/11 and 2002 and 2003 and now 2007 is notable and I think very strong.

Mr. BILIRAKIS. Thank you.

What responsibility should states, local governments, and transit agencies themselves bear in their own protection?

Mr. HAWLEY. I think it is a shared responsibility with the federal government, but clearly where these systems have been originated in the locality, and they have made arrangements and hired people and put in security requirements at that level, where it is strong, and my experience is that most of these systems are very professionally done, that it does not make sense for us to come in and try to superimpose on top of that, but rather to work with them to continue to strengthen the investment that is already made, so I think under the model we have now, where it is borne primarily by the state and local authority.

Mr. BILIRAKIS. Very good.

Next question, would you update us on the transit and rail inspection pilot program and share any relevant information that has been learned about the feasibility of screening passengers and luggage in rail environments?

Mr. HAWLEY. Sure. I mentioned the VIPR teams that we have around the communities, and also with Amtrak. We have worked with Amtrak on doing some screening of passengers, as well as the luggage that they carry. There have been a number of pilots, one in the New York area, one in San Francisco area, actually on ferries, where we have screened passengers. The U.K. has done it as well.

What we find is that it is feasible. Passengers are receptive to it, but that with 1,500 passengers a minute going into a major transit system, that there is no way to get to a statistically significant number. So just as a random thing, it works. Operationally, we can do it. It is a question of how far we would want to expand it.

Mr. BILIRAKIS. Okay, last question. What role should individuals play in protecting themselves and ensuring their own safety when using public transportation?

Mr. HAWLEY. I think it is a pivotal role, and as Mr. Rosapep mentioned in his statement, it is one of the three top things, is the

public awareness, see something, say something. It is how transit attacks have been stopped in other countries, by passengers being alert. It is I think really the strongest thing we have going for us, is with all those 11 million people traveling every day, alert and willing to say something, and know who to say it to, and have a person who gets told that know what to do about it, that is very powerful security.

Mr. BILIRAKIS. Thank you, Madam Chairwoman. I yield back the balance of my time. I look forward to working with you.

Ms. JACKSON LEE. I thank the gentleman for yielding his time and thank him for his questions.

It is my pleasure now to yield to the distinguished gentlelady from New York, Ms. Clarke, who I know has a great investment in the success of this committee—we look forward to working with you—for 5 minutes.

Ms. CLARKE. Thank you very much, Madam Chair.

And to our distinguished secretary, thank you for being here to give us some clue as to where we are right now.

I am a bit disturbed, quite frankly, by the description of the level of federal guidance and support that is being given to the state and local jurisdictions. My point of reference, of course, comes from New York City, where I know there has been a tremendous burden placed on our day-to-day operating systems, just the basic securities of running such a huge mass transit system, and having to shift resources on a regular basis in order to address any events that take place.

So if there is a bombing in Madrid, we automatically go to Code Orange, or whatever the code is, and that is costly to us. It is a cost that the city bears itself, without the federal support or the state support to continue to do this on a regular basis.

So I wanted to just ask a couple of questions. One, what do you see as the role or the vision of financial support to jurisdictions similar to New York around the nation, that have to be constantly in a state of readiness from a personnel perspective, from an equipment perspective, or technological perspective? We have become quite sophisticated at our own costs in New York City, and that is a real concern when we are looking at a federal standard.

And then secondly, you mentioned the "See Something, Say Something." It is a great novel idea. You did also point to what is very important in that equation, and that is you know who to say something to. And part of the challenge, quite frankly, has been that we are having a hard time finding out who to say something to. There have been cutbacks in personnel with respect to our transit workers. They are not even trained properly to be able to relay information in a real-time sense. There are some logistical challenges that I think we should be beyond at this stage.

I would like to know, with respect to your strategic planning, how are you being informed and how are we going to provide the appropriate supports for the infrastructure to be safe in a mass transit environment?

And then just secondly, the Port Authority of New York and New Jersey released a report recently that the PATH tunnels that run under the Hudson River are more susceptible to attack than previously thought. What steps are being taken to assure that the se-

curity of tunnels in New York and elsewhere are being really taken into account? And how much money do you estimate it will cost to ensure that these tunnels are secure? And who should pay for security upgrades?

I think there are some real challenges right now with respect to state and local jurisdictions, and bearing the burden of really what is a national challenge around security.

Thank you, Madam Chair.

Mr. HAWLEY. Taking the last one first, about the underground tunnels. We are in very close coordination with the Port Authority of New York and New Jersey, as well as Connecticut, I might add. But on that specific issue, the Federal Transit Security grants have as their number one priority underground and underwater tunnels in high-density populated areas. That was the case for fiscal year 2006 money. It is the case for fiscal year 2007, and I expect it will be for fiscal year 2008.

So in terms of the report that was recently released, it is clearly something that we are well aware of, and working with the community there on, and have made it the number one priority for our federal money.

As to your first question on the model that we have, the model says that the local jurisdiction has the operating responsibility to pay its officers to do the operations. Federal support comes in areas like the underground tunnel issue, as well as in equipment and technology and things like that. So it tends to be a breakdown on that basis.

Ms. CLARKE. Madam Chair, just one final question. The issue of training, who does that fall under, because that is a personnel issue?

Mr. HAWLEY. Sure. I think it is maybe the theme of this morning's session. What we have done is gotten very good security training, a lot of it produced by Federal Transit, and we have put it high on the agenda. Number one, we already talked about, public awareness, and training and emergency response. It is one of the top three. And then we have sent the money with the priority throughout the system.

The question that is raised here, and I think is a valid one, is the degree to which that is hitting the people on the street, and then repeated hitting the people on the street. We have found in our personal interviews with people in the field that that whole issue of recurrent training and the variety of the training is a part we all need to focus on. The self-assessments, actually, that they did themselves, rated that as one of the highest needs that they need to get on.

Ms. JACKSON LEE. Thank you, Congresswoman Clarke.

I now yield to Congresswoman Blackburn from Tennessee, for 5 minutes, for questions.

Mrs. BLACKBURN. Thank you, Madam Chairman. I appreciate the time, and I appreciate our witnesses taking the time to be here with us this morning, and provide some clarification to questions that we are getting from our constituents.

Mr. Hawley, in the GAO Passenger Rail Security Report, there is a statement. I am going to ask you about this and get a response

from you, but I have a little more I want to say before you do talk about it.

It says that the TSA likes a strategy with goals and objectives for securing the overall transportation sector in each mode of transportation, including passenger rail. Mr. Thompson talked just a little bit about that. This is the type of thing we do hear from our local electeds on, and we also hear from our constituents on. And then statements like that, or discoveries, if you will, or pronouncements lead reporters, here is New Channel 5 out of Nashville, where they are looking at rail cargo and anhydrous ammonias, and chorines, and different components that are in rail yards unattended for hours at a time.

And then here is the USA Today article where you are responding to some of the allegations about the toxic cargo, and are quoted in this one from January 21. As our constituents go through the checkpoints at airports and cannot take a 5-ounce bottle of lotion, but they can take a 3-ounce bottle as long as it is in a baggie, and they see that type of subjective scrutiny. And then they hear reports of this nature, and then they talk to someone that works with some type of logistics company, of which we have many in Tennessee, or they are talking with someone who works with a passenger rail service, and there is basically not the training, not the interface, not the attention to the safety.

It does cause questions. And so what I have heard you say, and I want you to clarify a little on this, is that you all have put a strategy on paper. What you are lacking is an implementation plan that reaches cross-agency as to how you will interface with your employee training, with your public awareness, with some of your protocols and disciplines.

If you will respond?

Mr. HAWLEY. Sure. On the cross-interface, we mentioned in our testimony that we have agreements, MOUs, with both Federal Transit and Federal Rail Administration to have that in writing on paper. The issue you mentioned about chlorine and anhydrous ammonia, we have a rulemaking that Secretary Chertoff announced on December 21 that will go through the process and take a while to implement.

But we also announced that the center of the bull's eye on that one is when there is anhydrous ammonia or chlorine or any of those other TIH cars sitting unattended, including in Roseville, California or anywhere, that that is measured by TSA and the railroads, and that they have agreed, and subject to our inspection, to reduce that by 25 percent in a year, and then we will go after continued reductions.

So what we have done is gone after immediate effect to reduce risk, right at the most vulnerable part, that goes into effect right away and doesn't wait around for a year or a year-and-a-half or 2 years for a rule to go through the whole process.

Mrs. BLACKBURN. If I may, sir, on that, with reducing 25 percent in a year, are you going to require some type of labeling on those tankers so that it is identified as toxic?

Mr. HAWLEY. Yes. I will defer to Mr. Haley, but they are identified visibly on the cars.

Mrs. BLACKBURN. I would offer that possibly they are a little difficult to detect sometimes.

Mr. Haley, do you want to respond?

Mr. HALEY. Yes. Hazardous material cars are required to be placarded, which indicates the contents of the cars so that emergency responders can handle any problems that may arise.

Mrs. BLACKBURN. Okay. Mr. Rosapep, coming to you for just a minute, as we talk about the training, and there is a lot of emphasis on the security training and the employee accountability, if you will, and making certain that people know the expectations of them as they go about doing their job. Are you developing a certification program so that your employees will have different levels of training and awareness and ability?

I think it is important that individuals who are citizens, who are using mass transit, know who to contact. I think it is also important for our local electeds to know who to contact and to know what their level of capability is.

Mr. ROSAPEP. We don't have a formal certification program in place as yet. Right now, we are actually conducting a training assessment of the top 30 transit agencies and 20 smaller ones to get a better feel for what their real needs are among their employees.

To your point, we do know that there is probably a desire to redirect some of our courses to specific job classifications. That might help in the training process. But we will have a much better idea on the overall training needs later this spring, from that standpoint.

On the safety side of things, through the Transportation Safety Institute, FTA over the years, we do have a safety certification program for some employees, who, if they go through a particular curriculum and take a certain number of courses over a set period of time, then they are certified from a safety standpoint. Ultimately, that might be something to look at on the security side as well. But it is clear to try to tailor those courses to your point, to the jobs that people are actually doing.

Ms. JACKSON LEE. The light is still on. Thank you for yielding back.

I now yield to Congresswoman Brown–Waite for 5 minutes for questions.

Ms. BROWN-WAITE. Thank you very much, Madam Chair.

I recently received a letter from a state senator who is chair of the Florida Domestic Security Committee. In this letter, she indicated that TSA has been working on the TWIC card to do background checks on potential airport and port security workers. However, the TSA is no longer working to ensure Florida's system is compatible with TSA's.

Obviously, I am very concerned about this, and would like to hear what steps you are taking to integrate existing state systems with the new federal requirements, and specifically what you are doing in Florida.

Let me read you one paragraph from her letter: "After years of partnership with TSA on this project, it was shocking to receive the treatment which was afforded by TSA over the last few months. The lack of responsiveness across staff levels, and even the perfunctory response by Secretary Chertoff to a letter written by Gov-

ernor Bush, to work with the state to assure positive continuation of the partnership was baffling."

Mr. Hawley, I would like to hear your response to this.

Mr. HAWLEY. Well, first I will go back and see what all that refers to in terms of the interaction. But the issue on TWIC is we did partner with the state of Florida in the early days of TWIC as it was coming along. Florida elected to go forward and make that program in Florida, knowing that the federal standard had not been set.

The issue is interoperability of credentials, so that the idea is you can use it in Florida or any other place in the United States. To do that requires, obviously, the standards that are interoperable, so that the ones that, as I understand it, that the Florida ports went to are ones that, out of their good interest to get security upgraded right away, they went with a standard and it has not turned out to be, to my understanding, what the overall standard will be going forward.

So I will be happy to go and sort out what it is. I think what Secretary Chertoff was referring to was we have had a very positive partnership with them, and we all knew at the time that there would be a choice that they made, but we will certainly work with them going forward to achieve the level of security and interoperability we want.

Ms. BROWN-WAITE. Sir, I do believe that they worked in conjunction with you all to come up with this system. It is like they worked with you, and didn't hear any objections, and now they are kind of out there left on a limb, and there is no longer the cooperation level there with TSA.

Mr. HAWLEY. Well, we did cooperate with them building it, but it is the standard that was not set. I remember, because I had one of the conversations, which was what I said to one individual at least was, "If you have to go ahead on your own, you have to do what you have to do, but we are not ready yet on the standard and will not be immediately ready." So that is the risk you take of going forward with one version versus waiting for the standard. And I don't know all that happened after that, but I will go find out.

Ms. BROWN-WAITE. I would appreciate that.

Madam Chairman, one other question. Recently on a major news broadcast show, they had information about the fact that everyone has to go through the screening at the airports, but the issue is the employees coming in the back door with an identification card that may or may not be current, and without any real daily screening.

Now, if the TSA people have to go through the screening and the pilots have to go through the screening, and our constituents have to go through the screening, I can just tell you that last year, Representative Lowey and I agreed that this should not continue. We are still here. There is no better security at the back door, and I hear passengers grumbling in line who saw this program.

How long is it going to take? And is it going to take a tragedy to get you all to move a little faster on that?

Mr. HAWLEY. Well, we moved in the past year on physical screening of employees. We have as part of the FSD's program, federal security director at each airport, they have their resources from

TSOs to go around to areas all over the airport and do random, unpredictable screening. We do not at this point screen everybody every time. That is an issue of process and resources.

From a security point of view, we like the ability to do the random everywhere anytime, so it covers the entire airport, versus just the one time when you catch them walking through the door.

The other piece of it is, the neighborhood watch nature of airports, where every employee there is responsible for challenging anybody without a badge, and reporting incidents. And there is a very high degree of awareness throughout that community. So it is a policy issue of whether to require TSA or airports to physically screen everybody as they walk in the door, but that is not the case today.

However, the issue on insider threat is one we take extremely seriously. There are tremendous background checks, recurring watchlist checks every night on that whole population. We have 50,000 people, say, at a large airport, and it is a lot of real estate.

Ms. BROWN-WAITE. Madam Chair, I think it would be very revealing to this committee to have a list of the airports that this random screening has been done at. I think it would be very revealing, and the airports and the frequency which this is done. It is a concern to every one of our traveling members of the traveling public. I want to make sure we are not sitting here next year or the year after and hearing the same story of well, random is enough, when the department screens its own personnel, the TSA workers who are there. Pilots get screened.

Ms. JACKSON LEE. Let me, if I might, as I conclude this portion of the hearing, thank the gentlelady from Florida for her work, and the work of Congresswoman Lowey. As I started out this morning, you can be assured this is going to be an enormously active committee. Therefore, you are timely in your inquiry. We are sort of overlapping. Administrator Hawley is responsible for rail and aviation, but we will have a hearing on that very question. So I am giving you pre-notice to determine where we stand on that vital issue. So I thank you.

I am prepared now to conclude this panel, with the thanks of all of the witnesses, Administrator Hawley, Mr. Rosapep and Mr. Haley. We will submit, and I would open the opportunity for members to submit questions for the record.

Mr. Hawley, as you put your papers together, one of the questions will be that we will pursue with you is the representation of required security checks for railroad employees. Of course, we welcome that, but it is represented that DHS is the cause of the firing of a number of employees in Chicago. It happened to be, of course, in this instance, from a minority population. We will pursue that. It is like that we will have a hearing on that. You might want to begin preparing your answers on that question, because we want consistency and we want facts and truth.

So with that, I want to thank the witnesses for their presence and their testimony, and indicate that we are now prepared for the second panel.

I would welcome the second panel witnesses.

The second panel contains only one witness, Ms. Cathleen Berrick, a director with the Homeland Security and Justice Division with the Government Accountability Office.

I thank the witnesses, and I welcome Ms. Berrick to the table.

I will indicate, without objection, the witness's full statement will be inserted in the record, as you come and prepare. I will give you just a moment.

I now ask the witness to summarize her statement for 5 minutes, and you are able now to present your testimony. Welcome to our committee.

STATEMENT OF CATHLEEN A. BERRICK, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. BERRICK. Thank you, Chairwoman Jackson Lee and members of the committee, for the opportunity to discuss the security of passenger rail.

In addition to GAO's passenger rail security work, we have also, or will soon initiate reviews of additional surface modes of transportation for this committee, including freight rail, commercial vehicles, and highway infrastructure. We expect a report of the results of that work later this year.

Regarding passenger rail, my testimony today focuses on actions the federal government should take in the near term to strengthen security, and security efforts implemented by the federal government and domestic and foreign rail operators.

We have reported that DHS needs to complete, update and more fully coordinate its risk assessment efforts in order to ensure that resource needs for securing passenger rail are appropriately identified and focused. We found that DHS, in conjunction with its grantmaking authority, TSA and DOT have all completed numerous risk assessments on passenger rail systems around the country. We also found that DHS had begun to develop an overall framework for consistently analyzing risks within and across sectors.

However, we found that these assessments were not yet completed or fully coordinated. Until they are, it may be difficult to compare risks within passenger rail and across all transportation modes so that appropriate resource allocation decisions can be made.

We also reported that DHS lacks a clear strategy for securing passenger rail and other surface modes. As was mentioned this morning, DHS has been delayed in issuing its transportation sector-specific plan and supporting plans, which are to identify TSA strategy for securing all transportation modes.

Without a plan, it is difficult for rail and other transportation operators to clearly understand the federal government's security role, as well as expectations for them. A lack of a plan can also make it difficult for DHS to be held accountable for implementing needed security strategies and efforts.

Our ongoing work on commercial vehicle security has found that operators are seeking information from the federal government on their role and strategy with respect to security. Our work has also shown that despite several security efforts under way in this area,

DHS is in the early stages of defining its security role regarding commercial vehicles.

After the 9/11 attacks, FRA and FTA implemented and still support a number of programs to strengthen rail security, including providing operator training and technical assistance. TSA also issued security directives and piloted explosive-detection technology, and recently issued a proposed rail security rule, and has implemented other security programs in partnership with FRA and FTA.

Domestic and foreign rail operators have also taken a range of actions to secure their systems. We also observed security practices among certain foreign rail systems or their governments that are not currently used or used to the same degree domestically. These practices include the random screening of passengers and their bags, and the utilization of covert testing to help keep employees alert to security threats.

We also found that certain foreign governments maintain a centralized clearinghouse of rail security technologies, which is not currently done, although is planned in the United States.

Another key component of surface transportation security is ensuring strong stakeholder partnerships, given that security is a shared responsibility between the federal government, state and local governments and the private sector. To this end, DHS and DOT signed an MOU intended to improve coordination on security and safety matters, and subsequently completed several related annexes. DHS is also strengthening partnerships with private sector stakeholders through its security assessments and other efforts.

As TSA begins to place more focus on the security of other surface transportation modes, it will be equally important that such a framework be developed and implemented to supports its efforts.

In summary, we are encouraged by the increased federal focus on the security of surface transportation systems. However, in moving forward, a clear strategy based on risk and strong coordination will be needed to help ensure the actions and investments designed to enhance security are appropriately focused.

Madam Chairwoman, this concludes my opening statement. I would be happy to respond to any questions.

[The statement of Ms. Berrick follows:] [1]

Ms. JACKSON LEE. I thank the witness very much for her time and for yielding time back. We thank you so very much, and we thank you also for your patience.

Before I recognize myself for questioning, without objection, I want to place into the record Ms. Berrick's September 2005 GAO report, and previous January 18, 2007, testimony before the U.S. Senate Committee on Commerce, Science and Transportation.

I will now recognize myself for questions.

This is a tough challenge that we have. This hearing is set not to blame, but frankly to get answers and to ensure that as we write rail security legislation, we focus on the unique niche and important responsibility of the Department of Homeland Security.

[1] *See* GAO, *PASSENGER RAIL SECURITY Federal Strategy and Enhanced Coordination Needed to Prioritize and Guid Security Efforts*, GAO–07–442T, Tuesday, February 6, 2007, at *www.gao.gov/cgi-bin/getrpt?GAO–07–442T*

So I would appreciate it if you would take all gloves off and confront this issue enormously seriously. One of the difficulties we have here in the United States Congress, I might imagine it is in the executive, as GAO has seen, is a jurisdictional question. But it is clear that the security issue, security for this nation, is vested in the Department of Homeland Security, and frankly, in the Transportation Security Administration.

I almost paint the picture that everyone wants a hand in the matter, until the crisis arises. I would venture to say that if we did not continue to receive the blessings that we have, as it relates to attack on our soil, if one were to occur, I would bet all bets that the pointing would go toward the Department of Homeland Security and TSA, in this instance, as it relates to rail security.

So we have a real challenge to step up to the bar. My questions relate to stepping up to the bar. You mentioned a number of points. I start with the DHS assessments not completed, or possibly not coordinated with other agencies, which I think is truly key. You heard testimony about the lack of security training, at least required, that we seem to have with rail employees, which I would include mass transit employees.

I am giving you a series of issues. One, the coordination, whether or not we are consulting with law enforcement agencies on the federal level as to the assessment, say, an overview of security issues across the nation. Are we engaging in regional FBI offices? Are we talking to the New York FBI office, for example? Is there that kind of coordination?

And then, of course, the training question. As we look at the way to focus legislation to give Administrator Hawley more, if you will, tools, is a request of 288 personnel seemingly adequate, with only 1,000 and a small number of surface transportation security officers?

And then, a ticklish point, but I believe a very important one. There is no doubt that controlling the purse-strings gives you a little oomph. Therefore, if security is defined as the responsibility of DHS and TSA, would it not be appropriate for transportation security grants, determined by risk, funding to be issued out of TSA or the Department of Homeland Security?

With that, I will yield to you for your responses.

Ms. BERRICK. Thank you, Madam Chairwoman.

Your first point regarding risk assessments, GAO did look at the Department of Transportation's and Department of Homeland Security's efforts to conduct risk assessments. At the time, we had done that work, TSA was in the early stages of doing risk assessments. This was about a year ago. The Department of Transportation had been doing them since 9/11. And also at the Department of Homeland Security level, they were doing risk assessments as a part of their grantmaking authority.

We had observed during that work that there was a lack of coordination between the three parties. These were all promising efforts, but they weren't coordinated and they also weren't completed. Since that time, there has been more coordination. They have completed more assessments, but they are still not at the point where they need to be. Until that happens, it is very difficult for TSA to develop a strategy on what the security should be for passenger

rail or for any mode of transportation until they are in a position to have a comprehensive view of the risks facing that sector, and then comparing that to aviation and other modes of transportation.

Ms. JACKSON LEE. So they need to be working with FTA and FRA?

Ms. BERRICK. Exactly, and also TSA and the Office of Grants and Training within DHS needs to be working together. We made recommendations along those lines.

Regarding coordination, when we had done our work, we identified that coordination was a problem between DHS and the rail operators. TSA really started getting involved in passenger rail security after the Madrid bombings. Once they did, they issued security directives within a matter of months. It was mentioned earlier that these directives were not fully coordinated. So coordination was a problem.

Operators also weren't clear what TSA's role was versus FRA and FTA and DOT. We had made a recommendation that DOT and DHS establish a memorandum of understanding to clearly delineate what their roles and responsibilities are. They did implement that MOU and establish some annexes, which we think is a great step in the right direction to coordinate better with stakeholders.

Also, TSA, since we did our work, is reaching out more with rail operators, as a part of their security assessments. They are building a framework there to work closely with stakeholders. I think where they are right now is in the implementation. They have this framework in place with the MOU. They have reached out initially to rail operators. Now, it is about implementation and moving forward. Whatever strategies they put forth, it is important that they be coordinated with these stakeholders and they leverage these relationships that they have developed.

Regarding training, you had mentioned training. Right now, one of the points we have made in our work is that TSA, FRA and FTA have a lot of security efforts under way. Part of what is under way is the Department of Homeland Security is providing grants to rail operators for training. The problem that we see is that it is not clear how all of these different efforts tie together, and what the ultimate end-state is for security for passenger rail. For example, training, everybody agrees that training is important, but what type of training, who should be trained, when should they be trained, should it be one-time, should it be recurrent, how will TSA measure whether or not operators are absorbing subject matter that they want them to absorb.

That is why training needs to be a part of a bigger plan. How do all these different components fit together, and what are the ultimate goals for training? Mr. Hawley mentioned that the work had been done to support that plan. We just haven't seen the plan yet, and what that is.

Regarding your question about 288 personnel being devoted to surface transportation security, again, I go back to the risk assessments. I think until TSA does an analysis, until the put it forth and it can be reviewed, it is difficult to answer what is the appropriate number of resources. As of today, I haven't seen that analysis. I know they are working on this transportation sector-specific plan. Once they lay out what their strategy is, I think everybody

will be in a better position to assess whether or not that is an appropriate number of people.

Ms. JACKSON LEE. Let me think. I had another question, but I am going to yield to the distinguished gentleman from Colorado, and welcome him to the committee. Mr. Perlmutter? He is from Colorado, not New York.

Mr. PERLMUTTER. Thanks, Madam Chair.

I just had a couple of questions, and just a couple of comments. My first question is, in your studies and your inspection of this, how have the more successful agencies within the TSA worked with the rail and transit sectors to develop the best practices? That would be my first question.

And then my second is, when you were doing your assessment of all of this, it seems to me that the Denver area, which has a lot of rail traffic, was ignored. I mean, I don't know whether you found anything or you wondered by the metropolitan area of Denver was not part of the study group, or whatever, but those are my questions.

With that, I will yield to the speaker.

Ms. BERRICK. Thank you.

Regarding coordination and best practices for TSA, what we found is, first and foremost, that TSA is developing a strategy related to passenger rail security, or before they roll out any security directives or programs, it is really paramount that that coordination happen before they make those decisions. Most of the problems in the past have stemmed from the fact that that coordination wasn't always there, and there have been reasons for that turnover within TSA.

And then also TSA was reacting quickly as a result of the Madrid bombings. They wanted to get security directives out quickly, so they were trying to balance that with coordinating with stakeholders. So I think the first best practice is really reaching out before decisions are made and working with stakeholders.

I think a second good practice is, before laying out regulations and standards, going out and visiting the rail operators, seeing how they do business, see what they have in place already, and get their input regarding what assistance do they need and what direction do they need. TSA has since done a lot more of that in the past year. So I think those are two important practices.

By the way, we did visit some foreign countries as a part of our work, in Europe and Asia. And stakeholder partnerships was always a very big part of what they did. We also identified some unique things that they were doing in those countries that potentially could be considered in the United States, that we reported on.

In terms of Denver, as a part of the study, we visited about 35 major rail operators around the country. I am not certain whether or not Denver was a part of that or not. I can check and then let you know after this hearing. I also wanted to mention that this committee has asked GAO to do follow-on work on passenger rail security. So if there are certain issues or locations that you think we should be focused on, we would be certainly happy to talk to you and get your input. I can get back with you on our last study and whether or not Denver was one of the cities we visited.

Mr. PERLMUTTER. One last question, Madam Chair.

Are you getting any resistance from any of the stakeholders as to efforts to beef up security, either on the freight side or the passenger side?

Ms. BERRICK. Not at all. In fact, most of them have said, "We know that this is our responsibility as well." They went and they acted after 9/11, before anybody came to them from the federal government. They knew that they had to do this. They knew they were going to have to pay for a lot of this. So no, it wasn't.

We often asked the question, well, what do you want from the federal government? You are doing a lot of these things already. They would always say, well, "We want to know what the federal government's role is; we want to know what their strategy is; we want to know if they are going to issue security standards a year from now that is going to conflict with what I am doing."

They also said that they wanted information on technologies that would be useful to them, because they had a lot of technology providers approaching them. They wanted to know what were the best technologies to pursue. So we actually saw that they were very willing to work with the government, and also willing to shoulder a lot of the burden for securing their systems.

Mr. PERLMUTTER. Thank you, Madam Chair.

Ms. JACKSON LEE. Let me make sure that the record is clear. There are a lot of New Yorkers on this particular subcommittee, and I am delighted that the distinguished gentleman represented the very wonderful state of Colorado. We thank him for his presence and his very pointed and important questions.

I now yield myself 5 minutes for a second round of questions.

As I have looked, it doesn't appear that you have been to the Denver area, the suburbs. I would encourage the distinguished gentleman to encourage your visit in that area. Likewise, it appears that you were in Dallas. I am going to ask, sort of probing your mind, if you remember any distinctive aspects of that review in that city, and if you remember anything striking in terms of security that you are able to share in your foreign visit. And then I would like to also make mention of Houston, Texas, from the freight and rail perspective, that we will probably encourage a visit there, because it is a system that weaves in and out of the residential area.

If I might, those are questions that you might answer. It might have to be in writing, but let me pursue them, and you might be able to provide us with an answer.

Again, I want to pursue the president's budget of 288, and this coordination issue. Would you give the committee your sense of how urgent and how fast we should be moving with this coordination? I would also put on the record that I would be interested in securing the MOU. We might have it in our records files, but I want to make sure this committee has a copy of that. I am not sure if the GAO has it. We will make an official request on that.

So if you could comment on how fast, and I have given you some earlier questions, but how fast we need to move. And then let's go back to this question of training, the urgency or the importance of a consistent training program. Now, I know this smacks up against the sort of dichotomy between more local efforts than we have in

aviation, where the aviation is dominated by federal. It seems that there is some balance in the rail system. But the training is what we hear from rail employees, whether they be mass transit or otherwise, that they need not only training, but ongoing.

And I think the way Administrator Hawley represented it to us, was that it is through transportation security grants, that you can use it for that or not. Why don't you comment on how vital training is, and maybe the need to make it required. And then if you would indicate to us whether or not the effective training is a key to what we need to be doing, and whether or not DHS needs to have full control over the issuance of the transportation security grants, which would include issuing the check.

Ms. BERRICK. Thank you.

Regarding your question about how fast should coordination happen, I think it should happen immediately. The framework is put in place now. It is about implementation. But I think until TSA can really move forward, again I go back to the plan. They have to communicate to the stakeholders what their strategy is, because they can do a lot of coordinating, but if it is not clear what the end-state is for security, it is difficult to really move forward.

Again, rail operators are doing a lot on their own, but they are also leery of doing too much in anticipation of federal requirements that may be issued that may conflict with what they are doing. So I think they need to move quickly. I think the first step, they have done a lot of these risk assessment efforts. I think they can improve upon that, have that built into the strategy, communicate it, and then implement it. And then it would also provide for congressional oversight, too, because there is a roadmap from which you can assess DHS's progress.

Regarding training, every rail operator that we spoke with, domestically and overseas, all said that training is probably the most important aspect of security that they felt they had within their reach. In addition to grants that DHS provides for training, rail operators on their own are implementing a lot of different training efforts as well. So there is a lot of training going on, but again, it is not required. It is not consistent. It is important, and it is not clear what TSA's vision is for training, again, who should be trained and how often, how frequently, and by when. So I think training is very important, and I think it is something that TSA needs to focus on and communicate with stakeholders.

You had mentioned foreign practices, if we had learned anything in our work that could potentially be applied domestically. There were some practices, although a lot of practices are the same domestically and foreign, there were some foreign practices that we saw that we felt should be considered here. One was related to training. It was not so much the training itself, but it was how the training was taught. Instead of a large classroom setting, it was more of a one-on-one conversation between a supervisor and their employee on security. A few countries were doing this. They thought it was much more effective than classroom training, so that was something of interest that we passed on.

There were also a few other practices, one was covert testing. We found that some countries were doing covert testing of their rail systems. This was run by the federal government. It was also run

by the rail operators themselves. That is where rail management or the government would leave a suspicious package. They would time how long it took a rail employee to detect it and report it. They would break a seal on a fire extinguished and time how long it took someone to detect it. So covert testing was one that was not done domestically here in the United States.

Also, the random screening of passengers and their bags. At the time we did this work, that was not done domestically. It is done to a limited degree right now, but again not to the degree that we have seen in some foreign countries. And then a last major area was a clearinghouse of technologies. There are some federal governments that see it as their role, providing information to operators on technologies. So they really provided a clearinghouse on technologies that are existing and evolving and emerging, and they shared that information with rail operators. That was not done and is not done here today in the United States, although TSA is planning to do something along those lines.

So there were a few other practices. Those were probably the major ones. We did recommend that DHS consider these as they move forward with their rail security efforts, and they agreed to do that.

Regarding DHS's full control over grants, we haven't done work specifically focused on the grant process, other than look at the grants that have been distributed and what was being done with them. As a part of our ongoing work for this committee, we were asked specifically to look at grants. So we will get into a lot more detail on grants and how they are administered and what is working and what isn't. So we will make sure that we absolutely focus in on that.

Your question about Dallas and Houston, Texas, I will have to get back to you, unfortunately. You have the list so you probably have more information than I do. Again, we will be doing additional work and we can make sure to focus in on these locations as a part of that.

Ms. JACKSON LEE. Thank you. My clock is sort of stilted at .16. But in any event, Congressman, as you have listened to her answers, do you have any additional questions that you would like to pose or invitations you would like to give?

Mr. PERLMUTTER. I always invite people to Golden, Colorado. It is one of the best places on the planet. But I do have a question on the covert testing. I assume, my guess is that the TSA or some organization within the department is doing some kind of testing. As you were saying, that reminded me of the experience that Boston just had with that those funny-face things, or whatever they were. Are any of the organizations doing the testing to see how quickly the rail inspectors, or whomever, respond to a suspicious package?

Ms. BERRICK. TSA does have a covert testing program that is envisioned to cover all modes of transportation. Right now, that is just focused on aviation. TSA did run a pilot program where they did some covert testing at rail facilities, but they haven't moved forward with that and haven't implemented it yet, although they say they are considering that.

The Department of Transportation is not doing any security-related covert testing at rail facilities. The rail operators themselves at the time we interviewed them, again, this was about 12 months ago, were not doing any covert testing either of their own facilities. Again, it was somewhat striking in that there were quite a few other countries that were doing it, but so far, to my knowledge, it is not being done here.

Mr. PERLMUTTER. Thanks, Madam Chair.

And thanks, Ms. Berrick.

Ms. JACKSON LEE. I thank the distinguished gentleman.

I would be happy to yield to the ranking member, in all of his timeliness, Mr. Lungren for 5 minutes.

Mr. LUNGREN. They say you can't be three places at once. Well, we are proving them wrong.

Thank you very much for being here, and thank you for the work that you have done and your testimony.

Let me ask this, we do hear a lot of talk about the difference of how much time and how much money and how much manpower or personnel is placed on aviation versus rail and mass transit. The TSA administrator made the point that the federal government has this massive role in the area of aviation in terms of personnel, but that in rail it is primarily local jurisdictions and the private sector, but primarily the local and state jurisdictions.

Is there any argument that you believe would lead us to federalize rail and mass transit security? Should we even contemplate doing anything like spending the amount of money it would require for federal security and a screening force for mass transit? If not, what should we be doing? I want to get a very, very precise question, not a wide question. But if not, what should we be doing?

Ms. BERRICK. Thanks for the question.

In terms of federalizing rail and mass transit security efforts, we have never heard positions that would support us saying we think that that is a good idea. Frankly, that has never really been raised with the rail operators. They understand that this is their responsibility. They are going to have to pay for security. It is a matter of doing business, but it is also a shared responsibility. They recognize that the federal government does need to be involved and set what the strategy is for rail security.

So in terms of federalization, they haven't been convinced or even gotten input that that is something that should be done. But what the rail operators do want is they want more from the federal government in terms of where they ultimately want to be with rail security, and they want to know how that is going to impact them. After 9/11, rail operators moved quickly. They implemented a lot of different security programs. FRA and FTA did, too.

But right now, where they are is it is not clear how these fit together. Although a framework is established, where they are talking to TSA, there are still not clear on where TSA is going. So as a result, they are looking for more guidance, strategy from TSA, and then assistance through the grant program.

In terms of the amount of money that should be administered through grants or other efforts, again I think that gets back to completing these risk assessments across rail, which we have reported haven't been fully completed or coordinated. There has been

a lot of progress, but there could be some more, and then laying out what that strategy is.

Mr. LUNGREN. Obviously, there are a lot of elements to it, but one of the concerns I have, and it was expressed a number of different ways by the other government representatives who spoke, is the potential vulnerability at a rail yard, if you have hazardous cargo or if you just have the opportunity, perhaps, to sabotage or in some way gain access to the rail cars that are there.

Are there best security practices that you were able to observe with respect to securing rail yards, access to the rail yards, level of surveillance of the rail yards, et cetera?

Ms. BERRICK. Actually, our work was focused on passenger rail security.

Mr. LUNGREN. Right.

Ms. BERRICK. We did initiate a review for this committee on freight rail, and hazardous materials and the storage at rail yards is one issue that we will be looking at as a part of that work.

Mr. LUNGREN. Okay. I hope you look at that part of it.

Ms. BERRICK. Yes, we will.

Mr. LUNGREN. I am not looking for blame. I am looking for answers. It just strikes me that we have a new culture, a new environment, a new concern that we didn't have before. And where before you didn't have to worry about limiting the access as much as we do now. Have we taken a fresh pair of eyes to look at this sort of thing to see if we are doing what needs to be done at those locations?

Now, I am not giving you any suggestion I have evidence that that is a huge problem. It just strikes me, as an observer, as one who has been in and around rail yards, that that could be a real vulnerability, and how do we go about applying best practices, and what is the government role in that, and what is the federal government role in that?

I would appreciate observations and conclusions you might have on that.

Ms. BERRICK. We will look at that.

Mr. LUNGREN. Thank you very much.

Thank you, Madam Chairman.

Ms. JACKSON LEE. Thank you very much.

We will conclude. I would like to yield myself 5 minutes to just conclude. I am not sure if the ranking member needs additional time.

You asked a very important question, as you focused on what we should be doing and how we should be doing it. Let me just ask you a question of GAO accountability in terms of how do you think processes work better.

You mentioned that you want to study the transportation security grant process. Let me just move it a notch up and simply say, has it been found by GAO that when an agency controls directly the purse-strings, meaning that based upon their process, whether it is at risk, they make the determination and they issue the funding, that it is a more effective chain of events and makes it a more effective process of oversight?

Ms. BERRICK. Thank you.

GAO has done work looking at the distribution of grants. Your specific question about whether or not it is more effective if one agency is controlling it, I will have to check to see if we covered that specific point. I know some of the issues we have raised in the past about the distribution of grants have been related to making sure that the process is clear to grant recipients, what they have to do to apply for grants, not changing the process mid-stream, which sometimes happens during grantmaking processes, so as a result, the recipients aren't sure how to apply and the requirements are changing.

And then also the timeliness of receiving the grants. If it filtered through the states, for example, there could be a significant delay, for example, for rail operators receiving grants.

So those have been the three issues that have surfaced in our grant work. I will have to check to see specifically if we looked at whether or not that was an issue in terms of control, and which agency is controlling the grant, and would that have an impact on the oversight.

Ms. JACKSON LEE. On the oversight, federal agencies, that is.

Ms. BERRICK. On their oversight, federal. And we will look specifically at this issue for passenger rail, again, as a part of our work.

Ms. JACKSON LEE. Let me just, Congressman Lungren mentioned this issue of hazardous materials. I think the irony is that this confusion between state and local authority versus federal is getting even more confused as it relates to the rail system because a recent notice of proposed rulemaking, recently released by TSA, had TSA and the Department of Transportation precluding state and local officials from mandating the re-routing of hazardous materials.

I think that is the dichotomy of the conflict. We don't know whether to put it in the states or to take it back. Do you see that that is very important for us to sort of get some order in how we are regulating our rail, whether it is hazardous materials or whether it is passengers?

Ms. BERRICK. Again, most of our work has been focused on passenger rail security, but related to hazmat and freight?

Ms. JACKSON LEE. The point is that they interfered with state and local authorities, saying, for example, don't go through this neighborhood. They left that responsibility to the federal government. It looks like we have sort of a uneven sort of order to doing this. Don't we need to get consistent in how we handle this regulation, whether it is freight or passenger?

Ms. BERRICK. There needs to be communication with the stakeholders, and I would hope for that specific requirement there was coordination with the stakeholders to get their input. I know this is a proposed rule, so you will get comments back in on it. But in terms of whether or not it should be consistent, I don't know what the answer to that is. I think you would have to look at it on a facts and circumstances, what the specific requirement is, maybe the federal government should take more of a role, maybe they should take less of a role.

So I think it is going to depend on the specific circumstances. I think there has to be coordination so the government has all the information it needs to make an informed decision. And then from

that, they need to make a decision and then move forward. But right now, the requirements have been uncertain. In most of the cases, it is not clear what the government's role ultimately is going to be, and this may be another case.

Ms. JACKSON LEE. That is an important point.

My last question is, what should be the federal government's top priority in securing the passenger rail system?

Ms. BERRICK. I think the top priority is the risk assessments. Make sure that what DHS is doing, what TSA is doing, what DOT is doing is consistent, and that can be consistently applied across rail and across other transportation modes so that TSA can make informed decisions.

Stemming from that, I think another important element is the strategy based on these risk assessments. Identify a clear strategy, a clear roadmap on what they want the end-game to be for passenger rail and how to get there, so that they can measure their progress and be held accountable for doing it.

And then I think a third area, it gets back to coordination, since this is a shared responsibility, there needs to be a framework in place. At passenger rail, I think they do have a framework in place. They just need to implement that, and moving forward, to make sure that they can implement these requirements and work with stakeholders to make them successful.

Ms. JACKSON LEE. Let me thank you very much. Thank you for your testimony.

As I indicated earlier, members have 5 days to submit their statements into the record, and as well, we will look forward to any information that the witnesses would desire to put in.

I thank the witnesses for their valuable testimony, and the members for their questions. I have already said the members of the subcommittee may have additional questions for the witnesses, as I will have, and we will ask you to respond expeditiously in writing to those questions.

Hearing no further business, the subcommittee stands adjourned.

[Whereupon, at 12:23 p.m., the subcommittee was adjourned.]

APPENDIX A: THE RAILROAD INDUSTRY'S SAFETY RECORD

The railroad industry's overall safety record is very positive, and most safety trends are moving in the right direction. While not even a single death or injury is acceptable, progress is continually being made in the effort to improve railroad safety. This improvement is demonstrated by an analysis of the Federal Railroad Administration's (FRA) database of railroad reports of accidents and incidents that have occurred over the nearly three decades from 1978 through 2005. (The low point of rail safety in recent decades was 1978, and 2005 is the last complete year for which nearly final data are available.) Between 1978 and 2005, the total number of rail-related accidents and incidents has fallen from 90,653 to 13,969, an all-time low representing a decline of 85 percent. Between 1978 and 2005, total rail-related fatalities have declined from 1,646 to 888, the second-lowest number on record and a reduction of 46 percent. From 1978 to 2005, total employee cases (fatal and nonfatal) have dropped from 65,193 to 5,643, the record low; this represents a decline of 91 percent. In the same period, total employee deaths have fallen from 122 in 1978 to 25 in 2005, a decrease of 80 percent.

Contributing to this generally improving safety record has been a 71 percent decline in train accidents since 1978 (a total of 3,225 train accidents in 2005, compared to 10,991 in 1978), even though rail traffic has increased. (Total train-miles were up by 5 percent from 1978 to 2005.) In addition, the year 2005 saw only 37 train accidents out of the 3,225 reported in which a hazardous material was released, with a total of only 50 hazardous material cars releasing some amount of product, despite about 1.7 million movements of hazardous materials by rail.

In other words, over the last approximately three decades, the number and rate of train accidents, total deaths arising from rail operations, employee fatalities and injuries, and hazardous materials releases all have fallen dramatically. In most categories, these improvements have been most rapid in the 1980s, and tapered off in the late 1990s. Causes of the improvements have included a much more profitable economic climate for freight railroads following deregulation in 1980 under the Staggers Act (which led to substantially greater investment in plant and equipment), enhanced safety awareness and safety program implementation on the part of railroads and their employees, and FRA's safety monitoring and standard setting (most of FRA's safety rules were issued during this period). In addition, rail remains an extremely safe mode of transportation for passengers. Since 1978, more than 10.7 billion passengers have traveled by rail, based on reports filed with FRA each month. The number of rail passengers has steadily increased over the years, and since 2000 has averaged more than 500 million per year. Twelve rail passengers were killed in train collisions and derailments in 2005, including ten that died in the Glendale, California tragedy. On a passenger-mile basis, with an average about 15.5 billion passenger-miles per year since the year 2000, rail travel is about as safe as scheduled airlines and intercity bus transportation and is far safer than private motor vehicle travel. Rail passenger accidents—while always to be avoided—have a very high passenger survival rate.

As indicated previously, not all of the major safety indicators are positive. Grade crossing and rail trespasser incidents continue to cause a large proportion of the deaths associated with railroading. Grade crossing and rail trespassing deaths accounted for 93 percent of the 888 total rail-related deaths in 2005. In recent years, rail trespasser deaths have replaced grade crossing fatalities as the largest category of rail-related deaths. In 2005, 467 persons died while on railroad property without authorization, and 357 persons lost their lives in grade crossing accidents. Further, significant train accidents continue to occur, and the train accident rate per million train-miles has not declined at an acceptable pace in recent years. It actually rose slightly in 2003 and 2004 (to 4.05 and 4.38, respectively) compared to that in 2002 (3.76), although it dropped in 2005 (to 4.08). As stated in the main testimony, the

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causes of train accidents are generally grouped into five categories: human factors; track and structures; equipment; signal and train control; and miscellaneous. The great majority of train accidents are caused by human factors and track. In recent years, most of the serious events involving train collisions or derailments resulting in release of hazardous material, or harm to rail passengers, have resulted from human factor or track causes. Accordingly, the National Rail Safety Action Plan makes human factors and track the major target areas for improving the train accident rate.

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

• In response to various rail safety concerns, including some recent major train accidents, such as Graniteville, SC, and the lack of substantial improvement in the train accident rate in recent years, *Secretary of Transportation Norman Mineta launched the National Rail Safety Action Plan in May 2005. FRA has made real and substantial progress* in bringing its aggressive and ambitious National Rail Safety Action Plan to fruition.

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

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

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

- Developed an automated track inspection system that uses high-resolution video to detect cracks in joint bars. Testing showed that the high-resolution video system detected cracks that were missed by the traditional visual inspections. The system, which can be deployed on a hi-rail vehicle to detect cracks in joint bars without having to stop the vehicle, was demonstrated to the railroads during summer and fall of 2006.

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- Issued a final rule requiring track owners to develop and implement a procedure for the detailed inspection of rail joints in continuous welded rail track.
- Contracted for the construction of two automated track inspection vehicles, to be delivered in February and March, 2007, which will bring FRA's fleet to five, allowing FRA to inspect nearly 100,000 track-miles each year, which triples the present capacity. This additional capability will permit FRA to inspect more miles of major hazardous material (hazmat) and passenger routes, while also having the ability to follow up more quickly on routes where safety performance is substandard.

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

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

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

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

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

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