S. Hrg. 109–310

NOMINATION OF EDMUND S. "KIP" HAWLEY

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF EDMUND S. "KIP" HAWLEY TO BE ASSISTANT SECRETARY OF HOMELAND SECURITY FOR THE TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

JULY 18, 2005

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NOMINATION OF EDMUND S. "KIP" HAWLEY

MONDAY, JULY 18, 2005

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:50 p.m., in room 562, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senator Collins.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

The Committee will now consider the nomination of Edmund S. "Kip" Hawley to be the Assistant Secretary of Homeland Security for the Transportation Security Administration. This is a vitally important position, made all the more important by the changes he would have to oversee, if confirmed, in connection with Secretary Chertoff's Second Stage Review of the Department.

TSA was established by the Aviation and Transportation Security Act of 2001. TSA was handed a great challenge under extraordinary circumstances.

Despite progress, however, troubling vulnerabilities persist in our aviation and other transportation systems. The integrity of airport workers with access to sensitive areas is still not assured, and general aviation, which comprises approximately 77 percent of all flights into the United States, remains largely unprotected.

In addition, efforts to secure our other modes of transportation appear to be lagging. Our Nation's seaports may well present our single greatest terrorist vulnerability, and, as the attacks last year in Madrid and just 2 weeks ago in London demonstrated, railroads and other commuter transportation systems are prominent targets. Looming over the many specific deficiencies is the lack of a comprehensive national transportation security strategy.

On top of these remaining challenges come the recommendations of the Department's Second Stage Review. The overall thrust of the recommendations to create a more unified and streamlined Department with improved information sharing and coordinated strategic planning is commendable. TSA will be an integral part of this restructuring.

In addition to resuming operational responsibility for the Federal Air Marshals' Service, TSA would be given the responsibility to harden our transportation infrastructure in a more aggressive manner.

Mr. Hawley has a strong background to carry out these vital responsibilities. In October 2001, he was appointed by Transportation Secretary Mineta to be senior advisor for the project team that established TSA. He currently serves on the Federal Aviation Administration's Air Traffic Services Committee, and has served on the National Commission on Intermodal Transportation and the Commercial Space Transportation Advisory Committee.

In the private sector, Mr. Hawley has worked as a supply-chain technology consultant, as the CEO at a global trade management company, and as Vice President for Transportation Services at Union Pacific Railroad—clearly an impressive background.

I welcome the nominee to the Committee, and I look forward to his testimony.

I would like to first swear in the witness, as our Committee rules require. Please raise your right hand.

[Witness sworn.]

Chairman COLLINS. Mr. Hawley, I believe that you have family members present with you today, and I would ask that you introduce them to the Committee.

Mr. HAWLEY. Thank you, Chairman Collins. My wife, Janet. My son, Chris. Our older son, Nick, is working in Charlotte, and my sister, Victoria, and her son, Henry, are representing the rest of my family watching on the Internet.

Chairman COLLINS. We are very pleased to welcome you all to the Committee hearing today.

Mr. Hawley has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had his financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee's offices.

Mr. Hawley, I would ask that you proceed with your statement at this time.

TESTIMONY OF EDMUND S. "KIP" HAWLEY,[1] TO BE ASSISTANT SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HAWLEY. Thank you, Chairman Collins and distinguished Members of the Committee.

I'm very honored to be here today and thank the Committee for your prompt consideration of my nomination. I am also very grateful to President Bush for nominating me to this position.

In the interest of time, I have submitted testimony, and I'd like to highlight a few areas where Secretary Chertoff's Second Stage Review that was announced last week would apply to TSA.

And first off, it's in the area of direction. I think the Secretary has made very clear direction for the Department that applies to TSA in terms of making its operations an investment related to risk and use that in a disciplined way to help set our priorities.

It also allows the many great people at TSA a chance to think anew about the mission of the agency and how we accomplish it, and I look forward to working with the many people at TSA who

[1] The prepared statement of Mr. Hawley appears in the Appendix on page 10.

have these ideas and are very interested to get those out front. And I am very mindful of the fact that TSA has outstanding people from the current leadership, as well as all the way up and down the chain.

And I just highlight one area where that's an example, and that is I've had the opportunity to talk to employees at all levels, and screeners have told me that the injury situation that exists at TSA is not only bad from an injury perspective, but applies to the security product as well, and that it takes people away from active duty and puts pressure on other employers, which does make it more difficult for the others to do their work.

So this screener was indicating that by driving down the injuries that happen to TSA that can elevate the level of security. So it's that kind of thinking that I'd like to think at all levels can bring themselves to the front and that based on Secretary Chertoff's Second Stage Review, that gives us a new framework and architecture to do that.

And in conclusion, I'd say that I know a lot of words have been used, and I'm going to be using only words today, and that Secretary Chertoff and the Committee and the Congress are looking for results, and, if confirmed, that would be my priority.

And so I thank you, Madam Chairman.

Chairman COLLINS. Thank you very much for your statement.

I want to start my questioning with the standard questions that we ask of all nominees.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. HAWLEY. No.

Chairman COLLINS. Second, do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office?

Mr. HAWLEY. No.

Chairman COLLINS. Third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. HAWLEY. Yes.

Chairman COLLINS. Thank you.

Mr. Hawley, I want to bring up first an issue that has been the subject of a great deal of press lately and has generated a great deal of concern in my mind as well as in general on Capitol Hill, and it has to do with the contract that TSA awarded to NCS Pearson to help set up the Federal Screening Workforce.

Now, first, let me say that I recognize that the deployment of the TSA workforce at airports was a considerable accomplishment. Congress set a very aggressive deadline. TSA met that challenge, and, starting from nothing, and was able to recruit 129,000 individuals and deploy a screening workforce at 429 airports across the country in 40 weeks.

I am concerned that in the race to the finish line, corners clearly were cut. TSA hired the Defense Contract Audit Agency (DCAA) to audit the contract with NCS Pearson. At the time of the award of the contract, its estimated value was $103.4 million. At the final

settlement, the contractor received $741 million, an absolutely astronomical increase.

I don't want to jump to conclusions about that overall figure, but DCAA clearly could not verify the reasonableness of the costs, nor the payments to the contractor from TSA, and reported many cases of what appeared to be highly questionable expenditures.

I am concerned that in our rush to address security needs that the appropriate checks and balances are not always in place to ensure that the taxpayers' investment is protected. So I have two questions for you as a starting point.

First, since you were at the Department part of the time, did you play any role in the NCS Pearson contract and screener hiring?

Mr. HAWLEY. Sure. The short answer is no. We looked at the requirements put in place for the Department of Transportation by ATSA, and it was clearly evident that in order to reach the goals by the timelines that a lot of people had to be hired in a lot of places very quickly. My role at the beginning was trying to figure out the sequencing of the various tasks and how to line them up so that they would all come together at the right time and meet the deadlines with the proper operational integrity if you will.

For the hiring of the screeners, our first priority was to get the management team in place so that the Federal security directors, i.e., the lead TSA person at the airports were really the first hiring priority. But right behind that, when those people were in place, the idea was to get started right away with the hiring process for the vast majority of the people.

So I worked with what we then called go teams to look at those issues and to schedule them, but at the point at which they were turned into actual go on the street contract bids that went over to the acquisitions area, and I never saw it again.

So I'm familiar with the idea that we needed to hire a lot of people very quickly and that a contract was going out that subsequently was NCS Pearson. But I was not involved in the actual contract in any way.

However, I'll wait for your second question. Yes, ma'am.

Chairman COLLINS. I think you have anticipated it, which is what will you do to ensure better contract management by TSA?

Mr. HAWLEY. Yes, I think that a lot of the leadership of TSA since that time have got a great head start on it, and, as Rick Skinner mentioned in the previous hearing, TSA has brought up now over 70 acquisition officers and has really got a disciplined program for program managers, certified program managers, investment review boards, and executive leadership review. And from last week's Second Stage Review announcements from Secretary Chertoff, it was crystal clear certainly to me and I think anybody watching the very high priority he puts on acquisition excellence and stewardship of public trust.

So certainly from the leadership team at DHS, this is a critical priority, and it certainly, if confirmed, would be one for me as well.

Chairman COLLINS. Thank you. In your written responses to the Committee's questions, you noted the need to allocate resources to the greatest areas of risk within TSA's budget, and that is an issue and a theme the Secretary has also emphasized.

Do you believe that we have over-invested in aviation security at the expense of other modes of transportation?

Mr. HAWLEY. We certainly have invested a great deal in aviation. I think that the experience following the London attacks shows the excellent work that has been done around the country, not dictated by the Federal Government, but undertaken by private sector, State and local communities, specifically transit agencies, in working originally with Department of Transportation and the Federal Transit Administration to do risk assessments and start doing contingency planning that over the last 3 years, again working with DHS and TSA, that these communities across the country did, in fact, have those plans in place, and were, in fact, ready for a pretty quick run up when word came of the London bombings.

And the Secretary talked a lot in the Second Stage Review about working in partnership, and I think the London experience indicates that the Secretary did not slap a Federal requirement immediately. I think his assessment was that the local communities immediately jumped to a heightened level that was, in fact, effective.

And I note that his—when he raised the alert level from yellow to orange was specific to the transit sector. And one of the byproducts from that, which maybe hasn't been noticed a lot, but I think is highly significant, is that by not making everybody rise to the orange level, that then meant in local communities and with the Federal and State agencies there were resources that became available to offer to transit. So the transit not only itself went up to its orange level, but other areas had resources that they were then able to supplement transit as needed.

And I'm told that some of the feedback from that experience that that was a very positive thing.

Chairman COLLINS. That is a good segue into my next question for you, which concerns the Secretary's controversial comments last week about the value and responsibility of aviation security versus mass transit. As you weigh all of the responsibilities under you, how are you going to allocate resources? What do you see as our greatest risks?

Mr. HAWLEY. Well, I look at the job of TSA reflecting what the Secretary said last week that there are really three things. One is to make sure that the transportation systems in the United States are not used to make a catastrophic or an attack with catastrophic consequences against the United States, and the second would be to make sure that no matter what happens in terms of terrorist attack, the transportation network of the United States continues to function and to do the above two without disrupting unduly the American way of life in terms of privacy and efficiency and the economy.

That would be kind of the guiding light and that the Secretary announced also with the threat matrix approach at the Department that they're working on, and, if confirmed, I will work with the TSA on the ones that are within the transportation sector.

Chairman COLLINS. How high a priority is it for you to get the TWIC card, the Transportation Workers Identification Credential, in place? I have to tell you in the hopes of biasing your answer that I have been very frustrated about the repeated delays in implementing a project that makes all the sense of the world and that

is not blocked by technology. I mean there are some issues where we haven't proceeded because the technology hasn't caught up with the concept.

In this case, the technology is there, but the will to get it done seems to have been absent from the Department.

Mr. HAWLEY. Very high priority that whole area, and I think the Secretary illuminated in the 2SR his thinking in terms of using technology across the whole Department to arrive at a solution in one area that would apply to others and I think the U.S.–VISIT experience of technology and the fact that U.S.–VISIT is within the Department and has some capability with fingerprints. But when you look at secure flight and the registered traveler, and the TWIC card, and HAZMAT driver's licenses, all of those things have a component of using technology information to assure identity and assess risk. And that if the Department is able to build a foundation that respects privacy and is recognized broadly by the public that what DHS is doing in this area is respectful of privacy, that then the solutions that maybe are in one area you could use the system gains there to solve the other problems. And that I think, if confirmed, from my perspective at TSA, being able to sort the passengers, if you will, with some estimate of risk, to put more focus on the greater risk passengers and less on those that do not pose a risk that helps across the board. It helps with budget. It helps with security, and certainly the TWIC card is an essential element of that issue.

Chairman COLLINS. In March of this year, the GAO reported that, "TSA has recognized that Secure Flight has the inherent potential to adversely affect the privacy rights of the traveling public because of the use of passenger data and has begun to take steps to minimize potential impacts on passengers and to protect passenger rights during the testing phase. However, TSA has not yet clearly defined the privacy impacts of Secure Flight in an operational environment or all of the actions TSA plans to take to mitigate potential impacts."

Given that TSA's Secure Flight program intends to match personal identification information collected by air carriers against government watch lists, what steps do you plan to ensure that privacy concerns are addressed?

Mr. HAWLEY. I think that's the first gate that you have to pass through really before any others is to make sure that the privacy aspects of dealing with data about passengers and citizens at large that the privacy protections are in place because I think it's obviously demonstrated that if there is a problem in that area, it will come out at some point, whether at the beginning or right when you're trying to implement a program. So you have to have it properly built—the foundation built on privacy before working out the rest of the problem.

So I think my approach to it is don't talk to me about how we're going to do it until we know that we have the rules set and a good comfort level that the privacy, legitimate privacy rights are protected.

Chairman COLLINS. Finally, my office has received complaints from travelers who have faced very severe penalties, financial penalties, for inadvertently carrying prohibited items to a screening

checkpoint. Now, we all understand the importance of the screening process. But in some cases, my constituents have been faced with fines totaling thousands of dollars for carrying something that they clearly shouldn't have. It may have been a toy. It may have been some other prohibited item, but it was caught. It was clear that they didn't intend to do so.

That concerns me because we really need to have the public's support for the screening process for it to be effective. The public has been willing to put up with considerable inconvenience and long lines, but if there are very heavy fines imposed for behavior that is not intentional and that caused no harm other than an extensive period of questioning, I wonder if we are striking the right balance. Do you have any response to that?

Mr. HAWLEY. Yes, I think the commonsense security is really the way to look at it, and that, if confirmed, it would be a very high and immediate priority to look at the security regimes as respect what happens at the checkpoints and give that a whole fresh look.

Clearly, the object of the drill is to find terrorists or threats to aviation and to do so without unduly hassling the rest of the American public. So I understand and respect the point that you have made and will go forward, if confirmed, with that in mind.

Chairman COLLINS. Thank you. I look forward to talking with you after you are confirmed, which I am confident you will be, about some of the other issues. I really commend Secretary Chertoff for suspending the 30-minute rule of in and out of Washington. That has made him a very popular individual with frequent travelers. But there are many other concerns that have come up repeatedly about the screening process, and I know the men and women who are on the front lines as screeners are doing their best, and they are doing a great job. But they are following rules that at times don't make a lot of sense.

We also need to do a lot more work on the watch list to make sure that it is a consolidated, reliable list with as high quality information as possible. All of us have had constituents who happen to have similar names or identical names to people on the list who have found it extremely difficult to fly. We have a lot of work to be done yet.

Mr. HAWLEY. Yes, ma'am.

Chairman COLLINS. Mr. Hawley, I very much appreciate your appearing before the Committee today and your willingness to leave the private sector to come back into the public sector this time as a presidential appointee. And we appreciate the sacrifice of your family as well.

Without objection, the record will be kept open until 10 a.m. tomorrow morning for the submission of any additional written questions, statements, or materials for the record.

Again, thank you very much for being here today. I am very pleased to lend my support to your nomination, and I hope we can get you approved and in place as soon as possible.

Mr. HAWLEY. Thank you, Chairman Collins.

Chairman COLLINS. This hearing is now adjourned.

[Whereupon, at 3:16 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Chairman Collins. Mr. Hawley, I too welcome you and your family to the Committee. Your family should be proud that you are willing to serve your country to protect American lives, and I thank them in advance for their sacrifice.

Mr. Hawley, you led the Department of Transportation team that established TSA in 2001 and 2002, and I know you will bring this experience into play as head of the agency.

I enjoyed meeting with you last week and as I mentioned, I have four specific concerns to raise with you today. The first is ensuring the privacy and civil liberties of travelers. TSA has been criticized by privacy advocates and the Government Accountability Office over a lack of transparency regarding the use of private contractors and commercial data in Secure Flight.

The second issue is employee rights. Currently, TSA screeners do not have the same labor and whistleblower rights as other employees at DHS. I support granting full whistleblower rights to TSA employees, and I hope you will agree with me.

My third concern is TSA's contracting practices. I recognize that many of the reports of contractor waste date back to 2002 and 2003 when the agency was being stood up. However, I am deeply troubled that TSA may be allowing contractors to have too much control over contracts on which they are bidding, thus creating a conflict of interest. You have stated that TSA is seeking to increase staffing levels for contract oversight, and I urge you to fill these positions with Federal employees and not allow contractors to over see other contractors.

Lastly, I would like to point out that my home State of Hawaii is 2,500 miles from the U.S. mainland. Hawaii is uniquely dependent on the air and sea for travel and commerce. Our airports have continually been short passenger and baggage screeners and are still awaiting the funding to install in-line Electronic Detection System (EDS) equipment. Currently, the EDS machines sit in already crowded lobbies creating congestion and necessitating the employment of more screeners to operate the system.

I ask that you address these issues. Moreover, I ask you to remember that accountability and transparency are essential keys to successful administration. I look forward to working with you.

Thank you, Madam Chairman.

To Be Given Monday, July 18, 2005, 2:00P
Dirksen Senate Office Building, Room 562

The Testimony of
Kip Hawley
Nominee to be Assistant Secretary of Homeland Security (Transportation Security Administration), Department of Homeland Security

OPENING STATEMENT OF KIP HAWLEY BEFORE THE UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Chairman Collins, Senator Lieberman, and distinguished Members of the Committee, I am honored to appear before you today. I am grateful to President Bush for nominating me to serve as Assistant Secretary of Homeland Security for the Transportation Security Administration (TSA).

I believe the Committee is familiar with my professional background from my written submissions, visits with Members of this Committee, my staff interview, and recent testimony before the Commerce Committee. In view of the interest expressed by Members and staff of this Committee in the role and focus of TSA regarding its intermodal mission, I would like to highlight my background in that regard.

I have spent the last thirteen years engaged in the issues, operations, and technology of intermodal transportation. My focus has been on the optimization of intermodal transportation and supply chain networks.

In 1992, I had the honor of serving on the National Commission on Intermodal Transportation, having been appointed by President Bush. The Commission was created by Congress and was bi-partisan in nature, spirit, and result. I believe that same approach is appropriate as we work together to tackle the issue of securing the Nation's transportation network.

My day job was at Union Pacific (UP) Railroad where I had responsibility for Transportation Services which included the network center and intermodal operations. At UP, I subsequently served in a reengineering capacity that sought to improve the network performance based on customers' desire for seamless, reliable end-to-end transportation across all modes and to their partners in the supply chain.

For three years, starting in 1995, I served as CEO of Skyway, a leading supply chain services company, whose primary business was delivering solutions to high tech customers that combined information, technology, and transportation to achieve improved supply chain performance – across all modes of transportation.

Since 1998, I have continued to work on technology solutions to supply chain network problems, again with the perspective that overall network performance depends on the smooth integration of transportation systems in all modes.

It was from that business that I came, after September 11, 2001, to assist in the start-up of TSA.

Three years later, I have had the chance to take a fresh look at TSA. Secretary Chertoff has just released his vision for the Department in his Second Stage Review. I agree with that vision and, if confirmed, will seek to align TSA's priorities and resources to that vision. TSA has tremendous talent and I believe that by using a team approach and effective management systems, TSA can make continued progress in providing well-thought-out and efficiently implemented security for the U.S. transportation system.

The recent attacks in London, as well as the lessons learned from Madrid, demonstrate the critical nature of coordinated security planning and exceptional information sharing. These elements are the foundation on which TSA can accomplish its preparedness mission every day, as well as manage incidents as they arise.

I believe that my previous experience in government and in the private sector – mostly working on the nexus between transportation and technology – prepares me to understand and act on the input that would come from within and outside DHS/TSA. I intend to take a fully collaborative approach and will capitalize on the experience, expertise and knowledge of those who have come before me.

I believe that TSA, in addition to having a critical National mission, is a special place. It is made up of highly-skilled and highly-motivated people, every one of whom stepped up to serve the country in the aftermath of 9/11. Should the Senate confirm me, it would be an honor to join them in service to the Department and to the Nation.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)
(a) Edmund Summers Hawley nickname: Kip

2. **Position to which nominated:**
(a) Assistant Secretary of Homeland Security

3. **Date of nomination:**
May 19, 2005

4. **Address:** (List current place of residence and office addresses.)

5. **Date and place of birth:**
(a) November 10, 1953
(b) Waltham, MA

6. **Marital status:** (Include maiden name of wife or husband's name.)
(a) Married to Janet Isak Hawley, Maiden name: Janet Victoria Isak

7. **Names and ages of children:**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
- University of Virginia Law School, J.D. (May, 1980)
8/76-5/77, 8/78-5/79)
- Harvard Law School, Third Year Special Student
8/79-5/80
- Brown University, A.B., Political Science (June, 1976)
8/72-6/76
- Phillips Exeter Academy, Diploma (June 1971)
9/68-12/71

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)
(a) Please see Attachment.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.
(a) Commercial Space Transportation Advisory Committee, U.S. Department of Transportation, 1984-86
(b) Citizens Democracy Corps, Volunteer Advisor
(c) National Commission on Intermodal Transportation, 1992-4
(d) Senior Advisor to the Secretary, U.S. Department of Transportation, 2001-2002
(e) Air Traffic Services Committee, Federal Aviation Administration, 2002-5

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner,

proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

(a) Union Pacific Corporation, Vice President-Governmental Affairs
(b) Citizens Democracy Corps, Volunteer Advisor
(c) American Red Cross, Volunteer Advisor
(d) Skyway, Inc., President & C.E.O.
(e) Salvation Army – Omaha,NE, Board Member
(f) Juvenile Diabetes Research Foundation, San Francisco, CA Chapter, Board Member
(g) Casbah, Inc., Board Member
(h) Arzoon, Inc., Executive Vice President
(i) Trovatek, Inc., President

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

(a) Salvation Army – Omaha,NE, Board Member
(b) Juvenile Diabetes Research Foundation, San Francisco, CA Chapter, Board Member
(c) Citizens Democracy Corps, Volunteer Advisor
(d) American Red Cross, Volunteer Advisor
(e) Massachusetts Bar Association, Inactive Member

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.
1. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
1. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.
1. None.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

(a) Transportation Security Administration, Honor Award, 2002
(b) U.S. Department of Transportation, Exceptional Public Service Award, 2002

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

(a) None.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

(a) Attached.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?
1. Please see below.

(b) What do you believe in your background or employment experience affirmatively qualifies you for

this particular appointment?

1. I participated in the stand-up of the TSA in 2001-2002 and understand and support the security and management strategies on which it was built. I am also familiar with many of the issues, stake-holders, and people who play a role in the TSA's mission and am prepared to add value to the TSA and DHS upon confirmation.
2. Because of the experience that I have had in my private sector career, I am comfortable in a leadership role and will be able to engage immediately with the TSA leadership team and its employees, customers, and stake-holders.
3. Because of the experience I have had in my public sector career, I am familiar with the obligations of government service and understand the importance of working well with others in the Administration, the Congress, the Public, and stake-holders. I am also familiar with the language and mechanics of government operations and some of the significant differences between public and private sector management.
4. My career focus has centered around the intersection of transportation and technology and as a result I have first-person experience in the opportunities and challenges relating to improving performance in challenging real-world operating, budget, regulatory, and market environments. The use of technology in driving improvement in operational performance and reduced costs/cycle times has been a central focus of my professional life for the past thirteen years. I understand that the value of technology can be dramatically increased when combined with energized, focused people working knowledgeably in support of a clear mission.
5. Another area in which I have relevant experience is in the area of organizational change management, both in terms of major process redesign as well as the human factors that go along with change.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

- Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

- No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

- No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

- No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

- Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

- None.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

- None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

- Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

- No.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

- No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

- I was a Director of Casbah, Inc., a software company, that filed for Chapter 11 Bankruptcy Protection. There were no complaints or other action regarding my involvement in the company.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

AFFIDAVIT

I, Edmund S. Hawley, ____ being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

E S Hawley

Subscribed and sworn before me this 7th day of June, 20 05

Melodie B. McDaniel
Notary Public

My Comm. Exps. 5/31, 2008

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

Edmund S. "Kip" Hawley Supplemental Attachment on Employment Record

5/76–8/76	John H. Chafee for Senate Campaign, Press and Research Assistant Providence, RI
5/77-8/78	U.S. Senator John H. Chafee, Legislative Assistant Washington, DC
5/79-8/79	Law Offices of Northcutt Ely, Summer Associate Washington, DC
8/79-5/80	Prof. Lyman Kirkpatrick (Brown Univ.), Teaching/Research Assistant Providence, RI
8/80-1/81	Gaston Snow & Ely Bartlett (Law Firm), Associate Boston, MA
2/81-3/83	U.S. Dept. of Transportation, Office of Governmental Affairs, Executive Director, Deputy Assistant Secretary Washington, DC
3/83-4/85	White House Office of Intergovernmental Affairs Special Assistant to the President, Deputy Assistant to the President Washington, DC
5/85-8/87	Citicorp Mortgage, Inc., VP/Chief of Staff, Mid-Atlantic Region McLean, VA
8/87-12/91	Union Pacific Corporation, VP-External Relations Washington, DC
1/91-12/94	Union Pacific Railroad, VP-Transportation Services, VP-Reengineering Omaha, NE
1/95-10/98	Skyway, Inc. (Supply Chain Management company), President/Chief Executive Officer Watsonville, CA
11/98-11/99	Self-Employed/Investor, worked with technology start-ups including Casbah, Inc. (Intelligent Agent software company), as Board Member Pebble Beach, CA
11/99-10/01	Arzoon, Inc. (Supply Chain software company), Executive Vice President-Corporate Development San Mateo, CA
10/01-5/02	U.S. Department of Transportation, Senior Advisor to the Secretary (Led project team to establish Transportation Security Administration) Washington, DC
5/02-12/03	Arzoon, Inc., Executive Vice President San Mateo, CA
1/04-Present	Self-Employed, worked with technology start-ups

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Edmund S. Hawley to be
Assistant Secretary of Homeland Security

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Assistant Secretary of Homeland Security?

   Answer: I am grateful for the trust and confidence that the President has shown in me by nominating me to serve as the next Assistant Secretary of Homeland Security. I strongly support Secretary Chertoff's efforts to guide the Department through a threat-based, risk-management approach.

   Following 9/11, Department of Transportation (DOT) Secretary Norman Y. Mineta asked me and a handful of private sector executives to help with the creation of the Transportation Security Administration (TSA) with then Deputy Secretary of Transportation, Michael Jackson. I am familiar with the obligations of government service and understand the importance of working well with others in the Administration, the Congress, the public, and stakeholders. I am also familiar with the language and mechanics of government operations and some of the significant differences between public and private sector management.

   I have successfully managed organizational change both in terms of major process redesign as well as the human factors that go along with change. I am comfortable in a leadership role and will be able to engage immediately with the TSA leadership team and its employees, customers, and stakeholders. Accordingly, I believe that I could leverage tools, capabilities, and resources within TSA, within the Department, and with other Departments.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

   Answer: There were no conditions, expressed or implied, attached to my nomination. I have been asked to lead TSA in accordance with law and regulation.

3. What specific background and experience affirmatively qualifies you to be Assistant Secretary of Homeland Security?

   Answer: My career in both the public and private sectors has centered around the intersection of transportation and technology, and, as a result, I have first-person experience in the opportunities and challenges related to improving performance in challenging real-world operating, budget, regulatory, and market environments.

The use of technology in driving improvement in operational performance and reduced costs/cycle times has been a central focus of my professional life for the past 13 years. I understand that the value of technology can be dramatically increased when combined with energized, focused people working knowledgeably in support of a clear mission.

I understand and support the security and management strategies on which TSA was built. I am committed to a full partnership with the many stakeholders in the transportation sector, including state and local governments, private industry, and the American public, all of whom rely heavily on a secure transportation system. I would work closely with Members of Congress to ensure TSA remains focused on preserving our freedoms while going about our important work of protecting the American transportation network.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Assistant Secretary? If so, what are they and to whom have the commitments been made?

   Answer: In accepting the President's nomination for the position of Assistant Secretary of Homeland Security and in coming before you to be confirmed in this important position, I pledge that I will do my utmost to provide for effective security across all modes of transportation, consistent with the values and freedoms that we as Americans cherish. However, I have made no commitments with regard to the specific policies that I would implement as Assistant Secretary, except that in responding to the questions below, I am now affirming support for several specific TSA initiatives, which I would, of course, honor if confirmed by the Senate.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

   Answer: There are no issues that I can currently foresee affecting TSA that will require me to recuse or disqualify myself because of a conflict of interest or the appearance of a conflict of interest. However, should a situation arise that calls this into question, I will immediately consult with the Department's Designated Agency Ethics Official to seek advice and guidance.

II. Role and Responsibilities of Assistant Secretary of Homeland Security

6. What is your view of the role of Assistant Secretary of Homeland Security for the Transportation Security Administration (TSA)?

Answer: The key role of the Assistant Secretary of Homeland Security is to provide leadership in the ongoing effort to protect the U.S. transportation sector against a terrorist attack as well as prepare it for continued operation and recovery in the event of an attack. In addition to providing leadership, it is important that the Assistant Secretary also promote a spirit of partnership with all entities involved in the protection, operation, and use of the transportation sector. If confirmed, I would seek to bring together those with a stake in TSA's mission and, together, line up in a common effort.

7. In your view, what are the major internal and external challenges facing the Department of Homeland Security and TSA? What do you plan to do, specifically, to address these challenges?

   Answer: Homeland Security Secretary Chertoff has initiated a review of DHS policies, programs, and operations in order to ensure that DHS's work is organized around missions, duplication is eliminated, and a risk-based approach is adopted. This review is almost complete. If confirmed as Assistant Secretary of Homeland Security, Transportation Security Administration, I will work closely with the Secretary to complete this review and implement the recommended changes.

8. How do you plan to communicate to TSA staff on efforts to address relevant issues?

   Answer: The Transportation Security Administration (TSA) has robust methods in place for communicating with TSA staff on important matters. Furthermore, as an agency within the Department for Homeland Security (DHS), there are internal communication procedures in place that would allow me, as the Assistant Secretary, to communicate with DHS staff on important matters. I believe the free flow of informal communications is a vital piece of good performance, and from my exposure to the leadership and staff at DHS, I believe there will be robust and productive communications as a part of our daily work. As Assistant Secretary, I will not only capitalize on these important existing communication assets but also seek to encourage improvements in this area.

9. As Assistant Secretary of Homeland Security, you would be the administrator of the Transportation Security Administration (TSA). With 52,615 full-time equivalent employees worldwide including a domestic field organization of over 45,000, management will provide many challenges. How will you approach management of the field organization? How will you ensure effective operations and communications?

   Answer: In both the public and private sectors I have successfully managed and led large organizations. Overall, I plan to provide structure and direction to the management of TSA's organization in pursuit of our shared goal of protecting the American transportation network. TSA has a number of communication vehicles

in place, including: the TSA employee newsletter, the Sentinel, letters to employees from the Administrator, an extensive Intranet and Extranet, broadcast messages to all TSA employees that includes a weekly electronic newsletter, TSA training, TSA Employee Open Houses, Brown Bag Luncheons, and Town Hall meetings. I will continue to use and evaluate these vehicles of communication and explore methods to increase an open environment for communication and coordination for the exchange of real-time information.

Additionally, I will ensure effective operations and communications by providing situational guidance to the large field organization and open access to multilateral communication within the agency. Specifically, I believe that it is important that Federal Security Directors (FSDs) have the flexibility they need to perform their security functions more effectively by having them serve as a direct link between TSA headquarters staff and screeners while at the same time empowering them to have autonomy in communication with the screener workforce. If confirmed, I will continue these efforts to strike the right balance between effective agency-wide management and local FSD authority.

10. TSA has had three administrative heads in less than four years and now you are the fourth to be nominated for this post. Furthermore, TSA has taken direction from two departments since its creation. The agency in many ways is still defining its culture and identity. Do you agree that these leadership changes have posed a challenge to establishing TSA? What will you personally bring as a leader given these circumstances?

Answer: I agree that as the Agency matures, TSA will continue to define its culture and identity within the multiple layers of the homeland security network. TSA was created in an emergency situation and was in a full sprint for over a year to address the requirements of the Aviation and Transportation Security Act (ATSA) and to restore public confidence in the security of America's transportation system. After the ATSA requirements were achieved, TSA had the formidable job of trying to build up the management infrastructure while at the same time integrating into DHS and executing its daily mission.

TSA has properly made use of very highly-skilled people from all walks of life – public sector, private sector, science, academia, the military, and the corporate world. The agency's complex mission and diverse workforce presents an excellent dimension for regular – and expected – improvement.

One of my priorities is to encourage strategic management and core support systems to provide a stable framework for this regular improvement. As I indicated earlier, following 9/11, Department of Transportation (DOT) Secretary Norman Y. Mineta asked me and a handful of private sector executives to help with the creation of the Transportation Security Administration (TSA) with then Deputy Secretary of Transportation, Michael Jackson. I am familiar with the obligations of government service and understand the importance of working well

with others in the Administration, the Congress, the public, and stakeholders. I am also familiar with the language and mechanics of government operations and some of the significant differences between public and private sector management. I also have first-person experience in the opportunities and challenges related to improving performance in challenging real-world operating, budget, regulatory, and market environments. Finally, I understand that the value of technology can be dramatically increased when combined with energized, focused people working knowledgeably in support of a clear mission.

III: Policy Questions

General

11. GAO as well as the DHS IG and others have identified a number of long-term management and organizational challenges TSA faces in sustaining enhanced aviation security that include paying for increased aviation security needs while controlling costs and establishing effective coordination among the many entities involved in aviation security. These challenges are compounded by the return of aviation transportation traffic as passenger loads continue to increase.

    a. How can TSA most effectively deal with the costs of aviation security needs?

    Answer: There are several ways that the Transportation Security Administration (TSA) can effectively control the costs of aviation security needs. These relate to external factors, such as our relationships with stakeholders in the aviation industry, and to TSA internal processes. TSA continually seeks to be a good steward of the taxpayer's money and to assure Congress and the American people that we are effectively and efficiently using the funds entrusted to us.

    Building consensus through effective partnerships with transportation stakeholders, in this case the aviation industry, is a critical element of the process. Security requirements that TSA issues and enforces affect airport operators, the air carriers (passenger and all-cargo), aviation manufacturers, State and local law enforcement, General Aviation pilots, direct and indirect air cargo shippers and freight forwarders, commercial businesses operating at airports serving passengers and air carriers, airline passengers, and employees of airports and air carriers, to name just some of them. As part of our rule making process, TSA must put its proposed security requirements through a rigorous economic analysis, except in emergency situations. The rule making process is an open one that invites substantial comment from the public, including, of course, parties that are directly impacted by the regulations. This assures that any costs imposed on industry or the public have been fully vetted and justified. TSA fully understands that if we make air travel and commerce prohibitively expensive then the terrorists will have won.

As authorized in the Aviation and Transportation Security Act (ATSA), TSA collects a substantial amount of fees imposed by Congress on airline passengers and air carriers. In the President's budget for Fiscal Year 2006, TSA is proposing a passenger aviation security fee increase to allocate the fee burden more equitably among taxpayers, passengers, and the airline industry to reflect the workload imposed on TSA by the direct users of the aviation security system. The fee increase would ensure that the direct beneficiaries of aviation security measures bear near full cost of implementing and maintaining those measures.

Internally, TSA has a rigorous program of internal controls to ensure that appropriated funds are properly spent under the oversight of TSA's Chief Financial Officer. The Agency's financial systems are also audited by the DHS Inspector General, and they have received a clean audit opinion. TSA relies heavily on contractor support for functions that are handled in-house as in many long-established agencies. This allows TSA staff to concentrate on our core functions of providing transportation security. As a result of this reliance on contractor support, TSA is seeking to increase staffing levels for overseeing contracts to ensure accountability, efficiency and effectiveness.

b. What further steps, if any, should be taken to increase coordination among the many entities involved in aviation security?

Answer: Ensuring that our nation's transportation systems are secure must be accomplished through effective partnering between appropriate Federal, state, tribal, local and private industry entities. Although TSA was created in the wake of the September 11 attacks and charged with responsibility for ensuring that all modes of transportation are secured, the Administration has consistently held that that this responsibility must involve the coordination of appropriate Federal, state, tribal, local and private industry partners, many of whom were already in the business of providing security for their particular piece of the transportation puzzle. TSA will continue to coordinate these efforts under the guidance of the Secretary, identifying gaps and working with appropriate partners to ensure that existing security gaps are filled.

12. Senior leadership of the Department of Homeland Security, including Secretary Chertoff and Deputy Secretary Jackson, are currently reviewing the organization structure of DHS and its component agencies, its various programs and the Department's priorities. Some reports indicate that consideration is being given to a proposal to reduce the role of the Transportation Security Administration. One suggestion apparently is that TSA's responsibilities should be limited to employing and supervising airport security screeners. Do you believe TSA's role in homeland security should be limited to aviation security, or more specifically to passenger screening at an airport? If so, who do you believe should be responsible for ensuring there is a comprehensive approach to security across all modes of transportation? Do you believe that any such proposal would require legislative changes?

Answer: The U.S. transportation system is a complex intermodal network that includes people, cargo, and everything necessary to move them. The Transportation Security Administration (TSA) is responsible for protecting the security of this network under the mandate and authority of Congress via several statutes, including:

- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act), Pub. L. 107-56 (Oct. 26, 2001);
- Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597 (Nov. 19, 2001);
- Maritime Transportation Security Act of 2002 (MTSA), Pub. L. 107-295, 116 Stat. 2064 (Nov. 25, 2002)
- Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002)
- Vision 100—Century of Aviation Authorization Act, Pub. L. 108-176, 117 Stat. 2490 (Dec. 12, 2003)
- Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), enacted on December 17, 2004, Pub.lic L.aw No: 108-458 (December 17, 2004)
- Annual Appropriations Acts and Supplemental Appropriations Acts

Since it was stood up after 9/11, the Agency has taken its responsibility to Congress and the American people seriously and has worked diligently to protect the nation's transportation systems to ensure freedom of movement for people and commerce. I am confident that TSA will continue to successfully fulfill this role going forward.

As you are aware, the Secretary is currently analyzing the results of the Second Stage Review and will be finalizing his decisions within the next few weeks. An announcement of the results is expected shortly. If confirmed, I will work closely with the Secretary to implement his vision for the department.

13. Since its inception, TSA has focused on commercial aviation security, and in particular on passenger and baggage screening. Its budget has been heavily weighted toward the costs associated with establishing and maintaining aviation screening operations and has contained relatively little funding for other transportation modes. This priority is apparent in the agency's FY 2006 budget request as well.

    a. Is the level of funding requested for nonaviation activities appropriate and adequate to secure those modes?

Answer: The President's Fiscal Year 2006 Budget reflects the Department of Homeland Security's most critical needs. Since its inception, the Transportation Security Administration (TSA) has focused the majority of its funding and efforts towards what has been considered the largest and most consistent potential threat - attacks on our aviation system. At the same time, TSA has been working to improve security in other modes of transportation. The Nation's transportation system is vast and complex, but only in aviation security is the Federal role direct and pre-eminent. For that reason, TSA and the Department of Homeland Security (DHS) have known that the aviation model of security would not work as well for securing other modes of transportation. Thus, TSA continues to work with State, tribal, local, regional and private partners to help secure our transportation system. These efforts span the spectrum of security, from intelligence and information sharing to awareness through prevention, response, and recovery from a potential terrorist attack in the United States.

b. As the agency moves forward, what is the appropriate balance between focusing on aviation security and security for other modes of transportation?

Answer: Much of the Transportation Security Administration's (TSA) activities support our mission across the various transportation modes, making them difficult to categorize as exclusively benefiting a single mode. Although the creation of a Federal screener workforce has meant that TSA currently channels a greater proportion of the security costs for aviation compared to other modes, transportation security is a partnership among Federal, state and local governments and the private sectors. Working with our partners, TSA plays an active role throughout the entire transportation system providing research and development (in close conjunction with the Science & Technology Directorate), advisory and direct services, and intermodal coordination. TSA's specific role within each sector will vary from mode to mode. In aviation security, for example, TSA has both an operational and regulatory lead role. In partnership with other component agencies of the Department of Homeland Security (DHS) and in coordination with the Department of Transportation (DOT), state, local and private sector partners, TSA's efforts in non-aviation security over the past three years have focused on greater information sharing between industry and all levels of government, assessing vulnerabilities in non-aviation sectors to develop new security measures and plans, leveraging existing security initiatives, increasing training and public awareness campaigns, and providing greater assistance and funding for non-aviation security activities.

c. How does TSA's role in aviation security differ from its role in other modes? Is this appropriate?

Answer: The Transportation Security Administration's (TSA) role in security for non-aviation modes is largely accomplished through open communication, developing standards and regulations, as required, and providing regulatory oversight. Entities other than TSA implement the actual security measures in compliance with the standards established by TSA. Unlike the aviation mode,

TSA has a limited physical presence on the ground in the non-aviation modes. Instead, TSA relies on other agencies within the Department, such as the United States Coast Guard and the Customs and Border Protection, to provide the on-site presence and enforcement capabilities.

d. What is the appropriate role of the federal government in providing and funding transportation security?

Answer: The responsibility for securing our nation's transportation system is a shared one between Federal, State, and local governments, and private industry stakeholders, and system users. Both public and private stakeholder investment in security is both appropriate and expected. Currently, the federal government is providing funding, in the form of security grants, to help ameliorate the cost borne by the private stakeholders. The Transportation Security Administration (TSA) will continue to assist system operators identify their security risks through: (1) security assessments, both government-facilitated and through use of self-assessment tools, (2) compliance efforts, and (3) through cooperative partnerships with industry associations and operators to develop effective and cost-efficient mitigation strategies.

TSA, in support of the Department of Homeland Security's (DHS) Office of State and Local Government Coordination and Preparedness (SLGCP), has provided transportation security subject matter expertise in support of the Urban Area Security Initiative (UASI) and other competitive grant programs SLGCP administers for security in surface modes of transportation, including ports, trucks, busses, rail (freight and passenger), and mass transit. The President's Fiscal Year 2006 budget for the Department would also establish a consolidated Targeted Infrastructure Protection Program (TIPP) which will allow greater flexibility to the Secretary to allocate funds according to the greatest risk so that we may best enhance the ability of the owners and operators of key transit systems and port assets to prevent and respond to transportation security incidents. Since FiscalYear 2002, DHS has awarded close to a billion dollars in grants for these modes, including $315 million in FiscalYear 2005 alone. With certain limitations, some of these grant funds have been used for capital security improvements by the recipients. New resources for public transportation must be weighed against other pressing needs to ensure we are optimizing the use of Federal resources to the highest risks and security needs.

14. TSA has been developing its national transportation system security plan since early 2003, yet no plan has been completed to date. In the Intelligence Reform and Terrorism Prevention Act of 2004, Congress pointedly called for completion of this plan. Deputy Secretary Jackson pledged the plan would be provided in June 2005.

a. When will this plan finally be completed as promised?

Answer: The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires the Department of Homeland Security (DHS) to develop a National Strategy for Transportation Security (NSTS). This document, which will govern Federal transportation security efforts, uses a threat-based, risk-managed approach to transportation security, looking at threat, consequence, vulnerability and likelihood of success by analyzing asset categories across six transportation modes: aviation, freight rail, highway, maritime, pipeline and transit. The NSTS establishes a list of asset categories determined to be at greatest risk. The resulting asset categories and their corresponding security priorities form the basis of each modal plan. The NSTS also discusses the roles and missions of the Federal, State, regional and local authorities, and the private sector in response to an attack that has occurred as well as research and development objectives for the transportation sector.

Though DHS assigned primary responsibility for development of this document to the Transportation Security Administration (TSA), it is being developed jointly with the Department of Transportation (DOT), and with intensive collaboration between several elements of DHS, including the Border and Transportation Security Directorate (BTS), the Information Analysis and Information Protection (IAIP) Directorate, the Coast Guard (USCG) and the Office of State and Local Government Coordination and Preparedness (OSLGCP).

As you note, on April 5, 2005, Deputy Secretary Jackson sent a letter to Congress stating the NSTS will be delayed 2-3 months in order to draw together and refine multiple related activities. NSTS continues to be a top priority at TSA and DHS and TSA has redoubled its efforts to complete this comprehensive document. If confirmed, I will personally review the NSTS and will be in communication with the Congress as to its contents and my own assessment of it. It is now anticipated that the strategy will be submitted in July 2005.

b. How has TSA been setting its spending and strategic priorities in the absence of this plan?

Answer: The nation's transportation system, as you know, is vast and complex, and very few of its assets are owned or controlled by the Federal Government. Only in the area of aviation security is the Federal responsibility truly direct and exclusive. For that reason, right from the very start, TSA and its parent department, DHS, have known that the aviation model would not work as well for securing all modes of transportation. Thus, we have worked with our State, tribal, local, regional and private partners to help secure our transportation system. These efforts span the spectrum of security, from intelligence and information sharing and awareness through prevention, response and recovery to a potential terrorist attack in the United States.

TSA allocates its scarce resources by utilizing a threat-based, risk-management approach to transportation security. In addition, since the creation of TSA, Congress has provided very specific direction as to how funds are to be spent.

TSA is responsible for evaluating risk to the transportation system across a changing array of threats, sharing threat and risk information with transportation stakeholders (public and private), establishing consistent national transportation security standards across all modes, monitoring compliance with those standards by transportation stakeholders and in the event of a transportation security incident, ensuring rapid restoration of service and public confidence. TSA and our partners within DHS, in coordination with DOT, have conducted vulnerability assessments on transportation assets, such as rail and transit, to determine their susceptibility to attack or compromise.

c. Will TSA provide technical assistance to transportation systems to help them develop their own security plans? If so, will TSA also provide funding for systems that do not have the resources to develop plans?

Answer: Many transportation systems have long had security plans in place and in the wake of 9/11 have updated and expanded them to address new emerging threats. TSA, as part of its Corporate Security Review (CSR) program, reviews an organization's security plans and makes recommendations on how to improve them as part of the feedback provided during the review process. As you are aware, TSA is not appropriated funding to provide direct financial assistance to transportation systems to develop their own plans. The Office of State and Local Government Coordination and Preparedness (SLGCP) at DHS oversees all the direct financial assistance programs, grant or otherwise, and acts as a clearinghouse for all state and local funding provided directly by the Federal Government for homeland security needs.

Secure Flight, the No Fly List and Privacy Concerns

15. The capability to identify individuals who pose a threat to aviation security and prohibit them from boarding a commercial aircraft is an aim of our aviation security system. Prescreening has been touted as a key layer in this effort. Yet, three years later, we have still not implemented an effective system to fully check passengers against known and suspected terrorist lists, domestically or internationally. In March 2005, GAO issued its most recent report (GAO-05-356) expressing concerns about TSA's ability to meet its goal of implementation with two air carriers by August.

a. When do you anticipate that Secure Flight will begin operation? When will the system be "certified" by the Under Secretary for Transportation and Border Security as required by P.L.108-176?

Answer: The Transportation Security Administration's (TSA) current plans call for pre-operational testing of Secure Flight to begin by the end of FY05. Under Sec. 4012(a)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L 108-458), amending 49 U.S.C. 44903(j)(2)(F), the certification requirement under P.L 108-176 is no longer operative. In lieu of this requirement, the

Transportation Security Administration (TSA) must implement advanced passenger prescreening within 180 days of completion of required testing. Furthermore, the Government Accountability Office is expected to report to Congress when TSA has satisfied 10 elements relating to Secure Flight.

b. How does the Department intend to implement the requirements of Section 4012(a)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which directs the Department to publish a notice of proposed rulemaking on advance passenger information? When will this be done?

Answer: Secure Flight is the Transportation Security Administration's (TSA) domestic pre-screening program. A decision was made by the Department of Homeland Security to utilize the current functionality contained within Customs and Border Protection's (CBP) Information Technology Infrastructure to pre-screen foreign passengers prior to their departure to the United States.

Current CBP regulations require that airlines send Advance Passenger Information System (APIS) to CBP within 15 minutes after departure. The APIS data is vetted against terrorist watchlists and other law enforcement databases that are resident within the Treasury Enforcement Communication System/Interagency Border Inspection System.

CBP has recognized that the current regulatory language falls short of the requirement to attain APIS in advance of an aircraft's departure. CBP has drafted Notice of Proposed Rule Making (NPRM) language to change the regulatory time requirement and require all carriers to transmit APIS data prior to departure from any location. Additionally, CBP is reviewing regulatory language that will change the definition of departure. Current regulatory language requires APIS to be transmitted with "wheels up" being the standard when the transmission will occur. CBP is exploring writing language that will identify "push back" as the standard for requiring APIS to be transmitted.

16. A number of agencies are involved in designating, compiling, maintaining and operating terrorist-related information for use in the no-fly process to prohibit dangerous individuals from flying. These agencies include the Central Intelligence Agency, the Federal Bureau of Investigations, the Terrorist Screening Center (TSC), U.S. Customs and Border Protection (CBP) and TSA.

a. What role do you think TSA should have in designating, compiling, maintaining and operating the no-fly list?

Answer: Homeland Security Presidential Directive 6 (HSPD-6) directed the creation of the Terrorist Screening Center (TSC) and reengineered the terrorist watch list process. HSPD-6 also outlined the National Counterterrorism Center's (NCTC) responsibility to maintain a current, accessible database of known and suspected terrorists and to provide terrorist identity data to the TSC for screening

purposes. The NCTC now manages that comprehensive database, feeding the TSC's consolidated Terrorist Screening Database (TSDB).

Since its creation on December 1, 2003, TSC has developed and maintained the federal government's TSDB. TSDB receives international terrorist-related identity data from the NCTC, and purely domestic terrorist information from the Federal Bureau of Investigation (FBI). The NCTC receives nominations from U.S. Government agencies, such as the Central Intelligence Agency (CIA) and FBI, for placement on specific federal watchlists. The NCTC then creates records in its terrorist identities database and forwards the originator nomination to the TSC. The TSC then provides data to the Transportation Security Administration (TSA) for use in its No- Fly and Selectee lists. TSA personnel at the TSC provide quality assurance and monitor the transmission of this data.

TSA's role is to provide the watch lists to foreign and domestic air carriers that service U.S. airports. TSA provides the air carriers with guidance on how to handle and operate the lists via Security Directives and Emergency Amendments. TSA's 24X7 watch centers take air carrier reports and coordinate No Fly and Selectee operational issues. Additionally, TSA maintains a list of cleared individuals whose names are similar to those contained in the watch lists. Cleared lists are attached to the No fly and Selectee lists to assist carriers in distinguishing between watch listed and non-watch listed passengers.

TSA will continue to support TSC's HSPD-6 requirements and continue executing its operational implementation of the No-Fly, Selectee and cleared list functions.

b. What should the relationship of the no-fly list be to the consolidated terrorist screening database maintained by the TSC?

Answer: The no-fly list should continue to be a portion of the Terrorist Screening Database (TSDB) maintained by the TSC.

c. Is the plan for implementation of Secure Flight consistent with your vision for TSA's role in this process? Is it consistent with your view of the TSA relationship to the TSC?

Answer: Yes. The Transportation Security Administration (TSA) will continue to work closely with TSC to ensure that accurate watch list information is provided to TSA in a timely fashion.

d. When it comes to ensuring that individuals matching terrorist information are prohibited from boarding inbound flights to the U.S., what are TSA's responsibilities? What are the responsibilities of U.S. Customs and Border Protection?

Answer: The Transportation Security Administration (TSA) has issued a Security Directive and an Emergency Amendment requiring each regulated air carrier to apply the No-Fly list against each person (including cockpit and cabin crewmembers) on inbound aircraft. Should a match occur, the air carrier is directed to prohibit that individual and passengers traveling with that individual from boarding. TSA also enforces compliance and may issue civil penalties in cases of violations.

- CBP requires all inbound aircraft to forward a complete manifest of all parties onboard an aircraft for processing through their Advance Passenger Information System (APIS).

- APIS vets the manifest names against multiple databases, one of which includes the No-Fly list.

- Should a match occur (because an air carrier failed to prohibit an individual on the No-Fly list to board an inbound flight), the CBP's National Targeting Center (NTC) notifies TSA's Transportation Security Operations Center (TSOC).

- TSA reaches out to the air carrier involved, any foreign government involved, if applicable, the agency that nominated the passenger for the No Fly list and any other agency that may have an interest in a given case.

- Once TSA determines the facts of a particular incident, a decision is made as to what action should be taken. Actions may include fighter escort, a diversion of the aircraft, or a denial to enter U.S. airspace.

e. Is the current delineation of operational responsibilities consistent with the Department's vision for the future?

Answer: Yes.

17. A prime tenant of the Privacy Act is government transparency in notifying the public of systems which maintain, use or store personally identifiable information. Additionally, data collected must be used for the purpose(s) for which it is being collected.

a. How does TSA plan to obtain PNR data to implement Secure Flight? Will this be done through promulgating a new rule? When will the rule be published?

Answer: The Transportation Security Administration (TSA) intends to obtain passenger information for the operation of Secure Flight through the issuance of an interim final rule applicable to carriers, as directed by 49 U.S.C. 44903(j)(2)(c)(iv). The interim final rule is under development. TSA will also publish the documents required by the Privacy Act and the E-Government Act

relating to the collection, maintenance, use and dissemination of personal information under the Secure Flight program.

b. Do you agree with the steps TSA has taken thus far to secure PNR data to develop and test Secure Flight?

Answer: Yes. The Transportation Security Administration (TSA) has employed data security controls, in consultation with the TSA Privacy Officer, to protect the data used for Secure Flight testing activities. The procedures and policies that are in place are intended to ensure that no unauthorized access to records occurs and that operational safeguards are firmly in place to prevent system abuses. Information in TSA's record systems is safeguarded in accordance with the Federal Information Security Management Act of 2002 (Pub.L.107-347), which established Government-wide computer security and training standards for all persons associated with the management and operation of Federal computer systems. The systems on which the tests are or have been conducted were assessed by TSA CIO for security risks, and TSA has implemented security policies and plans consistent with statutory, regulatory and internal Department of Homeland Security (DHS) guidance.

TSA, in consultation with the TSA Privacy Officer, has established chain-of-custody procedures for the receipt, handling, safeguarding, and tracking of access to the PNR data, and TSA maintains the data at its secure facility in Annapolis Junction, Maryland. Access to the data is limited to individuals with a need for access in order to conduct testing activities. The information is protected in accordance with rules and policies established by both TSA and DHS for automated systems and for hard copy storage, including password protection and secure file cabinets. Moreover, access is strictly controlled; only TSA employees and contractors with proper security credentials and passwords have permission to use this information to conduct the required tests, on a need-to-know basis. Additionally, a real-time audit function is part of this record system to track who accesses the information resident on electronic systems during testing.

All TSA and assigned contractor staff receive DHS-mandated privacy training on the collection, use and disclosure of personal data. In addition, contractor employees completed training for handling sensitive security information and entered into non-disclosure agreements covering all data provided by the Government for use during the test. Copies of these agreements are maintained by TSA's security office.

Records of transmission of PNR data to TSA contractors are maintained by TSA. TSA's commercial data test contractor also has measures in place to control access and handling of PNR data.

c. Will TSA designate mandatory fields for submission of PNR data? What data will be required?

Answer: Yes – TSA will designate mandatory fields for submission. The interim final rule will delineate these data requirements, including passengers' full name and date of birth, as well as information pertaining to their flight, e.g., flight time, etc.

d. Though PNR data is not standardized, it is used globally. DHS efforts to designate mandatory fields or standardize the data will require international cooperation with industry representatives and foreign governments. If confirmed, how will you work with international representatives to achieve this objective?

Answer: TSA has and continues to coordinate its efforts with CBP, the Department, and other US Government agencies to work with air carriers, the International Civil Aviation Organization (ICAO), the European Union (EU) and foreign governments to develop standardized guidelines for PNR. TSA recently participated with CBP and DOT on a PNR Working Group established by the ICAO Air Transport Committee (ATC) to develop international guidelines to assist States in designing standardized data requirements and procedures for PNR data collection. The Working Group reached consensus on proposed guidelines designed to minimize technical burdens on air carriers and ensure that data is adequately protected from inappropriate use. ICAO endorsed these guidelines and will propose a Recommended Practice to Annex 9 of the Chicago Convention that States conform their PNR data requirements and handling procedures to the guidelines.

18. If confirmed, will you ensure that TSA personnel consult with and cooperate with the TSA Privacy Officer and the DHS Privacy Officer in the design of programs that may impact personal privacy, and in the investigation of possible privacy violations?

    Answer: In March, 2004, TSA established Privacy Principles that every employee is required to follow in the design and development of programs as well as in collecting and using personal information about members of the public for use in those programs. The TSA Privacy Officer is responsible for assuring that employees adhere to these principles and regularly communicates with program offices during the development and implementation of agency programs. In addition, program offices are required to consult with the TSA Privacy Officer on privacy matters affecting agency programs. If confirmed, I would work with TSA's Privacy Officer to ensure the TSA Privacy Principles are followed.

19. TSA is still considering the potential use of commercial data to support operation of Secure Flight. While the use of such data in authenticating identity may hold some promise, there are many concerns regarding individual privacy, data protection and data integrity.

a. What do you believe are the benefits and limitations to using commercial data to help authenticate identity? How do you believe privacy, data protection and/or data integrity should be balanced against security needs?

Answer: At this time, commercial data testing is ongoing. We are examining the potential application of commercial data in domestic passenger prescreening to determine if commercial data can be used to improve the efficacy of watch list comparisons by making passenger information more complete and to see if commercial data can be used to verify whether or not a particular person is the person whom he/she claims to be. No decision has yet been made on whether commercial data will ultimately be used in Secure Flight. Furthermore, TSA will not be using commercial data upon the initial rollout of Secure Flight.

TSA believes that enhancing security while protecting the personal privacy of the public are consistent, complementary goals. To demonstrate its commitment to protecting privacy, TSA (1) limits its collection of personal information to only those data elements it needs in order to conduct the test of Secure Flight; (2) provides notice to the public when the agency intends to collect personal information; (3) limits access to the data by TSA personnel and its contractors; (4) limits the retention period for the data; (5) prohibits the data from being used for any other purpose than that for which it was collected; (6) provides redress for individuals who believe they are being inappropriately selected for secondary screening or are having a difficult time obtaining boarding passes; (7) requires all TSA employees and TSA contractors to complete mandatory privacy training before handling personal information; and (8) includes a built-in auditing mechanism in Secure Flight to detect unauthorized access to personal information stored for the program. TSA believes that these measures will be sufficient to protect individual privacy while allowing the Secure Flight program to operate as a security program for pre-screening passengers.

b. Has TSA completed its tests of the use of commercial data in Secure Flight? If yes, what are the results? If no, what preliminary information can be shared? When will results be shared with Congress?

Answer: Commercial data testing is not yet complete. Throughout the testing, the Transportation Security Administration (TSA) has sought to keep interested committees in Congress and the Government Accountability Office abreast of developments and preliminary findings. TSA will continue to do so in the appropriate settings.

c. Will initial implementation of Secure Flight utilize commercial data in its identity authentication process?

Answer: The initial implementation of Secure Flight will not utilize commercial data.

20. On September 21, 2004, TSA published a notice in the Federal Register that it was establishing a new system of records, known as "Secure Flight Test Records," pursuant to the Privacy Act of 1974. TSA explained that it intended to use the information in the system to test the Secure Flight program. The test would involve comparing information about commercial airline passengers, obtained from domestic air carriers for a given time period, to names in the Terrorist Screening Center's Database. The TSA notice also explained that it would be conducting a separate test to determine if personal information collected by commercial data aggregators could be effective "in identifying passenger information that is incorrect or inaccurate." TSA promised that "testing of these procedures will be governed by strict privacy and data security protections" and that "TSA will not store the commercially available data that would be accessed by commercial data aggregators." However, on June 22, 2005, TSA published an updated notice indicating that testing was taking place in a manner inconsistent with the process disclosed to the public in the September 21, 2004, notice. TSA also added a category of individuals covered by the system to this updated notice.

a. Please explain why the new notices were necessary, including why such updates were not published prior to conducting tests in a manner inconsistent with the September 21, 2004, notice.

Answer: GAO recently advised TSA that commercial data records collected by a TSA contractor should be covered by TSA's system of records. TSA revised its notices accordingly. Records collected by the TSA contractor were used for research purposes only and were not used in whole or in part in making any determination about an identifiable individual.

b. If you are confirmed, what safeguards would you put in place to ensure that programs are executed consistent with public notices?

Answer: The Transportation Security Administration has put procedures in place to ensure that programs are executed consistent with public notices. Prior to making any change in testing or operational procedures, the TSA Privacy Officer and TSA counsel will verify whether a change to TSA's system of records notice and PIA is required.

21. Under the Privacy Act, a contractor that establishes a system of records on behalf of a federal government agency must fully comply with the provisions of the Act, and no system of records can be created by either an agency or an agency's contractor unless the public has first been informed in a Privacy Act notice. In this case, did TSA or its contractor establish a second system of records containing data obtained from commercial aggregators? Please explain.

Answer: GAO recently advised TSA that commercial data records collected by a TSA contractor should be covered by TSA's system of records. TSA revised its notices accordingly. Records collected by the TSA contractor were used for

research purposes only and were not used in whole or in part in making any determination about an identifiable individual.

22. The DHS Chief Privacy Officer has announced that she is launching an investigation into whether TSA violated privacy laws by failing to properly disclose its use of commercial data. Privacy notices constitute the government's promise to the public regarding use of personally identifiable information, and the government has a responsibility to act according to its disclosures. If confirmed, will you cooperate fully with the DHS Chief Privacy Officer as she conducts her investigation into possible violation of privacy laws?

    Answer: TSA has been notified by the DHS Chief Privacy Officer that her office has been asked by the Deputy Secretary to conduct a review of the recent disclosure of TSA's activities with regard to the use of commercial data for the test phase of Secure Flight. The agency, including the TSA Privacy Officer, is fully cooperating with the DHS Privacy Office. It is critical that TSA provide this cooperation in order to ensure that individual privacy is protected as the agency serves the public through its mission of keeping the American people secure in all modes of transportation.

Passenger Screening

23. GAO and the DHS OIG have repeatedly reported that screener performance in detecting threat objects is not adequate. For that reason, in IRTPA Section 4015, Congress required the Assistant Secretary for Homeland Security (TSA) to take such action as may be necessary to improve performance and undertake a human factors study to better understand what problems may be affecting performance. What steps should be taken to improve screener performance?

    Answer: Certainly, the Transportation Security Administration (TSA) should continually strive to provide its screener workforce with the technology, training, and operational procedures they need to effectively carry out their responsibilities for screening passengers and baggage at our Nation's airports. I understand that as new procedures and new technologies are developed, TSA also focuses on understanding the impact of these procedures and technologies on screeners. Indeed, TSA has a program within the agency that specifically focuses on human factors and what can be done to improve performance.

    It is also my understanding that TSA has already performed a series of studies to enhance screener performance. For example, in July 2003, TSA completed a comprehensive Passenger Screener Performance Improvement Study which focused on human factors and utilized the principles of Human Performance Technology. And, in addition to these efforts, TSA has conducted a number of human factors studies to help identify solutions that could be implemented either through training, procedures, or technology design. I understand that the outcome

of these and other studies has led to significant enhancements in the training of screeners. If confirmed, I look forward to learning more about the outcome of these studies and determine what further steps should be taken to improve screener performance.

24. Research and development (R&D) is key to improving aviation security and passenger screening. Have you or are you planning to reprogram any of this year's fiscal year's appropriation for R&D? What progress are you making in developing technologies to improve aviation security and increase screener performance in detection of threat objects?

    Answer: I understand that, to date, the Transportation Security Administration (TSA) has not reprogrammed Fiscal Year 05 funds associated with research and development (R&D) projects supporting development of new technology solutions for passenger and baggage screening, and has no plans for reprogramming these funds. However, I am also told that TSA continues to make progress in this area and has a number of activities underway.

For example, TSA has a number of R&D projects underway to expand both weapons and explosives detection capabilities to increase overall system effectiveness and through automation of threat detection, contribute towards enhancing screener performance. In addition, I understand TSA has conducted operational test and evaluation pilots using explosives detection trace portals and explosives detection document scanners.

25. TSA has yet to release its model for effectively allocating screeners among commercial airports, to include an assessment of the appropriate mix of screening personnel and technology to perform screening operations.

    a. When will TSA share this model with Congress?

    Answer: I am told that the Transportation Security Administration (TSA) has identified the elements within the staffing standard comprising the Screener Allocation Model. And that this model includes the equipment fielded at all airports and associated screener allocations. It is my understanding that a Report to Congress containing the elements of the Screener Allocation Model is being reviewed by the Department and Administration for submittal to Congress.

    b. Based on the results of this modeling, should the current 45,000 cap on screeners be increased or eliminated?

    Answer: It is my understanding that there are a number of factors that can impact the size of the screener workforce, including wait times, detection technology, checkpoint configuration, airline load factors, and schedules.

I also understand that the Transportation Security Administration (TSA) has set out to develop a more robust and dynamic tool to better define aviation security staffing requirements at the Nation's airports. I am told that with the development of the Screening Allocation Model, developed in the summer of 2004, TSA will have an objective measure for screener staffing levels at each airport. I understand that TSA can use the Screening Allocation Model to objectively reapportion the current screener workforce to the congressionally mandated 45,000 FTE screeners.

26. It appears that passenger processing generally works well at Detroit Metropolitan Wayne County Airport, however back-ups still occur at the Smith Terminal. How is TSA dealing with staffing and scheduling at airports, and how will it do so if it is downsized?

Answer: It is my understanding that with the rapid formation of the Transportation Security Administration (TSA), screener requirements were initially based on estimates of screeners performing screening functions under privatized agencies. By mid-2003, revised estimates were based on a demand driven staffing model (GRA). I am told the GRA model, while improving on the original pre-9/11 model, did not provide the flexibility to react to dynamic changes in the transportation industry. Accordingly, as noted above, TSA has set out to develop the Screening Allocation Model as a more robust and dynamic tool to better define aviation security staffing requirements at the Nation's airports. If confirmed, I will undertake further review of this issue.

27. Under ATSA, airports have had the ability to "opt-out" of the federal screener program and utilize private screeners since November 2004.

a. What effect will allowing airports to "opt-out" of the federal screener program have on TSA's ability to maintain uniform standards for passenger and baggage screening and ensure passenger safety?

Answer: I understand that the Aviation and Transportation Security Act (ATSA) requires that the level of screening services and protection provided by the private screening programs at an airport be equal to or greater than the level provided at an airport with Federal screeners. I am told that TSA will continue to set one standard for security for the entire commercial aviation system, whether an airport has Federal screeners or private screeners. And that TSA will ensure that standard is met through TSA security protocols, extensive contract oversight, conducting covert testing, and continuous oversight by Federal Security Directors (FSDs) and their staff in both federal and Screening Partnership Program (SPP) airports.

b. What steps will you take to ensure that TSA's standards for screener hiring, training and proficiency are met by private screener operations?

Answer: I understand that TSA is required by statute to ensure the same or greater level of security is provided by private contract and Federal screeners. I am told that a spectrum of management controls and oversight techniques would be employed to ensure contract screeners are providing at least the same level of security as their Federal counterparts. TSA is implementing performance metrics as part of the contract with the private sector contractors to measure and evaluate performance and ensure security, customer satisfaction and efficiency outcomes. If confirmed, I will examine whether further steps should be undertaken to ensure the TSA standards are met.

c. What is your view of airports' liability and flexibility concerns?

Answer: I understand that liability has been, and continues to be a critical consideration, for private contractors and airport operators that are interested in participating in the Screening Partnership Program (SPP). It is my belief that airport operators who do not perform screening services should not face liability for the screening services provided at their facility, regardless of whether those services are provided by Federal TSA screeners or contract screeners.

I believe that TSA should continue to work closely with airport operators and other key stakeholders with regard to increased flexibility at the airport level over the management of the screener work force. An example of this collaborative effort can already be seen in the greater flexibility and control now afforded to FSDs and private contractors in the areas of screener assessment, hiring, and training.

d. Do you believe airports should be encouraged to retain the TSA federal screener program? If so, what actions will you take to do so? If not, please explain.

Answer: Certainly , the Transportation Security Administration (TSA) should strive for a level playing field between the Screening Partnership Program airports and Federally staffed airports so that each airport can select its preferred system based on its own decision-making criteria. If confirmed, I look forward to further study and understanding of the screener program.

e. Should federal screeners at airports that opt-out be given first right of refusal for jobs with the private contractors?

Answer: I understand that the Transportation Security Administration (TSA) has invested greatly in the current screener workforce and believes strongly in their capabilities and qualifications. And indeed that TSA is requiring that screening

companies provide priority for employment to the Federal screeners who would be displaced. If confirmed, I look forward to further study of this matter.

28. A May 23, 2005 article in Government Executive reported that "Lockheed Martin is under contract by TSA to administer part of the agency's annual recertification program for federal airport screeners. But the company also is part of an industry team that is competing to replace federal screeners with a privatized workforce." The article also quotes TSA spokeswoman Deirdre O'Sullivan stating, "TSA has engaged Lockheed in discussions regarding a potential conflict of interest and we are currently awaiting additional information."

    a. Do you believe a conflict of interest or an apparent conflict of interest exists?

    Answer: I am told that The Transportation Security Administration (TSA) believed there was a potential organizational conflict of interest (OCI) issue. This issue impacts two potential Screener Partnership Program (SPP) teams - one with Lockheed Martin as a prime contractor, another as a subcontractor. Prior to my confirmation I do not have sufficient information to advise on whether a conflict of interest (real or apparent) does in fact exist.

    b. Did the discussion with Lockheed occur and, if so, what were the results?

    Answer: I am told that the Transportation Security Administration (TSA) did discuss this issue with Lockheed Martin. And that consistent with the TSA Acquisition Management System provisions on Organizational Conflicts of Interest, TSA informed Lockheed Martin that it must submit a mitigation plan. I understand that Lockheed Martin submitted such a mitigation plan, which was carefully reviewed and approved by TSA.

29. Passenger identification is not typically reviewed at the airport by TSA employees, but rather by individuals privately contracted by the airlines. who receive little if any training which would allow them to identify a fraudulent ID.

    a. What does TSA do to ensure adequate training is provided?

    Answer: I understand that the Transportation Security Administration (TSA) requires the airlines to conduct a passenger identity check using the procedures outlined in the airlines' TSA approved security program at the initial point of contact with each originating passenger checking baggage and immediately prior to entering the screening checkpoint. Any person who appears to be 18 years of age or older who cannot produce the required identification, or whose name does

not match his/her boarding pass, must be subjected to additional security screening. If confirmed, I will further study this issue.

b. Do you believe TSA needs to take any further action in this area?

Answer: As noted above, if confirmed I will certainly study this matter further to determine whether any further action is needed.

Baggage Screening

30. ATSA mandated the screening of all checked baggage using explosive detection systems by December 31, 2002. Congress subsequently authorized an extension for noncompliant airports until December 31, 2003. Almost two billion dollars have already been obligated for acquisition and installation of explosive detection systems for checked baggage screening at airports but TSA is still not electronically screening 100 percent of all checked baggage and is relying on alternative means.

a. When will TSA be able to screen all checked bags using explosive detection system (EDS) and explosive trace detection (ETD) without resorting to alternative means such as Positive Passenger Bag Match?

Answer: It is my understanding that TSA is currently in compliance with the statutory requirement to screen electronically all checked baggage, utilizing explosive detection systems (EDS) and/or explosive trace detection (ETD). But that, nevertheless, TSA sees a continuing need to use alternative screening procedures (ASPs) on certain rare occasions. I understand that use of ASPs in rare instances provides necessary flexibility without compromising security. And further that, eliminating the use of ASPs would require the acquisition and deployment of duplicative equipment and manpower that would not be used on a continual basis. That said, if confirmed, I look forward to further study of this issue to determine when, if at all, these alternative means must be deployed.

b. Is Positive Passenger Bag Match as effective as screening with EDS and ETD? Does bag match fully prevent a terrorist from placing a bomb on an aircraft if the terrorist is willing to die in the attack? Do you support continued use of Positive Passenger Bag Match?

Answer: I am informed that the Positive Passenger Bag Match (PPBM) remains an approved ASP under statute as well as TSA procedures and constitutes one of many risk mitigation methods that is available to TSA should the need arise. It is my understanding, however, that TSA recognizes the limitations of PPBM; accordingly, PPBM may only be used as a last resort and may not be implemented at an airport without the direct personal approval of TSA's Chief Operating Officer. As Assistant Secretary of Homeland Security, Transportation Security

Administration, I will ensure that TSA continually examines the utility of theASPs and whether they are appropriate given the existing threat environment.

c. Do you believe "mitigation," an ETD technique that is used to speed up baggage screening by swiping as many as 6 pieces of checked luggage at one time with one cloth swab, an effective technique for ensuring that bags placed aboard passenger flights do not contain explosives?

Answer: I have been informed of the details relating to how any particular ASP is carried out, its effectiveness, and under what circumstances each may be utilized and, once confirmed, I would be happy to discuss these further in a closed forum.

31. The continued operation of EDS equipment in many airport lobbies creates safety and security concerns, inconveniences passengers and is extremely labor intensive for the government. The answer at many airports -- according to the 9/11 Commission and many others -- is to quickly move the equipment "in-line" as part of an airport's integrated baggage system. Under Section 4019(d) in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), the Department was required to submit a cost-sharing study that would propose an equitable division of costs for deploying in-line baggage screening equipment, where such deployment would benefit the private sector and the government. At the nine airports where the TSA has issued Letters of Intent (LOIs) to date, TSA has estimated that the move will save the federal government $1.3 billion over seven years; TSA will recover its initial investment in in-line systems at those airports in just over a year; and the number of TSA baggage screeners and supervisors required to screen checked baggage will be reduced by 78 percent from 6,645 to 1,477 (GAO-05-365).

a. When will TSA complete the study required in Section 4019(d)?

Answer: I am informed that the Transportation Security Administration (TSA) continues to work on the cost sharing study and will submit a report as soon as possible.

b. Do you agree that expediting the in-line installation of EDS equipment at key airports, where the study demonstrates it would be effective, should be a top priority for TSA?

Answer: I firmly believe that the Transportation Security Administration (TSA) should continue to devote the necessary resources to ensure there is 100 percent checked baggage screening at all of the nation's commercial airports, and this should continue whether the equipment configuration is stand-alone or in-line

c. If so, do you agree that additional funding and the issuance of new LOIs

(beyond the initial eight) is critical to achieving that goal?

Answer: I believe that letters of Intent (LOIs), as well as Other Transactional Agreements (OTAs), provide an effective mechanism for funding partnering arrangements between the Federal Government and non-Federal entities to support the installation of in-line checked baggage screening solutions.

If confirmed, I will be an active participant, among many in the Administration, in exploring the best ways to maximize checked baggage screening effectiveness and throughput utilizing available resources, including whether it would be appropriate and feasible to award additional LOIs beyond the current eight.

d. Detroit Metropolitan Wayne County Airport has applied for a letter of intent (LOI) for approximately $140 million to pay for the required new "in-line" screening equipment at its two terminals. What is the status of this LOI request?

Answer: I am informed that TSA recognizes that about 45 airports of various sizes have expressed an interest in entering into an LOI with TSA to fund in-line checked baggage screening solutions. And that TSA is currently developing a long-term plan to determine the appropriate level of in-line system integration activities for all airports. If confirmed, I will be happy to review this issue further and provide an update to this Committee.

32. There continue to be reports of theft of personal items, particularly cameras, from checked baggage. Just this past March, the DHS IG released a report (OIG-05-16) which found that thousands of claims of theft had been made in the past two years. Passengers have had some difficulty with claims because according to TSA, the agency and the airlines have been struggling to determine each entity's responsibility in each case. IRTPA requires that DHS facilitate the installation of electronic surveillance equipment in order to deter theft and speed resolution. What has TSA done to speed the installation of this equipment? What other steps has TSA taken to eliminate this problem? What more do you think can be done?

Answer: I believe that TSA should recognize, and believe that it does, that while every industry grapples with the issue of employee theft, TSA has a unique bond of trust with the traveling public, and therefore must set the standard for employee integrity much higher.

In response to the specific recommendations made in the Inspector General's (IG) report, TSA has taken a number of proactive steps to address the issue of baggage theft. For example, TSA is developing a plan to execute a program for the installation of electronic surveillance systems (ESS) to deter and detect incidents of baggage pilferage and to reduce claims arising from such incidents. To accomplish this, TSA is working in partnership with airports to find the most cost effective means to install and maintain current and future ESS systems. . If confirmed, it will be a key priority for me to study this issue further to determine

what additional steps should be undertaken to ensure a high standard of employee integrity.

Air Cargo

33. TSA largely relies on its known shipper program as a means for providing security for cargo security on passenger aircraft.

a. Do you believe the Known Shipper Program provides a significant layer to aviation security?

Answer: I know that the Known Shipper Program is a key component of the Transportation Security Administration's (TSA) layered approach towards managing risk. It is also my understanding that for more than twenty years, the Known Shipper Program has been the effective centerpiece of the federal air cargo security program.

b. What do you think can or should be done to bolster the Known Shipper Program?

Answer: I understand that TSA is continually working to strengthen the layered security approach, including the Known Shipper Program, to enhance security across the air cargo supply chain. For example, one such enhancement includes the development of a centralized, government operated and maintained known shipper database. I am also told that a notice of proposed rulemaking published in the Federal Register in November 2004 proposed to make participation in the TSA known shipper database mandatory for all operators that transport cargo on passenger aircraft. If confirmed, I look forward to learning more about further developments in this area.

c. Where does the development of the Freight Assessment System stand?

Answer: I am told that the Freight Assessment System (FAS) detailed design was completed in April, and the system is in the early stages of development.

d. What do you think can or should be done to bolster TSA's cargo pre-screening program, the Freight Assessment System, to identify high-risk cargo and to ensure that cargo is inspected?

Answer: I understand that once the Known Shipper database is fully implemented and the Freight Assessment System pilot has been completed, the Transportation Security Administration (TSA) will thoroughly evaluate the programs and make assessments in light of other efforts that are part of the layered approach to secure air cargo. At that time, TSA would be in a better position to identify and make

necessary adjustments to bolster its programs. If confirmed, I will certainly study this issue further to learn what further adjustments should be made.

34. How is the information gathered through the Known Shipper Program being coordinated with information gathered through other DHS programs, such as C-TPAT and FAST? Does a shipper that operates by land, air, and sea have to enroll separately in each of the three programs? What steps are being taken to consolidate and cross reference information from all three programs to increase accuracy and avoid unnecessary duplication?

    Answer: I am told that currently, there is no direct link between the TSA Known Shipper Program and Customs and Border Protection's (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) and Free and Secure Trade (FAST) program. However I understand that both TSA and CBP are committed to working closely together to leverage resources. For example, I am told that TSA has contracted with Deloitte Consulting for a study that should be complete by the end of summer. The study will compare and contrast the Known Shipper and C-TPAT programs, define synergies, and recommend areas where we might be able to leverage aspects of one program for the benefit of the other.

35. One of the significant transportation security vulnerabilities recognized by the 9/11 Commission was air cargo on passenger aircraft. In response to this, Congress included Section 4051 in IRTPA, which required DHS create a pilot program by June 15, 2005 for deploying blast resistant containers and similar alternative technologies in the cargo hold of passenger aircraft. Has TSA initiated the pilot program? If confirmed, what will you do to address this vulnerability?

    Answer: I understand that the Transportation Security Administration (TSA) has initiated a Pilot Program to evaluate the use of Hardened Unit Load Devices (HULDs) for the transport of air cargo and baggage on passenger aircraft as required by Public Law 108-458, Section 4051. In addition, I understand that TSA is continuing efforts to design blast resistant cabin and cargo liners, as well as overhead bin mitigation technological solutions. If confirmed, I will work to ensure that TSA continues to pursue testing and deploying technologies that will enhance the security of our nation's transportation system.

36. According to TSA's Air Cargo Strategic Plan, only a small percentage of air cargo on passenger aircraft is inspected for explosives using non-intrusive technology. Do you support expanding this effort?

    Answer: I understand that the Transportation Security Administration (TSA) has taken a threat-based, risk-managed approach to air cargo screening. This approach would help the agency appropriately target screening efforts with the resources available. I am also told that TSA believes that all cargo should be pre-screened for risk, and that 100 percent of cargo that is identified as elevated-risk should be screened using appropriate technology and methods.

I understand that TSA and the Science and Technology Directorate are performing research and development projects to improve and advance technological solutions. If confirmed, I will certainly study this issue further to determine whether this effort needs to be expanded and, if so, how this expansion should occur

General Aviation

37. GAO has noted that DHS has taken limited action thus far to improve general aviation security. FAA has provided some grant money for security at general aviation airports. Section 4012 of IRTPA required TSA establish a process for prescreening general aviation pilots and passengers. When will TSA establish this process? What more do you believe needs to be done to secure the general aviation sector?

Answer: It is my understanding that the ability to vet individuals in the charter aircraft context is dependent on the full implementation of the Secure Flight system. Indeed, the Intelligence Reform and Terrorist Prevention Act (IRTPA) specifically provides that the requirement to vet individuals in the charter aircraft context is not enacted until 90 days after the date on which the Department of Homeland Security (DHS)/Transportation Security Administration (TSA) assumes the performance of the advanced airline passenger pre-screening system.

I am informed that DHS/TSA is continuing to make progress in its efforts to implement Secure Flight and expects to be in compliance with IRTPA's requirement to implement that program within 180 days of completion of effectiveness testing. I believe that once sufficient progress is made in implementing Secure Flight for airline passengers, TSA should, of course, focus additional attention upon meeting IRTPA's requirements to implement a system for charter and lease vetting.

Research and Development

38. Several local transportation agencies and national groups have indicated a strong need for research and development of technologies that can detect chemical, biological and other attacks on transportation systems. They have also called for technologies that can help systems respond quickly to an attack to ensure minimal impact and quick restoration of service. These agencies and other actors also have indicated a need for a federal clearinghouse to help guide local decision-making on technology purchases. (See Mass Transit: Federal Government Could Help Transit Agencies Address Security Challenges, GAO-03-263)

a. What are the Department's plans to carry out research, development and deployment of detection technologies which could be utilized by transportation systems?

Answer: Currently, the development and implementation of effective and efficient counter-measures to biological, chemical and explosive threats should continue to be an area of emphasis for the Department. I understand that within the Department, the Science and Technology (S&T) Directorate has the lead in developing effective countermeasures for biological, chemical, radiological/nuclear, and explosives threat agents as well as providing support to the Department's organizational elements. I understand that several technologies have already been developed and deployed and, if confirmed, I look forward to learning more about these efforts.

b. Will TSA work with the Science and Technology (S&T) directorate to undertake research to help improve the basic infrastructure of systems – architecture, materials and construction methods, for example - to enhance facilities and mitigate the effects of terrorist attacks?

Answer: I understand that the Transportation Security Administration (TSA) is already working closely with the S&T Directorate to identify capability requirements through its Science and Technology Requirements Council (SRC). I understand the SRC was chartered to assist in the solicitation, validation, and prioritization of all science and technology requirements. \

TSA also communicates directly with the S&T Directorate's Border and Transportation Security portfolio. I further understand that in 2004, the portfolio developed the BTS Technology Vision which includes Border Watch, Transportation Watch and Border Net which would seem to be a tool to significantly improve our ability to provide the information necessary to secure our borders. If confirmed, I will certainly encourage an even closer partnership with the directorate on research in this area

c. What will you do to encourage research and development to improve emergency decision making and communications capabilities?

Answer: TSA should continue to discuss its R&D requirements with the S&T Directorate through both the SRC and the Border and Transportation R&D portfolio. I am told the S&T Directorate is working to integrate communications capabilities across the transportation domains enabling a Common Operational Picture (COP) across the entire transportation environment. Extensive data sharing, including the ability to discover links in criminal or suspicious activities across domains will be a key requirement to providing an effective Transportation COP. In addition, TSA should continue to engage with the S&T Directorate to ensure that the communication needs of the end-user are addressed. I will also review our current levels of cooperation to determine what further steps to undertake.

d. Would you support establishing a clearinghouse mechanism to ensure that transportation system operators can find out what security-related technologies are available or in development?

Answer: I believe the Transportation Security Administration (TSA) should work with the Department, as appropriate, in implementation of Section 313 of the Homeland Security Act which requires the S&T Directorate to establish a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

Transportation Security Grants

39. In its fiscal year 2006 budget, the Administration requested $600 million for Targeted Infrastructure Protection Program (TIPP) grants. While this is a significant increase over previous Administration requests for transportation and infrastructure grants, it does not designate funds specifically for high need areas such as port security.

    a. Do you support consolidating port security grants into the TIPP?

    b. What do you think will be the effect of consolidating these grants over time?

    Answer A & B: I understand the Department of Homeland Security (DHS) is committed to providing the resources needed to secure our Nation's critical infrastructure, including seaports and port facilities. The Targeted Infrastructure Protection Program (TIPP) at the Office of State and Local Government Coordination and Preparedness (SLGCP) proposed in the President's FY 2006 budget would consolidate grants to protect critical national infrastructures such as seaports, mass transit, railways, and energy facilities into a single, comprehensive program based on need, risk, and consistency with national priorities. I am told the Transportation Security Administration (TSA) is supportive of this consolidation and believes that such prioritization will ensure that redundancies are minimized and that funds are directed to the best use. TSA staff should continue to provide SLGCP with subject matter expertise for transportation security. TSA realizes that the challenges regarding port security are specific to that mode just as other modes of transportation have their own unique needs. Accordingly, TIPP should allow DHS to allocate funds to areas where intelligence indicates the greatest risks exist.

40. As the attacks in Moscow, Madrid and Tokyo have demonstrated, transit and rail systems are appealing targets for terrorists. Yet, the inherent openness of such systems, given that people use public transportation 32 million times each day in this country, poses a challenge for security. DHS has dedicated only a tiny fraction of its funds to mass transit, despite the fact that the American Public

Transportation Association has identified more than $6 billion in security needs. Do you believe DHS needs to provide additional funding for to improve security for all types of surface transportation systems?

Answer: I firmly believe that new resources for public transportation must be weighed against other pressing needs to ensure we are optimizing the use of Federal resources to the highest risks and security needs. I certainly believe the President's FY 2006 Budget reflects the Department of Homeland Security's (DHS) most critical needs. Ensuring that our nation's transportation systems are secure must be accomplished through effective partnering between appropriate federal, state, local and private industry entities. And, of course, DHS is charged with responsibility for working to protect all modes of transportation, but it has consistently held that that this responsibility must be shared with federal, state, local and private industry partners, many of whom were already in the business of providing security for their particular piece of the transportation puzzle.

I believe the President's FY 2006 budget request recognizes this imperative by providing for public transportation grants, outside of Urban Area Security Initiative (UASI) grants, which cover such programs as rail/mass transit inspectors, use of canine explosive detection teams in mass transit, intercity bus security improvements, hazardous materials truck tracking, and Highway Watch, among others.

41. The fiscal year 2005 Port Security Grant Guidance has been released by the Office of State and Local Government Coordination (SLGCP). It limited the number of ports that could be eligible for funds. Do you believe this is justified, given the Federal government mandates under the Maritime Transportation Security Act of 2002 (MTSA) affect all ports?

Answer: While I cannot speak for the Department of Homeland Security (DHS), it is my understanding that prior to issuing the FY 2005 Port Security Grant Guidance, DHS conducted a thorough risk, threat, vulnerability, and consequence-based analysis of the Nation's highest volume ports. Through this analysis, DHS determined that the top 66 ports constituted the highest priority and should be eligible to apply for funding under the FY 2005 program. It is my understanding that the Department of Homeland Security should be able to provide the Committee with further details on this limitation.

Container Security

42. Container security is often viewed as a component or subset of port security. However, the integrity of a container is part of a larger, inter-modal transportation security effort, which utilizes sea-borne vessels, freight trains, trucks and air transportation to move goods across the globe. DHS has initiated programs to inspect containers based on a risk assessment, to track and monitor individual containers, and to use non-intrusive detection equipment to screen containers at

various points in the supply chain. Numerous entities within DHS have a role in improving container security, though most notably TSA, CBP and the Coast Guard. The President has also proposed creating a new Domestic Nuclear Detection Office (DNDO) which would also have a role.

a. What do you believe should be TSA's role in developing and administering inter-modal container security programs?

Answer: The Department of Homeland Security (DHS) was certainly established to coordinate all of the efforts of various agencies in securing our homeland. In fulfilling this mission, it builds on the strengths and expertise of all of the agencies that work with each mode of transportation.

The U.S. Coast Guard (USCG) is, of course, the lead agency for maritime security issues due to its decades of experience and powerful assets focused on securing the maritime domain. Within this framework, the Transportation Security Administration (TSA) supports the USCG in the execution of certain responsibilities where leveraging of TSA's expertise may be appropriate, including the development of maritime passenger screening standards and transportation worker credentials. Additionally, I understand that TSA and USCG assist the Department's Office of State and Local Government Coordination in evaluating grant applications for the disbursement of port security funds appropriated by Congress.

U.S. Customs and Border Protection (CBP) is the lead entity within DHS for execution of cargo container security inspections in the international shipping environment. However, recognizing the intermodal nature of cargo shipments, the Border and Transportation Security (BTS) Directorate has been delegated authority and responsibility for developing a secure system of transportation for intermodal cargo shipments and container security performance standards. BTS is supported by both CBP and TSA in the execution of these responsibilities. If confirmed, I will certainly encourage TSA to continue to play a pivotal role in this area.

b. To what extent has TSA coordinated with CBP, the Coast Guard, DNDO and others to help ensure the effectiveness of the various container security programs?

Answer: I believe the Department of Homeland Security (DHS) was created to maximize the Federal Government's interagency coordination and TSA certainly has embraced this mission and plays a key role in fostering interagency cooperation. Three specific examples illustrate this role.

First, I understand that the Transportation Security Administration (TSA) has collaborated with U.S. Customs and Border Protection (CBP) and the United States Coast Guard (USCG) to conduct a program analysis of all current cargo

security programs in all modes both domestically and internationally under the leadership of the Border and Transportation Security Directorate.

A second example of interagency cooperation is Operation Safe Commerce. Operation Safe Commerce is an interagency program that tracks cargo from its international point of origin to its final domestic point of destination through multiple modes of transportation. TSA, CBP, and the Department of Transportation (DOT) acted as co-chairs of the program with TSA serving as the National Coordinator. Further representatives from USCG, the Department of Defense, the Department of State, and the Department of Commerce are also represented on the program's Executive Steering Committee.

Finally, with regard to the Domestic Nuclear Detection Office (DNDO), TSA currently has three detailees working in this office to help stand up this relatively new entity within DHS and, if confirmed, I anticipate TSA continuing this close relationship with the DNDO.

c. How is DHS effectively managing research, development and technology test programs to eliminate duplicative programs?

Answer: I understand that the Science and Technology (S&T) Directorate has initiated an integrated test and evaluation program for all research, development, testing and evaluation (RDT&E) of container security related technologies. This test program involves interagency coordination, including Customs and Border Detection (CBP), the Office of State and Local Government Coordination (SLGCP), the Department of Defense (DoD), and the national laboratories.

Perimeter Security

43. In a report last year (GAO-04-728), GAO noted that TSA has not fully met all of the requirements in the Aviation and Transportation Security Act of 2001 (ATSA) regarding airport perimeter security, access controls on access to secure areas, and risks posed by airport workers with access to secure areas. In some cases, GAO noted that TSA has not begun to address these issues.

a. TSA has been conducting vulnerability assessments and monitoring airports' security compliance. How is TSA using the information gathered through this process to improve security across the system and prioritize security needs?

Answer: I understand that in March 2005, the Transportation Security Administration (TSA) established an Office of Compliance that is responsible for oversight of the security inspection program affecting airports and aircraft operators. This move provides sharper focus on the compliance inspection oversight process as well as facilitating important liaison activities with industry.

I also understand that all of TSA's vulnerability assessment programs are designed to provide analytical data and site reports to the compliance oversight program. Locally-developed annual inspection plans prepared by each Federal Security Director take into consideration both the vulnerability assessment process as well as criminal activities in the airport vicinity.

Addinotally, I believe that when combined, these programs help address gaps and mandated requirements in an integrated manner. The compliance oversight program addresses regulatory oversight and the vulnerability assessment program addresses dynamic emerging threats that require immediate action and response.

b. The report also noted that airports need TSA to provide guidance on commercially available technology to improve perimeter security and access controls to secure areas, as TSA was authorized to do under ATSA. Congress then required this under Section 4011 of IRTPA. Are airports now moving forward under this guidance to deploy access control systems? Are any further steps required of TSA?

Answer: I understand that the Transportation Security Administration (TSA) has developed a draft Biometrics Guidance package that is under review at the Department before it is disseminated to industry. That guidance document will provide vendors and airports with performance expectations for technologies developed to support airport access control systems. If confirmed, I will determine whether further steps would be required of the TSA.

c. How will the implementation of the Transportation Worker Identification Credential program affect existing systems, and how will TSA ensure that capital and security investments already made by airports for access control will not be duplicated or wasted?

Answer: The Transportation Worker Identification Credential (TWIC) program is vitally important to the Transportation Security Administration (TSA) and to the Department of Homeland Security (DHS) as a whole. I am told that the implementation plan for the TWIC program focuses initially on maritime workers as the primary TWIC population. The results of the prototype program and the subsequent TSA recommendation for implementation will certainly affect the timeline for the ultimate implementation for TWIC. I understand that the Department is reviewing comprehensively all credentialing programs within the Department, and this review may affect the full implementation of TWIC.

In order to leverage the investment industry has already made, the TWIC has been designed to accommodate legacy access control systems. Similarly, the airport access biometric guidance document, which is currently undergoing DHS-wide review, is consistent with ongoing Administration/ DHS direction on government wide biometric standards as required by HSPD-12 and all relevant biometric

standards agreed to by NIST, American National Standards Institute (ANSI), International Standards Organization (ISO) and Radio Technical Commission for Aeronautics (RTCA) standards related to airport access control systems.

d. In addition, the report raised concerns regarding the limitations of relying on one time fingerprint-based checks to determine whether airport workers should be permitted access to secure areas. How has TSA addressed this concern?

Answer: I understand that the Transportation Security Administration (TSA) no longer relies solely on the initial fingerprint-based vetting for Security Identification Display Areas (SIDA) badge holders. TSA has implemented a process whereby name-based checks are conducted on SIDA holders periodically against appropriate watchlists/databases. It is also my understanding that this process should better ensure that individuals who may pose a security risk do not have access to airport SIDAs

44. Both GAO and aviation security experts have noted that while the "front" of the airport has been made considerably more secure since 9/11, the "back" of the airport remains less protected. (GAO-04-500) Perimeter improvements and access controls can help address this vulnerability. However, most airport and airline employees are not required to pass through the same kind of screening equipment that passengers are required to pass through. Do you believe that airport and airline employees with access to aircraft and other sensitive areas of the airport ought to be screened in the same way passengers are? What are the benefits and limitations to doing so?

Answer: I understand that due to the sheer size and unique configuration of the U.S. aviation system, the TSA relies on a "system of systems" approach, whereby each security ring (or measure) contributes to our overall security system. I also understand that given the number of airport and airline workers (approximately 1.2 million) that have access to secure areas of the airports and their need for access, as well as the tools and equipment they use to perform their jobs, physical screening of all aviation employees and their personal belongings is not practical at this time.

That said, the TSA of course requires a fingerprint-based criminal history records check of all airport and airline workers with unescorted access to Secure Identification Display Areas (SIDA) and periodically runs enhanced background checks (by conducting terrorist threat analysis) on these individuals as well.

It is my understanding that requiring screening for workers who have already successfully undergone background checks and therefore present a low risk could potentially have a negative impact on security by placing additional demands on screener resources and shifting their focus from passengers who present a higher risk. Screening these workers would also place additional time and resource demands on airports, airlines, and their contractors.

If confirmed, I will review this matter further. However, it is my opinion at this time that, due to the various measures TSA has put in place over the past several years, to include extensive background checks, we should continue to have an increased level of confidence in our aviation workers that have access to secure areas of our Nation's airport.

Transportation Worker Identification Credential (TWIC)

45. Identification, access controls and background checks for those with unescorted access to secure areas of our transportation system are key to the layered security system that has been put in place since September 11th. When it comes to the maritime mode, false starts with implementation of TWIC have perpetuated a serious vulnerability. In his confirmation hearing, Deputy Secretary Jackson informed this Committee that implementation of TWIC was not "rocket science." However, we understand that the greatest delay has been caused by policy decisions not yet made with respect to how background checks and access controls will be managed and what the TWIC business model will be.

    a. What do you believe are the primary challenges facing TSA as it works to implement the TWIC program.

    b. How would you propose resolving these issues and in what timeframe?

    Answer (a) & (b): I understand that the primary challenge facing the TWIC program is to evaluate the results of the prototype phase and incorporate the lessons learned from the prototype into the implementation plan and schedule. I understand that the prototype phase should conclude shortly and the results from this stage will likely generate questions regarding significant policy decisions such as the appropriate cost (fee) for the credential, disqualifying offenses, and the appropriate scope of the federal government's role in day to day management of the TWIC system. I am told that TSA plans to provide its implementation recommendations to the Department shortly after the protoype phase ends.

    c. When will TWIC be implemented nationwide?

    Answer: I understand that the results of prototype and the subsequent TSA recommendation for implementation will affect the timeline for the ultimate implementation for TWIC. However, as noted above, the Department is reviewing comprehensively all credentialing programs within the Department, and this review may affect the full implementation of TWIC.

46. An identity card, particularly one that grants access to sensitive and secure areas such as in airports and ports, is only effective if the issuing agency can be confident that the person receiving the card is who she or he claims to be. How will TSA verify the identity of those to whom it issues TWIC cards?

    Answer: I understand that the TWIC program has always maintained that correctly establishing and verifying identity is a crucial step and as such is designed to use a combination of process, training, and technology. Identity

determination and management is at the heart of the TWIC system. I am also told that TWIC's strong use of biometrics and identity verification processes will result in a high-assurance identity credential that is trusted and used across all transportation modes for unescorted physical access to secure areas and logical (cyber) access to systems. If confirmed, I look forward to learning more about how TSA will be able to verify the identity of those receiving TWIC cards.

47. According to DHS, only those who need to have access to secure areas of transportation facilities, such as in airports or ports, should be eligible to hold a valid TWIC card. For example, this means that TWIC card holders must be currently employed in a position that requires such access.

    a. What steps will TSA put in place to ensure it has (near) real-time information on individuals who leave positions requiring a TWIC card, or should be made ineligible for other reasons, such as conviction of a disqualifying crime?

    Answer: I understand that the TWIC Prototype solution is designed to provide a high-assurance identity credential that is trusted and used across all transportation modes for unescorted physical access to secure areas and logical (cyber) access to systems. Further that the TWIC Prototype solution is capable of periodically re-validating a TWIC holder's eligibility, including any change in the terrorist threat assessment and/or criminal history record check, and revoking the credential if appropriate. Based on results of the prototype, the frequency of re-validating eligibility should be part of the TSA recommendation for implementation.

    b. If a TWIC card holder changes jobs, and requires a different kind of access than he or she had previously, how will TSA obtain and maintain this information and make the appropriate adjustment in the card holder's access privileges, or let facility managers know about relevant changes so they can make any adjustments?

    Answer: Conferring and changing the access of any individual to any particular facility remains the decision and responsibility of the operator of the facility. Based on the results from the Prototype, it would seem that TSA should make additional recommendations for the identity management process.

<u>Other Modes of Transportation</u>

48. Please describe your view of TSA's role and responsibility for security in each of the following modes of transportation:

    a. passenger rail

    b. freight rail

    c. mass transit

    d. pipelines

e. trucking

Answer: The diversity and expansiveness of the transportation system presents inherent security challenges. Each of the major transportation modes has unique characteristics, operating models, responsibilities and stakeholders. The transportation modes also differ with respect to the level of Federal involvement. Traditionally, the Federal government has been much more actively engaged in the security aspects of the aviation and maritime modes of transportation. The government has played a more limited role in surface transportation security due to the extent of state and local government, and private sector ownership, and the general openness and breadth of these systems.

For this reason, the Federal government must focus resources on the basis of consequence, threat and vulnerability assessments, and the prioritization of risks. This concept is the foundation of a risk-based, threat-managed methodology which allows the Federal government to implement appropriate layers of security across all modes

Under DHS leadership, TSA is responsible for 1) assessing risk to the system across a changing array of threats, 2) sharing threat and risk information with transportation partners and stakeholders (public and private), 3) establishing consistent national transportation security standards across all modes, 4) verifying compliance with those standards, and 5) in the event of a transportation security incident, ensuring rapid restoration of service and public confidence.

The success of transportation security rests on the close partnership between DHS and transportation stakeholders. While clearly private investment in security is expected, the threat-based risk-managed approach, complemented by performance based standards – which permits achievement of security standards within an owner's business model – coupled with appropriate security grants, mitigates the national cost borne by the private stakeholders. On-site verification of compliance with national transportation security standards helps ensure acceptable risk to the national transportation security system.

To this end, TSA is deploying a trained force of 100 Surface Transportation Security Inspectors to various locations throughout the country on a risk-based prioritization of the national rail and mass transit system and its key infrastructures. They will develop relationships with owners/operators necessary to ensure compliance with all appropriate TSA security guidelines and regulations. They are currently being trained and deployed, and all 100 should be in the field by the end of 2005.

49. What do you think is the appropriate role for private sector non-aviation transportation operators to play in deciding what security measures are needed for their operations and in paying for those measures?

Answer: As stated above, the DHS and TSA are currently working with transportation stakeholders (public and private) to develop consistent security standards across all transportation modes. The success of surface transportation security rests on the close partnership between DHS and transportation stakeholders. While clearly private investment in security is both appropriate and expected, the threat-based risk-managed approach complemented by performance based standards – which permits achievement of security standards within an owner's business model – coupled with federally funded security grants – ameliorates the national cost borne by the private stakeholders. We believe one appropriate role for private sector surface transportation operators is to enhance security through effective policing and implementation of mitigation strategies to address vulnerabilities identified within their systems for the most likely threats.

50. Much of the nation's transportation infrastructure – mass transit and rail stations, tunnels and bridges, in particular – is old and badly in need of retrofitting (e.g. hardening of infrastructures, enhanced ventilation systems, etc.), detection devices, communications and surveillance equipment, and other security measures in order to help deter and mitigate catastrophes. However, to date, there has been little funding dedicated to meeting the capital needs of the transportation system outside of passenger aviation.

a. Do you think DHS should provide funds for capital improvements to non-aviation transportation systems?

Answer: It is my believe that bearing the cost for capital improvements that enhance security requires a collaborative partnership between federal, state, and local governments and private industry stakeholders with responsibilities for transportation. These efforts should be funded through existing programs for State and local assistance where resources are allocated based on State plans and the most urgent needs across all infrastructure categories and purposes.

I firmly believe, however, that new resources for public transportation must be weighed against other pressing needs to ensure we are optimizing the use of Federal resources to the highest risks and security needs.

b. If not, how will TSA help address these transportation systems needs and identified security risks?

Answer: The responsibility of securing our nation's transportation systems is a shared one. Both public and private stakeholder investment in security is both appropriate and expected. Currently, the federal government is providing funding, in the form of security grants, to help ameliorate the cost borne by the private stakeholders. TSA will continue to assist system operators identify their security risks through: (1) security assessments, both government facilitated and through use of self-assessment tools, (2) compliance efforts, and (3) through

cooperative partnerships with industry associations and operators to develop effective and cost-efficient mitigation strategies.

51. Concern over the shipment of hazardous materials by rail has been mounting. In 2001, a joint study commissioned by the U.S. Coast Guard and the National Transportation Safety Board found that the rupture of one 90-ton tank car of chlorine gas could produce a potentially lethal toxic cloud nearly 20 miles wide. The Naval Research Laboratory also testified in the same year that an attack or accident involving one of these tank cars could put more than 100,000 people at risk in just 15 to 30 minutes and cause "exposed individuals to die at a rate of 1000 per second.

a. Should railroad employees handling the same hazardous materials as truck drivers with hazmat endorsement be required to undergo background checks and obtain licenses as a prerequisite to working with hazmats?

Answer: I am informed that the issue is currently under development. I understand that the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act required the completion of a background records check for drivers who transport hazardous materials in commerce. I further understand that the Transportation Security Administration (TSA) employed a phased approach for implementation of the USA PATRIOT Act and recognizes that any future background check protocols would have to be implemented in phases to acclimate the industry and the government to a new security regime.

I understand that TSA anticipates requiring background checks of railroad employees handling hazardous materials in the future with the implementation of a Department of Homeland Security common credential, such as the Transportation Worker Identification Credential or TWIC.

b. Legislation has been discussed that would require rail to re-route shipments of certain hazardous materials around populous, high-threat areas, like Washington, D.C. What is your view of legislation requiring railroads to re-route hazmats outside of these high-threat, populous areas?

Answer: I understand the Department created a multi-agency task force to conduct a comprehensive security review, including a vulnerability assessment of the rail infrastructure used for the conveyance of hazardous materials through Washington, D.C. This review was used to create a plan to address identified vulnerabilities. I am told that the task force is comprised of DHS (IAIP and TSA), the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration, and affected stakeholders, including the local first responder community, local government, and railroad owners and users (VRE, Amtrak).

DHS, along with FRA and railroad owners, have done numerous, extensive briefings for congressional staff on their efforts to strengthen the DC rail corridor against terrorist attacks. If confirmed, I will undertake further study on this issue. It is my understanding, however, that, because it would be impossible to re-route hazmat to avoid all communities, the Department has no current plans to mandate re-routing. Instead, DHS intends to continue its risk management approach to help prioritize limited resources.

52. In 2003, the GAO concluded that DHS and DOT should develop a specific plan to determine the adequacy of rail security measures already in place and to identify gaps in rail security. (GAO-03-435)

a. Has such a plan been prepared? Do you believe it should be prepared and if so, by when?

Answer: In support of its goal of risk-based resource allocation the Transportation Security Administration (TSA) has focused its planning resources on one of the highest consequence rail entities—the toxic by inhalation (TIH) rail shipment. The Department of Homeland Security (DHS) and the Department of Transportation (DOT) have been working on various initiatives that support the development of a national risk-based plan to address the shipment of hazardous materials by rail and truck. For rail, DHS and DOT are focusing on the assessments of vulnerabilities of high threat urban areas where TIH are transported, identification of practical alternatives to placards on rail tank cars, new rail car design standards, and the development of hazardous materials (hazmat) security plans to improve the adequacy and effectiveness of industry security plans. DHS and DOT plan to complete a number of additional vulnerability assessments by the end of calendar year 2005. Once the assessments are completed and the results analyzed, DHS and DOT can evaluate the adequacy of rail security measures and identify security gaps.

Additionally, one of the primary tasks of the 100 statutorily mandated rail inspectors is to identify security coverage gaps in all aspects of rail transportation. The inspectors will be deployed nationwide with emphasis on the major rail hubs and coordination with existing Federal Railroad Administration (FRA) and Federal Transit Authority (FTA) regional offices. TSA anticipates full deployment of the inspectors in calendar year 2005.

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires the Department of Homeland Security (DHS) to develop a National Strategy for Transportation Security (NSTS). This document, which will govern Federal transportation security efforts, uses a threat-based, risk-managed approach to transportation security, looking at threat, consequence, vulnerability and likelihood of success by analyzing asset categories across six transportation modes: aviation, freight rail, highway, maritime, pipeline and transit. I understand that TSA is working in close conjunction with DOT in the preparation of this report and, once confirmed, I plan on thoroughly reviewing the NSTS to

ensure that all aspects of transportation security, including rail security, are addressed.

b. Legislation has been introduced that would require DHS to prepare a vulnerability assessment of freight rail transportation and to identify security risks that are specific to the rail transport of hazardous materials. Would you support such a requirement?

Answer: I understand that the Transportation Security Administration (TSA) was provided with the opportunity to review and comment on S. 2273 in the 108th Congress which also included this provision. And that the specific comments on the bill were included in the official DHS Views Letters. It is my understanding that in the letter, the Department of Homeland Security stated that it generally concurs with the objectives of the legislation, particularly in leveraging industry efforts in assessing security vulnerabilities and developing baseline measures. To this end, as has been previously noted, the Department created a multi-agency task force to conduct a comprehensive security review of the Washington, D.C. rail corridor.

53. The 9/11 Commission concluded that passenger trains, whether they be large Amtrak trains or local subways, "remain hard to protect because they are so accessible and extensive." Al Qaeda-exploited that vulnerability in March 2004 in Madrid.–In May 2004, the Department issued security directives for passenger rail systems. Although these directives are not open to the public, reports indicate that the directives reflect actions that many rail systems have already taken in the United States to prevent attacks. Those measures include: removing or hardening trash containers on boarding platforms, increasing the presence of security officers, using video surveillance in and around stations, and purchasing communication and safety equipment.

a. Beyond these actions, what other preventative measures should DHS and our rail systems be taking?

Answer: Certainly one step is for the rail companies continue to comply with the Security Directives issued last year and to monitor compliance with the directives with the deployment of the 100 surface transportation inspectors. I understand that additional preventative measures are also being explored through continuing work with stakeholders. . If confirmed, I look forward to studying this matter to determine what additional measures, if any, DHS and the rail systems should be taking.

b. Specifically, what are your thoughts about introducing some sort of a passenger screening system?

Answer: I understand that the nation's rail and mass transit system is vast, complex, open and generally accessible to the public by design. It is also my

understanding, however, that at this time, TSA and DHS do not support or recommend a passenger screening system similar to what is in the aviation mode. TSA successfully tested -- and deployed during special security events -- passenger and baggage screening technology in the rail environment. However, I am told that the widespread application of such technology is unrealistic in America's heavy rail systems, which consist of more than 1,000 stations and carry 2.7 billion passengers annually.

Nevertheless, TSA should continue to pursue explosion detection and screening technology, especially because these methods may be critical for deployment when there is targeted threat information on particular stations. Random screening techniques such as those deployed in Boston during the Democratic National Convention remain a viable option and could create a deterrence effect. However, this technology remains extremely expensive and would, at best, appear to be a detection application, not a prevention application.

c. Would you favor background checks for passenger rail employees?

Answer: As noted above, currently the Department is developing the Transportation Workers Identification Credential (TWIC). This credential is envisioned to be used by all transportation workers who have access to secure areas of the transportation system, including passenger rail employees.

d. Enhancing rail security can create trade-offs in terms of money, time, inconvenience, and personal freedoms. A challenging policy issue is where to strike the balance between the need for security and the efficient operation of rail systems, as well as the convenience and personal freedoms passengers have come to expect when traveling on such systems. How should the federal government and industry work together to strike that balance?

Answer: Effective partnerships between government and private sector stakeholders and across all levels of government, enable greater coordination, communication, and collaboration among stakeholders, encourage efficient resource allocation and contribute to the development of comprehensive, coordinated plans of action to prevent, deter, and mitigate physical and cyber attacks on critical assets, and to respond and recover from attacks in such a way as to limit consequences. The Transportation Security Administration has and will continue to communicate regularly with stakeholders to achieve these goals.

Additionally, Government Coordinating Councils (GCCs) and private sector-led Sector Coordinating Councils (SCCs) provide a framework for intra-government and public-private cooperation, information sharing and engagement across the entire range of critical infrastructure protection activities.

GCCs were created to foster inter- and intra-agency transparency and coordination on homeland security issues, and to provide a single point of entry

for critical infrastructure stakeholders into government. GCCs provide a single forum through which critical infrastructure protection issues can be addressed, both within government and between government and the private sector.

The Federal government is currently developing a Transportation GCC and SCC. Each of these councils will have a rail sector sub council that will work separately and together to tackle the challenging policy issues that face rail transportation today.

Human Capital Management

54. The proposed regulations for the Department of Homeland Security's new personnel system under the Homeland Security Act would not apply to TSA employees. In testimony before subcommittees of the Senate Committee on Governmental Affairs and the House Committee on Government Reform, Comptroller General David M. Walker stated that DHS should consider moving all of its employees, including the more than 50,000 TSA screeners, under a single performance management system framework to help build a unified culture.

a. Do you believe that screener personnel and other TSA employees should be covered by the proposed new human resource management system? If so, what administrative, regulatory, or legislative steps would be necessary to accomplish such coverage?

Answer: In the creation of the TSA, the Aviation and Transportation Security Act (ATSA) certainly provided TSA with broad human resource management flexibilities similar to those flexibilities provided in the DHS enacting legislation. For this reason, TSA employees were not initially covered by the new DHS system. I believe that TSA should continue with joint efforts to align its personnel systems with the Department's system to the extent permitted by statute and in a manner consistent with the Department's and TSA's goals. While pursuing this alignment, TSA should also continue to exercise the broader personnel flexibilities provided by Congress in ATSA.

b. If not, what steps will you take to help ensure TSA screeners and other employees are cohesive and effective components of DHS?

Answer: I believe that the TSA workforce is already a cohesive and effective component of DHS. TSA employees identify very strongly with the mission of ensuring homeland security. They stand up daily to the challenges associated with their extremely important jobs. Supporting the screener workforce in such a way that they can concentrate and focus on their immediate screening tasks without worrying about broader organizational and administrative changes around them is a critical function of TSA leadership.

Another important function of TSA leadership that encourages cohesiveness and effectiveness is the education of TSA employees about the other component agencies within DHS, what those organizations do, and how their own jobs may intersect with other organizations to provide comprehensive security coverage.

c. What due process rights and procedures do you believe should be made available to TSA screeners and other employees who believe they have been unfairly disciplined or have otherwise been subject to an inappropriate personnel decision? To what extent do you believe due process rights and procedures currently in place are adequate, and to what extent do you believe changes are needed?

Answer: It is my understanding that with respect to avenues of redress for screeners who believe they have been subjected to inappropriate or unfair personnel or management actions, TSA has established various programs and procedures to address this issue. Programs have also been created to allow employees to resolve issues informally and expeditiously.

With respect to due process, I understand that employees, including screeners, who have completed their probationary period, are entitled to due process for all adverse actions. And, further, that additional venues are available, such as the Disciplinary Review Board (DRB) which provides non-probationary screeners with a forum to appeal adverse actions. I would not want to speak to what changes, if any, should be made until I have reviewed this issue thoroughly if confirmed.

d. What do you believe is the appropriate role of the TSA Office of the Ombudsman in addressing workplace complaints and issues involving TSA screeners and other employees? Do you believe the Office of the Ombudsman has adequate authority to assist TSA screeners and other employees with personnel matters?

Answer: It is my understanding that the appropriate relationship between the Transportation Security Administration (TSA) Office of the Ombudsman and the screening workforce is that the Ombudsman's office provides screeners with an independent, neutral, and confidential service.

Based upon what I understand of the Office, I believe the TSA Office of the Ombudsman has adequate authority to assist TSA screeners with personnel matters. This authority stems from the fact that the Ombudsman's office reports directly to the Assistant Secretary through the Chief of Staff. If confirmed, they will brief me regularly on key employee issues and concerns and will have my full support as advocates for problem resolution. To achieve this end, I would expect every manager and supervisor to fully cooperate with Ombudsman staff. I would make it very clear to all TSA employees that the Ombudsman's office is responsible for providing assistance to all employees in resolving workplace

issues. Any action meant to discourage an employee from seeking the Office of the Ombudsman's resolution services acts as a roadblock in developing a culture of constructive problem solving. I would also make it clear that I expect to be notified of any roadblocks and will ensure that they are dealt with as appropriate. All TSA employees must be focused and vigilant in providing excellence in security and service - not distracted or disgruntled by workplace issues or problems that can be resolved through the ombudsman process.

Contract Management

55. In a January 2004 report, the DHS IG noted substantial contract management problems, and observed that "TSA senior managers and staff were consistent in their remarks that TSA has not effectively managed its contractors. Despite contract management weaknesses, TSA intends to continue to rely upon contract support rather than build an infrastructure to replace functions currently performed by contractors." (OIG-04-08). More recently, the DHS IG's report on Major Management Challenges Facing DHS (OIG-05-06) noted that though TSA still relies extensively on contractors, in 2004 it worked to improve procurement planning, contract structure and contract oversight.

a. What steps has TSA taken to improve management of its contractors?

Answer: I understand that the Transportation Security Administration's (TSA) Office of Acquisition has implemented a contract oversight and quality assurance program that has strengthened overall management of contractors. It includes developing oversight policy within TSA Acquisition that provides guidance and requirements information on contract oversight, evaluating and monitoring contractor performance, monitoring contract expenditures, evaluating and accepting deliverables, and reviewing and approving invoices. I am told that to monitor implementation of the policy, the Office is rolling out file reviews and other monitoring processes to help strengthen overall acquisition processes.

b. Has TSA built any infrastructure to replace functions initially performed by contractors?

Answer: I understand that during the initial creation of the Transportation Security Administration (TSA) a few contracts were structured as "general contractor" agreements due to TSA's lack of staff resources, especially those in the Office of Acquisition who directly manage the contractors. Once TSA staffed up, established protocols and became functional as a federal agency, resources became available to perform functions initially performed by contractors. I believe a good example of this is TSA's contract for deployment and maintenance of security equipment to the Nation's airports. When the initial contract was awarded to Boeing in June of 2002, there were 17 employees in the Office of Acquisition – nine of which had come onboard that month. Following the rollout

period and significant increase in employees, TSA revised its acquisition strategy and in early 2005 awarded separate contracts for hardware, maintenance, and integrated logistics support to multiple contractors. TSA has made great strides in this area, and continues to review contractor functions and performance to optimize effectiveness, efficiency, and ensure good stewardship of public funds.

c. If confirmed, what further steps would you take to improve TSA's management of its contractors?

Answer: During rollout the Transportation Security Administration (TSA) focused a great deal on deploying technology to the Nation's airports, and therefore actions were managed in many cases at the contract level. However, as TSA matures, it is imperative to take a more strategic view of our investments. The investment review process is a key strategic function of both TSA and the Department of Homeland Security (DHS), and if properly executed can provide for more structured program management.

Certification and selection of trained and experienced Program Managers for TSA's major acquisitions is also a fundamental step towards improved contractor management. Development of robust requirements and acquisition planning documents is another. I believe that broadening the focus from individual contract management to overall investment and program management is critical to maturing TSA's business relationships.

56. In March 2005, the DHS IG released a report on the development of the Transportation Security Operations Center (TSOC) that found "breakdowns in management controls left the project vulnerable to waste and abuse," and "senior managers... overrode protests by subordinates, which allowed the project manager to circumvent [the] rules and regulations." (OIG-05-18). Among other things, the IG found that TSA procurement managers were unable to produce documentation to support various purchases and that TSA purchase card policies were routinely violated.

a. If confirmed, what would you do to ensure TSA personnel abide by existing contract management and procurement procedures?

Answer: I believe that the Office of Inspector General (OIG) report revealed programmatic issues in development of the Transportation Security Operations Center (TSOC) rather than lack of procedural integrity of the acquisition staff. Well-trained, certified program managers are fundamental to robust acquisition programs, and increasing the certification rate is a key priority. Additionally, I believe that TSA has implemented a sound Contracting Officer's Technical Representative (COTR) policy that addresses training and appointment. The next step is oversight of the COTR program, to ensure that the policy is effective and COTRs are properly monitoring and reporting on contract performance. A comprehensive COTR program of file reviews, performance monitoring, contract

oversight, and feedback is necessary will provide visibility into systemic issues, which can then be addressed through training and communication.

b. The IG recommended that TSA ensure that its personnel, in particular contracting officers and contracting officers' technical representatives, receive appropriate training for their positions. Has TSA made sure its personnel have received the appropriate training? Do TSA personnel require any follow-up training?

Answer: I understand that the Transportation Security Administration (TSA) took an aggressive approach to training Contracting Officers (COs) and Contracting Officer's Technical Representative (COTRs). All COs are trained and warranted in accordance with the Department of Homeland Security (DHS) Management Directives 0781.1 and 0740.2, respectively. All appointed COTRs are trained and certified in accordance with DHS policy, and the Office of Acquisition has started formal COTR file reviews to identify challenges and recommend remediation. In addition, the Office of Acquisition continues to deliver a series of workshops to provide training in key acquisition processes, such as acquisition planning, market research, writing statements of work, and interfacing effectively with industry that supplements formal training. The workshops have been well-received, and have been presented to nearly 1,400 TSA employees since initiation. I am informed that in its final report, the Office of Inspector General (OIG) considered this recommendation resolved (closed).

IV. Relations with Congress

57. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Answer: Yes.

58. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Answer: Yes.

V. Assistance

59. Are these answers your own? Have you consulted with the DHS, TSA or any interested parties? If so, please indicate which entities.

Answer: These answers are my own. I have consulted with senior staff within TSA as appropriate in preparing these answers. I have also had standard pre-confirmation discussions with staff at DHS, the Office of Government Ethics, and the White House Personnel Office.

Additional Pre-Hearing Questions
From Senator Joe Lieberman
For the Nomination of Edmund S. Hawley to be
Assistant Secretary of Homeland Security

1. TSA's amended Privacy Act notice for Secure Flight Test Records, published on June 22, 2005, disclosed that TSA's system of records included personal information obtained from three commercial data aggregators, and that this commercial data had been compared to passenger records collected obtained from airlines. The amended notice claimed that TSA's original Privacy Act notice and Privacy Impact Assessment did not disclose plans to incorporate personal information obtained from commercial data aggregators in its system of records "because TSA had not developed its test plan with this level of detail at the time the documents were published." An AP story dated June 21, 2005, quoted a member of Secure Flight's TSA-appointed oversight panel as saying that TSA had been explicitly told not to try to verify passengers' information with commercial data.

   a. Did TSA consult with the TSA Privacy Officer, the DHS Privacy Officer, or members of the Secure Flight oversight panel before initiating its testing with data obtained from commercial data aggregators? If so, what advice did TSA receive regarding its handling and use of the commercial data? Did TSA follow the advice?

   Answer: The Transportation Security Administration (TSA) did consult with the TSA and DHS Privacy Officers prior to initiating commercial data testing, and based on the program office's description of how the test would be run, the TSA and DHS Privacy Officers provided guidance on the handling and usage of commercial data as well as the technical architecture of the commercial data test. I would also like to point out that the article cited above was in error; not only did Congress not forbid TSA from testing the use of commercial data, but in fact approved testing as described in the answer to Question 2 below.

   b. When did TSA begin incorporating data obtained from commercial data aggregators into its Secure Flight system of records?

   Answer: GAO recently advised TSA that commercial data records collected by a TSA contractor should be covered by TSA's system of records. TSA revised its notices accordingly. Records collected by the TSA contractor were used for research purposes only and were not used in whole or in part in making any determination about an identifiable individual.

   c. What specific event prompted TSA to disclose in June that its Secure Flight testing had incorporated data obtained from commercial data aggregators?

Answer: The General Accountability Office (GAO) recently advised the Transportation Security Administration (TSA) that commercial data records collected by a TSA contractor should be covered by TSA's system of records. TSA revised its notices accordingly. Records collected by the TSA contractor were used for research purposes only and were not used in whole or in part in making any determination about an identifiable individual.

2. In subsection 522(d) of the Department of Homeland Security Appropriations Act of 2005, PL 108-334, Congress prohibited appropriated funds from being used "to test an identity verification system that utilizes at least one database that is obtained from or remains under the control of a non-Federal entity until TSA has developed measures to determine the impact of such verification on aviation security and the Government Accountability Office has reported on its evaluation of the measures." In February of 2005, GAO reported that TSA measures developed for commercial testing "do not, and were not designed to, . . . identify impacts of using commercial data on aviation security in an operational environment." Did TSA violate this statutory provision when it paid a contractor to obtain data from commercial data aggregators and "to test the Government's ability to verify the identities of passengers using commercial data"? [Quoting from TSA's amended Privacy Act notice]. Please explain your answer.

   Answer: No. Based on GAO's February report and a March 17, 2005 TSA briefing to the House and Senate Appropriations Committee staffs on plans for commercial data testing and the identity of the commercial data test contractor, Congress agreed that TSA could proceed with commercial data testing.

   GAO's statements in its report in February of 2005 merely point out that TSA's measures are not intended to apply in an operational environment because TSA was not conducting testing in such an environment. Rather, the measures were designed to apply in a concept testing environment.

3. How many employees of TSA, and of TSA's contractor, EagleForce Associates, Inc., had access to the personal information provided by the three commercial data aggregators?

   Answer: As I understand it, three TSA employees were responsible for accepting nine discs of passenger information enhanced with commercial data from EagleForce and providing those discs to MITRE to validate data formats and to IBM for watchlist comparisons. Following conclusion of IBM's watchlist check, these discs were stored in a secure government safe per the data handling policy developed in consultation with and approved by the TSA Privacy Officer. Four additional TSA employees have access to this safe, but neither they nor the three employees responsible for accepting EagleForce information ever accessed these discs. Finally, I also understand that approximately 10 EagleForce employees had access to commercial data at the company's facility.

AFFIDAVIT

I, EDMUND S. HAWLEY, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

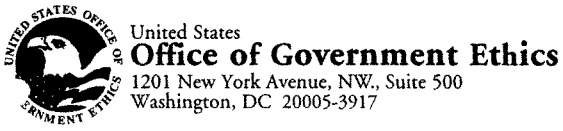
City/County of Arlington
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 1st day of July, 2005

by E S Hawley
(name of person seeking acknowledgement)

Deborah Lee Baldwin
(Notary Public)

My commission expires: 12-31-05



May 31, 2005

The Honorable Susan M. Collins
Chair
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Edmund S. Hawley, who has been nominated by President Bush for the position of Assistant Secretary, Transportation Security Administration, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated May 23, 2005, from Mr. Hawley to the Department's ethics official, outlining the steps which he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Hawley is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
Acting Director

Enclosures

Questions For the Record
Senate Homeland Security and Governmental Affairs Committee
Nomination of Edmund S. Hawley to be
DHS Assistant Secretary for the Transportation Security Administration
July 18, 2005

Post-Hearing Questions Submitted by
Senator Susan M. Collins

The State of Florida, due to its port security law, essentially volunteered to be the first to fully implement TWIC. Florida and TSA have been working very closely under a Memorandum of Agreement for two years. However, it is my understanding that Florida may now be forced to develop its own worker identification system if DHS cannot meet its obligations to sustain support. If confirmed, what would you do to address this issue?

Response: I am aware of Florida's strong desire to be assured that the Transportation Security Administration (TSA) will continue to provide sustainment support for credentialing Florida port workers using the Transportation Worker Identification Credential (TWIC) prototype system.

It is my understanding that the TWIC prototype phase concluded on June 30th, and that TSA continues to meet its obligations under the Memorandum of Agreement with Florida by extending program support for Florida's deepwater ports. I also understand that the current plan is to provide continued sustainment support for Florida until at least October 31, 2005, in order to bridge the gap between the conclusion of the prototype and implementation of the program through regulation.

We also recognize the importance of being able to assure Florida that the TWIC Identity Management System (IDMS) and card production capability will be available to process the enrollments of all Florida port workers through to implementation. Upon confirmation, I will quickly examine the TWIC program spending plans to determine if further planning is needed to provide sustainment services to Florida beyond October 31st.

Post-Hearing Questions Submitted by
Senator Joe Lieberman

1. The attacks on London's mass transit system last week served as an unfortunate and tragic reminder of their attacks on the train in Madrid, and confirmed what I and others have been advocating for a number of years: that we need to focus our homeland security efforts and resources not only on aviation, but also – and to a much larger degree than we have in the past – on rail and transit security. Yet one of Secretary Chertoff's statements in the press last week has given a number of my colleagues and me pause to question whether the Administration views surface transportation security as the priority that aviation security is. The statement from Secretary Chertoff follows: "The truth of the matter is, a fully loaded airplane with jet fuel, a commercial airliner, has the capacity to kill 3,000 people. A bomb in a subway car may kill 30 people. When you start to think about your priorities, you're going to think about making sure you don't have a catastrophic thing first." We know that mass transit is an al Qaeda target. It could seem to follow that our own nation's mass transit and rail systems are also likely targets for al Qaeda to attack. Further, not only thousands, but hundreds of thousands, would perish were terrorists to attack a rail car or truck carrying certain extremely hazardous materials. Do you

agree with Secretary Chertoff's statement, indicating that rail and mass transit security should not be treated on the same level with aviation security?

Response: It is my understanding that since its inception, the Transportation Security Administration (TSA) and the Congress have focused the majority of transportation security funding towards what has been considered the largest and most consistent potential threat - attacks on our aviation system. At the same time, TSA has been working to improve security in other modes of transportation. The Nation's transportation system is vast and complex, but historically only in aviation security is the Federal role direct and pre-eminent. For that reason, TSA and the Department of Homeland Security (DHS) have known that the aviation model of security would not work as well for securing other modes of transportation. Thus, TSA continues to work with State, tribal, local, regional and private partners to help secure our transportation system. These efforts span the spectrum of security, from intelligence and information sharing to awareness through prevention, response, and recovery from a potential terrorist attack in the United States.

The responsibility for securing our nation's transportation system is a shared one between Federal, State, and local governments, and private industry stakeholders, and system users. Public and private stakeholder investment in security is both appropriate and expected. Currently, the federal government is providing funding, in the form of security grants, to help ameliorate the cost borne by the private stakeholders. TSA will continue to assist system operators identify their security risks through: (1) security assessments, both government-facilitated and through use of self-assessment tools, (2) compliance efforts, and (3) through cooperative partnerships with industry associations and operators to develop effective and cost-efficient mitigation strategies.

2. At the Second Stage Review hearing, Secretary Chertoff discussed the level of attention that should be given to aviation and non-aviation security. According to the audio recording of his remarks at the hearing, Secretary Chertoff said that although aviation and non-aviation security "each require the same degree of attention, the particular way in which we pay attention may be a little bit different. Aviation, for example, is a closed system. People enter and depart in a relative fixed number of points. Once you're on an airplane, you're on an airplane. And so our configuration in terms of security is one that is guided and molded by the existing nature of the system. I've ridden the New York subways. I've ridden the Washington subways. To have magnatometers would be to destroy the system itself. So we have to think about how we make the system work with security and efficiency. And in that regard one of the things I wanted to emphasize - and maybe I'm not always as careful as I want to be - is that we have to look at the whole range of threats. Obviously even a bombing that kills 30 or 40 people in a subway is a serious matter. But a biological incident in the subway or a chemical incident in the subway, which could have the capacity of killing many, many more people and in fact rendering the subway unusable for a substantial amount of time, would be a matter of significantly worse consequence. It's part of the nature of my job to make sure that as we go about doing things, which in terms of our priorities, that we take account of the structural differences of the systems

we deal with, the different consequences. I think that's the essence of risk management." He continued: "It is not a question of [DHS] having responsibility across the board. It's recognition of the fact that different sectors of our economy are configured differently, that we have to be partners with everyone, and we have to recognize those differences when we work with our partners." What is your view of these statements by Secretary Chertoff? In your view, should the fact that mass transit is not a "closed" system like aviation weaken the federal government's role in the protection of Americans who use mass transit?

Response: Like Secretary Chertoff, I recognize that while the Transportation Security Administration (TSA) has responsibility for protecting the Nation's transportation system, our role in each mode is different. As noted in my response above, the Nation's transportation system is vast and complex, but it is my understanding that historically only in aviation security is the Federal role direct and pre-eminent. TSA and the Department of Homeland Security (DHS) have known that the aviation model of security would not work as well for securing other modes of transportation. TSA should continue to work with State, tribal, local, regional and private partners to help secure our transportation system. These efforts span the spectrum of security, from intelligence and information sharing to awareness through prevention, response, and recovery from a potential terrorist attack in the United States.

Each of the major transportation modes has unique characteristics, operating models, responsibilities and stakeholders. The transportation modes also differ with respect to the level of Federal involvement. The government has played a more limited role in surface transportation security due to the extent of state and local government, and private sector ownership, and the general openness and breadth of these systems.

The success of transportation security rests on the close partnership between DHS and transportation stakeholders. While clearly private investment in security is expected, the threat-based risk-managed approach, complemented by performance based standards – which permits achievement of security standards within an owner's business model – coupled with appropriate security grants, mitigates the national cost borne by the private stakeholders. On-site verification of compliance with national transportation security standards helps ensure acceptable risk management for the national transportation security system.

To this end, TSA is deploying a trained force of 100 Surface Transportation Security Inspectors to various locations throughout the country on a risk-based prioritization of the national rail and mass transit system and its key infrastructures. They will develop relationships with owners/operators necessary to ensure compliance with all appropriate TSA security guidelines and regulations. They are currently being trained and deployed, and all 100 should be in the field by the end of 2005.

3. Congress provided $150 million for rail and transit security in the FY05 Homeland Security Appropriations package. Last week, the Senate approved the FY06 Homeland Security Appropriations bill, which includes a $50 million reduction in rail and transit security funds from

FY05. Unfortunately, two amendments, each of which would have provided over $1 billion for mass transit security, were defeated on the Senate floor. The American Public Transportation Association says that $6 billion is needed to protect the country's mass transit systems. Do you believe the level of funding for transit and rail security in the FY06 Homeland Security Appropriations bill (H.R. 2360) is appropriate? What level of funding for transit and rail security, in your view, is appropriate?

Response: If confirmed, I will evaluate H.R. 2360 and the President's budget priorities in light of the recent attacks in London. It is my understanding that the Transportation Security Administration allocates the level of resources at its disposal by utilizing a threat-based, risk-management approach to transportation security. If confirmed, my intention is to constantly reassess these resources and budget priorities as part of the Department's risk-based management approach to securing the Nation's critical infrastructure. In addition, since the creation of TSA, Congress has provided very specific direction as to how funds are to be spent. TSA is responsible for evaluating risk to the transportation system across a changing array of threats, sharing threat and risk information with transportation stakeholders (public and private), establishing consistent national transportation security standards across all modes, monitoring compliance with those standards by transportation stakeholders and in the event of a transportation security incident, ensuring rapid restoration of service and public confidence. TSA and our partners within DHS, in coordination with the Department of Transportation (DOT), have conducted vulnerability assessments on transportation assets, such as rail and transit, to determine their susceptibility to attack or compromise.

Ensuring that our nation's transportation systems are secure must be accomplished through effective partnering between appropriate federal, state, local and private industry entities. And, of course, DHS is charged with responsibility for working to protect all modes of transportation, but it has consistently held that that this responsibility must be shared with federal, state, local and private industry partners, many of whom were already in the business of providing security for their particular piece of the transportation puzzle.

I believe the President's FY 2006 budget request recognizes this imperative by providing for public transportation grants, outside of Urban Area Security Initiative (UASI) grants, which cover such programs as rail/mass transit inspectors, use of canine explosive detection teams in mass transit, intercity bus security improvements, hazardous materials truck tracking, and Highway Watch, among others.

4. The New York Times recently reported that mass transit security measures in the United States are remarkably low-tech, using – for example – canine dogs to detect bombs where we could be using microwave transmitters and terahertz devices. Which mass transit security technologies should the U.S. government develop, deploy, or expand? What plans would you have to develop mass transit security technologies?

Response: It is my understanding that the Transportation Security Administration (TSA) has an ongoing program that stays abreast of the technological developments in all venues of

transportation security. Although mass transit poses significant challenges because of the high throughput of passengers throughout the system, I understand TSA has been examining ways to use technology that is currently in use in the aviation sector for the screening of mass transit passengers. I am told that in the rail transit environment, current programs such as enhanced video surveillance, explosives detection canine teams, as well as passenger and employee education and awareness programs have also proven to be effective.

TSA is continuing to explore and evaluate emergent technologies that may be suitable for high passenger throughput transportation venues. TSA is working closely with the transportation community, as well as the Department of Homeland Security, on continuous development of technologies and procedures that will address various security situations.

It is my understanding that TSA successfully tested -- and deployed during special security events -- passenger and baggage screening technology in the rail environment. However, I am told that the widespread application of such technology is unrealistic in America's heavy rail systems, which consist of more than 1,000 stations and carry 2.7 billion passengers annually.

5. In the same article, the New York Times also pointed out some of the cutting edge, useful techniques used by the national and local governments in Israel, Great Britain, and other countries that have had more experience with terrorist attacks on mass transit systems than has the United States. The article reported one example of Israeli police training, and sharing information with, first responders in Boston. In your view, what role should TSA play in the coordination of joint exercises between leaders American and foreign leaders and first responders?

Response: It is my understanding that Transportation Security Administration (TSA) officials have and are interacting with foreign counterparts on rail and transit security issues with the intention of sharing and gleaning best practices from countries with a history of terrorism against their surface transportation systems. TSA has developed forums for sharing security information and practices on behalf of the Department across all modes of transportation. TSA has meetings with officials from the U.K., Spain, Russia, Israel, France, Japan, Greece (particularly for the Olympics), the Netherlands, Canada, and other countries on a regular basis. TSA also benefits from the DHS representatives based overseas in U.S. Embassies. These TSA employees have expanded their traditional aviation security roles to include security issues relating to all modes of transportation.

Since the attacks on September 11, 2001, a number of countries have taken additional security measures to protect their rail and mass transit systems against terrorism. Following the more recent attacks, many systems have been placed on high alert and have implemented additional measures to secure mass transit in their respective countries. Examples of initiatives undertaken include screening technology, behavioral observation, explosive detection canine teams, closed-circuit television, enhanced communications systems, patrols of tracks and stations, additional policing, passive measures, and access controls. Many of the lessons learned by TSA counterparts in other countries have been incorporated into TSA efforts.

It is my understanding that TSA has held numerous security exercises domestically that bring together rail carriers, federal and local first responders, security experts, and is addressing gaps in antiterrorism training among rail personnel. In addition, rail personnel have received counterterrorism training at DHS' Federal Law Enforcement Training Center. If confirmed, I will explore the efficacy of pursuing joint exercises with foreign leaders.

6. Security experts, including Richard Falkenrath, have discussed the terrifying possibility of terrorists attacking a rail car carrying extremely hazardous materials, such as chlorine. Those experts have pointed out that were one of those cars carrying deadly chemicals to explode near a densely populated area, hundreds of thousands of lives could be lost. Such rail cars travel precariously close to the heart of Washington, DC and New York City. Therefore, the consequences of this sort of an attack could be catastrophic not only for the residents, tourists, and working people of Washington, but also for many of the nation's leaders. Senator Biden has introduced a bill that would require railroads to re-route certain cars carrying extremely hazardous materials around certain high threat corridors, subject to some meaningful exceptions. Do you support Senator Biden's bill? Do you think railroads ought to consider re-routing their cars carrying deadly chemicals around densely populated terrorist targets like Washington, DC and New York City?

Response: If confirmed, I will give the merits of S. 1256 full consideration. It is my understanding that since the terrorist attacks of September 11, 2001, the security of hazardous materials shipments has received enhanced scrutiny by the Department of Homeland Security (DHS), specifically, the transport of chemicals classified as toxic by inhalation (TIH). DHS and the Department of Transportation (DOT) have been working on various initiatives that support the development of a national risk-based plan to address the shipment of hazardous materials by rail and truck. For rail, DHS and DOT are focusing on the assessments of vulnerabilities of high threat urban areas where TIH are transported, identification of practical alternatives to placards on rail tank cars, new rail car design standards, and the development of hazardous materials (hazmat) security plans to improve the adequacy and effectiveness of industry security plans

I understand the Department created a multi-agency task force to conduct a comprehensive security review, including a vulnerability assessment of the rail infrastructure used for the conveyance of hazardous materials through Washington, D.C. This review was used to create a plan to address identified vulnerabilities. The task force is comprised of DHS (IAIP and TSA), Federal Railroad Administration, Research and Special Programs Administration (RSPA) and affected stakeholders, including the local first responder community, local government, and railroad owners and users (VRE, Amtrak). An assessment of a 15 mile DC corridor for hazmat rail shipment has been completed.

The TSA-led DC Rail Corridor Project included vulnerability assessments, a buffer zone protection plan (BZPP) and site specific recommendations for mitigation measures. The project resulted in the development of a classified vulnerability assessment report; a buffer zone protection plan (law enforcement sensitive); and an unclassified report. DHS, along with FRA

and railroad owners, have done numerous, extensive briefings with congressional staff on our efforts to strengthen the DC rail corridor against terrorist attacks.

As you know, communities all across American rely on chlorine and other hazardous chemicals for clean water and other essential services. Therefore, it is my understanding that because it would be impossible to re-route hazmat to avoid all communities, the Department has no current plans to mandate re-routing. Instead, DHS intends to continue our risk management approach to help prioritize limited resources. DHS will continue to work with rail carriers, State and local governments, and first responders to address high risk areas, as we have done in Washington, D.C. Additionally, I understand the Department has completed a ground assessment on New Jersey's northern coast, working with the New Jersey Department of Homeland Security, Conrail, CSX, Norfolk Southern and a number of short line railroads in the area. We are planning several additional assessments in other major urban areas.

7. When exactly will the Department produce the National Transportation Security Strategy mandated under the Intelligence Reform Act and now almost four months past due?

Response: The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires the Department of Homeland Security (DHS) to develop a National Strategy for Transportation Security (NSTS). This document, which will govern Federal transportation security efforts, uses a threat-based, risk-managed approach to transportation security, looking at threat, consequence, vulnerability and likelihood of success by analyzing asset categories across six transportation modes: aviation, freight rail, highway, maritime, pipeline and transit. The NSTS establishes a list of asset categories determined to be at greatest risk. The resulting asset categories and their corresponding security priorities form the basis of each modal plan. The NSTS also discusses the roles and missions of the Federal, State, regional and local authorities, and the private sector in response to an attack that has occurred as well as research and development objectives for the transportation sector.

I understand that although DHS assigned primary responsibility for development of this document to the Transportation Security Administration (TSA), the strategy is being developed jointly with the Department of Transportation (DOT), and with intensive collaboration between several elements of DHS, including the Border and Transportation Security Directorate (BTS), the Information Analysis and Information Protection (IAIP) Directorate, the Coast Guard (USCG) and the Office of State and Local Government Coordination and Preparedness (OSLGCP).

In addition I understand that in a June 21, 2005 response to a Committee letter on this question, the White House stated "Deputy Secretary Jackson wrote to Congress on April 4, 2005, requesting additional time to reassess and strengthen the transportation strategy report. This additional review is critical to ensure that the final product meets the intent of IRTPA, is helpful to your committee, and is appropriately coordinated with other federal agencies. We understand that DHS expects to complete and transmit that report in the next 5 weeks." NSTS continues to

be a top priority at TSA and DHS. It is my understanding that the Department anticipates that the strategy will be submitted before the end of July 2005. If confirmed, I will certainly push for adherence with this deadline.

8. TSA's amended Privacy Act notice for Secure Flight Test Records, published on June 22, 2005, disclosed that TSA's system of records included personal information obtained from three commercial data aggregators, and that this commercial data had been compared to passenger records obtained from airlines. The amended notice claimed that TSA's original Privacy Act notice and Privacy Impact Assessment did not disclose plans to incorporate personal information obtained from commercial data aggregators in its system of records "because TSA had not developed its test plan with this level of detail at the time the documents were published."

a. How many records did TSA's contractor obtain from the three commercial data aggregators? How many individuals had their personal information shared with TSA's contractor by the three commercial data aggregators?

Response: I understand the Transportation Security Administration's (TSA) contractor received 191,294,645 records. The exact number of individuals that had their personal information shared with the TSA contractor is not known because the contractor did not track such a statistic during the testing, however the contractor did not receive commercial data on 190 million distinct individuals. Any particular individual could have multiple records in the databases of each of the commercial data providers, as many of the records are drawn from similar sources. Any particular individual might have multiple records with each of the commercial data providers. For example, a particular individual might be associated with 10 records total among the three data providers.

b. Please specify the date or dates that the TSA contractor received the records from the commercial data aggregators and began using them in its testing.

Response: Data Received (First Batch)

Insight America	March 17, 2005
Acxiom	March 17, 2005
QSent	March 17 2005

Data Received (Second batch)

QSent	March 31, 2005
Insight America	April 1, 2005
Acxiom	April 5, 2005

9. In your response to question #19 of the Committee's pre-hearing written questions, you said that TSA was examining whether commercial data can be used in passenger pre-screening "to verify whether or not a particular person is the person whom he/she claims to be." Presumably, in order to use commercial data in this way TSA would have to compare it to a few pieces of personal information provided by the

passenger. Are there limitations of such a system, particularly if individuals obtain false personal data elements that are consistent with the identity of Americans who would not raise alarms in Secure Flight's system?

Response: Certainly one of the fundamental premises of the Transportation Security Administration's (TSA) commercial data test for Secure Flight is to determine whether passenger information is incorrect or inaccurate. This includes assessing the validity of information provided by passengers, *particularly* when a potential threat may be attempting to assume the identity of someone who does not present a threat. I understand the testing has been promising to date, but further inquiry is required, and TSA has extended the testing to examine the issue.

10. Although far from perfect, state-supplied ID's are an increasingly reliable form of identification, with embedded watermarks, "ghost" portraits, code contained in magnetic stripes or bar codes, and features visible only under UV light. States are also taking measures to crack down on fraud. Security features and fraud detection will get even better with the advent of federally mandated standards. TSA does not appear to have any program for enabling or training airport personnel to detect fraudulent ID's, to recognize the security features of ID's, or to access the embedded code contained in ID's.

a. Is it true that TSA has no such programs? Does TSA have any plans to implement such a program?

Response: It is my understanding that the Transportation Security Administration (TSA) requires the airlines to conduct a passenger identity check using the procedures outlined in the airlines' TSA approved security program at the initial point of contact with each originating passenger checking baggage and immediately prior to entering the screening checkpoint. Any person who appears to be 18 years of age or older who cannot produce the required identification, or whose name does not match his/her boarding pass, must be subjected to additional security screening.

Beyond describing the types of identification that are acceptable, I understand TSA does not provide identification check training or identification check training material to the airlines. TSA regulations require airlines to ensure that individuals performing security-related duties for the airline, of which ID verification is included, have the knowledge necessary to perform their duties.

TSA ensures airline personnel and individuals contracted by airlines have the knowledge necessary to perform their duties by conducting inspections and tests of airlines' implementation of the security requirements.

In my understanding TSA recognizes that currently available technologies exist that can enhance the ability of personnel to recognize legitimate forms of identification, and the agency's programs and pilots, such as the Transportation Worker Identification

Credential (TWIC) and Registered Traveler (RT), have/are testing methods of verifying the authenticity and legitimacy of identity documents using a combination of automated technology and user training. Additionally, TSA has tested access control technologies, including biometrics and access control systems, which could have applicability at checkpoints for validating identity. However, as you point out, currently there are several types of technologies being utilized across the nation that are not interoperable at this time; so deploying technology to airports to read all current state IDs currently may not be practical.

b. If confirmed, would you consider implementing such a program? If so, how?

Response: It is my understanding that the Transportation Security Administration (TSA) is working with the Department of Homeland Security and the Department of Transportation to implement the REAL ID Act which was included in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005. As you know the REAL ID Act repealed Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) and prescribes minimum standards for driver's licenses nationwide. As implementation of the REAL ID Act moves forward and as the TWIC and RT pilots are completed and evaluated, I will be in a better position to assess whether such a program is practicable and to study the latest technology. Rest assured, if confirmed, I will look into this matter.

Post-Hearing Questions Submitted by
Senator Daniel K. Akaka

Department of Homeland Security (DHS) Second Stage Review

1. As you know Secretary Chertoff's Second Stage Review has major implications for the Transportation Security Administration (TSA), including folding the Federal Air Marshal Service (FAMS) back into TSA. When former Secretary Ridge transferred the FAMS from TSA to the Immigration and Customs Enforcement (ICE) in November 2003, he said, "This is the right move at the right time for the right reasons." The idea was to establish an integrated law enforcement presence in the aviation sector and to create a larger surge potential of federally-trained law enforcement officers in the event of a crisis. If confirmed, how will you work with ICE and other law enforcement agencies, both within DHS and from other departments, to ensure that this surge capacity of trained law enforcement officers is available in the event of an attack within our transportation sector?

Response: Having not been involved in the Second Stage Review process, I feel I cannot, at this time, speak pointedly to the direction that Secretary Chertoff envisions for the Federal Air Marshal Service (FAMS). If confirmed, I can assure you that the prompt, smooth transition of the FAMS back to the Transportation Security Administration (TSA) will be a top priority. I will also ensure that there is proper coordination between the

FAMS, Immigration and Customs Enforcement (ICE) and other federal law enforcement agencies to leverage additional federal resources for surge capacity contingencies.

2. Secretary Chertoff mentioned the relationship of user fees to aviation security in his Second Stage Review, and he said he would be calling on Congress and the aviation industry to work in finding a formula that works.

   Most air travelers are willing to pay modest increases in user fees if they see a nexus between the fees and improved security measures. In the past, TSA has generally struggled in its efforts to educate the American public. The attempt last Fall by TSA to change the rules on patting-down passengers for weapons comes to mind. Public outreach will be critical for the success of any proposed user fees. How will you improve TSA's public outreach efforts?

   Response: I understand that since taking over passenger screening in November, 2002, the Transportation Security Administration (TSA) has made a concerted effort to educate the public about new or modified security measures and policies. For example TSA launched a website with a detailed section for passengers, developed a public/private partnership called "Prepare for Takeoff" with major members of the travel industry, provided materials for travel agents to distribute to their customers, produced public service announcements for radio, regularly issues national press releases with travel tips, held airport-based media events to educate the traveling public, held satellite media tours with markets across the country just prior to major travel seasons, and conducted hundreds, if not thousands, of meetings with local community groups.

   I understand TSA has also tackled specific problems like the high frequency of guns and/or ammunition intercepted at checkpoints, by partnering with the NRA to reach shooting sports enthusiasts through a myriad of publications. We have worked with firearms and ammunition manufacturers and retailers to develop packaging inserts and point-of-purchase displays that remind consumers of rules that govern travel with these products.

   Despite these efforts, passengers continue to bring prohibited items to the checkpoints and more education is required. Therefore, I understand TSA is planning to rejuvenate its efforts to work collaboratively with our partners in the travel industry to educate and inform passengers.

   With respect to user fees, TSA developed a color brochure for the Registered Traveler program that was distributed to everyone who applied for the pilot programs. We also worked closely with the participating airlines to provide educational materials to applicants. TSA will employ a similar approach in the future for all user-based fee programs.

While TSA has taken numerous steps to better reach out to the public, I recognize this as a critical area to which I will be giving my personal attention. I believe it is imperative that the agency continually review its work in this area, the effectiveness of that work, and look for ways to further improve how we communicate with both aviation industry stakeholders and the traveling public.

Personnel

3. In response to the Committee's pre-hearing questions, you said TSA should align its personnel system with the system at DHS, but that TSA should continue to exercise the broader personnel flexibilities provided by Congress. In aligning the personnel system at TSA with the system at DHS, what personnel issues should be unique to TSA and why?

   Response: In the creation of the Transportation Security Administration (TSA), the Aviation and Transportation Security Act (ATSA) provided TSA with broad human resource management flexibilities more expansive than those flexibilities provided in the Department of Homeland Security (DHS) enacting legislation. I believe TSA should continue with joint efforts to align its personnel systems with the Department's system to the extent permitted by statute and in a manner consistent with the Department's and TSA's goals.

   While pursing this alignment, TSA should also continue to exercise the broader personnel flexibilities provided by Congress in ATSA. By retaining this flexibility, TSA will be situated optimally to adapt to the dynamic nature of the aviation and transportation industry (i.e., hire critical staff quickly, direct and assign staff efficiently, and retain policy and organizational agility) and adapt to the changes ahead with the airports which are approved for the Screening Partnership Program (i.e., contract screeners). TSA should also will continue to serve as an "HR laboratory" with a most contemporary performance management system and demonstrating efficient and effective operations. TSA should continue to preserve fundamental merit principles, prevent prohibited personnel practices and honor and promote veterans preference.

   I believe that the TSA workforce is already a cohesive and effective component of DHS. TSA employees identify very strongly with the mission of ensuring homeland security. They stand up daily to the challenges associated with their extremely important jobs. Supporting the screener workforce in such a way that they can concentrate and focus on their immediate screening tasks without worrying about broader organizational and administrative changes around them is a critical function of TSA leadership.

4. Congress was very specific in ensuring that employees at DHS have full whistleblower protections, including the right to an investigation by the Office of Special Counsel into disclosures or retaliation for whistleblowing and the right to appeal to the Merit Systems Protection Board (MSPB). Currently TSA screeners do not have full whistleblower

protections and cannot bring cases to the MSPB. Do you believe whistleblowers at TSA should be treated differently from those at DHS, and if so, why?

Response: It is my understanding that the Transportation Security Administration (TSA) does not treat screeners differently from the rest of the employees at DHS because TSA is committed to protecting whistleblower rights. To ensure that whistleblowers are protected from retaliation, TSA entered into a Memorandum of Understanding with the Office of Special Counsel (OSC) to investigate whistleblower retaliation claims by TSA screeners and refer their findings to TSA for appropriate action. Under the agreement, TSA must fully cooperate with OSC investigations, which includes making TSA employees available to testify and responding to document requests by OSC. Additionally, OSC may request that TSA stay personnel actions when they believe whistleblower retaliation has occurred. I understand TSA has also issued a policy on whistleblower rights very similar to those set forth in the Whistleblower Protection Act and is currently working with OSC to obtain the OSC 2302(c) Certification Program.

Secure Flight

5. I understand that TSA is in the process of testing Secure Flight using information from commercial data companies. As you know, the risk of using inaccurate information from the private sector sources could adversely impact both our privacy rights and our national security. How will you ensure the accuracy of the commercial data used at TSA?

   Response: For the testing of Secure Flight, I understand the Transportation Security Administration (TSA) relies on the commercial data providers whose business is to improve the accuracy of data it uses on the commercial side. Understanding the privacy issues involved with the use of commercial data, TSA is examining the impact of potentially inaccurate commercial data on TSA's ability to verify passenger identities and identify potential threats. In addition, TSA is evaluating all the factors that cause passengers to undergo secondary screening, such as randomness, preliminary alarms, and CAPPS I to better understand the impact of potentially inaccurate commercial data on passengers' travel experiences. The testing has been promising to date, but further inquiry is required, and TSA has extended the testing to examine this and related issues.

6. As you know, TSA has a very high rate of workers compensation claims compared to other agencies.

a. What steps will you take to reduce on the job injuries for TSA employees?

b. How will you involve TSA employees in improving workplace safety?

Response a & b: In early FY 2003, the Transportation Security Administration (TSA) met Congressional deadlines to hire federal airport passenger screeners and achieve checked baggage screening using Explosive Detection Systems. As the TSA screening workforce was deployed, it became apparent that injuries caused by lifting and quickly moving baggage were a serious problem. I am told that TSA initiated a safety program in the second quarter of FY 2003 to address the high rate of injuries.

I understand that FY 2004's rate increase from FY 2003 is attributed, in part, to the processing of backlogged claims from incidents that actually occurred in FY 2003. In FY 2004, TSA began implementation of an Occupational Safety and Health program aimed at lowering TSA's injury and illness rate. By the midpoint of FY 2004, a decrease in the number of claims could be seen, and the decrease appears to be continuing into FY 2005. Training, guidance, a nurse intervention program, and the availability of field safety support have contributed significantly to the decrease. For example, in the first 15 weeks of operation, the nurse intervention program at 21 pilot airports yielded savings of over $2.2 million.

It is important to emphasize that airline baggage handling is among the most injury prone occupations in the private sector. I understand TSA has also directly engaged the screener workforce on the importance of workplace safety by distributing a safety awareness Web-Based Training (WBT) course both as a CD and via the Online Learning Center. This safety awareness WBT course covers such topics as proper lifting techniques, heat injury prevention, and checkpoint and checked baggage safety. In addition, training on radiation safety awareness is being developed.

Contracting

7. A team from Bearing Point was awarded a contract to manage the Transportation Worker Identification Credential (TWIC) contract. Another team from Bearing Point won the $24 million contract to build a prototype of the TWIC card. Do you believe it is appropriate to award a contract to the same contractor who helped to structure the contract? If not, will you commit that this practice will not continue under your leadership?

   Response: In this case, I understand BearingPoint submitted an Organization Conflict of Interest (OCI) Mitigation Plan containing detailed procedures to prevent any conflicts in performing both Prototype and Project Management Office support work for TWIC. This plan was accepted by the Transportation Security Administration (TSA) and was found acceptable and reasonable by the Federal Aviation Administration's (FAA) Office of Dispute Resolution for Acquisition (ODRA).

   I do believe these situations need to be carefully scrutinized to avoid conflicts. It is my understanding that TSA has strengthened its acquisition planning process, and a fundamental building block of the process is to prevent conflicts and maximize

competition. TSA has published and implemented a TSA Acquisition Planning Guide, which has been tailored for use throughout the Department of Homeland Security (DHS). TSA has also provided workshops to TSA employee on the process.

Additionally, in several cases, TSA has revised acquisition strategies to avoid OCIs. One example of this is the Freight Assessment System program: TSA issued the involved contractors letters notifying them that they cannot provide program management support and implementation services. Further, TSA solicitations include OCI provisions which require the contractors to identify potential OCIs and recommended mitigation plan.

I am committed to avoiding conflicts of interest under my leadership and will ensure TSA continuously monitors compliance with OCI mitigation plans

8. You have stated that TSA is seeking to increase staffing levels for contract oversight. Will you commit to fill these positions with federal employees and not with contractors?

   Response: As the Transportation Security Administration (TSA) has increased its staffing levels, its focus has necessarily been on recruiting highly qualified contract specialists to do the operational work of contracting – planning, negotiating, awarding, and managing contracts. During the initial stand up and growth phase of the TSA, where appropriate, the agency used contracting services for many activities. I understand TSA has increasingly engaged the expert support of non-TSA and DHS sources, such as the Defense Contract Audit Agency and the Defense Contract Management Command. As the Office of Acquisition increases its 1102 Contract Specialists series staffing levels, contract oversight will be executed by those federal employees. It is my understanding that TSA does intend to continue using contractor support for office administrative activities, such as data entry and invoice process routing

9. TSA is the only entity within DHS that is not required to follow the Federal Acquisition Regulation (FAR). The Government Accountability Office and the DHS Inspector General have audited TSA procurement practices and have questioned the cost and effectiveness of many TSA contracts. One example was a contract, which increased from $104 million to $741 million, with NCS Pearson to hire federal screeners in 2002 and 2003. Auditors blamed much of the increase on tight deadlines, a lack of TSA contract oversight personnel, poor management by Pearson, and weak financial controls at the agency.

   Now that TSA has been operating for over three years and is a part of DHS, do you believe TSA should still be exempt from the FAR, and in the absence of the FAR, how will you ensure effective contract management at TSA?

   Response: It is important to note that the early contracts that have been highlighted in recent audits, such as NCS Pearson and Boeing, were FAR-based contracts with FAR

clauses. The shortcomings in those contracts were a result of inadequate staffing resources and overall lack of an acquisition infrastructure.

Clearly the Transportation Security Administration (TSA) believes that continued use of Acquisitions Management System (AMS) is beneficial to our mission and the American public. As noted in GAO Report GAO-04-544 *(High Level Attention Needed to Strengthen Acquisition Function),* "TSA's acquisition policies and processes emphasize personal accountability, good judgment, justifiable business decisions, and integrated acquisition teams ...." The primary flexibility that AMS provides revolves around implementation of the Competition in Contracting Act (CICA). It is my understanding that TSA's preference for competition mirrors that of the rest of the Government; a fundamental tenet of the acquisition program is that competitive pressure yields better value for the Government, and therefore the taxpayer. However, exemption from CICA does provide the following:

- More efficient and effective competitions through quicker elimination of sources not likely to receive award. While the FAR has been revised to allow the competitive range to include only those offerors most likely to receive an award, the risk of a pre-award protest generally drives selection officials to include all offerors – resulting in a higher cost for the Government and industry.

- Better proposals resulting from industry's better understanding of more detailed and timely information exchange between industry and government. AMS emphasizes communications between the government and industry. Since the risk of protest revolving around whether meaningful discussions were held or not, information flows more freely.

- Increased emphasis on market research during the acquisition planning phases, since synopsis is used for public disclosure and generally not used as a means of identifying sources.

The integrity of TSA's procurements and overall management of the entire acquisition lifecycle process is a key focus area for DHS leadership. It is my understanding that the Office of Acquisition has many ongoing activities to strengthen the process. As I understand these activities are focused in four key areas:

- Continue to support the TSA mission with efficient, expedient, and accurate contracts.
- Significantly improve acquisition and program planning.
- Significantly improve program management and administration.
- Build and mature the TSA acquisition infrastructure.

Certainly I intend to make the progress of these activities a high priority.

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