



**STATEMENT OF
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**BEFORE THE
HOUSE COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON TRANSPORTATION SECURITY AND INFRASTRUCTURE
PROTECTION**

**ON THE
IMPACT OF BACKGROUND AND SECURITY CLEARANCES ON THE
TRANSPORTATION WORKFORCE**

February 16, 2007

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I want to thank the Committee for the opportunity to testify this morning on the imposition of criminal background checks by rail industry contractors through the e-RAILSAFE Program. I also want to thank you Madam Chair, not only for calling this hearing, but for your work in investigating and evaluating exactly what is being done by the railroads and your commitment to hold these companies accountable.

TTD represents 32 member unions in all modes of transportation and our 10 rail affiliates make-up our Rail Labor Division.¹ I want to specifically note that two of our affiliates, the Transportation Communications International Union (TCU) and the Brotherhood of Railroad Signalmen (BRS), represent workers that are subject to the checks performed by e-RAILSAFE and that are the focus of today's hearing.

The e-RAILSAFE program, designed and imposed by our nation's Class I railroads, was implemented without any consultation with labor and ignores the standards and procedures that have been developed by Congress and the Administration for security threat assessments. Given this fact, it is not surprising that the program has generated so much confusion and controversy. It is indeed unfortunate that we find ourselves having to address these issues today at a Congressional hearing when many of these problems could have been avoided by the rail industry with smarter planning, collaboration with our member unions, and a better understanding of the work that has been done in this area since the September 11, 2001 terrorist attacks.

¹ A complete list of TTD's member unions is attached.

Transportation Trades Department, AFL-CIO

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Indeed, since 9/11, Congress and the Administration, particularly the Transportation Security Administration (TSA), have focused considerable attention on imposing various forms of background checks on transportation workers and on planning for a universal Transportation Worker Identification Credential (TWIC). TTD has been at the forefront of this debate.

We have participated vigorously throughout the legislative and regulatory process to ensure these initiatives are reasonable and strike the proper and necessary balance between worker rights and due process, and legitimate security concerns. Indeed, it must be clear that no one wants to secure our nation's transportation system, including freight and passenger rail facilities, more than transportation workers. Our members are on the front lines and they will be the ones first affected in the event that a terrorist attack is carried out using or targeting our nation's transportation system and infrastructure.

With this in mind, we have been forceful advocates before Congress and the federal government for more federal support for rail transportation security improvements, mandatory employee training and strong whistleblower protections. It is indeed disturbing that we continue to face stiff opposition from the industry's lobby to our common sense security agenda; and this is the same industry that claims the safety and security of the rail network is its number one priority.

We do understand and appreciate that the world has changed since 9/11. Controlling who enters our transportation system and its facilities and ensuring that those who work there do not pose a terrorism security risk are legitimate goals and ones that we fully support. But any background check program must strike the right balance: disqualifying offenses must be clearly articulated and limited to those that cause someone to be a true security risk; a robust and independent appeals and waiver process must be available; worker privacy must be protected; and overall the process must be fair, consistent and transparent so workers can navigate the program in an efficient manner.

Based on these and other objectives, we worked directly with Members of Congress on both sides of the aisle in developing certain parameters for the maritime TWIC program embodied in the Maritime Transportation Security Act. We were pleased that this bipartisan model was largely adopted when TSA implemented the Hazmat security threat assessments required by Congress in the USA Patriot Act. While by no means perfect, these two TSA run programs at least provide workers with a list of disqualifying offenses, an appeals and waiver process, which includes, at the direction of Congress, an Administrative Law Judge (ALJ), and privacy protections limiting the use and distribution of information generated by these checks.

Let me be clear – the rail industry followed none of these principles in implementing its e-RAILSAFE program. And it must be noted that these checks apply to current workers, many of which have had long, productive tenures with their employers and are dependant on these jobs to support themselves and their families.

One of the main problems with the e-RAILSAFE program is that the scope of these checks and the process that workers must follow remain vague and unclear. Even in discussions convened by your staff Madam Chair, railroad representatives expressed uncertainty on exactly what would constitute rejection by e-RAILSAFE. If the railroads themselves cannot tell us how and why someone will fail a background check, how are rank and file workers expected to figure out their rights and how to preserve their jobs?

According to one written description of the program (see attachment 2), “an employee will be denied an identification badge if the background screening process reveals a felony conviction in the past 7 years, or the employee was released from incarceration for a felony offense within the last 5 years.” But we have also been told by at least one railroad security official that multiple misdemeanors might also be considered and the e-RAILSAFE web site clearly states that employees can be “denied if they have misdemeanor crimes of concern.”² Again, railroad representatives offer different interpretations of what this means and no one has been able to tell us what constitutes misdemeanor “crimes of concern.” I guess it’s whatever some official decides on any given day.

It should also be noted that rail workers are required by the e-RAILSAFE program to sign a broad consent form that, among other things, allows for a review of the employee’s “character and general reputation.” This may be boilerplate legal language, but with no further explanation from the company, front-line workers are not sure what type of checks they are agreeing to. Furthermore, e-RAILSAFE literature warns that these checks are somehow required by the Department of Homeland Security and subject to audit by government officials. A false claim offered only to lend credibility to this program and to coerce employees who would otherwise have legitimate questions about the extent of these background checks. And failure by the employee to sign the consent form will result in the worker being denied access to the rail facility.

The railroads’ claims that workers are offered an “appeals” process are false as well. The fact is that the appeals process is a protection in name only. As far as we can tell, the decision to “appeal” is left up to the contractor and the ultimate decision maker is the Class I railroad itself. This circular and insular process does not represent a fair process and it subjects workers to favoritism, potential bias and inconsistent standards.

A worker must have the ability to offer any corrections to criminal records and further demonstrate that despite a bad decision made several years ago, they do not constitute a security risk. Both of these rights are afforded to workers in the TWIC and Hazmat program. In fact, for the TWIC program Members of this Committee worked with transportation labor to require the availability of independent ALJs to hear worker appeals. This added protection was deemed necessary because the waiver process, as originally proposed, would have required workers to apply back to the very same agency that determined the individual was a security risk in the first place.

² See e-RAILSAFE web site at <http://www.e-railsafe.com/help/rsFAQ.html>.

I understand that based on the public criticisms of e-RAILSAFE, the AAR has already spoken to Members of this Committee and others in Congress about reforming this program. We applaud this decision. I would note, however, that on a number of occasions we have asked the industry to sit down with us in an attempt to reconcile some of the issues being considered today. Our offers of assistance were rejected and we could only meet with the rail industry on this topic when staff for the Committee convened a meeting late last year. It is my sincere hope that the industry will not employ this approach in the future if it is serious about reforming this program.

As I said at the outset, we are in strong support of efforts that will prevent those that pose a security risk from working in sensitive transportation positions. But there is a right way to go about this and a wrong way. Clearly the approach by e-RAILSAFE is wrongheaded and must be changed.

I hope this time, with our participation and the oversight of this Committee, the industry can get it right. At the end of day, a balanced and fair process of screening workers is not inconsistent with the goals of these checks and will only enhance transportation security.

Thank you for the opportunity to share our views today and I would be happy to answer any questions the Committee may have.

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
 Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)



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Class I Railroads Increase Security Measures



Given heightened concerns regarding national security, the Class I railroads have implemented a contractor background screening and identification program. This program, known as e-RAILSAFE, provides additional procedures to better secure railroad facilities, and satisfies government security recommendations, directives, and

regulations. The e-RAILSAFE program includes a background screening program, security awareness training and a photo identification badge for all qualified service providers, such as TTX. While all TTX employees were subject to a background check at the time of hire, the e-RAILSAFE program requires an additional background check to be performed. In order to initiate the e-RAILSAFE background check, all employees must complete a consent form. TTX Company has been advised by our owner/customers that any employee who refuses to provide this consent form will not be allowed to provide services on their property.

An employee will be denied an identification badge if the background screening process reveals a felony conviction in the past 7 years, or the employee was released from incarceration for a felony offense within the last 5 years. Employees denied an identification badge by e-RAILSAFE may appeal that decision to the railroad.

After employees pass the background check, they will be asked to complete an "on-line" safety/security exam at their location. A digital photograph of each employee will also be taken. Once these requirements have been met, employees will be issued a photo identification badge. Many TTX employees, particularly those working on Union Pacific property, have already been issued an e-RAILSAFE identification badge.

As we all know, security is one of the most important issues freight and passenger railroads face today. In the wake of 9/11 and transit system bombings in Mumbai (India), London and Madrid, ensuring the safety of rail employees, riders, cargo, and infrastructure, as well as the general public, is critical. Railroads are committed to emergency preparedness, and keeping vital rail transportation links open in the post-9/11 world. TTX Company's participation in the e-RAILSAFE process is a positive step forward in protecting our industry.