

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

Statement of

**ROBERT D. JAMISON
DEPUTY ASSISTANT SECRETARY
TRANSPORTATION SECURITY ADMINISTRATION**

Before the

**SUBCOMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE PROTECTION
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

FEBRUARY 16, 2007

Good morning Chairwoman Jackson-Lee, Ranking Member Lungren, and Members of the Subcommittee. I am pleased to appear before you today to discuss the use of background checks for rail workers.

As you may be aware, there are over 233,000 employees performing a wide variety of tasks associated with railroad transportation. With the exception of employees whose responsibilities overlap other credentialing programs, the Department of Homeland Security (DHS) does not perform background checks on these workers, nor do we require rail carriers to perform them. A rail carrier may voluntarily conduct background checks on employees and applicants, subject to limitations imposed by applicable Federal, State, or local law, and the terms of any collective bargaining agreements to which they may be subject.

On June 23, 2006, DHS and the Department of Transportation (DOT) issued a set of recommended security action items for the transportation of toxic inhalation hazard materials to all rail carriers. The action items were the product of rail corridor risk assessments conducted jointly by DHS, DOT, and rail carriers, and were developed with the concurrence of the Association of American Railroads, the American Shortline and Regional Railroads Association, and certain rail operators. Included in the action items was the recommendation “[t]o the extent feasible and practicable, utilize photo identification procedures for company-designated critical infrastructure. Establish procedures for background checks and safety and security training for contractor employees with unmonitored access to company-designated critical infrastructure.” The action items do not impose regulatory requirements, and their adoption by the railroad industry is purely voluntary. TSA stands behind this recommendation as an important, fundamental security practice.

Currently, employees who operate motor vehicles containing placarded amounts of hazardous materials must possess a Hazardous Materials Endorsement (HME) for their commercial drivers license. In order to receive such an endorsement, the employee must comply with TSA regulations implemented pursuant to the USA PATRIOT Act and undergo a security threat assessment that includes a check of terrorist databases, relevant criminal history databases, and alien status information. In addition, port workers requiring unescorted access to secured areas of port facilities will soon be required to obtain a Transportation Worker Identification Credential (TWIC) with a similar threat assessment. This will include the many rail workers who require unescorted access to secured areas of a port as part of their duties

TSA has redress policies in place for applicants who are denied a TWIC or HME. In the case of a TWIC, denied applicants will be provided with information on why they were denied and given instructions on how to apply for an appeal or waiver. All applicants have the opportunity to appeal a disqualification, and may apply to TSA for a waiver if disqualified for certain crimes or mental incapacity, or are aliens in Temporary Protected Status. Applicants who are aware of a potential disqualifying crime may apply for a waiver immediately after applying for a TWIC to expedite the waiver process. Applicants who seek a waiver and are denied may seek review by an Administrative Law Judge (ALJ).

To ensure fairness to rail workers, we have recently issued additional guidance on the issue of background checks to rail carriers. On February 12, 2007, DHS and DOT issued a second supplement to the recommended security action items for the rail transportation of toxic inhalation hazard materials. This supplemental guidance was rooted in our past experience with current redress policies. Using what we have learned from our experience and with stakeholder input, we have recommended that operators establish standards and procedures similar to those used for HME and TWIC threat assessments, including use of the federally established list of disqualifying crimes for those programs. Likewise, the appeals and waiver process, which we have adjusted since first used for HME, can now be recommended best practices for rail workers and other transportation workers. Therefore, we also recommended that operators establish procedures that permit employees to correct outdated and incorrect records that may disqualify them, as well as procedures permitting an employee to demonstrate rehabilitation or facts surrounding a conviction that mitigate security concerns that may be revealed by the check to allow the employee to either be hired or remain employed.

As with the previously issued recommendations, the recently issued guidance is solely voluntary, and is not intended to conflict with any other provision of law or any provisions in collective bargaining agreements or individual employment contracts. Rail carriers must still comply fully with all applicable Federal and State law, including statutory employment protections, as well as the regulations, orders, and directives of DHS, DOT, or any other government agency of competent jurisdiction.

Lastly, I would like to add that TSA is very sensitive to anyone using the name of the Department of Homeland Security or TSA to conduct actions that are not directly associated with security. We take this issue very seriously and are looking into any possible misuse of our name or mission.

Thank you for the opportunity to appear before you today. I would be pleased to respond to questions.