

**H.R. 1690, THE MODERN SECURITY  
CREDENTIALS ACT**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
TRANSPORTATION SECURITY  
OF THE  
COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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## **H.R. 1690, THE MODERN SECURITY CREDENTIALS ACT**

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**Wednesday, May 4, 2011**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TRANSPORTATION SECURITY,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 2:05 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [Chairman of the subcommittee] presiding.

Present: Representatives Rogers, Walberg, Cravaack, Walsh, Jackson Lee, Davis, Richmond, and Thompson.

Mr. ROGERS. The Committee on Homeland Security, Subcommittee on Transportation Security will come to order.

The committee is meeting today to hear testimony on H.R. 1690, The MODERN Security Credentials Act, and on-going efforts to streamline and eliminate redundancies in various transportation security credentialing regulations.

I want to take just a moment and let the audience know that we have asked our panelists—we were going to have two panels—we have asked them to combine into one, and they have graciously agreed to do that, and the reason being we are going to be called for a series of votes in about an hour and a half. We would be gone for 2 hours, so I didn't want the folks to be inconvenienced and have to wait for us to come back. So we are going to try to knock this out in a more timely fashion before that series of votes.

I would like to welcome everybody to the subcommittee's legislative hearing today and thank our witnesses for being here.

The subcommittee's hearing will focus on H.R. 1690, The MODERN Security Credentials Act, which requires the Department of Homeland Security to streamline and eliminate redundancies in various transportation security credentialing regulations. The bill takes a crucial step towards streamlining Government regulations, which we expect to result in greater cost savings and less red tape for our hard-working men and women who rely on and need these security credentials for their livelihoods.

This is a critical issue, and in 2009, the U.S. Small Business Administration named redundant and duplicative transportation security credential regulations as one of the top 10 regulatory areas needing reform.

This bill would make an important change to current law. First, the bill would allow for the consolidation and harmonization of the security threat assessment process for transportation workers. This harmonization would eliminate redundant background checks for

applicants and streamline threat assessment procedures, which should reduce costs for the various credentials.

For example, a worker who needs to acquire two different credentials would now only need one threat assessment. In addition, through streamlining this process, the Transportation Security Administration can realize cost savings as well. Since these credentialing programs are fee-based, cost savings would be passed onto the workers as lower fees. This legislation will save hard-working folks in the transportation sector money.

I have had made it clear in this bill that TSA should not start taking over additional processes and functions that it is not currently carrying out. I strongly feel that local authorities in the aviation arena can more effectively and efficiently carry out credentialing functions such as access control, enrollment, and criminal history record check adjudication.

For example, this bill preserves the authority of an airport operator to determine who has access to its own secure area. Furthermore, I strongly support competition among airport contractors to facilitate the criminal history record checks. I do not believe that this bill would restrict this competitive system in any way.

This legislation ensures that credentialing processes currently carried out by the aviation facilities will not be taken over by the TSA, and I intend to continue working with stakeholders to ensure that this does not happen.

Next, this bill would link the security identification display area badge security threat assessment standards to the TWIC, the Transportation Worker Identification Card, standards so that they are identical. This is essential to allow for the harmonization that I have just described. It also ensures that our transportation workers will all be subject to the same level of security review.

There are vulnerabilities in all of our transportation systems. Whether on a truck carrying security-sensitive materials or a port where ships carrying liquid and natural gas are moored up or in an airport, we need to maintain high levels of security across all these venues.

To further streamline the process and save money for truck drivers, this bill addresses redundant requirements that truckers face when having to undergo security threat assessment for both hazardous materials and TWIC. This bill would eliminate the requirement for security screening as a part of an HME, Hazardous Material Endorsement. It would instead require those truck drivers who are transporting materials that could have a security nexus to acquire one credential, a TWIC.

This would provide cost savings to individual drivers who may carry hazardous materials such as paint or food coloring that does not have a real connection to security or terrorism. Furthermore, this bill requires DHS to ensure TWIC enrollment centers have flexible operating hours and that centers are in geographically diverse locations, helping to facilitate worker enrollment in the TWIC program.

This bill has been endorsed by a number of organizations and industry associations. At this time, without objection, I would submit for the record four letters of endorsement for the bill.

Hearing none, so ordered.

[The information follows:]

LETTER SUBMITTED BY THE AMERICAN TRUCKING ASSOCIATIONS

Washington, DC.

The Honorable MIKE ROGERS,  
*Chairman, Committee on Homeland Security, Subcommittee on Transportation Security, U.S. House of Representatives, Washington, DC 20515.*

DEAR CHAIRMAN ROGERS: I am writing to express the American Trucking Associations support of the MODERN Security Credentials Act. This legislation will bring welcome relief to trucking companies and truck drivers who must obtain duplicative security credentials to haul hazardous materials and enter port facilities.

The MODERN Security Credentials Act recognizes that not all hazardous materials are weaponizable, and directs the Department of Homeland Security (DHS) to create a list of security-sensitive hazardous materials. To transport these designated materials, a driver would have to obtain a Transportation Workers Identification Card (TWIC). Currently, if a driver hauls any hazardous material that requires placarding, the driver is subject to a costly and time-consuming fingerprint-based background check to obtain a hazardous material endorsement (HME). If that same driver needs to enter a port facility he must go through another identical, costly, and time-consuming fingerprint-based background check and obtain a TWIC. By separating security-sensitive hazardous materials from other hazmat and returning the HMA to its original purpose of verifying driver safety, the Act will eliminate the significant burden these multiple background checks place on the trucking industry.

The MODERN Security Credentials ACT also would prohibit States and their political subdivisions from requiring redundant background checks for drivers transporting security-sensitive materials, unless the State can demonstrate a compelling reason that a separate background check is necessary to ensure the safe and secure transport of such cargo. ATA believes this prohibition needs to be broadened to cover all hazmat so that States do not establish redundant background checks for hazmat that is not considered security-sensitive by DHS and therefore not subject to a Federal background check. We look forward to working with the Committee to make this change as the legislation proceeds to markup. There are a number of different States that require truck drivers to pay another fee, in addition to the fees assessed on the drivers to obtain their TWIC and HME.

Since 2004, the trucking industry has sought legislation to address redundant security background checks and duplicative security credentials. In that time, truck drivers have incurred significant costs and financial burdens to undergo those multiple checks and security credentials. We applaud your efforts in moving this legislation and look forward to the swift passage of this very important bill.

Sincerely,

MARY B. PHILLIPS,  
*Senior Vice President, Legislative Affairs, American Trucking Associations.*

LETTER SUBMITTED BY THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

MAY 3, 2011.

The Honorable MIKE ROGERS,  
*Chairman, Subcommittee on Transportation Security, Committee on Homeland Security, U.S. House of Representatives, Washington, DC 20515.*

DEAR CHAIRMAN ROGERS: On behalf of the American Association of Airport Executives, I am writing to thank you for your leadership in crafting H.R. 1690, the MODERN Security Credentials Act and to offer our support for this important measure.

The legislation represents a thoughtful approach to harmonizing and consolidating the security threat assessment (STA) process for transportation workers, focusing on inherently Federal vetting functions while preserving and protecting the important local security roles that airports have played in the aviation worker background screening process for more than two decades. We are particularly grateful for provisions added prior to introduction to clarify that airport operators should maintain all roles and responsibilities they currently hold, including final decisions on badge issuance and access rights throughout their facilities.

As you know, the background check process for aviation workers has long operated successfully as a Federal/local partnership with the Federal Government holding sole responsibility for STAs and other necessary Government checks for prospective workers and with local airport authorities operating and managing enrollment, credentialing, badging, criminal history background check adjudication, and access

control systems in accordance with strict Federal standards. The current system for aviation provides a critical local layer of security and strikes the proper balance between the airport's need for operational flexibility and efficiency and the Federal Government's need to set standards, maintain strict oversight, and perform critical Federal vetting functions.

We are gratified that the MODERN Security Credentials Act seeks to protect the existing, successful, locally controlled credentialing and access control apparatus while encouraging the Department of Homeland Security to consolidate, harmonize, and reduce redundancies within the vetting processes directly under Federal control. This approach stands in marked contrast to efforts underway within DHS to harmonize aviation vetting programs with other, less mature transportation worker vetting programs that the Department manages, namely TWIC and the hazmat endorsement for trucking.

We are concerned that current, Department-led efforts appear intent on establishing a highly centralized approach that would significantly increase the role of the Federal Government in existing airport managed and operated processes. We oppose such a centralized approach and are pleased that your legislation clearly delineates between Federal and local roles and responsibilities.

While the desire to centralize and Federalize all processes for transportation worker vetting programs may be understandable from the Department's perspective, airports are concerned about Federal intrusion into existing processes that have worked well for decades. Airports are also concerned about an approach that could force them to help foot the bill for hundreds of millions of dollars in potential costs for changes that provide them with no demonstrable security or operational benefit. The current system in aviation operates efficiently and effectively at a fraction of the cost of other transportation vetting programs and at absolutely no cost to the Federal Government in contrast to TWIC, which has operated with mixed results and consumed hundreds of millions of dollars in Federal resources.

By keeping DHS focused on improving its own vetting functions and limiting the expansion of the Federal Government's responsibilities in the aviation environment, the MODERN Security Credentials Act would, in our view, accelerate efforts to harmonize security processes within the Federal Government, limit unnecessary Federal and industry expenditures, and protect a system that has served airports, the aviation industry, and the Nation well for decades. We look forward to working with you on this important initiative in the weeks ahead.

Sincerely,

CHARLES M. BARCLAY,  
*President.*

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LETTER SUBMITTED BY THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

*Washington, DC, MAY 2, 2011.*

The Honorable MIKE ROGERS,  
*Chairman, Committee on Homeland Security, Subcommittee on Transportation Security, U.S. House of Representatives, Washington, DC 20510.*

DEAR CHAIRMAN ROGERS: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than 3 million businesses and organizations of every size, sector, and region, submits this letter in support of the "MODERN Security Credentials Act of 2011." As we seek to remove unnecessary burdens from the backs of American businesses, this legislation is effective in harmonizing redundant Government credentialing requirements.

The Transportation Worker Identification Credential (TWIC) and the Hazmat Endorsement (HME) are redundant credentials administered by the Transportation Security Administration (TSA). Both programs query the same databases for criminal, immigration, and other violations, utilizing the same disqualifying criteria, appeal, and waiver processes. Yet today, transportation workers must pay \$94 for a HME to carry hazmat, \$132.50 for a TWIC to enter the ports, \$50 for a FAST card at the border, and \$27 for a Security Identification Display Area (SIDA) badge at each airport—a total cost of \$303.50.

The Chamber believes that the redundant fees and background checks of U.S. transportation workers is an unnecessary cost for businesses of all sizes. These sentiments are echoed by the U.S. Small Business Administration, which officially added the TSA's inaction in implementing Section 1556 to its Regulatory Review and Reform (r3) program's Top 10 list of most egregious regulations on small businesses.



The Chamber commends your efforts to advance this legislation, and is encouraged by past bipartisan support on this issue.

Sincerely,

R. BRUCE JOSTEN,  
*Executive Vice President.*

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JOINT LETTER SUBMITTED BY THE AMERICAN PYROTECHNICS ASSOCIATION, THE AGRICULTURAL RETAILERS ASSOCIATION, INSTITUTE OF MAKERS OF EXPLOSIVES, AND THE FERTILIZER INSTITUTE

APRIL 29, 2011.

The Honorable MIKE D. ROGERS,  
*Chairman, Subcommittee on Transportation Security, U.S. House of Representatives, Washington, DC 20515.*

The Honorable SHEILA JACKSON LEE,  
*Ranking Member, Subcommittee on Transportation Security, U.S. House of Representatives, Washington, DC 20515.*

DEAR CHAIRMAN ROGERS AND RANKING MEMBER JACKSON LEE: The undersigned<sup>1</sup> are writing to express support for legislation to eliminate burdensome duplication and redundancy in the Nation's security threat assessment vetting and credentialing programs for transportation workers that provide no commensurate security enhancement. On May 4, 2011, the Subcommittee will hear testimony on H.R. \_\_\_\_\_,<sup>2</sup> the "Modernizing of Documentation and Elimination of Redundant Identification and Security Credentials Act" or the "MODERN Security Credentials Act," a bill that leads the way toward accomplishing this objective.

The commercial explosives industry was the first private sector industry subject to Federal security threat assessments in the wake of the terrorist attacks of September 11, 2001. Since that time, Congress has enacted a myriad of duplicative and redundant vetting programs, some with credentialing requirements, that have impacted employees of our member companies, especially those employees who drive trucks.

In addition to the security vetting program authorized by the Safe Explosives Act of 2003, employees of our members may also be subject to other vetting and sometimes credentialing requirements with an alphabet soup of acronyms—HME, TWIC, FAST, CAC, IAC, CFATS, and soon to be implemented ammonium nitrate rules. The majority of these programs require a check for criminal history, a check to establish identity, a check to determine legal status to work, and vetting against the terrorist screening database.

In the last Congress, the House passed so-called "SAFE Trucker" legislation. This bipartisan piece of legislation proposed to allow the TWIC threat assessment and credential to replace the HME threat assessment. These two programs are currently the largest and most expensive transportation sector vetting and credentialing programs, and they have the greatest overlap.

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<sup>1</sup>The American Pyrotechnics Association (APA) is the principle trade association representing manufacturers, importers, and distributors of fireworks in the United States. The APA has over 240 member companies. Along with their subsidiaries, APA's member companies are responsible for 90 percent of the fireworks displayed in the United States. Each fireworks display produced in the United States.

The Agricultural Retailers Association (ARA) is a not-for-profit trade association that advocates on behalf of America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers, which include fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are located throughout all 50 States and range in size from small family-held businesses and farmer cooperatives to large companies with multiple outlets.

The Institute of Makers of Explosives (IME) is a nonprofit association founded in 1913 to provide information and recommendations concerning the safety and security of commercial explosive materials. IME represents U.S. manufacturers, distributors, and motor carriers of commercial explosive materials and oxidizers as well as other companies that provide related services. Millions of metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the United States. These materials are essential to the U.S. economy. Energy production, construction, and other specialized uses begin with the use of commercial explosives. These products are used in every State and are distributed worldwide by all modes of transportation.

The Fertilizer Institute (TFI) is the National trade association representing fertilizer producers, importers, wholesalers, and retailers. TFI's mission is to promote and protect the use of fertilizer from the plant where it is produced to the plants where it is used.

<sup>2</sup>April 27, 2011 (3:30 p.m.).

The MODERN Security Credentials Act encompasses the provisions of the SAFE Trucker legislation. This legislation provides that the TWIC credential and threat assessment will replace the HME threat assessment, for the preemption of non-Federal security background checks of those who transport security-sensitive materials, and for a task force to review the lists of disqualifying crimes to ensure that they are accurate indicators of terrorism security risk. Additionally, it gives statutory underpinning to the U.S. Department of Homeland Security's (DHS) regulatory effort to harmonize threat assessment processing and procedures across the Department's various vetting program, which began in 2007. This legislation is consistent with recommendations of the Surface Transportation Security Priority Assessment issued by the White House in 2010.

There are two aspects of the bill that we urge the sponsors to clarify and/or strengthen:

First, section 2 limits the ability of DHS to consolidate and harmonize the security threat assessment process for transportation workers "to the extent possible under law." The duplication and redundancy of the various vetting and credentialing programs stem from various acts of Congress. For this legislation to achieve the goal to eliminate wasteful duplication, DHS needs statutory authority to supersede prior law that is the source of the duplicative vetting programs. Section 2 should be strengthened to supplant all existing Federal security threat assessments for transportation workers unless otherwise provided by a subsequent act of Congress.

Second, the legislation requires new rulemaking to determine what hazardous materials are "security-sensitive." While we acknowledge that not all shipments of hazardous materials currently triggering security threat assessments of drivers would be attractive to terrorists and thus "security-sensitive," the legislation does not recognize the extensive regulatory review completed a year ago by the U.S. Department of Transportation (DOT) in consultation with DHS that establishes such a definitive list.<sup>3</sup> Rather, section 2101(a) authorizes DHS to establish a list of "security-sensitive materials" by notice and comment rulemaking, using, as the basis for the rulemaking, the definition of "security-sensitive material" found in section 1501 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act). By itself, the 9/11 Commission Act definition specifies a very limited list of materials based on consequences not risk. While the list can be expanded based on rulemaking, DOT has just accomplished that rulemaking. Additionally, we are concerned by those advocating a list based on "weaponizable" materials. We do not know what this means. Sugar, for example, can be used as an explosives precursor. Or does the term mean a material that would contribute to the consequences of a terrorist attack on the vehicle if released? Technically, all hazardous materials present some consequence when released. Finally, section 5(c) seems to undo the rulemaking that would be accomplished by the MODERN Security Credentials Act, by amending 46 U.S.C. 70105(b)(2), which establishes the universe of individuals required to obtain a TWIC, to authorize TWICs for truck drivers who transport security-sensitive materials as that term is defined in the 9/11 Act. In fact, section 5(c) should at least be referencing the rulemaking required by section 2 of the MODERN Security Credentials Act. Ideally, section 2 would cite to or include verbatim the DOT HM-232F list.

#### CONCLUSION

Safeguarding security-sensitive materials while in transportation is a top priority. Ensuring that security-sensitive materials are only tendered to the custody of trusted transportation workers is a key component of this initiative. Over the years, however, redundant vetting and credentialing programs for the same population of trusted transportation workers has become a time-consuming, costly endeavor with no commensurate security benefit. We believe that the MODERN Security Credentials Act takes important steps to eliminate needless overlap that wastes scarce gov-

<sup>3</sup>HM-232F, 75 FR 10974 (March 9, 2010). Based on an evaluation of the security threats associated with specific types and quantities of hazardous materials, the DOT/DHS final rule narrows the list of materials subject to security plan requirements and reduces associated regulatory costs and paperwork burden.

ernment and private sector resources that could be devoted to other pressing security needs. We urge the Subcommittee to act favorably on this legislation.

Respectfully,

JULIE HECKMAN,  
*President, American Pyrotechnics Association.*  
 CARMEN HAWORTH,  
*Public Policy Counsel, Agricultural Retailers Association.*  
 CYNTHIA HILTON,  
*Executive Vice President, Institute of Makers of Explosives.*  
 PAM GUFFAIN,  
*Vice President, Member Services, The Fertilizer Institute.*

Mr. ROGERS. The letters are from the American Trucking Association, the American Association of Airport Executives, the U.S. Chamber of Commerce and a joint letter from the American Pyrotechnics Association, the Agricultural Retailers Association, Institute of Makers of Explosives, and The Fertilizer Institute.

During the drafting process, this language was shared for comment with multiple groups across the transportation sector, and I look forward to continuing the work on the bill in a bipartisan and collaborative way.

As with almost all legislation introduced in the House, there is room for improvement. If there are prudent suggestions or changes that could improve the bill, I will gladly consider them as we have done with many of these groups represented in this room and our counterparts on the other side of the aisle.

In fact, this is the reason we are having this hearing today. I want to hear from different stakeholders represented on how we can improve this legislation in order to further eliminate redundant regulations, reduce costs, and streamline Government procedures without reducing the necessary security regime that these programs provide.

With that, the Chairman now recognizes the Ranking Member of the subcommittee, the gentlelady from Texas, Ms. Jackson Lee, for any statement that she may have.

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

Before I begin my statement, let me take a moment to first express my concern and condolences for the people in your home State of Alabama and some surrounding States. Our thoughts and prayers are with them as they go through this very difficult period of recovery.

Mr. Chairman, I would like to welcome the witnesses today who are testifying on the Modernizing of Documentation and Elimination of Redundant Identification and Security Credentials Act. The credentialing process for aviation and other transportation employees is one of the most critical layers of security that we have, as it determines who will have unescorted access to the most secure and sensitive areas at airports and seaports.

For a long time I have worked on this issue, and I joined Congresswoman Lowey in the early years of this committee to discuss issues dealing with employee access to airports.

I visited the aprons of airports. I have walked on tarmacs. I have visited with employees. I have watched trucks ingress and egress. I have visited cargo sites where inspections are carrying on. I have asked the intimate and intricate questions of how do airports work and how are we assured that all that are on those grounds have

the responsibility but also the credibility and the review that gives them the access that has been given?

We can see with issues such as external attacks on airports, meaning attacks on the perimeters, such as the issue in Moscow and other places, we recognize that we have some great challenges.

Industry experts agree that this type of employee screening is one of the most useful tools in mitigating the insider threat of individuals who wish to do harm. The credentialing process for aviation and other transportation employees is one of the most critical layers of security that we have, as it determines who will have unescorted access to the most secure and sensitive areas at airports and seaports.

With an issue as serious as this and a process as complicated as this, I am concerned that we are rushing legislative action for an issue that impacts many stakeholders, none of whom have asked for this type of legislation.

In fact, I am told that the Transportation Trades Department of the AFL-CIO is opposed to this bill and that there are concerns being raised by the Airports Council International. The subcommittee's oversight in this area needs to continue before legislation is passed that could cost jobs and raise operating expenses for the economically sensitive transportation industry.

We have not had a hearing on the Transportation Worker Identification Credential Program, the troubled biometric card program in use in the maritime environment. Yet this bill would aim to consolidate and harmonize the security threat assessment processes of TWIC and SIDA credentials.

The question would be whether or not there would be an increased number of employees that would be reviewing this. There are already enormous complaints about how slow the process is, whether or not in fact you are able to get a TWIC card, how long you have to wait.

Now with the merger, even though the term is modernized, consolidate, consolidate with what? Extra funding, more staff members, more trained individuals? Will there be a shortened time? What will be the benefit of modernizing with no staff and no resources?

TWIC has well-documented challenges, and the bill we are discussing today does nothing to address them. Instead, it would seem that this legislation is potentially seeking to overhaul a system that is not broken, except for the fact that we need to improve its implementation. In the process, we may place increased costs on the transportation sector when it is already struggling with record fuel prices.

Mr. Chairman, a TWIC card costs \$132. Would consolidating and harmonizing mean an airport's SIDA credential, which currently costs \$29, would go up by \$100?

How will adding new aviation-related disqualifying offenses impact the employment of truckers and port workers? Will it have a disproportionate affect on minorities and small businesses? What assurances do we have that this legislation, if enacted, would not put people out of work just when our unemployment picture is finally turning around?

My understanding is that the aviation component will then intrude and impact the employment or the process for truckers and port workers, using aviation standards. What does that mean? That the truckers and constituents of mine who have been able to rehabilitate their lives, secure a TWIC card and work at places that are a little bit different from airports are now going to be knocked out of work?

I don't think any of us knows the answers to these questions, which is why I think we should first do no harm and not pass a bill that would actually make us and our transportation system less safe.

I would like to continue working with you, Mr. Chairman, on this issue as we move forward in drafting a transportation security authorization bill, which I think is the appropriate vehicle for major revisions to existing policies and practices.

This bill before us today goes way beyond eliminating redundant background checks and credentials for transportation workers, which was a key component of the SAFE Truckers Act, which I support and which is contained in the second portion of this bill.

That language has been vetted with industry and Government officials, and it should be the focus of what we are discussing today. Accordingly, I would like to propose on the record that this subcommittee move the SAFE Trucker Act alone.

Finally, let me express my concern with the fact that the final version of this bill was never formally transmitted to me and other Members of this panel. Before moving on legislation that could dramatically impact the employment of millions of Americans, we have the responsibility to give thoughtful consideration to this legislation.

The failure to distribute the final text severely limits our ability to fully vet this bill. I believe the American public wants us to focus on critical issues like mass transit security, passenger screening protocols for body scanners and pat-downs and rising international security standards, in light of the demise of Osama bin Laden and the collateral damage that may be resulting in terrorist acts, all of which I hope we address in an authorization bill for TSA.

I look forward, Mr. Chairman, in working with you, and I know that you have great concerns on the security of this Nation. You have shown that, and therefore, I hope that you will listen to my comments in the spirit that they have been given, and that is that we will continue to work together and fix problems that can be fixed but be assured that issues that are detrimental are addressed as well.

With that, Mr. Chairman, thank you and I yield back.

Mr. ROGERS. The Chairman thanks the gentlelady and the Chairman now recognizes the Ranking Member of the full committee, Mr. Thompson, for any statement that he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman. I would also like to echo your words as well as that of the Ranking Member in welcoming our witnesses to this hearing. I look forward to hearing from each of you on the potential impact of the proposed bill and how it can be improved.

At a time when our economy is still recovering, unemployment remains stubbornly high and public anxiety over TSA's screening

practices is at an all-time high, it is interesting to note that the bill we are considering today, at our first legislative hearing this Congress, addresses none of these concerns.

Indeed, the draft bill includes a sweeping authorization for TSA to change the transportation worker credentialing process. Without question, TSA's credentialing process deserves our attention but in a way that provides enhanced security, fosters efficiency and lessens, not increases, the burden placed on workers. That is why I recently introduced H.R. 1105, the Transitioning with an Improved Credential Program Act.

Unlike the legislation before us today, my bill would provide certainty to transportation workers and stakeholders alike by tackling a well-documented challenge within a TWIC program.

I reviewed the bill and found myself asking, what exactly is modern about the The MODERN Security Credentials Act? It would establish a two-tiered system that permits airports to deny workers a SIDA badge, even after successfully going through the TSA waiver process. Is that modern? It does nothing to move us closer to the adoption of biometric standards for credentials. Is that modern?

It alters the list of disqualifying crimes for transportation workers seeking security credentials without justification for the relevance of the crime.

Is that modern? As a committee, we frequently question DHS and its components on lessons learned from previous experiences and how they will be used to inform future actions. Apparently, we do not intend to heed our own advice.

As some of you will recall, it was not that long ago that TSA overreached in a rulemaking for security in general aviation. Ultimately, Congress was compelled to intervene and rein in TSA. None of us wants a repeat of that experience.

Further, even without the passage of this bill, TSA has the authority to issue a rulemaking on credentialing. In fact, we have learned that there is a proposal pending right at this moment at OMB. Will we not risk short-circuiting the OMB vetting process by interceding with this bill and granting TSA a blanket go-ahead?

Outreach to industry stakeholders and workers is critical to ensuring that the potential impact of consolidating fees or vetting processes, or even credentialing programs, are well understood. Indeed, in prepared testimony, our witness representing the Airports Council International states that the bill includes conflicting requirements that will cause unintended and unnecessary operational challenges and impose additional costs for airports.

I think it is a safe bet that any additional costs incurred because of these new regulations will be passed on to the transportation workers and their employees. What will they get for those additional fees? More security, more efficiency?

That said, Mr. Chairman, I support the second half of the bill, the so-called SAFE Trucker legislation, which the House approved as part of the 2009 TSA authorization bill. It takes a common-sense approach to consolidation.

Let me close by expressing my concern about the process surrounding this hearing. I applaud the witnesses, or at least most of them, on their timely submission of prepared remarks. This was a serious feat, given that the majority did not circulate draft text to

all subcommittee Members and witnesses in advance of the hearing.

With that, Mr. Chairman, I yield back the balance of the time.

Mr. ROGERS. I thank the gentleman.

I do want to clear up; I don't know what happened. I don't withhold bills. We first gave the draft of this bill to the Minority on the 6th of April, a month ago, and the final version over a week ago, on April 27. So I don't know why it didn't get to the Members because it was submitted to staff. I would also offer—

Mr. THOMPSON. We got an answer for you.

Mr. ROGERS. Tell me.

Mr. THOMPSON. Clerk, can you tell us about the distribution of the bill?

Mr. ROGERS. That is what I said, staff. I don't know about any e-mails—but we gave it to your staff.

My point is simply this: I would never do that to anybody, and I am going to make sure in the future we don't have this kind of miscommunication, because that is just not the way to do business, and I wouldn't do that.

Mr. THOMPSON. I absolutely appreciate that, and I know you wouldn't. But, generally, the clerk will formally transmit the information to us.

Mr. ROGERS. Yes. They said something happened with the e-mail that was a problem.

Mr. THOMPSON. All right.

Mr. ROGERS. But, anyway, we are going to fix that.

But I also want to state, thinking about Ms. Jackson Lee's comments, the whole reason we are holding this hearing is to try to get the answers to the questions you raised. I mean, this is just a process in the making; it is not a done deal. So that thought is why we are doing this. I think you have raised some legitimate concerns, and I want the answers as well.

All right. Having said that, the Chairman is now happy to welcome our witnesses. We are very fortunate to have some really classy folks who know what they are doing and hopefully can help answer some of these questions.

Our first witness, Mr. Steven Sadler, is TSA's Deputy Assistant Administrator for Transportation Threat Assessment and Credentialing.

Our second witness, Mr. Darrell Bowman, is the Group Leader for Advanced Systems & Applications at Virginia Tech Transportation Institute, and he is the lead author of the transportation research report entitled, "Consolidated Security Credentials for Persons Who Transport Hazardous Materials."

So with that, the Chairman now recognizes Mr. Sadler for 5 minutes to summarize your statement.

**STATEMENT OF STEPHEN SADLER, DEPUTY ASSISTANT ADMINISTRATOR, TRANSPORTATION THREAT ASSESSMENT AND CREDENTIALING, TRANSPORTATION SECURITY ADMINISTRATION**

Mr. SADLER. Thank you, sir. Chairman Rogers, Ranking Member Jackson Lee and distinguished Members of the subcommittee, thank you for the opportunity to testify today about the Transpor-

tation Security Administration's efforts to harmonize security threat assessments across all modes of transportation.

TSA currently administers security threat assessment programs for 28 transportation worker populations, covering approximately 15 million individuals. Differing statutory specifications, what constitutes a threat assessment, and a lack of uniformity among user fees account for part of the current incapability. To implement comparability across a wider spectrum, TSA is working on a rule-making that will further harmonize threat assessments, the associated redress process and user fees across modes of transportation, which TSA conducts vetting.

This rule will improve the quality of data that TSA uses to conduct vetting, thereby reducing applicant processing time, eliminating redundancy by reducing the need for multiple background checks, allowing workers to use a single assessment for multiple purposes, offsetting costs for user fees, as directed by Congress, and providing more robust redress processes. The rule will also establish standardized enrollment procedures and improve identity verification.

However, TSA cannot fully implement these improvements and efficiencies in the credentialing process through a regulatory change alone. New legislation is needed to amend statutory security threat assessment requirements for aviation workers to mirror the statutory requirements for other populations.

The current law governing aviation workers was enacted prior to 9/11 and contains procedures that differ from the newer standards for other programs. These statutory differences prevent harmonization and cannot be changed to rulemaking. We believe the standards Congress subsequently enacted for the TWIC program support a more thorough threat assessment, thereby enhancing security and increasing fairness through the redress process.

The harmonization rule will have little effect on whose physical credentials are required for certain privileges or access to areas of transportation facilities. TSA believes that the regulated entity is in the best position to determining credentialing access control requirements.

Although TSA currently conducts background checks on 28 populations with varying degrees of overlap, TSA issues a physical credential to TWIC only for workers on certain maritime vessels and facilities and is required by law to do so.

With respect to other populations subject to vetting, TSA provides the results of the assessment to the entity that actually grants the access or privilege. In many cases, these entities issue their own credentials generally after the individual meets additional competency and suitability requirements.

For example, airport authorities that credential airport workers and States that license commercial hazmat drivers rely on TSA only for the assessment but not for issuing the credential or license. Under the new rules, these responsibilities would not change, since transportation facilities need to have their own standards for suitability and access control based on their specific operational needs, business and statutory requirements, and availability of resources.



To enable TSA to fulfill transportation security vetting in a consistent, comparable way, TSA plans to assume the adjudication of criminal background checks for airport and aircraft operator workers, which are currently performed by the airports and airlines.

For all other populations, TSA currently adjudicates criminal history information, along with the other information that comprises a security threat assessment. This will allow TSA to assure standardized processes and criteria for conducting and adjudicating security threat assessments, including criminal history record information.

TSA does not however, intend to assume responsibility for worker suitability or access control decisions from airports and airlines and will continue to send a criminal history record information to any airport that requests it for purposes of making its own suitability or access control determinations.

Mr. Chairman, Ranking Member Jackson Lee, thank you for the opportunity to appear before you today. The harmonization of threat assessments through regulatory and statutory changes will allow TSA to fulfill its mission with greater efficiency and effectiveness. I look forward to working with you towards this goal in answering your questions.

[The statement of Mr. Sadler follows:]

PREPARED STATEMENT OF STEPHEN SADLER

MAY 4, 2011

Good morning Chairman Rogers, Ranking Member Jackson Lee, and distinguished Members of the subcommittee. Thank you for the opportunity to testify today about the Transportation Security Administration's (TSA) effort to harmonize security threat assessments (STA) across all modes of transportation.

We share the goal of Congress and stakeholders that STA programs be harmonized to alleviate the burden and inconvenience placed on individuals by the need to obtain multiple STAs, to the extent legally possible. TSA currently administers STA programs for 28 transportation worker populations, covering approximately 15 million individuals across the transportation sectors. Differing statutory specifications for what constitutes an STA and a lack of uniformity among user fees account for part of the current incompatibility between STAs.

TSA has already established comparability standards and identified comparable STAs to reduce the burden on individuals that are required to have multiple STAs because of the nature of their work. For example, individuals who have had successful background checks for purposes of the U.S. Coast Guard Merchant Mariner Credential, U.S. Customs and Border Protection Free and Secure Trade (FAST) card, or State commercial drivers license hazardous materials endorsements (HMEs) are entitled to a reduced fee when applying for a Transportation Worker Identification Credential (TWIC). Also, the TWIC and HME background checks may be utilized for many workers in the air cargo sector. However, statutory, regulatory and infrastructure changes are necessary to implement comparability across a wider number of background checks and provide ease of use for the individual transportation worker.

To implement comparability across a wider spectrum, TSA is working on a rule-making that will further harmonize STAs, redress, and user fees for individuals across modes of transportation in which TSA conducts vetting, to the extent possible under current law. In addition to addressing individuals who are already subject to STA rules, such as those in the aviation and maritime sectors and commercial drivers transporting hazardous materials, the rule will implement requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007 to conduct STAs on additional populations including certain freight rail, passenger rail, and public transportation, and over-the-road-bus workers—totaling an estimated 12 million workers over 5 years.

This rule will enhance the STA process in several ways. It will improve the quality of data that TSA uses to conduct vetting, thereby reducing applicant processing time; eliminate redundancy by reducing the need for multiple background checks;

facilitate STA “portability” for individuals who work in several modes of transportation or change jobs by permitting workers to use a single STA for multiple purposes; offset the costs of STAs through user fees as directed by Congress; more equitably apportion the costs of STAs across all users by including populations that are currently not required to pay a fee for vetting; and provide more robust redress for many workers who do not currently have access to appeals, waivers, and/or an administrative law judge’s review. The rule will also establish standardized enrollment procedures and improve identity verification through new standards.

For example, a driver transporting cargo destined for an aircraft and screened in accordance with TSA security requirements must have an STA. That driver may also transport cargo from secure areas of a regulated maritime facility, or transport hazardous materials, which also require that he or she have an STA. Instead of applying for multiple STAs, each of which is subject to particular, and possibly conflicting, statutory, and regulatory standards and procedures, as is the case today, this individual would only require a single STA to meet the TSA background check requirement for all of these activities.

However, TSA cannot fully implement these improvements and efficiencies in the credentialing process through regulatory change alone. New legislation is needed to amend statutory STA requirements for aviation workers to mirror the statutory STA requirements for other populations. The current law governing aviation workers was enacted prior to 9/11 and contains procedures that differ from the newer standards for other programs. These statutory differences prevent harmonization and cannot be changed through rulemaking. We believe the standards Congress subsequently enacted for the TWIC program in the Maritime Transportation Security Act of 2002 support a more thorough STA, thereby enhancing security, and increasing fairness through the waiver process. For example, in the TWIC program, certain felony convictions are disqualifying if the conviction occurred within 7 years, or if release from prison occurred within 5 years, of the date of application. In the aviation sector, certain misdemeanors and felonies are disqualifying if the conviction occurred within the preceding 10 years, and there is no consideration of when the applicant was released from incarceration. These types of incongruities need to be harmonized.

TSA is also updating its information technology infrastructure in order to improve the services provided to transportation sector workers. Whereas the current infrastructure is not structured to support portable and reusable STAs absent substantial investment and costs, the TTAC Infrastructure Modernization (TIM) system will provide an integrated, end-to-end solution to manage identities, credentials, and assessment results for millions of transportation sector workers. TIM will align, integrate, and modernize current TTAC processes, services, and infrastructure allowing TSA to conduct mission capabilities in a more effective and efficient manner. TIM will be implemented on an incremental basis, allowing TSA to benefit from modernization’s capabilities as they become available.

The harmonization rule will have little effect on who issues physical credentials required for certain privileges or access to areas of transportation facilities. TSA believes that the regulated entity is in the best position to determine credentialing and access control requirements. Although TSA currently conducts background checks on 28 populations with varying degrees of overlap, TSA issues a physical credential, the TWIC, only for workers on certain maritime vessels and facilities and is required by law to do so. With respect to other populations subject to vetting, TSA provides the results of the STA to the entity that actually grants the access or privilege. In many cases, these entities issue their own credential, generally after the individual meets additional competency and suitability requirements. For example, while TSA conducts STAs on Federal Aviation Administration (FAA) certificate holders, it is the FAA that issues the certificate. Similarly, airport authorities that credential airport workers and States that license commercial hazmat drivers rely on TSA only for the STA and not for issuing the credential or license. Under the new rule, these responsibilities would not change since transportation facilities need to have their own standards for suitability and access control based on their specific operational needs, business and statutory requirements, and availability of resources.

One of TSA’s critical missions is to apply risk-based threat assessment methodologies in order to identify known or suspected terrorist threats working in, or seeking access to, the Nation’s transportation system and critical infrastructure to prevent terrorism or criminal acts. To enable TSA to fulfill this transportation security vetting in a consistent, comparable way, TSA plans to assume the adjudication of criminal background checks for airport and aircraft operator workers, which are currently performed by the airports and airlines. This will allow TSA to assure standardized processes and criteria for conducting and adjudicating STAs, including

criminal history record information. TSA does not, however, intend to assume responsibility for worker suitability or access control decisions from airports and airlines and will continue to send criminal history record information to any airport that requests it for purposes of making its own suitability or access control determinations.

Mr. Chairman, Ranking Member Jackson Lee, I thank you for the opportunity to appear before you today. The harmonization of STAs through regulatory and statutory changes will allow TSA to fulfill its mission with greater efficiency and effectiveness. I look forward to working with you toward this goal and answering your questions.

Mr. ROGERS. Thank you, sir.

The Chairman would now recognize Mr. Bowman.

**STATEMENT OF DARRELL S. BOWMAN, GROUP LEADER, ADVANCED SYSTEMS & APPLICATIONS, VIRGINIA TECH TRANSPORTATION INSTITUTE**

Mr. BOWMAN. Thank you, Mr. Chairman.

Chairman Rogers, Ranking Member Jackson Lee, Members of the Transportation Security Subcommittee and staff. Thank you for the opportunity to testify before you today on a very important topic, the MODERN Security Credentials Act.

I am hopeful that my testimony will give you a unique and valuable perspective as you weigh the important policy decisions surrounding this matter. My name is Darrell Bowman, and I am a senior researcher at the Virginia Tech Transportation Institute with more than 15 years of transportation research experience.

I am here today to talk about pertinent findings from our recent preliminary study, HMCRRP-HM-08, "Consolidated Security Credential for Persons Who Transport Hazardous Material." This study evaluated the hazardous material transportation worker credentialing system to identify duplicative elements and redundant costs.

The current hazardous material security credential system requires workers to have a variety of security credentials as they move through the hazardous material transportation logistics change. Each credential has costs, both monetarily and time to acquire, resulting in redundant cost and additional time required by both the credentialing agencies and the credential applicants. These costs provide a strong incentive to evaluate opportunities for consolidation within the hazardous material security credentialing system.

The following discussion focuses on three important findings pertinent to today's topic of the hearing.

First, the most promising initial step appears to be the consolidation of security threat assessments. There is strong evidence that the security threat assessments, which include background checks for several security credentials, could be consolidated and still remain applicable across transportation modes. In some cases, there are minor variations of how these processes are completed or which databases are checked.

However, the overall processes are similar. More importantly, the objective of these background checks is the same for all security credentials. A system where security threat assessments are standardized would increase efficiency and likely result in a reduced cost.

The second pertinent finding is the inconsistencies and disqualifying offenses for security credentials, creating the need for a harmonized set of disqualifying offenses. Consolidation of security credentials would require merging disqualifying offenses from various credentials, creating a standard threshold to which all applicants would be held accountable. However, agencies must decide to the degree which the disqualifying offenses should be harmonized to ensure that the applicants are appropriately vetting, while not excluding potentially eligible workers.

The third pertinent finding is the need to strike a balance between the level of security and the user burden through the inclusion of broad stakeholder input. While there is a clear need for a secure hazardous material transportation system, there is a competing need to minimize user burden, a complete and effective security credentialing system can only be developed with input from hazardous materials transportation stakeholders, including the credential holders, the administrators and other involved parties.

To conclude, the research suggests that consolidation of security threat assessments could be an immediate solution for the result—which will result in decreased costs, reduced time burdens for stakeholders and elimination of redundancies. Its success would require a standardization of the disqualifying offenses and is dependent on the input of stakeholders at all levels.

This final report is now in the National Academies' Transportation Research Board editorial process and will be published later this year as "Hazardous Material Cooperative Research Program, Report 6, Feasibility of a Consolidated Security Credential for Persons who Transport Hazardous Material."

Again, thank you very much for the opportunity to testify before you today on this important matter.

I will be happy to answer any questions you have regarding these findings.

[The statement of Mr. Bowman follows:]

PREPARED STATEMENT OF DARRELL S. BOWMAN

MAY 4, 2011

Chairman Rogers, Ranking Member Jackson Lee, Members of the Transportation Security Subcommittee and staff, thank you for the opportunity to testify before you today on a very important topic: "The MODERN Security Credentials Act." I am hopeful that my testimony will give you a unique and valuable perspective as you weigh the important policy decisions surrounding this matter.

My name is Darrell Bowman, and I am a senior researcher at the Virginia Tech Transportation Institute. In this position, I currently serve as Group Leader for the Advanced Systems & Applications Group within the Institute's Center for Truck and Bus Safety. I have more than 15 years of experience as a researcher in the areas of transportation safety and security. My research experience includes various projects related to the safe and secure transportation of hazardous materials, the development and testing of advanced commercial vehicle information/safety systems, and the improved comfort of occupants through enhanced vehicle component designs.

I am here today to discuss pertinent findings from our recent study, *HM-08, Consolidated Security Credential for Persons Who Transport Hazardous Materials*, which my group completed for the Hazardous Materials Cooperative Research Program (HMCRP) of the National Academies' Transportation Research Board. This project ended in February of this year (2011). The final report has been accepted by the HMCRP HM-08 panel and approved for publication by the Chair of the Subcommittee for National Research Council Oversight. This final report is now in the editorial process, and will be published later this year as *Hazardous Materials Coop-*

*erative Research Program (HMCRP) Report 6, Feasibility of a Consolidated Security Credential for Persons who Transport Hazardous Materials.* It is important to note that this HMCRP project was not intended to provide policy recommendations to the Federal Government; instead, it provides fact-finding and policy analysis.

This study evaluated the hazardous materials (HazMat) transportation worker credentialing system to identify duplicative elements and redundant costs. The research characterized the application elements, the acquisition process, and the physical characteristics for each identified credential. The key outcome of the project was to determine the feasibility of consolidating many or all of the existing local, State, and Federal credentials, necessary under current regulations and policies, into one credential for all transportation modes that is cost-effective while maintaining an equal or greater level of security and safety.

#### BACKGROUND

According to Transportation Research Board Special Report 283, the U.S. Department of Transportation (U.S. DOT) has estimated that about 817,000 shipments consisting of 5.4 million tons of HazMat are made daily in the United States, which would total nearly 300 million shipments and 2 billion tons of hazardous cargo per year.<sup>1</sup> By its risky nature, the safekeeping of HazMat in transit is paramount to the safety and security of people everywhere. Vetting the personnel working with and around HazMat through a credentialing process is essential for maintaining the security of the transported materials as well as for ensuring the safety of the general public.

The security of the Nation's HazMat freight in all transportation modes relies on a layered, multi-faceted security program. This comprehensive system is a constant monitor of the many facilities, vehicles, and workers involved in HazMat transportation. One important part of this comprehensive security system is worker credentialing. Security credentials play an important role by vetting the individual credential holder, and communicating pertinent information for facility access control.

While the current credentialing program is comprehensive across all transportation modes, some consider the U.S. credentialing process to be lacking a coordinated vision and failing to recognize the multimodal and intermodal nature of the transportation sector.<sup>2</sup> This disjointed vision has created a fragmented security credential system that requires workers to possess various security credentials as they move through the HazMat transportation logistics chain. Each credential has costs, both monetarily and in time to acquire, resulting in duplicative costs and additional time required for both the credentialing agencies and the credential applicants. These costs provide strong incentive to evaluate opportunities for consolidation within the HazMat security credentialing system.

#### PERTINENT FINDINGS

While the study report provided a detailed review of the current HazMat credentialing system, the following discussion focuses on three important findings pertinent to the topic of today's hearing.

First, the most promising initial step appears to be the consolidation of security threat assessments.

There is strong evidence that the security threat assessments, which include background checks, for several security credentials could be consolidated and still remain applicable across all transportation modes. Examples of these security credentials include the Transportation Worker Identification Credential (TWIC), Commercial Driver's License—Hazardous Materials Endorsement (CDL—HME), Security Identification Display Area (SIDA) badge, Free and Secure Trade (FAST) card, NEXUS card, Secure Electronic Network for Travelers Rapid Inspection (SENTRI) card, Merchant Mariner's Credential (MMC), Merchant Mariner's Document (MMD), United States Postal Service (USPS) credential, Common Access Card (CAC), and the U.S. Passport.

Ten of these 11 security credentials identified shared both a fingerprint-based background check (all but the Passport) and a name-based background check (all but the USPS credential). The fingerprint-based background check is performed by the Federal Bureau of Investigation (FBI) using the National Crime Information Center (NCIC). Regardless of the issuing agency, the FBI performs this portion of the investigation and then provides the relevant data back to the issuing agency (or

<sup>1</sup> [http://books.nap.edu/openbook.php?record\\_id=11198&page=11](http://books.nap.edu/openbook.php?record_id=11198&page=11).

<sup>2</sup> <http://www.truckline.com/Newsroom/ATA%20Comments%20Filed/ATA%20R3%20TWIC%20Petition.pdf>.

adjudicating organization). A name-based search of relevant databases includes a criminal history check (e.g., the U.S. Passport), and a review of the Terror Watch List (e.g., TWIC, MMC, and HME) which is also maintained by the FBI. The MMD and MMC require a drug test as part of the application process, and results of the test are included in the adjudication process. A review of the National Driver Register is required for the MMD, MMC, and USPS credentials. Finally, an interview with issuing agency personnel is required for the three U.S. Customs and Border Protection-issued credentials (FAST, NEXUS, and SENTRI).

The key difference for many of the credentials is the process of adjudication. Each issuing agency receives the results of the security threat assessments and determines the applicant's eligibility for the credential based on agency-specific disqualifying offenses. One exception would be the issuance of the HME by the individual States. In this instance, the Transportation Security Administration (TSA) provides the applicant's eligibility to the individual States.

In some cases there are minor variations in how these processes are completed or which databases are checked; however, the overall processes are similar. More importantly, the objective of these security threat assessments (i.e., identifying any disqualifying offenses) is the same for all credentials. The consolidation of the security threat assessments would deal largely with the application process, and would be transparent to the end user.

The need for a harmonized security threat assessment was supported by comments from actual HazMat security credential holders while completing the project's on-line questionnaire. Examples of comments related to security threat assessments include:

- "Why so many background checks? Can't these agencies talk to one another? Who gets the money? Why \$83 for one check and \$132 for TWIC and \$25 for TSA? Why isn't one background check enough?"
- "You have to go to [a] special place to get fingerprints done rather than [a] local law enforcement office. Our place is about 1.5 hours away which is not very efficient."

A system where security threat assessments are standardized would increase efficiency and likely result in reduced costs. Multi-agency data sharing could also streamline the process for all stakeholders. This harmonized system would require that the background investigation results of an initial credential application be applicable to a subsequent credential application. As is currently the case with the TWIC, it would require the expiration of any subsequent credentials (e.g., CDL-HME, FAST, MMD, and MML) to coincide with the expiration of the first credential. That is, if an applicant is issued a TWIC in 2010, and then applies for a FAST card in 2012 using the security threat assessment from the TWIC application, the FAST card would also expire on the TWIC expiration date of 2015. Initially, this could cause some issues with increased renewal processing demands due to non-standard renewal periods. However, over time this should save money as alignment and efficiency occur.

The second pertinent finding is the inconsistency in disqualifying offenses for security credentials, creating the need for a harmonized set of disqualifying offenses.

Disqualifying offenses are those offenses that would bar an applicant from qualifying for a security credential. In many cases, these are specific criminal violations. In some cases, the disqualifying offenses are related to monetary infractions, applicant flight risk, or suspicion of an applicant based on intelligence information.

Currently, the various security credentials have disqualifying offenses with differing nomenclatures and intents, which applicants must satisfy. Consolidation of security credentials would necessitate merging disqualifying offenses, creating a standardized threshold to which all applicants would be held accountable. However, there are several important factors that need to be considered when harmonizing the disqualifying offenses, two of which are:

- A highly restrictive harmonization of disqualifying offenses could potentially limit the applicant pool, thus reducing the qualified labor force.
- Conversely, the least restrictive set of disqualifying offenses would likely lower the overall screening effectiveness of the security threat assessment, but increase the applicant pool sufficiently to handle labor demand.

To illustrate this balance of harmonization, imagine a fisherman mending his nets. He can make the size of the nets' openings so small as to catch all fish—both wanted and unwanted species—or so large that no fish are caught at all. Like the fisherman, agencies must decide on the degree to which the disqualifying offenses should be harmonized to balance the security needs (i.e., applicants are appropriately vetted) of the HazMat transportation system with worker eligibility (i.e., not excluding potentially qualified workers).

The third pertinent finding is the necessity to strike a balance between level of security and user burden through inclusion of broad stakeholder input.

The research results revealed the complexities of the existing HazMat credentialing system through the identification of: (i) Multiple security credentials, each with its own specific purpose, and (ii) system redundancies such as vetting processes, costs, and time. While there is a clear need for a secure HazMat transportation system, there is a competing need to minimize user burden. A complete and effective security credentialing system can only be developed with input from HazMat transportation stakeholders, including end-users, administrators, and other involved parties.

#### CONCLUSIONS

The research suggests that consolidation of security threat assessments could be an immediate solution that will result in decreased costs, reduced time burdens for stakeholders, and the elimination of redundancies. The majority of the security credentials identified for transporting HazMat require very similar background investigations. Through data-sharing agreements and standardization of the adjudication process, a streamlined background investigation for these credentials could be achieved. This consolidation would require a standardization of the disqualifying offenses, which must be performed to maintain each security credential's intended function as well as balance the screening effectiveness with the qualified labor pool. Finally, the success of consolidating processes within the HazMat credentialing system is dependent on the input of stakeholders at all levels.

As stated, this final report is now in the editorial process, and will be published later this year as *Hazardous Materials Cooperative Research Program (HMCRP) Report 6, Feasibility of a Consolidated Security Credential for Persons who Transport Hazardous Materials*.

Again, thank you very much for giving me the opportunity to testify before you on this important matter. I will be happy to answer any questions you have regarding these findings.

Mr. ROGERS. Thank you, Mr. Bowman.

The Chairman now recognizes Ms. Jeanne Olivier of the Port Authority of New York and New Jersey. She is here representing the American Association of Airport Executives.

Welcome.

#### **STATEMENT OF JEANNE M. OLIVIER, A.A.E., ASSISTANT DIRECTOR, AVIATION SECURITY & TECHNOLOGY, AVIATION DEPARTMENT, THE PORT AUTHORITY OF NEW YORK & NEW JERSEY**

Ms. OLIVIER. Thank you, Mr. Chairman, Ranking Member Jackson Lee, and Members of the committee.

I appreciate the opportunity to be here on behalf of the American Association of Airport Executives to discuss The MODERN Security Credentials Act, legislation that AAAE is pleased to support as a means of preserving and protecting the important local role that airports play in aviation security.

I am active in AAAE through my work with the Port Authority of New York and New Jersey, where I oversee security operations through the Port Authority's five airports. I currently serve as vice chair of AAAE's Security Committee and as the chair of the basic consortium, an airport-led effort to create a biometric base solution for airport badging and access control.

I want to begin by thanking you, Chairman Rogers, and your staff for the opportunity afforded to AAAE and other groups in recent weeks to offer input on the legislation. The legislation recognizes the critical local role that airports play in enhancing security, and AAAE appreciates provisions included in the bill that ensure airport operators maintain important security functions and re-

sponsibilities they have held for decades, including final decisions on badge issuance and access rights throughout their facilities.

The background check process for aviation workers has long operated successfully as a Federal local partnership, with the Federal Government holding sole responsibility for security threat assessments and other necessary Federal checks for prospective workers. With local airport authorities operating and managing worker enrollment, credentialing, badging, criminal history background check adjudication and axis control systems in accordance with strict Federal standards.

The current system for aviation ensures the highest level of security by combining the unique local experience, expertise, and knowledge with Federal standardization, oversight, and vetting assets. Local involvement provides a critical layer of security and gives airports the operational control they require to ensure that qualified employees receive the credentials they need to work in the airport environment.

AAAE is gratified that The MODERN Security Credentials Act seeks to protect the existing airport security functions while encouraging DHS to consolidate, harmonize, and reduce redundancies within the vetting processes directly under Federal control.

The approach reflected in the legislation stands in marked contrast to efforts under way within DHS that appear intent on establishing a highly centralized approach in aviation that would parallel what exists at ports with the TWIC program.

Under the TWIC model, the Federal Government or its contractors are responsible for worker enrollment, applicant vetting, and credential issuance. The early results of TWIC have been uneven at best, despite significant Federal investments. The existing system in aviation works extremely well and operates at low cost to the industry and at no cost to the Federal Government.

Airport executives oppose any move to shift critical local functions in aviation to the Federal Government and believe that such a move would diminish security by eliminating a critical extra layer of vigilance that is already in place in airports and absent with the TWIC approach.

Additionally, pursuing the highly Federalized TWIC approach in aviation would eliminate local operational control, stymie significant efforts already under way at airports across the country to upgrade and biometrically enable existing badging and access control systems and significantly increase costs to the aviation industry. Again AAAE opposes a centralized approach and is pleased that the bill clearly delineates between Federal and local roles and responsibilities.

Mr. Chairman, by keeping DHS focused on improving its own vetting functions and limiting the expansion of Federal Government's responsibilities in the aviation environment, the MODERN Security Credentials Act would, in AAAE's view, accelerate efforts to harmonize security processes with the Federal Government, limit unnecessary Federal and industry expenditures and protect the system that has served airports, the aviation industry, and the Nation well for decades.

Before concluding, I want to highlight the proactive efforts of the basic initiatives. Airports are committed to moving forward to bring



biometrics into the airport environment as soon as possible in a manner that builds upon existing capabilities and limits operational difficulties. The basic initiative, which is being driven by airports in cooperation with TSA, offers the best opportunity for making the promise of biometrics a reality in a timely manner.

Thank you, I look forward to your questions.

[The statement of Ms. Olivier follows:]

PREPARED STATEMENT OF JEANNE M. OLIVIER

MAY 4, 2011

Chairman Rogers, Ranking Member Jackson Lee, and Members of the subcommittee, thank you for the opportunity to discuss the MODERN Security Credentials Act, legislation aimed at consolidating and harmonizing the Federal security threat assessment (STA) process for transportation workers. We appreciate your recognition of the critical role that airports play—and must continue to play—working with the Federal Government to protect vital and security sensitive airport facilities.

I am appearing today on behalf of the American Association of Airport Executives, which represents thousands of men and women across the country who operate and manage the Nation's airports. I am actively involved with AAAE as Vice Chair of the association's Transportation Security Services Committee and as Chair of the Biometric Airport Security Identification Consortium or BASIC initiative, an airport-led effort to create a biometric-based solution for airport badging and access control. I currently serve as Assistant Director, Aviation Security & Technology for the Aviation Department of the Port Authority of New York and New Jersey. In this capacity, I oversee security operations for New York's Kennedy and La Guardia airports and for Newark Liberty International Airport and Stewart International Airport.

As you know, airports play a unique and critical role in aviation security, serving as an important partner to the Transportation Security Administration in helping the agency meet its core mission of passenger and baggage screening. The significant changes that have taken place in airports over the past decade with the creation of the TSA and its assumption of all screening duties have been aided dramatically by the work of the airport community, and we will continue to serve as a critical local partner to the agency as it continually modifies its operations.

In addition to partnering with TSA to meet its core mission, airports as public entities also perform a number of inherently local security-related functions at their facilities, including incident response and management, perimeter security, employee badging and credentialing, access control, infrastructure and operations planning, and a myriad of local law enforcement functions. These important duties have long been local responsibilities that have been performed by local authorities in accordance with Federal standards under Federal oversight.

Airport operators meet their security-related obligations with a sharp focus on the need to protect public safety, which remains one of their fundamental missions. The professionals who perform these duties at airports are highly trained and have the first responder duties that I know each and every Member of this subcommittee, the Congress, and the country value immensely. From a security and resource perspective, it is critical that these inherently local functions remain local with Federal oversight and backed by Federal resources when appropriate.

PRESERVING THE LOCAL ROLE OF AIRPORTS WITH BADGING AND ACCESS CONTROL IS  
CRITICAL

As this subcommittee and Congress contemplate changes aimed at enhancing the efficiency of the Federal STA process for the various transportation worker populations who are required to have these checks, it is important to understand and protect the unique role that airports play with regard to the overall background screening process for aviation workers and with badging and access control at their facilities.

In the aviation environment, the background check process for workers operates successfully as a Federal/local partnership with the Federal Government holding sole responsibility for STAs and other necessary Government checks for prospective workers and with local airport authorities operating and managing enrollment, credentialing, badging, criminal history background check adjudication and access control systems in accordance with strict Federal standards.

The current system for aviation ensures the highest level of security by combining the unique local experience, expertise, and knowledge that exists at individual airports regarding facilities and personnel with Federal standardization, Federal oversight, and Federal vetting assets. Local involvement provides a critical layer of security and gives airports the operational control they require to ensure that qualified employees receive the credentials they need to work in the airport environment.

In contrast to the long-standing locally controlled credentialing and access control apparatus that exists in the aviation environment, the credentialing/access control system in place in the maritime environment with the Transportation Worker Identification Credential (TWIC) program is relatively new. Under the TWIC model, the Federal Government or its contractors are responsible for all aspects of the process, including worker enrollment, applicant vetting, credential issuance, and associated functions of access control. In our view, the early results of TWIC have been uneven at best despite hundreds of millions of dollars in Federal investments. The existing system in aviation operates at no cost to the Federal Government.

INCREASED FEDERAL ROLE IN LOCAL AIRPORT SECURITY FUNCTIONS WILL DIMINISH  
SECURITY

Some have suggested abandoning the successful local systems and processes already in place at airports with badging and access control to give TSA and the Federal Government full control over the entire process as is the case with TWIC in the maritime environment. Airport executives oppose any move to shift critical local functions in aviation to the Federal Government and believe that such a move would diminish security by eliminating a critical, extra layer of security that is already in place in airports and absent with the TWIC approach.

Pursuing such an approach would scuttle a successful local/Federal model that has worked well for decades, eliminate local operational control, stymie significant efforts already under way at airports across the country to upgrade and biometrically enable existing airport badging and access control systems, and significantly increase costs to the aviation industry with no demonstrable security benefit.

With that in mind, AAAE is gratified that the MODERN Security Credentials Act introduced earlier this week by subcommittee leaders seeks to protect the existing, successful, locally controlled credentialing and access control apparatus while encouraging the Department of Homeland Security to consolidate, harmonize, and reduce redundancies within the vetting processes directly under Federal control. This approach stands in marked contrast to efforts underway within DHS as part of the TSA Transportation Threat Assessment and Credentialing (TTAC) Infrastructure Modernization (TIM) program to harmonize aviation vetting programs with other, less mature transportation worker vetting programs that the Department manages, namely TWIC and the hazmat endorsement for trucking.

One of the stated goals of TTAC's on-going effort is to "harmonize and standardize its enrollment process across its security threat assessment programs, envisioning a centrally managed enrollment service, phasing in applicant populations over time." TTAC budget documents note different enrollment, vetting, and adjudication and redress processes between various transportation programs and state that TIM will "combine functions and processes into a single, uniform approach with common security requirements, methods, and information."

While the desire to centralize and Federalize the process for all transportation worker vetting programs may be understandable from the Department's perspective, airport executives are concerned about Federal intrusion into existing processes that have worked well for decades. Airports are also very concerned about having to help foot the bill for the costly TIM effort—estimated at \$571 million through 2018—for changes that provide them with no demonstrable security or operational benefit. The current system in aviation operates efficiently and effectively at a fraction of the cost of other transportation vetting programs and at no cost to the Federal Government. We want to ensure that remains the case.

With the Federal Government and State and local governments operating under historic budget constraints, it makes little sense to devote hundreds of millions of dollars in scarce resources to Federalize functions that airports have performed successfully for nearly a decade. The TIM effort fails to take into account the long-proven approach that exists in the aviation industry.

Again, AAAE opposes such a centralized approach and is pleased that the MODERN Security Credentials Act seeks to clearly delineate between Federal and local roles and responsibilities. By keeping DHS focused on improving its own vetting functions and limiting the expansion of the Federal Government's responsibilities in the aviation environment, we believe the legislation will help accelerate efforts to harmonize security processes within the Federal Government, limit unnecessary

Federal and industry expenditures, and protect a system that has served airports, the aviation industry, and the Nation well for decades.

Mr. Chairman, AAAE sincerely appreciates the opportunity that you and your staff have afforded for input on this important legislation. We are particularly grateful for provisions that have been added prior to introduction to clarify that airport operators should maintain all roles and responsibilities they currently hold, including final decisions on badge issuance and access rights throughout their facilities. We look forward to continuing our work with you and with other Members of the subcommittee as this measure moves through the legislative process.

BIOMETRIC AIRPORT SECURITY IDENTIFICATION CONSORTIUM (BASIC)

Before concluding, I want to take this opportunity to bring the subcommittee up to date on a related topic and the efforts of the Biometric Airport Security Identification Consortium or BASIC initiative, which I chair. In simple terms, the objective of BASIC is to define a comprehensive, airport-driven Concept of Operations that will enable voluntary migration to biometric-based badging and access control systems at airports—a goal that I know subcommittee Members share. More than 40 airports of all sizes actively participate in BASIC. I would note that BASIC airport participants are working cooperatively with TSA on this initiative as well as with other groups, including the Airports Consultants Council.

Many airport operators—including the Port Authority of New York and New Jersey—are eager to move forward with biometrics, but concerns remain about the prospect of overly prescriptive and costly solutions. Airports are also eager to avoid repeating mistakes made in the past where the Federal Government required costly and often proprietary access control systems to be deployed in airports in a short period of time. That approach proved both expensive and ineffective.

In an effort to avoid unnecessary regulations and a one-size-fits all mandate regarding biometric-based systems, airports participating in BASIC have identified several key principles that must be part of any future biometric-based badging and access control systems, including:

- Safeguards on local control and issuance of credentials,
- Leveraging of existing capital investments and resources,
- Standards-based open architecture and local determination of qualified vendors, and
- Phased implementation that migrates over time.

In addition to building on the processes and regulations already in place at airports today, BASIC is also working to adapt important Federal standards regarding secure biometric credentials into the airport's operational environment. For example, Federal Information Processing Standard (FIPS) 201 and the more recent Personal Identity Verification Interoperability (PIV-I) for Non-Federal Issuers are reflected throughout the BASIC Concept of Operations and greatly inform the recommended phased implementation for airports.

The BASIC working group, which meets on a regular basis, is moving forward aggressively to develop a detailed Concept of Operations that will define the biometric components and common business processes that need to be added to airports' existing procedures to enable biometric-based badge and access control systems in a reasonable and cost-effective time frame. In fact, several airports have already begun to implement the early phases of the BASIC Concept of Operations. Newark Liberty International Airport, San Francisco International Airport, Aspen Pitkin County International Airport, Los Angeles International and Salt Lake City International Airport—to name just a few—have implemented a secure messaging structure for the submission of biographic security threat assessments and biometric criminal history record checks that will ultimately enable the return of trusted biometrics back to the airport for use on credentials or in access control systems.

Airports are committed to moving forward to bring biometrics into the airport environment as soon as possible in a manner that builds upon existing capabilities and limits operational difficulties. The BASIC initiative, which is being driven by airports in cooperation with the Federal Government, offers the best opportunity for making the promises of biometrics a reality in a timely manner.

Mr. Chairman, thank you for the opportunity to testify today and for your recognition of the important role that airports play partnering with the Federal Government to enhance aviation security. Your efforts to preserve and protect the important role that airport operators play with regard to badging, credentialing, and access control at their facilities will help ensure that important efforts within the Federal Government to harmonize its own internal processes are not distracted by a costly and unnecessary attempt to Federalize important local airport-controlled se-

curity functions, which provide countless benefits, including a vitally important additional layer of security.

I look forward to answering any questions you might have.

Mr. ROGERS. Thank you.

The Chairman now recognizes Mr. Martin Rojas, of the American Trucking Association and we look forward to hearing your testimony.

**STATEMENT OF MARTIN ROJAS, VICE PRESIDENT, SECURITY & OPERATIONS, AMERICAN TRUCKING ASSOCIATION**

Mr. ROJAS. Good afternoon, Chairman Rogers and Members of the subcommittee. Thank you for opportunity to testify today on the MODERN Security Credentials Act.

My name is Martin Rojas, and I am vice president for security and operations at the American Trucking Association.

The trucking industry is an essential component of our economy, transporting more than 80 percent of our Nation's freight bill and employing nearly 7 million workers, including over 3 million commercial drivers.

It is these hard-working men and women who will gain the most from this committee's efforts to implement The MODERN Security Credentials Act.

First, I want to take a moment to recognize and thank the Homeland Security Committee for its bipartisan efforts and leadership in passing the SAFE Truckers Act of 2009.

Although the bill did not pass the full Congress, it highlighted the importance for implementing a risk-based approach in transportation security. ATA believes that the the MODERN Security Credentials Act, if signed into law, will have a positive impact by reducing burdensome background checks and excessive fees and costs.

Presently the hazardous material endorsement screening program and the Transportation Worker Identification Credential impact large portions of the commercial driver population.

According to TSA, about 1.7 million screenings have taken place under the hazmat endorsement program. Roughly 340,000 drivers have undergone the TWIC screening, making these drivers the single-largest population of TWIC holders by job description.

Today, drivers who pay \$132.50 for a TWIC must also undergo a separate yet identical screening to get a hazmat endorsement on their commercial driver's license. That screening cost is \$89.

ATA calculates that commercial drivers have paid almost \$200 million in TWIC and hazmat endorsement fees. In 2004, TSA stated that there were 2.7 commercial drivers with hazmat endorsements. Today, after completing a full 5-year cycle of endorsement and renewals, there are about 1.5 million truck drivers with such endorsements.

This 40 percent drop in drivers with hazardous material endorsements is not due to the applicants being disqualified. Less than 1 percent of applicants have been disqualified and mostly because drivers don't understand the program's appeal and waiver process. ATA believes that drivers are simply choosing not to renew or seek a new hazardous material endorsement due to the cost and the complexity associated with undergoing this screening process.

At a time when our economy is slowly recovering, trucking faces a returning driver shortage. Unfortunately multiple screening programs compound the challenge for trucking companies to attract, hire, and add new drivers to their payrolls. Potential drivers are likely to go find employment elsewhere rather than be subjected to multiple fingerprint applications to become a driver.

ATA supports a background check for drivers, but we oppose multiple costly screening programs. This is why ATA has supported the TWIC as a single application and enrollment process for compliance with multiple screening and access control requirements.

ATA supports the MODERN Security Credentials Act because it establishes a risk-based approach for screening drivers who will transport security sensitive materials. We also support the bill because it defines the TWIC as the process for compliance with the background check. However, ATA believes that section 2104 needs to be amended to include all hazardous materials to ensure a uniform background check screening program. If section 2104 is left unchanged, non-Federal political entities could continue to require background checks on drivers transporting any type of hazmat, including paint, hairspray, and soft drink syrup.

Again, on behalf of ATA and its members, I thank the committee for its leadership on this critical issue and for the opportunity to testify. I look forward to answering any questions you may have.

Thank you, Mr. Chairman.

[The statement of Mr. Rojas follows:]

PREPARED STATEMENT OF MARTIN ROJAS

MAY 4, 2011

INTRODUCTION

Chairman Rogers and Members of the Subcommittee on Transportation Security, thank you for the opportunity to testify today on the MODERN Security Credentials Act. My name is Martin Rojas and I am vice president for Security and Operations at the American Trucking Associations (ATA). Founded in 1933, ATA is the Nation's preeminent organization representing the interest of the U.S. trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

The trucking industry is an integral component of our Nation's economy transporting more than 80% of our Nation's freight bill and employing approximately 7 million workers in trucking-related jobs, including over 3 million commercial drivers. It is important to note that the trucking industry is comprised primarily of small businesses, with 97% of trucking companies operating 20 trucks or less, and 90% operating six trucks or less.<sup>1</sup>

More importantly, about 80 percent of all U.S. communities depend solely on trucks to deliver and supply their essential commodities. Included in these deliveries are roughly 800,000 daily shipments of hazardous materials that provide chemicals for water treatment facilities, medical products and supplies, vital manufacturing inputs, and a number of other products that are important components of our daily lives. In terms of product value, tonnage, and number of shipments, trucks move more hazardous materials than all other transportation modes combined.<sup>2</sup>

BACKGROUND

ATA and its members are grateful for the hard work and bipartisan leadership demonstrated by the Homeland Security Committee and the U.S. House of Representatives in passing the SAFE Truckers Act of 2009 (H.R. 2200) in the 111th session of Congress. By passing the bill, the House underscored the importance of es-

<sup>1</sup> American Trucking Associations, *American Trucking Trends 2011* (March 2011).

<sup>2</sup> See Bureau of Transportation Statistics, *2007 Commodity Flow Survey* (January 2011).

establishing a risk-based approach for the transportation of hazardous materials and the need to consolidate the multiple background checks required of commercial drivers. Unfortunately, the SAFE Truckers Act was not passed by the full Congress and did not become law.

ATA believes that the MODERN Security Credentials Act, if signed into law, will have the same positive impact of reducing the burdensome requirements of multiple background checks and of excessive fees and costs faced by commercial drivers and trucking companies.

Both the Hazardous Materials Endorsement (HME) screening program and the Transportation Worker Identification Credential (TWIC) impact large portions of the commercial driver population. About 1.5 million drivers have undergone the HME screening since the program was initiated in May, 2005, and roughly 340,000 “known” commercial drivers have undergone a TWIC screening,<sup>3</sup> by far the largest single population of TWIC holders by job description operating at maritime facilities.

#### ATA CONCERNS WITH CURRENT SCREENING PROCESSES

To illustrate ATA’s concerns with the present screening processes, consider the following scenario: If a driver who possesses a TWIC, after paying \$132.50 for the credential, is required to also transport hazardous materials, the driver must obtain an HME on his or her Commercial Drivers License (CDL). Even though the driver has already undergone a TWIC screening, an additional and identical screening under the HME program must be done before a State can issue an HME on the driver’s CDL. The HME screening costs \$89 if the driver resides in one of the 38 States, plus the District of Columbia, that use TSA’s contractor to gather a driver’s biometric and biographical information. There are 12 States that collect driver information and fingerprints using their own processes before sending it to TSA for adjudication. Some of these 12 States charge less than the TSA contractor while others charge more, some as high as \$150.

By ATA’s estimate, the TWIC and HME screenings have so far cost commercial drivers nearly \$180 million in fees alone,<sup>4</sup> not including lost wages for time off work to undergo the application and fingerprinting processes. More time, and the related costs, is required for a driver to pick up the credential and activate it at a TWIC facility.

Using TSA’s own numbers there were approximately 2.7 million commercial drivers with HMEs in 2004.<sup>5</sup> Today, after having already completed a full cycle of HME renewals on the truck driver population, there are approximately 1.5 million commercial drivers with HMEs.<sup>6</sup> The drop in the population of drivers with HMEs is not a result of applicants being disqualified during the screening process—less than 1 percent of applicants have received final disqualification letters and those have mostly been issued because the drivers did not understand and avail themselves of the screening program’s appeal and waiver process.<sup>7</sup>

ATA believes that the reduced number of HME holders is due primarily to the costs and the burden on commercial drivers of the fingerprinting and application process for getting an HME. Some trucking companies with a small percentage of hazardous materials loads have even stopped transporting such cargo to avoid burdening their drivers with the HME screening. Keep in mind that the trucking industry faces a continuing driver shortage of qualified commercial drivers. Any requirements that increase the burden of entry for drivers, such as multiple background checks, only compounds the challenge for trucking companies to attract, hire, and add new drivers to their payrolls.

ATA and its members support a comprehensive security-related background screening for commercial drivers. However, the trucking industry opposes Government programs that require drivers to undergo multiple background checks to perform the very same security threat assessment. Because of the multiple screening programs in place today, ATA has long supported the original concept of the TWIC:

<sup>3</sup> TSA compiled statistics show about 340,000 applicants who list their job description as drayage drivers or truck drivers. However, about half of all TWIC applicants have not specified their job description, which could include commercial drivers.

<sup>4</sup> ATA arrives at this figure as follows: 1.5 million commercial drivers with HMEs × \$89 = \$133.5 million, plus 340,000 drivers × \$132.50 = \$45 million, for a total of \$178.5 million.

<sup>5</sup> 69 *Federal Register* at 68739 (November 24, 2004)

<sup>6</sup> This number has been provided by TSA personnel during meetings of the Highway Motor Carrier Government-Sector Coordinating Council. TSA has stated that an average of 25,000 commercial drivers underwent the HME Screening in the first full 5 years of the program: 60 months × 25,000 = 1.5 million.

<sup>7</sup> TSA has shared with ATA staff that applicants that have received final disqualifications letters, for both the TWIC and HME programs, represent less than 1 percent.

One application and enrollment process, one fee, one security threat assessment, and a single credential that transportation workers may carry to demonstrate compliance with multiple access control security requirements.

If the MODERN Security Credentialing Act becomes law, it will establish an important precedent for consolidating multiple, costly screening programs into a single security threat assessment and credential with multiple applications for transportation workers. ATA believes this is a very important and achievable goal.

#### KEY ISSUES IN MODERN SECURITY CREDENTIALING ACT

I would like to briefly highlight specific areas that have been included in the proposed bill under Title XXI that the trucking industry views as vital to ensure it meets its intended goals.

##### *Sec. 2101 Transportation of Security Sensitive Materials*

ATA strongly supports establishing a risk-based approach to the transportation of security sensitive hazardous materials (SSM). The bill recognizes that not all hazardous materials represent the same security risk—paint, food coloring, and soft drink syrup are not materials that can be utilized as weapons by terrorists.

This section also establishes the TWIC as the background check and credential required to transport SSM. ATA also supports this provision. Establishing the TWIC as the background check process and credential not only mandates the consolidation of screening programs for drivers, but it also returns the HME to its original purpose of establishing an individual's fitness to safely operate a commercial vehicle transporting placarded loads of hazardous materials. It is important to remember that the HME was established as an additional "safety" component of a driver's CDL to ensure that a driver has the necessary knowledge and understanding for the safe and compliant transportation of hazardous materials.

##### *Sec. 2102 Enrollment Locations*

ATA supports this language to ensure that commercial drivers have the greatest level of flexibility regarding the locations and hours of operations for undergoing the application process and for receiving and activating the TWIC.

##### *Sec. 2103 Commercial Drivers from Mexico or Canada*

ATA supports this section requiring commercial drivers from Canada or Mexico to undergo a background check that is equivalent to what U.S. commercial drivers are required to undergo. It should be noted that TSA presently allows Canadian or Mexican drivers to satisfy the requirements under 5103a of title 49 by successfully undergoing a background check and obtain either a TWIC or Free and Secure Trade (FAST) card.

##### *Sec. 2104 Redundant Background Checks*

ATA supports the proposed bill's mandate that the TWIC serve as a uniform Nationally accepted background check screening program for the transportation of SSM. This means that States and thousands of local jurisdictions should not be allowed, without demonstrating some compelling need, to require additional security background checks and/or credentials for individuals that have a Federally-issued TWIC.

However, ATA believes the language Sec. 2104(a) should be amended to read as follows:

"(a) IN GENERAL.—The Secretary shall prohibit a State or political subdivision thereof from requiring a separate security background check of an individual seeking to transport [security-sensitive] hazardous materials."

The change to "hazardous materials" is essential to ensure this section achieves the goal of establishing a risk-based approach for the transportation of hazardous materials. Otherwise, if this language is not changed as suggested above, it could result in non-Federal political entities continuing to require background checks on drivers transporting any type of hazardous material. Furthermore, this very same language was included by the Homeland Security Committee and passed by the House of Representatives in the SAFE Truckers Act under Section 2107.

##### *Sec. 2105 Transition*

ATA supports allowing commercial drivers that have already undergone an HME screening to transport SSM until the expiration of their present HME. ATA also supports the need for reducing the fees associated with the TWIC.

## CONCLUSION

ATA supports the MODERN Security Credentialing Act. The screening of individuals involved in the transportation of goods is important to the trucking industry. Our industry has long supported a National, uniform process to check a commercial driver's criminal history. However, the present multiplicity of background checks for commercial drivers, and their associated costs, creates a significant challenge for the recruitment and retention of qualified drivers. Simply stated, if there are comparable jobs in other sectors with less stringent barriers to entry, potential drivers will likely seek those jobs first.

Again, on behalf of ATA and its members, I thank you for the opportunity to share some comments and our suggestions regarding the MODERN Security Credentials Act. I look forward to answering any questions by the Members of this committee.

Mr. ROGERS. Thank you.

The Chairman now recognizes Mr. Randall Walker, director of Aviation at Las Vegas McCarran International Airport for your statement.

Welcome.

**STATEMENT OF RANDALL H. WALKER, DIRECTOR OF AVIATION, LAS VEGAS MCCARRAN INTERNATIONAL AIRPORT, CLARK COUNTY DEPARTMENT OF AVIATION.**

Mr. WALKER. Thank you, Mr. Chairman, Ranking Member Jackson Lee, and Members of the subcommittee, on behalf of members of the Airport Council International, North America, thank you for this opportunity to discuss and give comments on the MODERN Security Credentials Act.

Before I give more detailed comments on the legislation, I want to thank the committee for the provisions that reinforce the airport operator's right to restrict an individual's access to the secure areas and preserve the right to disqualify individuals from employment based on a review of the criminal history records check.

However, while the legislation does contain these provisions, ACI has identified some concerns with the bill.

First, the legislation contains language requiring a TWIC-like process, whereby the Secretary determines whether an individual is qualified to receive unescorted access to secure areas based on the review of the results of the criminal records history check. This language appears to shift the responsibility of adjudicating the results of a criminal history records check from local airports to the DHS.

Such a change would most certainly lengthen the time to complete the badging process and increase the costs for airports. It could also prevent airports from imposing a more stringent security requirement, which may be necessary to address unique security challenges at individual airports.

Airports are concerned with the language of this bill, as written, and believe that the results of the criminal history record check must be adjudicated at a local level. Additionally, ACI believes that there is no need for individuals who have been denied unescorted access to secure areas to participate in a formal waiver process through TSA.

There is an existing effective process which allows individuals to seek redress if they have been denied a SIDA badge due to the information received from a criminal history records check or a security threat assessment. With language in the bill that allows the



cost of the TWIC waiver process to be incorporated into if this security threat assessment fee, ACI believes airports will be faced with increasing costs for background checks. It makes no sense to force airport operators to pay the costs of an unnecessary and duplicative waiver process.

Airports believe that DHS should harmonize the system for background check data submission for aviation workers. However, the rulemaking language in the legislation is overly broad and unnecessary for DHS and TSA to move forward with its rulemaking to align the background check requirements and associated fees, something that is already under way.

The rulemaking language, along with the proposal for the Secretary, not the airport, to determine whether individuals are qualified to be granted unescorted access to secure areas could allow TSA to merge the process for security threat assessments and criminal history record checks. If these two processes are merged, it would be problematic for airports, as not all airport credentials grant unescorted access to the secure area.

Airports believe this bill includes conflicting requirements that would cause unintended and unnecessary operational challenges and impose additional costs for airports without improving security.

Because of this, airports encourage the committee to direct TSA to constitute a Government and industry working group with the task of making recommendations for streamlining the current process, which could be incorporated into a future rulemaking process.

Finally, limitation language in the bill seems to protect the current monopoly process with regard to the channeling service provider airports must use for background checks. If this legislation is enacted before TSA has changed its security directive and regulatory guidance, which requires airports to only use the transportation security clearinghouse, this could be interpreted by TSA as a ban on competition for channeling service providers, thus protecting TSA's sole source contract with transportation security clearinghouse and preventing airports from taking advantage of a competitive marketplace.

Mr. Chairman, when I first read this bill—and I was comforted by your remarks—but when I first read this bill, I actually found it ironic this Republican-controlled committee would advance a bill that seemed to increase the Federal control of this process at the expense of the local control.

In our opinion, such a Federalization of the process will increase processing time, which, of course, to our tenants, equates to money, and compliance costs without any improvement in security.

Additionally, I would also find it ironic if this legislation, which appears to perpetuate a monopoly on channeling services, was enacted by this committee. Three years ago, as chairman of ACI, on behalf of our members, I sent a letter to the TSA administrator requesting that competition be provided to our members. Currently the TSA is working on that process, and I think they might be done sometime later this year.

We look forward to working with the committee, DHS, and TSA to identify procedures to increase the effectiveness and efficiency of background check data submission process for airport workers and

preserving the ability for airports to adjudicate the criminal records history process and make decisions at the local level whether to grant access to our airports.

Mr. Chairman, I would be happy to answer any questions.  
[The statement of Mr. Walker follows:]

PREPARED STATEMENT OF RANDALL H. WALKER

MAY 4, 2011

Chairman Rogers, Ranking Member Jackson Lee, and Members of the subcommittee, thank you for the invitation to appear before you today to offer the views of airport operators on the Modernizing of Documentation and Elimination of Redundant Identification and Security Credentials Act (MODERN Security Credentials Act). My name is Randall Walker and I am the director of Aviation for the Clark County Department of Aviation which operates McCarran International Airport in Las Vegas, Nevada and four general aviation airports. I am testifying on behalf of the 344 member airports of Airports Council International—North America (ACI-NA) which enplane more than 95 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America. More than 350 aviation-related businesses are also members of ACI-NA.

Before offering comments on the specific legislation, it is important to first understand the processes and procedures in place at airports to ensure applicants have been subjected to a background check prior to the airport issuing a Security Identification Display Area (SIDA) badge, which allows individuals to have unescorted access to secure areas of the airport.

SIDA BADGE PROCESS

Currently, applicants wishing to receive a SIDA badge must undergo a Security Threat Assessment (STA) to verify the individual's identity and allow the Transportation Security Administration (TSA) to utilize the Terrorist Screening Database and other Government systems to ensure that the individual is a lawful resident of the United States and does not pose a security threat. TSA uses a variety of classified databases in order to perform the STA. Because of the sensitive nature of the results, TSA only provides airports with an approved status, indicating that the airport may grant the individual unescorted access to secured areas through the issuance of a SIDA badge, or a disapproved status, indicating that the airport must not issue the individual a SIDA badge or other form of identification. In addition, airports are required to submit an applicant's fingerprints to the FBI which conducts a Criminal History Record Check (CHRC). The results of the applicant's CHRC is sent to the airport so they can determine whether the individual has been found guilty (or not guilty by reason of insanity) of any of the 28 disqualifying crimes during the 10 years prior to the application for the SIDA badge. Some airports, through their TSA-approved airport security programs (ASPs), actually have a longer "look back" period or include additional disqualifying crimes; a process they believe enhances security at their airport and/or is required by State or local laws.

There is a process in place which allows individuals to seek redress if they have been denied a SIDA badge due to information received from a CHRC or STA. If the individual has been denied airport credentials based on the results of a CHRC, TSA regulations require that the airport operator advise the individual that the CHRC discloses information that would disqualify him or her from receiving or retaining a SIDA badge and provide the individual with a copy of the FBI record if the individual requests it. TSA regulations also allow corrective action by an individual if he or she believes the FBI records are inaccurate. Regulations state that the individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record within 30 days after being advised that the CHRC discloses a criminal offense. The individual must also notify the airport in writing of his or her intent to correct any information they believe to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual of the revised FBI record or a certified true copy of the information from the appropriate court, prior to issuing the individual a SIDA badge granting unescorted access.

If through an STA, the TSA determines that an applicant does not meet the requirements and is denied an airport-issued badge, TSA will provide the individual:

- (i) A statement that TSA has determined that the applicant does not meet the eligibility requirements to hold an airport-approved and/or airport-issued personnel identification media;

- (ii) The basis for the determination;
- (iii) Information about how the applicant may appeal the determination; and
- (iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the date of service of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination will automatically become a Final Determination of Threat Assessment (FDTA) without further notification from TSA.

TSA, not the airport authority, makes a determination as to whether an applicant's STA reveals information that the individual does or does not pose a security threat. Redress based on the STA will be handled on a case-by-case basis due to the classified and/or security sensitive information that may be involved. TSA is the final adjudicator of STA results.

In addition to the STA and CHRC, TSA regulations require individuals seeking a SIDA badge to complete training provided by the airport.

Pursuant to regulatory guidance issued in 2002 and subsequent Security Directives, TSA requires all airports and airlines to use and pay the Transportation Security Clearinghouse (TSC) for its email messaging services to consolidate and transmit the biographic and biometric data necessary for TSA to conduct Security Threat Assessments (STAs) and the FBI to conduct fingerprint-based criminal history record checks (CHRCs). In accordance with the requirements, airports collect the required biographic information of applicants for airport-issued identification badges, input the data in a spreadsheet and transmit it to the TSC. Similarly, airports collect the fingerprints of SIDA badge applicants and transmit them electronically to the TSC. The TSC simply consolidates the information and transmits it to the TSA.

The TSC is not uniquely qualified to perform this function. Indeed, at least 18 companies, in addition to the TSC, have been certified by the FBI as being qualified to transmit data pursuant to Federal standards. With the expansion of background check requirements by State and local governments and the commercial sector, the FBI has developed a testing process for certifying companies that meet Federal standards to perform the function.

Almost 3 years ago, as Chairman of ACI-NA, I sent a letter urging TSA to provide a fair, open, competitive process by allowing airports—and other industry stakeholders—to utilize other channeling service providers. Around that time, several other airports sent letters with similar requests to TSA. To date, TSA has not allowed airports to choose between qualified vendors providing such services. My concern is not specifically with the TSC providing channeling services. Rather, it is that TSA has precluded fair and open competition in the marketplace in not allowing airport operators a choice between FBI-certified vendors that provide channeling services.

#### SIDA VS. TWIC

The SIDA background check process and that for the Transportation Worker Identification Credential (TWIC) are distinctly different and affect very diverse workforces between the transportation modes, all of which may be faced with dissimilar threats. In the case of the SIDA badging process, the airport (the employer in most cases) grants unescorted access to certain areas of their individual facility. The ability for airport operators to monitor and limit individuals' access to certain areas at an airport is an essential layer of security that would be compromised under TWIC, which would allow a badge holder to access virtually any area of an airport. At a minimum, airports comply with strict regulations for STAs and CHRCs but again, some airports, because of State and local laws, go above and beyond the Federal minimums with regard to disqualifying offenses. Airports must follow TSA regulations, but unlike TWIC, identification badges are issued by the airport, not the Federal Government. It is also important to note that just because an individual has held or currently holds a SIDA badge from one airport it does NOT grant them unescorted access to secure areas of another airport. Due to the need for airports to limit individuals' unescorted access to certain locations within the secured area and given the vast differences between commercial aviation and port facilities, airports do not believe it makes sense to align the SIDA and TWIC processes.

#### MODERN SECURITY CREDENTIALS ACT

Although they are both agencies under the Department of Homeland Security (DHS), current TSA and Customs and Border Protection (CBP) regulations require separate and duplicative biometric and biographic data submissions to support background checks for aviation employees that are subject to the requirements of each agency. Rather than requiring separate data submissions to satisfy various agencies

such as TSA and CBP, airports believe DHS should develop a consolidated system for background check data submissions for aviation workers. Airports support Congress helping to move TSA and DHS toward that goal.

With regard to the MODERN Security Credentials Act, airports appreciate and support the language that reiterates the airport operator's right to restrict an individual's access to secure areas. Additionally, airport operators support the language which preserves their right to disqualify an individual from employment based on their review or adjudication of a criminal history record check. Although the legislation does contain some protections, airports have identified some concerns with the bill.

First, the rulemaking language is overly broad and unnecessary for TSA to move forward with its rulemaking to align the requirements and fees for background checks, something that is already underway. While this language appears to only affect the STA process, proposed changes to section in the U.S. code in the legislation actually affect the process for CHRCs. This could mean that the STA and CHRC processes would be merged under this rulemaking and that airports would no longer be able to review or adjudicate CHRC results. Merging these processes could be problematic, as not all airport credentials give unescorted access to the secure area. Current TSA background check requirements stipulate that certain individuals should only be subject to an STA. If these processes are merged, it could mean that additional individuals—who have no need for unescorted access to secured airport areas—would be required to get a CHRC, simply because they operate near or in an unsecured area of an airport. This could impose significant operational issues and unnecessarily drain limited resources while significantly increasing costs. For example, construction personnel working on airport projects do not have unescorted access and therefore, are only required to have an STA. Airports have existing effective measures in place to ensure that these personnel do not go into the SIDA area. Expanding the current requirement to include this population is unnecessary and could cause significant delays in these projects while workers wait for the processing of their CHRCs.

Airport operators agree that DHS should be required to consult with various stakeholders, including airports as they develop the rule. However, the consultation language provided in the bill does not require recommendations by stakeholders to be considered as part of or inform the rulemaking process, which allows the agency to disregard any comments made by stakeholders during the consultation process.

Furthermore, the limitation language in the bill protects the current process at airports with regard to the background checks. But, if this legislation is enacted before TSA has changed the security directive and regulatory guidance which requires airports to use the TSC, this could be interpreted by TSA as a ban on competition for channeling service providers, thus protecting the TSC's sole-source contract and the requirement that airports use only TSC as their channeling service provider. ACI-NA has long advocated for TSA to allow airports a choice between qualified vendors, including the TSC, that consolidate and transmit the required biographic and biometric information for STAs and CHRCs. ACI-NA asks that the language be modified to protect competition among channeling service providers.

Airports support the requirement in the bill that the agency provide an analysis of how the STA process will be consolidated; any reductions in fees or costs; and any other efficiencies that the rule may realize. However, the new process put forth by the rule could cause operational delays in getting responses back from TSA about whether individuals are cleared. ACI-NA believes TSA should also be required to conduct a thorough examination of the potential operational impacts resulting from the requirements prior to issuing a notice of proposed rulemaking.

Although the bill contains specific language preserving the current process for airports to determine whether to issue individuals a SIDA badge granting unescorted access to secured areas, it also contains contradictory or conflicting language requiring the Secretary to determine whether an individual qualified to receive a badge based on the results of the CHRC. This language would prevent airports from adjudicating results of a CHRC or imposing more stringent security requirements that are necessary for the unique security challenges at their airports. Airports strongly oppose this language and believe that the results of the CHRC should be adjudicated at a local level. Again, some airport operators, to enhance security in accordance with their TSA-approved airport security programs or because of State and local laws, choose to include additional disqualifying crimes or a longer "look back" period than is required by Federal law. Airports reiterate that it should remain a local decision to implement more stringent security requirements.

Because there is a process in place which allows individuals to seek redress if they have been denied a SIDA badge based on the results of the CHRC, airports believe there is no need for individuals denied unescorted access to secured areas

to participate in the TWIC waiver process. While airports appreciate the language in the bill which protects the rights of airports to disqualify any individual from employment based on a review or adjudication of a CHRC even if the individual holds a waiver, there is concern about the potential for implied pressure some airports might receive from TSA over granting unescorted access to individuals that have received a waiver, particularly for TSA's own employees as has occurred previously. Airports also support the language which protects them from being sued for refusing to provide unescorted access to individuals that have been determined to have some derogatory information as part of their background check.

As a result of the rulemaking required in the bill, airports will be faced with a significant increase in fees for STAs, a cost which TSA currently covers. Additionally, the legislation allows the costs of the waiver process to be incorporated into the fee. With a process already in place for individuals to correct inaccuracies identified in their CHRC and STA results, airports do not believe there is a need for a separate waiver process. ACI-NA is concerned that incorporating the costs of a waiver process and imposing a new fee for STAs will significantly increase costs. Again, while this may allow the fee for other populations within the transportation sector to be lowered, it will significantly increase fees in the aviation sector. Airport operators do not believe they should be forced to pay for the costs of a formal waiver process within TSA.

#### CONCLUSION

Although ACI-NA supports the goal of developing a consolidated system for the submission of data to support background checks for aviation workers, this bill includes conflicting requirements that would cause unintended and unnecessary operational challenges, and impose additional costs for airports. In order to ensure that the requirements are operationally feasible and commercially competitive, airports encourage the committee to direct TSA to constitute a Government and industry working group, tasked with making recommendations for streamlining the current process, which would be incorporated into a notice of proposed rulemaking.

Airports believe very strongly in and are determined to retain their right to deny individual's unescorted access to secure areas at their airport. If an airport operator chooses (whether because of State and local laws or in order to enhance security) to include additional disqualifying crimes or a longer "look back" period than is required by TSA, it should be their prerogative to implement more stringent security requirements.

While airports continue to urge DHS to develop a consolidated system for background check data submissions for aviation workers as a way to reduce costs and streamline the process, airports oppose the implementation of a credential which would provide universal access for aviation workers or for aviation workers to be absorbed into TWIC.

ACI-NA looks forward to working with the committee, DHS, and TSA to identify procedures to increase the effectiveness and efficiency of the background check process for aviation workers while preserving the ability for airports to adjudicate results, make decisions about whether to grant unescorted access privileges to individuals and to determine the level of access based on job function.

Thank you for the opportunity to appear before you today.

Mr. ROGERS. Great. Thank you.

I would point out on the competition issue, there are two or three other entities that are supposed to be certified within the month.

Mr. WALKER. Correct.

Mr. ROGERS. So hopefully we will have that competition, because I agree. We want to see that come about.

I am not going to take my full time because I want other Members to be able to ask questions before they call up the votes.

However, I would ask, Mr. Walker, I am assuming that all your concerns are in your statement. I would like to see some suggested language changes that you would make, that you would feel make it more comfortable for you to address some of those concerns you just raised. You never know, I mean, we might be able to work something out to allay many of your concerns.

Ms. Olivier, your colleague, Mr. Walker just now in his testimony, complains that the MODERN Security Credentials Act will

somehow restrict competition for background check channeling services for airports to the benefit of AAAE's transportation security clearinghouse. Do you agree with that?

Ms. OLIVIER. No, Chairman. Respectfully, as you pointed out, the TSA has already called for competition. They have already selected two additional channeling providers and are in the process of certifying them, so I think that we are well under the way for a competition which, in fact, I think myself and my colleagues have all supported, including members of AAAE.

Just as an additional point on that, when I referred to the biometric airport security identity consortium that I work with, these members all in drafting a concept of operations working with the TSA-anticipated competition, and so as we try to anticipate the path to biometrics, we are anticipating the need for interoperability of credentials so that it will facilitate this competitive environment.

Mr. ROGERS. My last question for you, Ms. Olivier, you heard Mr. Walker's concern about Federalization of this process. Is that your organization's concern as well?

Ms. OLIVIER. Yes, Mr. Chairman. We continue to feel strongly that airports need to have local control.

Mr. ROGERS. Then do you see anything in this legislation as a threat to that?

Ms. OLIVIER. In fact, we were very pleased to see that the language culls out airports and respects the responsibilities and the authorities that airports currently have.

Mr. ROGERS. Okay.

Last, Mr. Sadler, you have heard Mr. Walker's concerns. What would be your response to him?

Mr. SADLER. I think the first thing I would say is that we feel that the airport is in the best position to control access at their facilities; that is No. 1.

No. 2, I want to clarify that the security threat assessment is not the same as a credential.

So everyone mentions the TWIC process as somehow being the security threat assessment process, and it isn't. The TWIC card is the result; it is of the security threat assessment process. What we are trying to do is we are trying to harmonize that background check and those disqualifiers so we can treat all of the transportation workers fairly and evenly across the board and we can satisfy our security objectives.

So I just want to repeat, we don't intend and don't desire to issue a credential at an airport. The TWIC does not control access into a facility. What it does is it is another tool that allows a facility operator to control access.

So if you get a TWIC card, which I have one, and I paid my \$132.50 for it, I can't get into every port in the country. I can only get into a port if they want me to get in and if I have a business reason to get in.

So I just want to be clear on that. Airports are in the best position to control access into their facilities, and we agree absolutely with that.

Mr. ROGERS. Great. I want to yield the balance of my time and go the Ranking Member, and I am very interested in hearing her questions being answered.

With that, I recognize the Ranking Member, my friend from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much, and I am going to likewise try to be succinct and then make a brief comment, Mr. Chairman, and express my interest in reading this bill thoroughly and working with a lot of stakeholders, some of whom are in this room, on the final product.

This question is for—and let me again thank all the witnesses for their presence here—this question is for Mr. Sadler and Mr. Walker. The bill, in essence, creates a two-tiered system for waivers. Under the TWIC program, an applicant that secures a waiver from TSA is issued a TWIC card and can work in our Nation's ports.

While under the airport credential program, an applicant that secures a waiver from TSA does not get a credential if the airport operator pulls its issuance, somewhat of what you just finished saying, Mr. Sadler. Does this two-tiered system trouble you, and how is this harmonization, Mr. Sadler?

Mr. SADLER. Thank you, ma'am for that question.

I want to make another clarification that currently under statute, an individual is allowed to appeal the criminal record information. So, basically, what they can do is they can correct the record, and we consider that to be an appeal.

So the airport adjudicates to criminal history records. If there is some issue of misidentification or maybe the record itself is incomplete, there is an open disposition where the individual wasn't convicted or, excuse me, the disposition of that case wasn't added to the record, then that individual can correct that record.

Ms. JACKSON LEE. Right, I understand that. But you are not answering the question. The question is if you get a waiver from TSA, you don't get a credential from the airport; is that correct?

Mr. SADLER. No, that is not correct.

What I was trying to explain is it really isn't a two-tier waiver system because there isn't a waiver right now in effect under the current credentialing system. The applicant can appeal the decision of TSA. We do the National security checks and immigration check, and they can technically appeal the criminal history record information from the airport by correcting that record.

What TSA will do is if they find a disqualifying conviction, a criminal conviction, they will allow the individual to show TSA that they have been rehabilitated in some way, whether they have paid restitution, they have cleared parole.

Ms. JACKSON LEE. Right, and that is when you give a waiver.

Mr. SADLER. That is when you give the waiver.

Ms. JACKSON LEE. Right. I am now leaping to the airport. Please listen to my question.

While under the airport credential program, an applicant that secures a waiver from TSA does not get a credential if the airport operator opposes issuance, is that correct?

Mr. SADLER. Oh, that is correct. Yes, I am sorry, I misunderstood the question.

Ms. JACKSON LEE. That is the point I am making. So you have a two-tiered system basically. Do you have a comment on that?

Mr. SADLER. I believe that it is necessary for TSA to be able to adjudicate the criminal history records, along with the rest of the information we get on the individual, so we can satisfy our transportation security objectives.

But I also believe that the airport should have the right to determine who can go into that airport and conduct their own suitability check.

Ms. JACKSON LEE. Well, and there is a premise now that the individual now can get a TSA waiver and might be able to work, but, again, and I am not quarreling with you on this, the airport can decide whether they have access or not. In the modernization, I am confused and questioning whether or not that option is removed.

Mr. Walker, do you have a comment on the point that I just made very quickly, please?

Mr. WALKER. No, I don't. I have listened to what Mr. Sadler said. I agree with him on his comments. I think there are reasons that airports need to look at the criminal history. Obviously, there is an opportunity for—

Ms. JACKSON LEE. But how does the modernization bill, as it is now written, impact that ability?

Mr. WALKER. Well, the way the bill is written today, we think is very open-ended and would allow—and we have provided some comments to the staff to make those changes, as you suggested, Mr. Chairman—would allow the TSA to consolidate that process and actually adjudicate all—for everybody. They said they are not interested in doing that, but we believe the language would provide that opportunity for them to do that, and we are concerned with that.

Ms. JACKSON LEE. Let me quickly, thank you so very much.

As you know, at present, the cost of a SIDA airport credential is \$29, while the cost of a TWIC is \$134. Both programs are fully fee-funded and this bill establishes a new potentially costly appeals and waiver process within the SIDA program. As an airport operator, Mr. Walker, are you concerned that TSA will raise the cost of the fees to accommodate all these programmatic changes?

Mr. WALKER. Yes.

Ms. JACKSON LEE. Ms. Olivier.

Ms. OLIVIER. Yes, Ranking Member Jackson Lee.

Ms. JACKSON LEE. Okay.

Ms. OLIVIER. Certainly we feel that the process with the airports now is an extremely cost-effective process and an effective one.

Ms. JACKSON LEE. Thank you.

Let me conclude, Mr. Chairman and raise the point. I represent a very diverse community, a large number of minorities, a large number of minorities who have rehabilitated their lives and have become truck drivers and have access to port and have gotten TWIC cards. The one point that I want to have on the record, I will not support legislation that eliminates jobs or eliminates the opportunities for minorities who have had an unfortunate misstep in their lives.

We are now under the TSA process. They are able to secure a waiver if enough information is given, keep their job. If it is now merged and individuals will then be blocked, they may not want to come to the airport. They may be able to do well going to ports



and driving trucks. I am not going to see African-Americans and others denied work—if I have fought as hard as I can—because of this merged process.

By the way, the TWIC card system is not perfect. It takes a long time, and all I do is spend my time with a lot of my inner city workers trying to work and trying to get a TWIC card. I do not want to try to support something that is going to add extra levels.

Let me yield back and thank you, Mr. Chairman.

As I said, I look forward to working with you.

Mr. ROGERS. On that point, Mr. Sadler, my understanding is the waiver helps people who have had a checkered background, is that not true?

Mr. SADLER. That is correct. So what the waiver does it allows—

Ms. JACKSON LEE. I understand that, I understand that. But if we merge it and have the same process as SIDA, SIDA has a more extensive prohibition of disqualifying crimes, and that means my guys, my inner city guys, rural guys, whoever it is who are trying to support their families are thrown to the wolves again, can't get a job.

Mr. ROGERS. I want to come up with some language that will alleviate with that.

Ms. JACKSON LEE. I would be happy to work with you.

Mr. ROGERS. Let's work on trying to get that fixed because Mr. Rojas doesn't want to prohibit people from getting into his industry either. He says he has a shortage of drivers, so we will work on that.

Ms. JACKSON LEE. Thank you.

Mr. ROGERS. The Chairman now recognizes the gentleman from Minnesota, Mr. Cravaack.

Mr. CRAVAACK. Thank you, Mr. Chairman.

Thank you for coming here today. I appreciate it, especially crammed all together on that small little table there, so I appreciate that.

One of the things I have got a couple of questions about, with this modernization bill, I am just going to go real quickly because of time, with this modernization bill, will it increase the level of safety to the traveling public? If I could just go down the row, I appreciate it.

Mr. SADLER. We think it will increase security if TSA is allowed to adjudicate the criminal background checks in addition to the other information and apply the look-back periods that we have now for TWIC and HME drivers as well, but it will also increase the fairness in the redress process.

Mr. CRAVAACK. Perfect.

Yes, sir.

Mr. BOWMAN. I would have to say our review of it was more in line with the findings of our report, so I would not be able to comment on your question.

Mr. CRAVAACK. Fair enough, thank you.

Ms. OLIVIER. Well, it does provide for airports to continue with the level of responsibilities and authority that they have, so we feel in that regard it allows us, airports, to continue to do the good work that they have done to date.

Mr. CRAVAACK. So it doesn't impede on your ability to say who you want on your tarmac?

Ms. OLIVIER. That is it.

Mr. CRAVAACK. Okay.

Yes, sir.

Mr. ROJAS. I am not quite sure from the safety perspective how it would impact, but certainly the ability of undergoing a single background check rather than multiple background checks is a very positive development for our drivers and to be able to attract good people into the industry, and that would certainly be a positive development.

Mr. CRAVAACK. Just a note for you, Mr. Rojas, it looks like there will be, at the markup, there will be a manager's amendment that will address the issue regarding carrying hair spray and food coloring, so they will be addressing that issue as well.

Mr. ROJAS. Great. Thank you very much.

Mr. CRAVAACK. Mr. Walker.

Mr. WALKER. I can't speak to the surface transportation issue, but from an airport perspective, if the language is strengthened to make sure that we continue to be able to do what we are doing today, I don't think we will improve the security, but we will certainly continue to maintain the high level of security that we already have.

Mr. CRAVAACK. I am all about keeping the Federal Government out of our backyards, so I agree with that as well. Okay.

Also down the line again, will it streamline and make more efficient and effective the credentialing process and procedures?

Mr. SADLER. By modernizing our system and harmonizing the background checks, it will go from single systems for each program, single programs, to a person-centric ability, and what that means is we will be able to manage an individual from the time they enroll to the time that they get issued a benefit. So, therefore, if you need a hazmat endorsement, you don't just have to apply for a hazmat endorsement. If you need a TWIC, you don't have to just apply for a TWIC. If Steve Sadler comes in and enrolls, he will enroll once and we will use it many times, so it is going to increase the efficiency.

Mr. SADLER. So it is going to increase the efficiency.

Mr. CRAVAACK. Will it also decrease the amount of time and fees associated with an individual waiting for credentialing?

Mr. SADLER. Well, we would hope that it would decrease the amount of time that they would be waiting for the credential because we would have a better system to do the work with.

As you know, Congress directed TSA to collect user fees to sustain our programs. Right now, we are in the midst of developing a regulatory evaluation on the fee structure. So I am not in the position to be able to comment on that now. But once we get that out, we are going to send it to our stakeholders, and it is going to be very important for them to comment on it, and we will understand what their issues are with it.

Mr. CRAVAACK. Fair enough.

Thank you, sir.

Mr. BOWMAN. To your first point, would it increase the efficiencies, the bill's language seems to be in line with what we found

in our report, is that the consolidation of the security threat assessments would, as Mr. Sadler was referring to, would allow the information to be shared among the agencies and increase those efficiencies so that, as far as your second point, I would not be able to comment at this time.

Mr. CRAVAACK. I have got about 1 minute left. So if we could go down the line, I would appreciate it.

Ms. OLIVIER. There are some aspects where it might help the airport process, reaching into Customs and Border Patrol, for example. At airports, there is a separate credentialing, a separate background check process required by there. So if those can be consolidated and harmonized, it will help expedite the clearance of workers. There is a lot of turnover at airports. We need that.

Mr. CRAVAACK. Sure. I understand. Thank you.

Mr. ROJAS. I would say that eliminating the stovepiping that Mr. Sadler mentioned is critical and certainly the elimination of costs for as long as you reduce the number of credentials required. That is a big reduction in cost. But we also think that there are economies of scale, you could reduce further the cost of the truck credential, for example.

Mr. CRAVAACK. All right. Thank you.

Mr. WALKER. I agree with Ms. Olivier in terms of the TSA and CBP process. If they can harmonize that, then we could have one process that will save us some time and money as well.

Mr. CRAVAACK. Thank you, sir.

I have 3 seconds left, and I will yield back, sir.

Mr. ROGERS. I thank the gentleman. The Chairman now recognizes the Ranking Member of the full committee, the gentleman from Mississippi, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

At least we get some good discussions.

Mr. Sadler, I understand that everybody here has spoken about competition. I understand that there is an IDIQ out right now for modernization that you plan to award without competition. Am I correct?

Mr. SADLER. No, sir, not that I am aware of.

Mr. THOMPSON. Well, sole source it. I don't want to get into semantics. You don't plan to sole source it?

Mr. SADLER. For our modernization effort?

Mr. THOMPSON. For the TTAC modernization—

Mr. SADLER. Not that I am aware of, sir. But I can certainly go back and ask the acquisition folks if they have anything that—

Mr. THOMPSON. Well, I really wish you would. If it is competition, I think all of us want that.

Mr. SADLER. We plan to compete, just like we competed the aviation channelling services. We had references to AAAE passing the information at the TSA. We knew that needed to change. We went out with a full and open competition. We decided through technical and cost evaluations on three service providers. We are going to do the same thing with the modernization system. It is going to be full and open competition. As a matter of fact, we already had an industry day for modernization. We issued a draft RFP to stakeholders for comment. We received approximately 450 comments on that draft request for proposals, and they are being considered and

responded to now. But I will certainly go back and ask that question.

Mr. THOMPSON. I am glad to see you looking for a full and open competition.

Are you aware that TSA Assistant Administrator Weldon attempted to relocate the office from Arlington to Annapolis Junction, Maryland, without competition?

Mr. SADLER. I was there when that issue occurred.

Mr. THOMPSON. You are aware of it?

Mr. SADLER. I was there when it happened.

Mr. THOMPSON. You understand that people got involved and said, you can't do it that way. Are there any plans to relocate the office now?

Mr. SADLER. Not that I am aware of. What I am aware of is when that issue occurred, the question was asked about moving resources due to space restrictions up to another facility. The result of that was, I believe, we have much more open communications with our staff. Our staff is fully informed of any decisions that we believe we may make in the future. We have—and these may sound like minor things, but they aren't. They are very important things. We have many town halls. We have a new newsletter. We have staff meetings. So like I said, I was there. It was a troubling time to be a part of that. It was very serious. But some good things came out of it, and I think we are in a much better position today than we were—

Mr. THOMPSON. So you are saying to us, if the relocation comes back on the agenda, you plan to follow the protocols that are required?

Mr. SADLER. Absolutely.

Mr. THOMPSON. Thank you.

I understand there are about 96 million people who are in the TTAC small vetting programs that don't pay fees. You were talking about in your rulemaking giving it authority by Congress. Are you planning to start charging those individuals a fee?

Mr. SADLER. Where it is appropriate to collect a fee, yes, we plan to use our Congressional authority to do that. Because as you just stated, we are directed by Congress to collect the user fees to sustain any program that we have.

Mr. THOMPSON. Thank you, Mr. Chairman, for the hearing. With respect to airports during the vetting of employees, is your testimony that TSA should not be involved in that process, that it is a local issue?

Mr. SADLER. No. My testimony is that TSA should be involved in that process because our mission is transportation security. But on the flip side of that, we also believe that the airports should have final control and the decision-making ability on who comes into their airport. So we believe that we need to adjudicate date—

Mr. THOMPSON. Explain just for my benefit the difference between who comes into the airport and what you are talking about now.

Mr. SADLER. So we have the background check that we do now is based on certain disqualifiers. If you have been released from incarceration within the last 5 years or convicted within the last 7

years for certain felonies or if you have ever been convicted of other felonies; so for instance, if you were convicted of murder any time in your life, that is an issue we need to look into.

So what we would do is we would do the adjudication based on those disqualifiers which we hopefully would harmonize with the TWIC and the HME programs. If the airport decided to adjudicate that criminal history record information based on standards that they have or increased standards, they should have the right to do that. So there could be a case where TSA would approve someone to get a SIDA badge, but because of the requirements of the airport—and as I understand it, certain airports have more strict requirements than others. It does happen. They should have the ability to deny that credential because they are going to allow the access into that facility.

Mr. THOMPSON. Thank you.

If I might, Mr. Chairman, Mr. Walker.

Mr. WALKER. That creates a great concern for us as airports. Because what Mr. Sadler just said is they are going to start adjudicating records that they are not doing today. So what cadre of staff are they going to hire to do that? What is the time going to be? This is going to lengthen the time for us to be able to get badges issued to people that have already been hired and ready to go to work and they can't until they get their badge.

This is going to create—any time the Federal Government—excuse me—starts controlling a process, I have never seen it become more timely and less costly. So that is our concern as airports. We have lots of turnover, and these people are going to be waiting longer for their badges. They won't get paid as soon. I don't see the necessity of them adjudicating. They can set the rules. We can review the records and adjudicate like we are doing it today. They can monitor and audit us like they do today to make sure that we are in compliance with their rules and regulations. But taking over the program is just going to add cost and time to it, and I don't see how that is going to improve security at all.

Mr. THOMPSON. Taking over the program, Mr. Chairman, is not what I see as the spirit. I thought we were trying to give the local airports the authority. It just appears that somehow it is getting interpreted altogether different. I don't have a problem with the local airports doing it, but it looks like we are going down two different directions.

Mr. SADLER. Thank you, sir. The first thing I want to say is that if you pull the airport population from this universal rule and do not allow us to do that criminal adjudication, then you pull over a million workers out of comparability and harmonization, and you also deny TSA the opportunity to vet those individuals completely with all of the information.

The second thing I would say is the information that we are talking about here as far as costs, fees, times are all within the universal rule and that will be out for notice and public comment. Those are very important to us.

The third thing I would say is we have been doing this a long time. We have got a lot of people and with the Hazmat Threat Assessment Program, we had 33 States that used the TSA agent as opposed to collecting their own information when we started in

2005. We have an additional five States now. So we have 38 States and the District of Columbia because those States were having difficulty with their process. They knew we were doing a good job. They knew we could do a good job, and we are doing a good job.

Mr. THOMPSON. Mr. Chairman, let me read, if I may, Mr. Sadler's statement: TSA plans to assume the adjudication of criminal background checks for airports and aircraft operator workers, which is currently performed by the airports and airlines.

I mean, that is your statement.

Mr. SADLER. I think you have to continue on. Let me find that. Do you have the page number there?

Mr. THOMPSON. Yeah.

Mr. SADLER. Here we go. Hold on. If you go down to the bottom of that page, we also say that TSA does not, however, intend to assume responsibility for worker suitability or access control decisions from airports and airlines and will continue to send criminal history record information to any airport that requests it for the purposes of making its own suitability or access control determination.

So what we are saying is we think we need, in order to fully implement harmonization and comparability, to adjudicate the criminal records for aviation workers.

We do not think we need to issue credentials. We do not think we need to control access at an airport. We think that is best done by the airport themselves. They are in the best position to do that.

But in order to implement comparability and harmonization, we need to include that population if we are going to do it correctly and in order to achieve our transportation security mission.

Mr. THOMPSON. Thank you.

Mr. ROGERS. I thank the gentleman.

The Chairman now recognizes the gentleman from Illinois, Mr. Walsh, for 5 minutes.

Mr. WALSH. Thank you, Mr. Chairman and Ranking Member Lee.

Folks, if I am repetitive, I apologize. Mr. Sadler, a couple of quick basic questions. What is the difference between an appeal and a waiver? Succinctly.

Mr. SADLER. An appeal is an objective determination of whether you were the person who got convicted, whether your record is correct. So if Steve Sadler has an issue, I can come back and say, I wasn't convicted of that crime; the crime was expunged; I was convicted of a lesser offense. So basically, I am not the guy or the record is incorrect.

A waiver is a subjective determination by TSA based on the rehabilitation of the individual. So the individual has been convicted of a disqualifying crime; he or she sends information into us; we convene a waiver board, and we merit a determination that we feel they aren't a security threat.

Mr. WALSH. Basic question No. 2, in airports right now, do workers currently have access to an appeal, a waiver process, or both?

Mr. SADLER. They have access to appeal in the form of correcting their criminal history record information or they can appeal an immigration or a National security decision made by TSA, keeping in

mind that the airports adjudicate the criminal history records at this time. They don't have access to waivers.

Mr. WALSH. Third final basic question, is it fair in your estimation that truck and port workers have appeal access and access to a waiver process but airport workers only have access to an appeal process and are not allowed to have access to a waiver process?

Mr. SADLER. It is an interesting question. We were directed by law by the NHTSA Act to include a waiver process with an administrative law judge review. That does not exist for aviation workers at this time, but we think it is the right thing to do. An example of that is, we took the waiver process from the TWIC rule and we included it with the hazardous material endorsement rule. So we were not directed by law to include that in the hazardous materials process, but we did anyway because we thought it was the right thing to do. We think it is the right thing to do with aviation workers.

Mr. WALSH. So they should have access to both?

Mr. SADLER. We think so, yes

Mr. WALSH. Mr. Rojas, a quick question, this act, the MODERN Security Credentials Act, will it reduce costs and cut through redundant regulations for your drivers?

Mr. ROJAS. Yes, if we achieve the goal of a single credential, a single background check process that will allow the drivers to comply with multiple security requirements, yes, it will reduce the cost; one single payment, one process, period. In addition to the fees, obviously there are time off requirements off of work in which they lose salary and everything else. So we do believe it would be a positive development.

Mr. WALSH. Ms. Olivier, clear up one thing for me. You have expressed valid concerns about the direction you see TSA heading towards Federalizing some of these local security processes. In your view, would this Act help protect local security processes and functions?

Ms. OLIVIER. Yes, Congressman. That is the way we saw the legislation that specifically called out the local authorities and responsibilities at the airport.

Mr. WALSH. Great. Thank you.

Mr. Chairman, I would like to just yield to one quick question from my colleague from Minnesota, Mr. Cravaack.

Mr. CRAVAACK. I thank you for yielding, sir.

Just a quick question for Mr. Walker. Mr. Walker, you rely on TSA right now presently to do part of your background checks for your local airport, correct?

Mr. WALKER. They do the STA checks, yes.

Mr. CRAVAACK. Right now, the TSA is doing that for free, are they not?

Mr. WALKER. I believe so, correct.

Mr. CRAVAACK. Right now, Mr. Sadler, since you are doing those background checks for free right now, basically you are disseminating the costs associated with the background checks for the airports over to possibly the truckers and everybody else. Would that be a correct statement?

Mr. SADLER. We do that work through appropriations.

Mr. CRAVAACK. Okay. Well—

Mr. SADLER. So, basically, we are—the taxpayer is paying.

Mr. CRAVAACK. So, in essence, the one you actually go through to the TWIC card, as I understand it—correct me here if I am wrong, sir—those that would actually be receiving your service would be the ones that would be paying for it. Would that be a correct statement?

Mr. SADLER. That is correct. We would be collecting user fees to sustain the program.

Mr. CRAVAACK. So it wouldn't be spread on a trucker for an aviation background check?

Mr. SADLER. No. Our intent is to charge fees for services provided.

Mr. WALKER. It means our fees are going up. I guarantee it.

Mr. CRAVAACK. Okay, sir, but you are not paying for anything now, correct?

Mr. WALKER. No. All of our fees. They are going to do the adjudication, and then they are going to send it to us. We are going to have to do it. We are going to have to pass those costs along to our tenants. The costs for people who work at the airport are going to go up with the process that the TSA is proposing. It might come down for Mr. Rojas. That is great. They are going to go up for aviation, and that is going to pass costs onto the airlines and our tenants, which is not good for creating jobs.

Mr. CRAVAACK. Okay, sir, but just to be clear, they would be paying fee for service, correct, sir?

Mr. WALKER. We are going to start duplicating services because they are going to do the things that we are already doing, and then we are going to have to do them ourselves a second time. That costs money. They are going to pass that cost on along to us. Then we are going to have the same costs we already have today. That is a duplicative cost that is going to get passed to our users.

Mr. CRAVAACK. I will yield back to Mr. Walsh.

Thank you very much, sir.

Mr. WALSH. I yield back, Mr. Chairman.

Mr. ROGERS. I thank the gentlemen.

The Chairman now recognizes the gentleman from Illinois, Mr. Davis, for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Mr. Sadler, I appreciate the fact that TSA has long sought authority from Congress to raise the ticket fee. In your testimony, you indicate that the rulemaking TSA is currently working on would require, quote, new populations to pay a fee for vetting by TTAC. Which new populations will be covered? You talked about travelers using Secure Flight or flight crews. If yes, then it sounds like it might be a backdoor effort to raise the ticket fee. Is that what—

Mr. SADLER. There is no effort on our behalf to raise the ticket fee, sir. It is all about security threat assessments for transportation workers and fee fairness and equitability for that fee across transportation modes. By ticket, I am assuming you are speaking to an airline ticket?

Mr. DAVIS. Yes.

Mr. SADLER. Yeah. No, that was not our intent.

Mr. DAVIS. Thank you very much.



Mr. Rojas, let me ask you, what are some of the challenges associated with the current credentialing for individuals who would haul hazardous materials?

Mr. ROJAS. Well, I think part of the program—when we first analyzed the program, one of the issues that we had and that we pushed for was that it be developed as a National—National uniform system. Right now, as Mr. Sadler mentioned, there are 38 States that use a TSA contractor. However there are 12 other States that do their own sort of program. Some of those fees can be higher than the cost associated with using a TSA contractor. So the lack of uniformity is one of the concerns that we certainly had Nation-wide. One of the—and that is why we continue to push—the fact is one of the biggest issues that we have within the hazmat environment is that, of course, not all hazardous materials are created equal.

So there are certain materials that could be considered weaponizable per se, toxic by inhalation, perhaps some radioactives, some explosives. But there are a number—a large universe of materials that did not qualify as a security threat per se. We don't think drivers that are going to be transporting some of these less secure, low-risk materials should be undergoing a fingerprint-based background check for the purpose of performing their duties.

Mr. DAVIS. So you are suggesting that there might be differentials which would allow individuals to transport some materials but not others?

Mr. ROJAS. That is correct. I mean, in essence, if you want to transport certain types of materials that represent a higher security risk, then you should be required to undergo a fingerprint-based background check for the purpose of transporting those materials but not the hairsprays, the Coca-Cola, and syrup and everything else.

Mr. DAVIS. Thank you very much.

Mr. Walker, let me ask you, what are your opinions in establishing an appeals and waiver process to see that credentialing and whether or not you have had any really expressions of concern from tenants and operators about this process?

Mr. WALKER. I am not aware of significant concerns in that process for airports. If it was determined that there should be a waiver process, what I would recommend, then, is that the TSA develop some regulations of how that would work and let us continue to function the way we are.

We can handle that process under regulatory oversight, just like we do the processes we have today. I don't see that we need to have one-size-fits-all in a very diverse transportation community, airports or not, the same as surface transportation. It seems to me that TSA is trying to get a one-size-fits-all, and it just doesn't work. If they want to add that to the process, if this committee feels that is important, then they can establish the rule and we can very effectively handle that kind of a process just like we do the processes today.

Mr. DAVIS. Would you suggest that there is need for considerable time to review and analyze to make a determination, given the large numbers of individuals who seek these credentials?

Mr. WALKER. We don't have a large number of people that are denied badges in the first place, because most of the employees that come to us for badging are processed by a private-sector employer. Out of 18,000 employees, our people who have badges, I report about 1,400 who work for us at airport. So they do their own screening. So we don't have a lot of denials in the first place. If there is a need to have that kind of a waiver process, and this committee establishes that in regulations, we will do a very effective job in managing that process like we do the processes that we have today.

Mr. DAVIS. Thank you very much.

Thank you, Mr. Chairman. I yield back.

Mr. ROGERS. I thank the gentleman. I am confused now. AAAE, which is in the airport business, just like your organization, does not see these concerns that you have got. What is the deal? Ms. Olivier, can you tell me? Does this bill scare you as much as it scares Mr. Walker?

Ms. OLIVIER. No, Mr. Chairman. I am encouraged by the way this seeks to preserve the authorities of the airports, and it did concern me that the TSA said that they would be the adjudicator. This bill preserves the authority and the responsibilities as they are now, the procedures conducted by airports. With that is the adjudication and criminal history records check. So what we feel is, of course, the TSA needs to concentrate, and I think the focus of this legislation does that, encourages the DHS to focus on the parts that they are responsible for. That is the STA process, and that is ensuring that the criminal history records based on fingerprints are related to the airports for adjudication.

Mr. ROGERS. I can assure you what we are after is to make it simpler. One of the problems I have heard from my trucking organizations is how unreasonable it is to require a trucker to go on two separate days to get two different investigations, pay for both of them when—if he is a security concern, we ought to be able to knock it out at one time. That is what we are after, trying to simplify things and at the same time be effective. So we want to work out these concerns you have got to the extent we can. I can assure you, I don't want any more big Federal Government in your business than we have got to have. We are going to work to that end. Also to maintain your autonomy because I don't want to be in the airport business either. So we want to work with you.

Ms. Jackson Lee, if you have anymore questions, you are recognized.

Ms. JACKSON LEE. Just to say, Mr. Chairman, I am glad that you are seeking to dissect confusion.

My point is modernization has a positive premise. We have to delineate responsibilities. We have to know what Mr. Sadler is actually going to do. If he does not want to yield—does not want to secure adding authority to adjudicate, it needs to be clear. Then additionally, we need to make sure that our job is to create jobs and not to end jobs.

I make the final point that people who have been incarcerated range across ethnic lines. I don't want to highlight one particular group, but there is a disproportionate impact in some inner city minority communities and rural areas. I would simply say to you that

our work over the years has not seen a former burglar, per se, mastermind the demise of the World Trade towers. We need to give Americans the chance to be rehabilitated, to work and provide for their families. That is what I would like to see happen.

Mr. ROGERS. I agree.

The Chairman now recognizes Mr. Cravaack.

Mr. CRAVAACK. Well, I can hear with just all the bells working. We are going to go and vote here.

Mr. Walker, you bring up some good points. Being an airline pilot, the last thing we want to do is increase fees to airlines. But my question is: You say your fees will increase. Is that because you are doing a duplicative background check to what the TSA is already doing?

Mr. WALKER. No, right now, the criminal history record check information comes to us. Our staff reviews it and adjudicates whether the person is eligible for a badge under the regulations that we have. Then the TSA has oversight, and they audit us to make sure we are doing the job correctly. What I heard Mr. Sadler say is that they intend to adjudicate, and then they would send us if we so request the same information, which then we would have to go through the same process to determine whether we are going to issue a badge. That is duplicative. That will add additional cost to our process, which then we will pass on. The ultimate payers, as you know as an airline pilot, are the airlines at the airport. They fill the gap.

Mr. CRAVAACK. It is actually the consumer at the tail end.

Mr. WALKER. The consumer at the tail end.

Mr. CRAVAACK. Mr. Sadler, do you think that there is some ground here that you could work together with the concerns of Mr. Walker?

Mr. SADLER. Well, that is part of our regulatory evaluation and fee structure rule that we are going to put out for notice and comment. We can also meet with the stakeholders prior to the issuance of that MPRM, and we do frequently. We are certainly willing to do that.

Mr. CRAVAACK. Thank you very much for that because the last thing that any of us as consumers would want would increase fares, especially with our rising gas prices as well.

Thank you very much, sir, and I appreciate it.

I yield back, Mr. Chairman.

Mr. ROGERS. I thank the gentleman.

I do want you all to know I appreciate you making the time. This has been very helpful for me, very informative for our staff and the other Members of this committee. I can assure you my staff will be reaching out to you all again as we look at other modifications that will allay some of the concerns that were raised here today. Our Majority staff is going to be reaching out to the Minority staff to make sure we address some of the concerns that we were raised by the Minority Members here today as well.

Ms. JACKSON LEE. Mr. Chairman, likewise, I would like an equal opportunity for those persons who have been very nice and informative witnesses to reach out to both sides of the aisle so that we can have information working together as this committee has done

over the tenure that we have been together and previously as well. Thank you. I yield back.

Mr. ROGERS. So with that, thank you. I do want you to know that the committee hearing will be held open technically for 10 days. Members who weren't here may have questions that they want to submit to you in writing. I would ask that you respond to those. With that, we are adjourned.

[Whereupon, at 3:31 p.m., the subcommittee was adjourned.]

