OFFICE OF INSPECTOR GENERAL

Testimony of Inspector General John Roth

Before the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security

Committee on Commerce, Science, and Transportation

United States Senate

"Assessing the Security of our Critical Surface Transportation Infrastructure"

Homeland Security

December 7, 2016
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DHS OIG Highlights

Assessing the Security of our Critical Surface Transportation Infrastructure

December 7, 2016

Why We Did This

The audits discussed in this testimony are part of our ongoing oversight of the Transportation Security Administration (TSA). Our reviews are designed to ensure efficiency and effectiveness of TSA operations in order to fulfill both aviation and non-aviation-related missions.

What We Recommend

We made numerous recommendations to TSA in our audit reports discussed in this testimony.

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What We Found

TSA has many responsibilities in addition to providing security for our Nation's aviation passengers — including highway, freight and passenger rail, mass transit, port security, and pipelines. However, TSA has not considered these areas a priority, thus exposing the traveling public and sensitive infrastructure to additional risk. This testimony highlights several recent audits of TSA's non-aviation security-related missions. Our findings include:

- TSA lacks an intelligence-driven, risk-based security strategy that informs security and resource decisions across all modes of transportation.

- TSA has not fully implemented internal controls that strengthen the reliability of port worker background checks.

- TSA has not implemented regulations governing passenger rail security, established a rail training program, nor conducted security background checks of frontline rail employees.

- We believe that the *Surface Transportation and Maritime Security Act*, if enacted, will assist in addressing a number of the challenges facing the Department and direct TSA to correct significant deficiencies in its programs and operations.

Agency Comments

We issued 10 recommendations that TSA concurred with and, in most cases, has begun implementing corrective actions.

Chairman Fischer, Ranking Member Booker, and members of the Subcommittee, thank you for inviting me to testify at today's hearing regarding the security of our surface transportation infrastructure.

When the American public thinks of TSA, they think of the Transportation Security Officer in a blue shirt instructing them to remove their belts and shoes before going through security screening at the airport. The truth is that TSA has a much broader responsibility to also oversee and regulate our Nation's surface transportation modes — highway, freight and passenger rail, mass transit, and pipelines — and port security, to ensure the freedom of movement for people and commerce. However, TSA's budget reflects the public perception of its mission, allocating most of its resources to air passenger screening and dedicating only a small portion to the vulnerable areas of non-aviation.

Recently, the OIG has published three reports[1] that identify significant weaknesses in TSA's ability to secure surface transportation modes and the Nation's maritime facilities and vessels. Specifically, we identified issues with TSA's ability to identify risk across all modes of transportation, the reliability of background checks for port workers, and passenger rail security.

TSA Needs a Crosscutting Risk-Based Security Strategy

TSA has many responsibilities beyond air travel, and is responsible, generally through the use of regulation and oversight, for surface transportation security. However, TSA focuses primarily on air transportation security and largely ignores other modes. We found that TSA does not have an intelligence-driven, risk-based security strategy to inform security and budget needs across all types of transportation. In 2011, TSA began publicizing that it uses an "intelligence-driven, risk-based approach" across all transportation modes. However, we found this not to be true. In an audit we released this past September, we reported that TSA specifically designed this approach to replace its one-size-fits-all approach to air passenger screening but did not apply it to other transportation modes. Additionally, TSA's agency-wide risk management organizations provide little oversight of TSA's surface transportation security programs. TSA established an Executive Risk Steering Committee which was intended to create a crosscutting, risk-based strategy, which would drive resource allocations across all modes. However, neither it, nor any of these entities place much emphasis on non-air transportation modes.

[1] *TSA Oversight of National Passenger Rail System Security* (OIG-16-91); *TWIC Background Checks are Not as Reliable as They Could Be* (OIG-16-128); and *Transportation Security Administration Needs a Crosscutting Risk-Based Security Strategy* (OIG-16-134).

We also found that TSA lacked a formal process to incorporate risk into its budget formulation decisions. Despite the disparate requirements on the agency, TSA dedicated 80 percent of its nearly $7.4 billion FY 2015 budget to direct aviation security expenditures, and only about 2 percent to direct surface transportation expenditures. Its remaining resources were spent on support and intelligence functions. A formal process that incorporates risk into its budget formulation would help TSA ensure it best determines and prioritizes the resources necessary to fulfill its missions.

TSA concurred with our recommendations, and is working to create a consolidated risk-based security strategy for aviation and surface transportation modes. It also noted that efforts were made to improve the budget process by conducting a series of crosscutting program reviews and developing resource planning guidance. However, notwithstanding that they have been working on this for a considerable amount of time, TSA does not intend to provide us with its risk-based security strategy until the last quarter of 2017. We also do not yet have their formal budget planning process that uses risk to inform resource allocations.

TSA Missing Key Controls within the TWIC Background Check Process

TSA — responsible for safeguarding our Nation's ports and maritime facilities through the Transportation Worker Identification Credential (TWIC) program — lacks key internal controls and this compromises the TWIC program's reliability. These weaknesses leave our Nation's seaports at risk for terrorist exploitation, smuggling, insider threats, and internal conspiracies.

TSA provides background checks, or security threat assessments, for individuals who need unescorted access to secure port facilities; and issues a biometric identification card, also known as a TWIC. The background check process for TWICs is the same as that of aviation workers[2] and drivers who need a Hazmat Materials Endorsement.[3] It includes a check for immigration-, criminal-, and terrorism-related offenses that would preclude someone from being granted unescorted access to secure facilities at seaports.

The Government Accountability Office (GAO) also reviewed the TWIC program five years ago. In 2011, GAO identified key internal control weaknesses in TSA's management of the TWIC background check process and recommended the Department take significant steps to improve the effectiveness of the

[2] *TSA Can Improve Aviation Worker Vetting* (OIG-15-98)
[3] Commercial drivers required to transport hazardous materials must undergo a background check by TSA prior to receiving a hazardous material endorsement on their Commercial Driver's License.

program as a whole. Although TSA took some steps to address GAO's concerns, our review — five years later — found that TSA did not adequately integrate the security measures intended to identify fraudulent applications into the background check process.

For example, TSA required enrollment staff to use a digital scanner that could evaluate security features present on identification documents and generate a score to help TSA determine if the document was authentic. However, TSA did not collect or use these scores when completing its background checks — nullifying the effectiveness of this security measure. For those documents that could not be electronically scanned, TSA required the staff at the enrollment centers to manually review identity documents. However, TSA did not require that the staff be trained at detecting fraudulent documents. When the enrollment staff documented their observations of suspicious identity documents in TSA's system, TSA did not have a standardized process for collecting, reviewing, or using the notes when completing the background checks.

We determined TSA management's lack of oversight was the primary reason the TWIC background check process had many control weaknesses. At the time of our review, the TWIC background check process was divided among multiple program offices so that no single entity had complete oversight and authority over the program. Furthermore, the lead program office for the program lacked key metrics to measure TSA's success in achieving TWIC program core objectives. For example, the measures in place focused on customer service, such as enrollment time and help desk response time, rather than on areas like accuracy of the background check itself. Since our review, TSA told us it realigned the divisions responsible for the TWIC background check process in an effort to provide better oversight and guidance and has begun making improvement to strengthen the controls surrounding the background check process. However, we have not validated the TSA's actions, so we do not know whether this has improved the program's functionality.

TSA Delays Implementing Passenger Rail Security Regulations

TSA has failed to develop and implement regulations governing passenger rail security required more than nine years ago by the *Implementing Recommendations of the 9/11 Commission Act of 2007* (*9/11 Act*).[4] Unlike the security presence that TSA provides air passengers in airports, its responsibility for rail passengers rests in assessing intelligence, sharing threat information with industry stakeholders, developing industry best practices, and enforcing regulations. This is particularly important due to the volume of

[4] Public Law 110-53.

passengers using this mode of transportation and the unique challenges in the rail environment.

In fiscal year 2015 alone, Amtrak carried 31 million passengers across the continental United States and Canada, and operated more than 300 trains daily. Additionally, Amtrak and other passenger rail carriers operate in an open infrastructure with multiple access points that make it impractical to subject all rail passengers to the type of security screening that passengers undergo at airports. Notwithstanding this, there were actions that TSA could have taken, but did not, that would have strengthened rail security. Specifically, although required to by the *9/11 Act*, TSA neither identified high-risk carriers nor issued regulations requiring those carriers to conduct vulnerability assessments and implement DHS-approved security plans. TSA also did not issue regulations that would require a railroad security training program and security background checks for frontline employees. Regulations to implement a training program are important to ensure rail carriers have a mechanism in place to prepare rail employees for potential security threats.

Furthermore, unlike aviation and maritime port workers, TSA did not develop regulations requiring security background checks for rail workers. TSA vets airport and maritime port workers who need unescorted access to secure areas against the terrorist watchlist and immigration status and criminal history information, and these processes are consistent with the requirements in the *9/11 Act*.

These very issues were identified in 2009 by GAO, which reported that TSA had only completed one of the key passenger rail requirements from the *9/11 Act*. Seven years later, we identified that the same rail requirements — a regulation for rail carriers to complete security assessments, a regulation for rail security training, and a program for conducting background checks on rail employees — remain incomplete.

Following the 2004 terrorist attack on a passenger train in Madrid, Spain, TSA issued a security directive for Amtrak. That directive required carriers to improve security procedures by designating a rail security coordinator, reporting significant security concerns to TSA, and allowing TSA to conduct inspections for any potential security threats. TSA does conduct some limited inspections to verify carrier compliance with these requirements. However, TSA does not enforce other aspects of the security directive, such as the use of bomb-resistant trash receptacles, canine teams, rail car inspections, and passenger identification checks to enhance security and deter terrorist attacks. Instead, TSA relies on Amtrak and other transit entities to implement security measures if resources permit, and is even considering rescinding these minimal requirements from the directive. Without enforcing all security

requirements, TSA diminishes the directives importance and carriers ability to prevent or deter acts of terrorism.

In the absence of issuing formal regulations to implement the *9/11 Act* requirements, TSA has developed and implemented a variety of outreach programs and voluntary initiatives to strengthen rail security for Amtrak. However, Amtrak is not required to participate or implement TSA's recommended security measures because the initiatives are voluntary. TSA's reliance on voluntary initiatives has created an environment of reduced urgency to implement regulations governing passenger rail security; to establish a rail training program; and to conduct security background checks of frontline rail employees. If TSA does not fulfill these requirements, it cannot ensure that passenger rail carriers will implement security measures that may prevent or deter acts of terrorism.

Pending Legislation

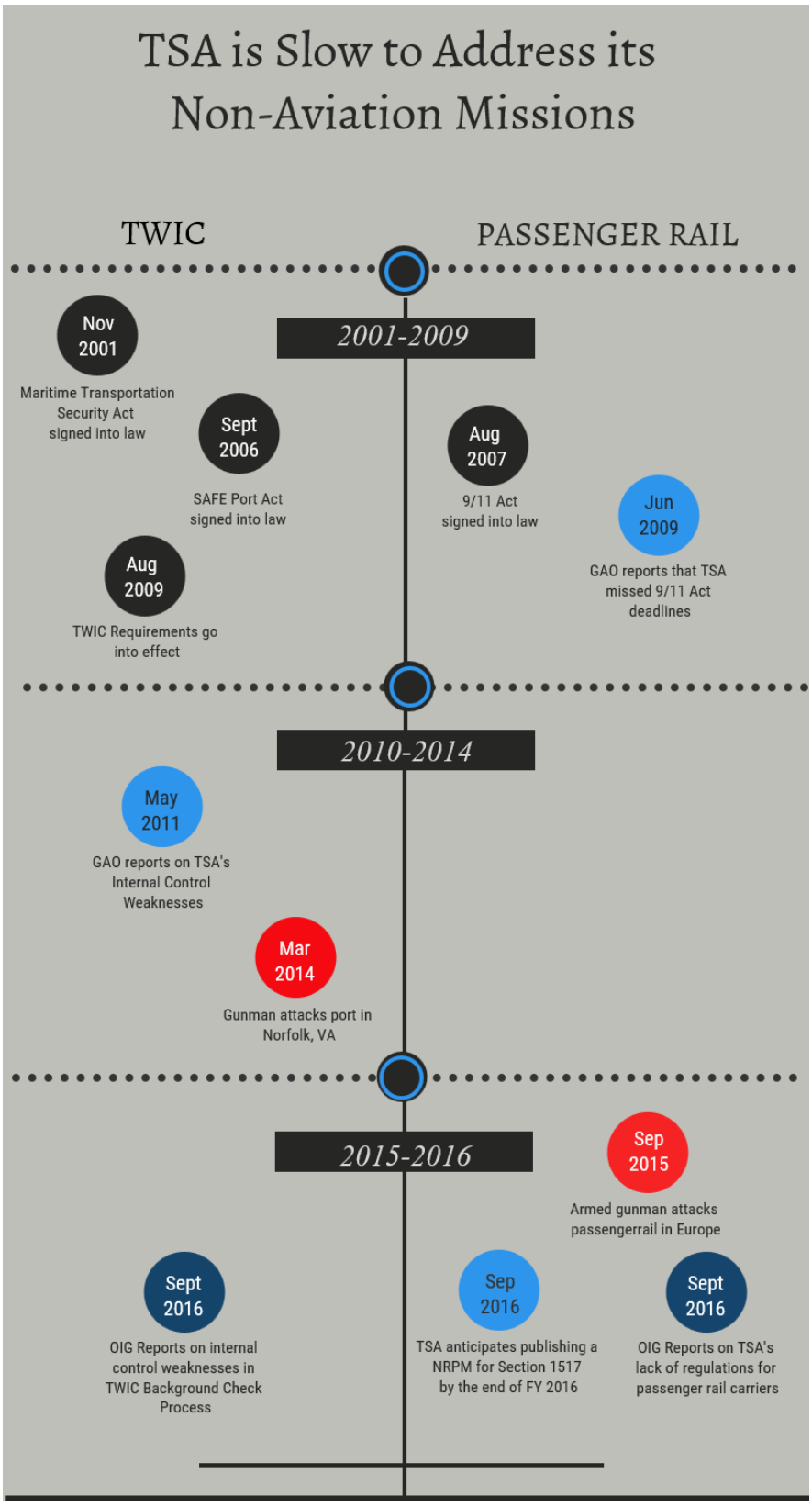
Many of the issues I've discussed today are addressed in the *Surface Transportation and Maritime Security Act*. I want to thank the Committee for introducing legislation to address a number of the challenges facing the Department. We believe that if enacted, this legislation will direct numerous improvements to our Nation's security. However, I must emphasize that the Department and TSA have demonstrated a pattern of being dismissive and lax on implementing requirements related to non-aviation security, as illustrated in the attached appendix. Under these circumstances, change will require significant attention by Congress, the Inspector General, and the Comptroller General to ensure that TSA and the Department take timely actions to implement these improvements.

Future work

We will continue to audit and evaluate the Department's aviation and non-aviation-related programs and report our results. Currently, we are reviewing the effectiveness of TSA checkpoint screening, Federal Air Marshal oversight of civil aviation, the TSA PreCheck enrollment process, the TSA's Office of Intelligence and Analysis, and TSA's use of the Sensitive Security Information designation. We are planning a review of passenger security for cruise ships.

Madame Chairman, this concludes my testimony. I welcome any questions you or any other members of the Subcommittee may have.

Appendix


TSA is Slow to Address its Non-Aviation Missions
TWIC
PASSENGER RAIL
2001-2009
Nov 2001
Maritime Transportation Security Act signed into law
Sept 2006
SAFE Port Act signed into law
Aug 2007
9/11 Act signed into law
Jun 2009
GAO reports that TSA missed 9/11 Act deadlines
Aug 2009
TWIC Requirements go into effect
2010-2014
May 2011
GAO reports on TSA's Internal Control Weaknesses
Mar 2014
Gunman attacks port in Norfolk, VA
2015-2016
Sep 2015
Armed gunman attacks passengerrail in Europe
Sept 2016
OIG Reports on internal control weaknesses in TWIC Background Check Process
Sep 2016
TSA anticipates publishing a NRPM for Section 1517 by the end of FY 2016
Sept 2016
OIG Reports on TSA's lack of regulations for passenger rail carriers