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# SAFE TRUCKERS ACT OF 2006

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## HEARING

BEFORE THE

### SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY

OF THE

### COMMITTEE ON HOMELAND SECURITY

### U.S. HOUSE OF REPRESENTATIVES

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## SAFE TRUCKERS ACT OF 2006

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Friday, June 16, 2006

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON ECONOMIC SECURITY,  
INFRASTRUCTURE PROTECTION, AND  
CYBERSECURITY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:18 a.m., in Room 311, Cannon The Capitol, Hon. Stevan Pearce presiding.

Present: Representatives Lungren, Linder, Pearce, and Thompson, ex officio.

Mr. PEARCE. If you all are finally ready, we will get started here. Excuse us, but the need to get out of town on Friday sometimes gets overwhelming.

The Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity will come to order. The subcommittee is meeting today to hear testimony on H.R.V04, the “Screening of Applied Fairly and Equitably to Truckers Act,” or the “SAFE Truckers Act of 2006.”

Mr. PEARCE. Last November this subcommittee held a hearing on TSA’s Hazmat endorsement security assessment program. This program requires all truck drivers who want to haul hazardous materials to undergo a fingerprint—based criminal history records check. While the intent of the program was to misappropriation of materials that could be used against the country in a terrorist attack, from our testimony last November and from ongoing subcommittee oversight, it is apparent this program is unnecessarily broad and not an efficient use of TSA resources.

The current Hazmat list includes over 4,000 materials and is based on environmental and safety concerns. As a result, TSA is forced to screen nearly 2.7 million drivers, or approximately 25,000 applications, a month. The majority of these drivers will probably never haul materials that present a real security risk. This is simply a misuse of limited resources.

The SAFE Truckers Act alleviates this burden on TSA by focusing the most intensive background checks on those hauling materials that pose the greatest risk.

Without compromising security, I am also concerned about the current program’s cost and impact on our truckers. Currently, all 2.7 million Hazmat truckers will pay fees in some States as high as \$130. These truckers also face delays of lost productivity in traveling to and from limited locations to collect the fingerprints necessary for background checks. By requiring all Hazmat—endorsed

drivers, which represents nearly 90 percent of commercial truck drivers, to undergo such a comprehensive background records check, we may be discouraging or unnecessarily disqualifying otherwise qualified individuals, resulting in a shortage of much-needed drivers.

The bottom line is, the current program's all-inclusive approach is a costly, inefficient, lengthy burden on our Nation's truckers, who are vital to this Nation's economy and supply chain. The SAFE Truckers Act will provide relief for truckers without sacrificing security by employing a risk-based system to focus the most scrutiny on those drivers hauling materials that are true security risks in order to eliminate duplicative background checks and increased cost to drivers. The SAFE Truckers Act requires that the Department issue the permit as part of TWIC. The act further requires that the Department review all Federal Government credentialing programs to identify common characteristics with the goal of eliminating costly redundancies.

I think this bill begins to address the concerns that this committee has heard from interested stakeholders for the last year and a half, and I look forward to hearing both TSA's and the affected stakeholders' thoughts on approving this much-needed legislation.

I would like to thank our witnesses for joining us today. I would now recognize the ranking member of the full committee, Mr. Thompson, for his comments.

Mr. THOMPSON. Thank you very much, Mr. Chairman. And like you, I am happy to be here for the hearing.

I have a number of operations in my district that are impacted by this legislation. A number of them are concerned that the standard for licensing is for everybody and that it should be separated. They have been concerned that there are no appeal rights to any denials. And so this is a wonderful opportunity; it makes sense.

The cumbersome process of the hoops many operators have to go through is significant too. So I look forward to the hearing.

I would also like to ask unanimous consent to include in the record a letter from Congressman Cunningham—Carnahan, excuse me—and the Teamsters in support of the legislation.

Mr. PEARCE. Without objection.

Mr. THOMPSON. And I look forward to the hearing. I yield back.  
[The statement of Mr. Carnahan follows:]

**Retained in Committee files**

Mr. PEARCE. Our first panel consists of Mr. Robert Jamison. He is the Deputy Administrator of TSA, U.S. Department of Homeland Security.

Mr. Jamison, you have 5 minutes. Your full testimony will be put into the record.

**STATEMENT OF ROBERT JAMISON, DEPUTY ADMINISTRATOR,  
TRANSPORTATION SECURITY ADMINISTRATION, U.S.  
DEPARTMENT OF HOMELAND SECURITY**

Mr. JAMISON. Good morning, Congressman Pearce and Ranking Member Thompson. Thank you for this opportunity to update you on the progress of TSA's Hazmat Assessment Program and to comment on the SAFE Truckers Act of 2006.

In the 16 months since TSA began fingerprint—based checks for hazardous material endorsements, required by the U.S. PATRIOT Act, we have processed nearly 310,000 applications. We have significantly reduced processing time by implementing electronic submission requirements, including a Web—based initiative to improve an application intake portal for use of non—TSA Agent States. Over the last 3 months our average processing time for all applicants has been reduced from 17 days on average to only 10 days, even though the applications have risen from 10,000 per month on average to 24,000 per month. To improve driver access to the enrollment process we have expanded a number of sites to collect fingerprints and driver information from 68 sites to a total of 172 sites.

To date, less than 1 percent of the applicants who apply for an endorsement are deemed ineligible. We have processed over 3,500 appeals and are focused on approving of the appeals process.

Our analysis suggests that the applicants initially deemed ineligible remain so as a result from their decision not to follow through on providing TSA with the additional information required to approve the Hazmat endorsement application. We continue to strongly encourage all applicants to fully avail themselves of the appeals process. TSA regularly evaluates its systems and processes and, as a result, plans to implement a new IT application to further improve the process by reducing the number of determinations requiring follow—up, enhancing performance and reliability and reducing operating costs.

We recognize that opportunities exist to reduce duplicative requirements with DHS vetting on programs. Staff at TSA is collaborating with other components and Federal agencies to reduce duplication where possible. One such opportunity is a transportation worker's ID card, TWIC. As this process rolls out, drivers who have completed Hazmat security threat assessment and who must obtain a TWIC card will not be required to undergo another threat assessment.

TSA commends the subcommittee's risk—based approach to establishing a security sensitive materials permit program. The use of risk—based analysis in making operational decisions is one of TSA's fundamental principles. Our efforts are focused on increasing the broad baseline of security across transportation modes using this approach.

It is through the lens of risk—based analysis, we welcome the opportunity to comment on the SAFE Truckers Act of 2006. I want to work with the committee in the days ahead as you consider the bill. However, time is needed to coordinate this proposal within DHS and the other affected Federal agencies.

It is important that the act avoid requiring the duplication of requirements under the U.S. PATRIOT Act. Also, as you look at narrowing the hazardous materials list to sensitive security materials, it may be appropriate to consider vetting all commercial driver's license holders against terrorist watchlist databases. We believe this will raise the overall baseline of security.

Further, development of a sensitive—or security—sensitive materials list is a complex task that will require careful analysis and

thoughtful input of private sector stakeholders and government agencies at the Federal, State and local levels.

TSA will begin to determine how current systems and procedures can be delivered to deliver security—sensitive materials program. We recognize establishing a new compliance and enforcement processes will require time and coordination. Moreover, conducting a rulemaking and completing the processing of all drivers in 1 year will be a challenge.

Finally, we remain cognizant and sensitive to the fact that there are substantial costs associated with the infrastructure conversion and rulemaking to accomplish the bill's goals. As such, we are working on duplicative efforts, some of which I have described in my testimony today.

In conclusion, TSA believes there is merit in taking a risk—based approach to establishing a list of sensitive—security—sensitive materials. We look forward to working with the subcommittee to resolve the issues I have touched upon today and we may address in the future.

In the meantime, TSA's HME system is working well. We continuously seek opportunities to improve it.

I look forward to your questions.

[The statement of Mr. Jamison follows:]

#### PREPARED STATEMENT OF ROBERT JAMISON

Good morning Chairman Lungren, Ranking Member Sanchez, and Members of the Subcommittee. I am pleased to have this opportunity to testify on behalf of the Transportation Security Administration (TSA) on the security of hazardous materials transported by commercial motor vehicles and considerations related to establishing a permit process for security sensitive materials.

Last November, TSA provided the Subcommittee with a full report on our hazardous materials (hazmat) threat assessment program implementing Section 1012 of the USA PATRIOT Act. Today, I would like to update you on the progress we are making.

#### **The Hazmat Threat Assessment Program**

TSA is proud of the progress we have made in implementing the hazmat threat assessment program. In the sixteen months since the Department of Homeland Security (DHS) began fingerprint-based checks, we have processed nearly 310,000 applications. Today, 33 States and the District of Columbia participate as Agent States through which TSA collects and transmits fingerprint and driver application information at 170 enrollment sites. There are 17 Non-TSA Agent States. Recently, one of these states elected to have TSA perform collection and processing duties beginning later this year.

TSA has established a comprehensive program, and we continually seek opportunities for improvement. We have significantly reduced processing time by implementing electronic submission requirements, including a web-based application intake portal for use by Non-Agent states. Customer service and response times to state queries have been significantly enhanced through the introduction of the State Portal, a secure web site that provides all states with electronic notification of threat assessments for drivers and driver processing status. TSA engages daily with state motor vehicle departments, industry associations, and other stakeholders to expand the number of sites that collect fingerprint and commercial driver information.

All of these improvements have helped the program process a large number of applications in a short time. Since initiation of the program, the average processing time for all applicants is approximately seventeen days, but for the past three months, the average processing time has been reduced to ten days, even as the average number of applications received has risen from 10,000 in the first months to over 24,000 per month today. TSA has received 308,018 applications, 3,509 appeal requests, and 385 waiver requests. To date, the total number of applicants disqualified is 2,386, less than one percent of all applicants.

Additional improvements anticipated in the near future include an updated application that will reduce the number of initial determinations requiring follow-up, further decreasing average processing times. TSA is considering amending its rules to eliminate redundant checks for drivers transferring among states, increasing interoperability with other federal agencies that conduct comparable checks, and improving operational processes. TSA is moving forward with technical improvements to our information technology system that will reduce operating costs, improve performance and reliability, and enhance security and interoperability.

After the Transportation Workers Identification Credential (TWIC) program rolls out, drivers with a hazardous material endorsement (HME) who have already completed a security threat assessment and must obtain a TWIC to have unescorted access to secure areas of maritime facilities and vessels will not be required to undergo a new threat assessment as part of their TWIC application. However, these drivers will have to enroll and provide biometrics that are used to verify identity on the TWIC and pay an incremental fee to cover those costs.

As we pursue improvements in the hazmat threat assessment program, we are looking at ways to leverage data collection innovations that will reduce duplication of effort among DHS vetting and credentialing programs. The Department is carefully assessing the interoperability of a variety of programs to ensure that they are complementary, while working toward the ultimate convergence of our credentialing programs.

#### **Risk-Based Approach to Hazardous Materials Security**

While the hazmat threat assessment program moves forward successfully, we are examining TSA's programs in relation to the agency's key operating principles. One of these key principles is to use risk analysis to make operational decisions, assessing and undertaking risk management and mitigation measures based on their effect on the total transportation network.

TSA continues to aggressively address the risk posed by hazardous materials moving through domestic supply chains. Through risk-based analyses we have implemented a number of programs designed to mitigate these risks. Our recent work in freight rail focuses on identifying and implementing voluntary security action items designed to mitigate the risk of materials that pose a Toxic Inhalation Hazard in domestic freight rail transportation. In coordination with DOT we will continue to develop and implement risk-based security programs to secure the transportation of hazardous materials in all modes.

#### **Security Sensitive Materials Permits**

As the "SAFE Truckers Act of 2006" has only recently been brought to our attention, TSA has only preliminary comments today. We will want to work with other components of DHS and other federal agencies in looking at its potential implications for security. We applaud the Subcommittee for taking a risk-based approach in considering this issue. In concert with narrowing the list to security sensitive materials (SSM), based on risk, it may be appropriate to consider vetting all Commercial Driver's License (CDL) holders against terrorist watchlist databases.

One of TSA's preliminary concerns is that the bill would establish duplicative requirements for threat assessments for commercial drivers transporting hazardous materials. If the bill requires drivers who transport SSM to obtain fingerprint-based threat assessments, it may duplicate requirements for drivers under the USA PATRIOT Act and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

The timeframe established by the bill is not sufficient for an appropriate regulatory analysis, including the evaluation of costs and benefits needed to support a rule. Development of an SSM list is a complex task that will require time for careful analysis. In its current form, the bill also does not provide sufficient time to modify existing infrastructure to process and adjudicate permit applications and to complete the processing of all covered drivers.

We recommend that the proposed legislation not prejudice the outcome of the regulatory analysis. Any modifications to the hazardous materials list that forms the basis of threat assessments should be developed through the collective efforts of DHS, DOT, other interested federal agencies, and industry and other stakeholders. The inclusion of radioactive or nuclear materials would be of major interest to numerous departments and agencies. The Domestic Nuclear Detection Office, for example, would have a strong interest in exactly how that list of materials is determined, as well as consistency with lists developed by the Nuclear Regulatory Commission, the Department of Energy, DOT, the International Atomic Energy Agency, and others. Not to be overlooked is the role fulfilled by our state partners. It will be essential that any possible modifications to the current regime be done in full partnership with them.

We must analyze the relative risk for diversion and misuse of the hazardous materials being considered for exclusion from the background requirements. Second, we cannot limit our review to individual materials, but rather must consider all possible safety and security risks which come from instances where various combinations of relatively low risk hazardous materials could result in substantial death, injury, or damage to the environment. Third, we must consider factors affecting vulnerability to shipments in transport. Finally, we must carefully analyze the degree to which driver background checks would identify and address those potential vulnerabilities.

In our regulatory analysis, we would also want to determine the population of drivers that would be covered by a new system. Today companies often require all their drivers to have an HME on their commercial driver's license because of the unpredictable nature of the shipments drivers may transport. This gives the company the flexibility to match a load with a driver at any given time to satisfy just-in-time delivery requirements. Under a potential SSM permit system, a company would still need to match specific drivers with a specific short list of security sensitive materials. In considering the feasibility of any change, it will be important to know whether drivers will be required to not only obtain an HME, but also obtain the SSM permit, even though the likelihood of transporting SSM may be small. TSA should have the opportunity to consider whether establishing a list of SSM would reduce shipper options for transporting certain commodities.

We would also need to consider the potential implications of the TWIC program for commercial drivers. The proposed TWIC program would require all individuals who require unescorted access to secure areas of facilities regulated under the Maritime Transportation Security Act to obtain a TWIC. This includes CDL holders transporting general freight that need access to ports to load or unload their cargo, not just those transporting hazardous materials.

Serious consideration must be given to how current systems and procedures would be converted to the delivery of an SSM permit program. Both the TWIC program and the substantial efforts and investments of the States in the HME infrastructure and processes would have to be considered and evaluated. TSA would want the flexibility to assess alternatives for phasing in implementation of an SSM permit program. Operationally, 100 percent transition to a fingerprint-based background check for the SSM driver population in one year would be very costly. Currently, drivers holding an HME undergo a fingerprint-based security threat assessment on a rolling, five-year basis (on average) based on the renewal dates of drivers' current HME. This evenly distributes the processing load and requires less system capacity and manpower.

Procedural and cost factors for compliance by shippers, including technology costs, need to be evaluated, and enforcement procedures, including roadside options, for a new permit will also need to be established. Today approximately 900,000 law enforcement officers have some responsibility for commercial vehicle enforcement. Under the current system, law enforcement officers can readily discern whether a driver is carrying hazardous materials in amounts requiring placarding and whether the driver has the necessary commercial driver's license hazmat endorsement. These officers would require new training and perhaps implementation of a new support infrastructure if enforcement were to be effective. This is an extremely large task and needs to be weighed when considering any alternative to the current process.

We are also concerned that by requiring TSA to issue a permit to a commercial driver, TSA is effectively being asked to license individuals to transport hazardous materials on the Nation's highways and ensure the underlying driver's license is valid and appropriately endorsed to transport those materials. This responsibility currently falls under the authority of the states and the DOT by statute. DOT, through the Federal Motor Carrier Safety Administration develops, maintains, and enforces federal regulations including the requirements that promote carrier safety and establish safe operating requirements for commercial vehicle drivers, carriers, vehicles, and vehicle equipment. TSA places a high value on collaboration with other government agencies and the recommendations of the private sector to improve transportation security. We believe that formation of task forces to assess security risks to motor vehicles transporting security sensitive material and to review the lists of disqualifying crimes of a terrorism security risk is highly relevant and could be beneficial to a potential SSM permit program. We would note, however, that DOT is already engaged in assessing the vulnerabilities of motor vehicles transporting hazardous materials. Unfortunately, the 180 days provided by the bill does not provide sufficient time for the appointment of task force members, collection of information and data, task force deliberation, development of reports, and consideration of task force results in agency decision making. Additionally, the Federal Advi-

sory Committee Act imposes substantial procedural requirements on any task force including non-federal representatives.

TSA is also concerned about the substantial funding needs that such an effort would require. SSM permit user fees may pay for operational costs and the expenses involved in performing threat assessments and issuing the necessary certifications. However, there are substantial costs associated with the infrastructure conversion necessary for such an endeavor and notice and comment rulemaking. There is no current appropriation for this, and the TSA budget request for FY 2007 does not include any such funding to cover these costs, since there is no current authorization for this program.

In conclusion, TSA commends the Subcommittee's efforts to take a risk-based approach to the transport of hazardous materials. I hope the Subcommittee will consider the complex analytical and operational issues that must be considered to ensure security and not cause undue burdens on drivers, industry, or government. Time is needed to provide a smooth transition if Congress determines this is the proper course, and the need to implement an SSM permit process is not immediate. TSA's current HME system, including waiver procedures, is working well, and we are working closely with DOT's Pipeline and Hazardous Materials Safety Administration in looking for areas where there may be opportunities for reducing the regulatory burden on shippers and carriers.

TSA looks forward to working with the Subcommittee to address these issues.

Thank you, again, for this opportunity to appear before the Subcommittee. I will be pleased to answer any questions you may have.

Mr. PEARCE. Thank you very much, Mr. Jamison, for your testimony.

You had mentioned that one State has called on you all to do their processing and collection of data. Which State? And have you actually followed through on that?

Mr. JAMISON. The State—we currently have 33 States we have the TSA agency in.

Mr. PEARCE. The one that has asked you to do the full collection. That is all I am asking.

Mr. JAMISON. Illinois.

Mr. PEARCE. And they—

Mr. JAMISON. We are currently working with them to make them an TSA agent. I am not sure when exactly they will come online.

Mr. PEARCE. In page 3 of your testimony, you say that it might be appropriate to consider vetting all commercial drivers, CDL holders, against terrorist watchlist databases.

What would cause you to say that that is more important than some of the other priorities that are in front of you?

Mr. JAMISON. Well, as we take a risk-based approach, we agree it may be time now to narrow down this Hazmat list to really, really dangerous Hazmat. But as we do that, we think we can improve the overall baseline security by having a much less intrusive check on the broader CDL license base, because these trucks and vehicles have access to a lot of our major infrastructure. This type of vetting would be much less intrusive than the fingerprint-based criminal history record check that will give us an overall baseline security improvement. And in combination with the Real ID Act coming forward in the future, we think that it will reduce a lot of vulnerabilities in the CDL system.

Mr. PEARCE. You think that CDL system has vulnerabilities that you can solve by vetting those particular people?

Mr. JAMISON. I think it will help on the vulnerabilities. But in combination with the—

Mr. PEARCE. Well, it would help to check every single driver out there in the system.

At what weight limit is your CDL required? It is about 26,000 pounds, I will just tell you.

So how much sodium nitrate is necessary to really blow up a building, for instance? How much was in the Oklahoma bombing?

Mr. JAMISON. I believe the Oklahoma bombing, there was 2,500 pounds, I believe.

Mr. PEARCE. Two thousand five hundred pounds. So you have people with access to everything that don't have to have a CDL driver's license of any kind, and yet you are going to say that you are going to make the system safer by choosing these people with CDLs; and I just don't see where you are getting the information from. I don't see why you are setting the priorities there, and I don't understand why the comments are made in your testimony.

It seems like you really should look at the risks rather than just saying, we can improve the systems incrementally by just vetting all the CDL drivers. That seems to be a knee-jerk reaction, frankly, from the employer that has had to comply with too many regulations that just don't make sense in any regard.

And in my previous business, we moved equipment over the road by trucks and CDL drivers; so I am very familiar with what you are suggesting here, and I am not sure that I think it is going to accomplish much of anything.

You talked about the TWIC card becoming maybe the full identification card. Have you discussed this with law enforcement agencies and with the law enforcement community?

Mr. JAMISON. As far as in regards to replacing the HME?

Mr. PEARCE. Yes. If it becomes the full identification card, obviously it is going to replace several other things, and it just seems like that is a much broader discussion than just by TSA itself.

Mr. JAMISON. Currently we are having broad discussions, as you know, in the NPRN process with the TWIC rulemaking which includes all stakeholders. As we go through that process, we are going to learn a lot more, and before we move to make that a broader application across the other transportation modes, we are going to certainly engage all stakeholders, including—

Mr. PEARCE. Can you give me an idea of the stakeholder list that you are currently engaged in this particular discussion with?

Mr. JAMISON. Of course. All the port workers, the drainage community, the maritime industry, including Coast Guard and all the Merchant Mariners, as well as several other populations.

I would be happy to follow up with a full list.

Mr. PEARCE. If you would provide a full list, I certainly would appreciate that.

You have got concerns about implementing the bill. At what point are you going to make the decision to actually begin to take things off the list of hazardous substances? When are we going to know the outcome of those internal discussions?

Mr. JAMISON. We hope to—we are undergoing in-depth analysis of the whole Hazmat chain right now, including trucking, rail, across the transportation spectrum from origin to destination, full supply chain analysis. We hope to have some initial results of that from what we think are the most high-risk chemicals in the very near future, in the summer time frame; and we would like to work with the committee as they entertain coming up with an SSM list.

Mr. PEARCE. Can you get me any closer to that than summer time frame? What is the timing? Because too often we are sitting up here on these oversight committees and we hear summer time frame, and it becomes winter time frame or fall, and we simply go through decades like that.

Mr. JAMISON. Well, we have an in—depth process. We can identify fairly quickly which substances we are most concerned about, but the concern is, we don't jump to conclusions until we have done a full analysis of where these chemicals are moving through the system, where the risk and vulnerabilities are, to make sure we understand the existing systems that are in place, and leverage those networks to know the full implications and the full vulnerabilities.

But we could forward a list to you based off what our analysis is on the chemicals in a very short time frame, within a few weeks.

Mr. PEARCE. So you have not yet considered whether hauling women's nail polish needs to be on your full list, that that hasn't yet sprung out as one of the things that ought to be weeded off the list yet. Is that correct?

Mr. JAMISON. I would say that is not correct. I mean, we are fully aware that putting Hazmat extensions on people that are hauling paint or fingernail polish is not appropriate.

Mr. PEARCE. My question is, when are those obvious exceptions? I know there are things that come very close to the line, but when are those obvious exceptions going to be delineated and told to the full committee and to the community at large?

Mr. JAMISON. We can forward to the committee over the—within the next 2 weeks which chemicals we think are very, very susceptible to coming off the list. We can do that within 2 weeks.

Mr. PEARCE. But the question that is being begged is, when are they going to be taken off? When are you actually going to start making decisions that make this thing simpler rather than more complex?

Mr. JAMISON. I think it is a combination of looking at the broader picture to make the determination of what we can do, but like I said, we support the committee's move to narrow the list. We would like to do that, but we would like to look at the broader issues we would like to add.

Mr. PEARCE. I know my time has expired, sir. I just keep trying to get an answer.

You are telling me there are things that do not fit the list, but you cannot tell me that you are going to pull the trigger and actually do anything to get them off the list. I find that very disconcerting, and I will continue to find that very disconcerting.

I think you really need to start making decisions inside the Agency and start showing a simplified list to the American public, because right now it is in a state of flux, and the people who are trying to make a living out there, the drivers, the people who are hauling freight, do not know what you are going to do; and that uncertainty is a very difficult thing for business.

And that is what I am telling you, that you need to start pulling the trigger on some of these things. There are obvious exceptions, but there are obvious things that do not fit on the Hazmat list.

Mr. JAMISON. I appreciate your concerns, and we look forward to doing that.

The other provision that we just need to keep in mind is, currently we had no flexibility to narrow the list ourselves because of the provisions of the PATRIOT Act, which require us to require a Hazmat extension for all placard loads as determined by the Department of Transportation. So it is not within our purview to take the items off the list with the current statute.

Mr. PEARCE. That would have been the appropriate question up front. I will come back in the second round, and I will ask what legislation—so that your staff is ready, what legislation we need to give you the oversight capability, or give you whatever freedom.

But to have the bureaucracy bound up in legislation, that is the correct answer up front; and then we will be happy to do what we can to open that up.

Mr. Thompson.

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

Mr. Jamison, if a trucker already has a hazardous material endorsement, do you think he should be charged for a TWIC card?

Mr. JAMISON. Currently, in the NPRN proposal, he is going to be charged only the additional delta to get a biometric and to get the handling and issuance of an access card that is going to allow him to enter a secure facility. So right now he will not be charged to go through another security threat assessment. He will be charged for the additional cost of issuing a new medium and a new access card and the process that goes behind capturing a biometric to put on that card.

Mr. THOMPSON. So how much is that?

Mr. JAMISON. Current estimate is, it is about \$105.

Mr. THOMPSON. \$105. So can you give me—what would a trucker normally have to pay to get regular hazardous endorsement?

Mr. JAMISON. Currently, I am not familiar with exactly what the State fees are. The State fees average \$91 across the system. If you are a TSA agent, just for our Hazmat extension it is \$94.

So the \$105 would be in addition to the \$91 average across the system.

Mr. THOMPSON. So we are just adding an additional cost?

Mr. JAMISON. It would be an add-on cost to the Hazmat extension, yes. The Hazmat extension is required if that driver is required to get secure access into a port facility.

Mr. THOMPSON. So I guess some of this redundancy in the process concerns me a little bit.

What is the difference between the information required for the hazardous material endorsement versus the rest of the endorsement? Is it the same information they send to TSA?

Mr. JAMISON. The checks are consistent and the background checks are fairly consistent. The difference is, one, the enrollment process, the collection of the different— of additional biometric information. And the processing and reissuance of the card, the technology of producing a readable card that can be used to access a reader in the port is a large portion of that expense.

Mr. THOMPSON. So your testimony is that, now, additional sites are being added so people won't have to go hundreds of miles to get the certification?

Mr. JAMISON. When we rolled out the program in January of 2005, we had 68 sites, I believe; and now we are up to 172. I think we have got a couple of sites that were pending, and we continue to work closely with the States to try to come up with creative ways, if they have issues with drivers not being able to get access to the facilities. But we feel like we have greatly improved access over the course of the roll-out in the last 16 months.

Mr. THOMPSON. You also state in your testimony that there is not sufficient time for regulatory analysis. How much time do you think we need?

Mr. JAMISON. I think we need to let the regulatory process and the rulemaking process play out, so going through that open public comment period, we need to make sure we have enough time to do that. We can work to expedite that as greatly as possible, but it is really hard to estimate exactly how long that is going to take.

Mr. THOMPSON. You don't have any idea? But you make reference that it is not enough, on one hand, in your testimony, but you don't have an idea as to how much.

Mr. JAMISON. It is going to take substantially longer than a year we think. We can work to do what we can to expedite it.

As I said, as we get more opportunity to look at the bill and work through our other Federal partners we can come up with a better determination. We are as committed as we can be to expedite the process. We are just putting a precautionary statement out there that we are concerned about the time frame.

Mr. THOMPSON. And in line with what the chairman had asked earlier, in order to develop this security-sensitive materials list, you also say you need more time. How much time?

Mr. JAMISON. As I said earlier—mean, we can give you a list of chemicals that we think are our highest priority from a Hazmat standpoint in pretty short order, within weeks.

The broader issue of taking more time to do a complete assessment of the whole supply chain and other vulnerabilities is what we are working on, but we can share a list of what we think is most important in a short time frame.

But I again remind you that currently we don't have the flexibility with the statute to pull those items off the list required for a Hazmat extension.

Mr. THOMPSON. I yield back.

Mr. PEARCE. Mr. Jamison, on the question of your capability to do this, and in your not being permitted to change the Hazmat list under the PATRIOT Act, this legislation accomplishes that, does it not? Doesn't it give you the flexibility to then have the power to change that?

Mr. JAMISON. The way the bill is currently drafted, I read it as creating a duplicative requirement where we still have to abide by the PATRIOT Act, as well as the new requirement, is the way we read it. That was our concern about making sure we don't have a duplicative process.

Mr. PEARCE. Sure. And the committee has just informed me that in full committee we will go ahead and address that.

But given the fact that the duplication is going to be taken care of, does this legislation not free your hands up the way that you said you need?

Mr. JAMISON. It would give us some flexibility, yes, sir.

Mr. PEARCE. So you state you are in favor, substantively, of the bill, but you are worried about the implementation. Describe to me the worry about implementation that you have.

Mr. JAMISON. The only worry is, as I say, we haven't had long to look at this. We want to continue to look at this bill.

We are overwhelmingly supportive of the concept of narrowing the list. We think that that is a good risk—based approach. We just need to make sure that we fully understand implementation, especially as it ties to other affected agencies, DOT and others.

But we are supportive. We want to work with you on this legislation.

Mr. PEARCE. In your testimony, you are talking about DHS and DOT cooperating on really the hazardous materials list. Is the mission of DOT similar enough to yours that you would really—I mean, once they establish the Hazmat list, that is, materials that DOT is concerned about having an effect on drinking water and those things that are of valid concerns, but certainly not the same sorts of concerns that would arise from terrorist concerns.

So as I am reading this, all I see is a lot of bureaucratic time involved, and I am not certain why. Can you explain to me why it would be necessary to sit down with DOT? They have already established the list. It seems like now your requirement is to figure out which ones apply to Homeland Security and to TSA.

Can't you simply go through the list and pull the trigger on the ones—I am not sure what benefit it is to have DOT sitting in the room looking over your shoulder, sitting across the table. Can you tell me a little bit about why that statement is in there?

Mr. JAMISON. Sure.

First of all, one—both the Pipeline Safety Administration as well as Federal Motor Carriers have a lot of expertise on Hazmat, and we want to make sure they are involved. They are involved working crew, so working through their rolls and so forth is very important.

Just—for example, one of our biggest concerns, and we think it is manageable and we need to work through it, is the enforcement process. Right now, through motor carriers and our State and Federal law enforcement agencies, it is fairly easily cut that if a vehicle is placarded, they have a got a Hazmat extension requirement, and it is an easy enforcement issue for them.

As we go through that and narrow down that list, we need to work with them on how it is going to be enforced, what the implications are, so we make sure that we get the full intent of what the legislation is trying to accomplish as implemented.

So that is just one example, but there are other examples like that.

Mr. PEARCE. In the next paragraph you talk about diversion and misuse of hazardous materials. That term “misuse” is very broad. In other words, I think I understand what the intent of the Homeland Security Department is, and TSA, and I think I understand the intent of checking drivers to make sure they don't have access to places and things that can do great damage. But the term “misuse,” to me, is very broad.

Again, speaking as somebody who has tried to put trucks on the road and seen DOT, both statewide and Federal DOT, begin to develop regulations, this part concerns me quite a bit. Tell me a little bit about your concept.

Mr. JAMISON. Well, I think misuse is a broad statement. These are hazardous materials. We are concerned about accumulation of these, even in small quantities over a long period of time by a transporter, as well other intentions of how these might be used to attack our major infrastructure. But it—point well taken; it is a broad term.

Mr. PEARCE. Mr. Thompson, you have further questions?

Mr. THOMPSON. Mr. Chairman, I have one additional question. Mr. Jamison, we will be taking up the SAFE Truckers Act in the not—too—distant future; and we have a section of the bill that would not require a fingerprint background check for truckers transporting nonsensitive security material. Does TSA support that?

Mr. JAMISON. As I said earlier, we do support the narrowing of the list, which would include not having all Hazmat extension drivers have to have a fingerprint criminal history records check. We would like to work with the committee to determine whether or not that broad—based terrorist watchlist database check is appropriate. As I mentioned earlier to Congressman Pearce, we do think that will raise a baseline of security.

We know that there has been an interest by terrorist organizations to acquire CDLs. That is one of the reason that we think that would be helpful to us. And again, in combination with the REAL ID Act, that is going to make sure that we get better verification of the people that are getting the driver's license, we think that will raise the baseline of security.

Mr. THOMPSON. In support of that, then, would you support the development of a memorandum of understanding between the Department of Transportation and the Department of Homeland Security?

Mr. JAMISON. Absolutely.

Mr. THOMPSON. Do you have one?

Mr. JAMISON. We have got an overarching DHS and DOT memorandum of understanding. We have got annexes on transit, currently working with Federal—the Pipeline and Hazardous Material and Safety Administration on a draft of an MOU for that particular annex that will affect a lot of these issues.

Mr. THOMPSON. Any idea of when it will be completed?

Mr. JAMISON. I think it will be completed within this month. We are both committed. I was on the phone yesterday with leadership at PHMSA, trying to push this along. They are committed to doing it. We are committed to doing it. We think we can get it done very quickly.

Mr. THOMPSON. Mr. Chairman, I would like, once it is completed, for the committee to at least be provided a copy of that memorandum.

Mr. PEARCE. Absolutely, I agree. And we are going to go ahead and move onto the next panel.

Mr. Jamison, you will be dismissed. We look forward to getting the particular things that we talked about, the 2 weeks of looking

at the things you have already established and the memorandum of understanding, the list of stakeholders that have been involved. But we do appreciate your testimony and your coming for questions today.

Mr. JAMISON. Thank you.

Mr. PEARCE. The Chair now calls the second panel to the stand.

We are joined today by Mr. David S. McClimon. He is here on behalf of the American Trucking Association. He is the President of Con—way Freight Inc. Mr. Todd Spencer is the Executive Vice President of the Owner—Operator Independent Drivers Association. And Ms. Cynthia Hilton is the Executive Vice President of Governmental Affairs, Institute of Makers of Explosives.

Again, I would remind the witnesses that we are trying to limit our statements to 5 minutes. Your full written testimony is going to appear in the written record of the committee.

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today on behalf of American Trucking Associations, Inc. ("ATA") on the subject of screen

Mr. PEARCE. And at this time I would recognize Mr. McClimon. Thank you very much for coming.

**STATEMENT OF DAVID S. McCLIMON, PRESIDENT, CONWAY FREIGHT INC., ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATION**

Mr. McCLIMON. Thank you, Mr. Chairman and members of the subcommittee. Thank you for inviting me to testify today on behalf of the American Trucking Association on the subject of SAFE Truckers Act. My name is Dave McClimon. I am President of Conway Freight Inc., a \$2.8 billion freight transport company headquartered in Ann Arbor, Michigan, with 21,000 employees located in 440 service centers throughout the United States and Canada. I have submitted my written testimony for inclusion in the record.

I would like to express my appreciation and gratitude to this subcommittee for its continued interest and attention to TSA's implementation of the Hazmat background check required by the U.S. PATRIOT Act.

Mr. Chairman, in light of the introduction of the SAFE Truckers Act by you and several members of this subcommittee, it seems there is general agreement that the current Hazmat background check process is not satisfactory. Today, we have an overly broad program whose excessive cost and burdens far exceed the benefits to homeland security.

The SAFE Truckers Act is necessary to appropriately narrow the focus and more efficiently achieve our shared security objective. By focusing fingerprint—based screening on drivers who transport Hazmat that possesses significant risk to homeland security, rather than screening all drivers who transport any Hazmat, the SAFE Truckers Act will significantly enhance security.

From a security perspective, not all Hazmat is created equal. Materials designated as Hazmat have been so designated due to characteristics that require special consideration while handling or during cleanup in the event of an accidental release. Hazmat includes commodities like paint, perfume and soft drink concentrate. These

are not commodities that would be attractive to a terrorist as a weapon. Passage of legislation like the SAFE Truckers Act is necessary to differentiate between Hazmat that possesses a significant threat to homeland security and Hazmat that does not.

At my company, which is like many other trucking companies when it comes to Hazmat transportation, Hazmat shipments only make up roughly 3.5 percent of our overall shipments. This translates to approximately 2,000 shipments daily. To effectively transport these shipments on behalf of our customers, we require all of our 14,500 drivers to have a Hazmat endorsement, and we are now paying the fees charged to them for the background check.

Our most frequently transported Hazmat is paint or paint-related material — again, not a threat to homeland security. Yet a significant amount of time and money is spent on screening individuals who transport paint and similarly nonweaponized products.

For illustrative purposes, if the list of materials identified as security sensitive neared the list of materials that Congress identified as requiring carriers to obtain a Federal permit, my company would only have 16 covered shipments a day. We would not require our 14,500 drivers to go through the fingerprint-based screening. Our drivers would save time and avoid the inconvenience. We would save money, and the focus would be on real risks to homeland security.

ATA is encouraged by the introduction of the SAFE Truckers Act. With some suggested modifications, which I can briefly discuss, we believe the SAFE Truckers Act can become a bill we can enthusiastically support.

First, the bill needs to be modified so that the fingerprint-based background check required for permit under the SAFE Truckers Act replaces and is not simply in addition to the current fingerprint-based background check required under the PATRIOT Act provision. The trucking industry is facing enough background checks as it is.

Second, the ATA is concerned that the SAFE Truckers Act may be creating a different TWIC; since the disqualifying criteria for the security sensitive permit and the TWIC are the same and the same databases are checked, there does not appear to be any need to modify the TWIC. The same TWIC that will demonstrate a truck driver has successfully been screened for access to maritime ports should also serve as the security-sensitive material permit.

Third, the interstate trucking industry relies on uniformity and thus benefits from Federal statutes preempting State laws in several areas. Homeland security would seem to be an appropriate area. Permitting States to require checks of their own database rather than requiring States to upload the relevant data to the Federal database results in lessened security nationwide.

Fourth and finally, Congress has already recognized that failure to notify employers of the final security threat assessment determination under the current Hazmat background check program creates an unnecessary risk. Congress addressed that risk by requiring employer notification under the current Hazmat background check program as part of the Highway Authorization Bill.

Employers should similarly be notified under the program to be established by the SAFE Truckers Act.

I thank you for the opportunity to testify today. The industry appreciates the efforts by the members of this subcommittee to achieve our shared homeland security objective in a rational manner.

My colleagues in the trucking industry have done a lot, most of it voluntarily, to enhance the security of the freight transportation we provide. In return, we only ask for a reasonable, risk-based approach as to protecting the homeland.

I would be happy to take any questions.

Mr. PEARCE. Thank you, Mr. McClimon.

PREPARED STATEMENT OF DAVID S. MCCLIMON

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today on behalf of American Trucking Associations, Inc. ("ATA") on the subject of screening truck drivers transporting hazardous materials ("hazmat"). My name is David McClimon. I am President of Conway Freight Inc., a less than truckload carrier headquartered in Ann Arbor, Michigan. Conway Freight Inc. is a \$2.8 billion freight transport company with over 21,000 employees located in 440 service centers located throughout the United States and Canada. I am here on behalf of ATA, a federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. ATA's membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

ATA appreciated the opportunity to testify before this Subcommittee on reforming hazmat security last November. While many of the points in that testimony remain equally relevant today, I will try to refrain from being repetitive. ATA appreciates the Subcommittee's interest and continued attention to this matter. ATA would like to thank Chairman Lungren, Ranking Member Sanchez, and other Members for introducing the SAFE Truckers Act of 2006 (H.R. 5604), which embodies a common sense, risk-based approach to the threats posed by the transportation of certain materials.

Overview:

Shortly after the tragic events of September 11, 2001, Congress passed the USA PATRIOT Act in an effort to better secure the United States against future terrorist attacks. Among its numerous provisions was a requirement that all drivers seeking, renewing, or transferring a hazardous materials endorsement ("HME") to their commercial driver's license ("CDL") had to undergo a security threat assessment. While the provision was no doubt well-intentioned, it was enacted with little debate or discussion. Unfortunately, it has led to the unfortunate result that a driver must subject him/herself to a costly and burdensome security threat assessment in order to be authorized to transport such everyday hazmat as paint, perfume and soft drink concentrate (which require a HME when transported above certain threshold quantities). ATA believes that requiring security threat assessments of individuals that transport paint, perfume and other everyday commodities was an unintended consequence of legislation meant to protect against real risks to homeland security, i.e., transportation of security sensitive materials.

The leadership at the Department of Homeland Security ("DHS") and the Transportation Security Administration ("TSA") has embraced the notion of a risk-based approach to security. The SAFE Truckers Act provides a legislative framework authorizing DHS and TSA to implement a risk-based approach. It requires DHS to specifically identify materials in amounts and form that pose a significant risk to homeland security due to their potential for use in an act of terrorism. Drivers who transport these identified materials above designated quantities would be required to undergo a fingerprint-based security threat assessment. Drivers and their employers who do not transport materials that are identified as posing a significant risk would not have to bear the costs and burden of undergoing a fingerprint-based security threat assessment. This approach will allow for appropriate focus on the security risk without jeopardizing the ability of motor carriers and drivers to continue transporting those materials which do not pose a significant risk from a security standpoint.

My company, Conway Freight Inc., is like many other trucking companies when it comes to hazmat transportation. Although hazmat shipments only make up roughly 3.5% of our overall shipments (roughly 2,000 hazmat shipments daily), all

of our 14,500 drivers have HME's. From an operations standpoint, we often do not know in advance which drivers will be called upon to transport hazmat and therefore must ensure that all of our drivers possess a valid HME. However, our most frequently transported hazmat is paint or paint-related material. We do not see why it is necessary to subject all of these drivers to an additional security threat assessment on top of meeting the longstanding safety requirements as currently set forth in the HME regulations. For illustrative purposes, if the list of materials identified as posing a significant security risk mirrored the list of materials for which Congress requires carriers to obtain a special security permit (the "Section 5109 list"), my company would only have 16 covered shipments per day. We would be able to narrowly focus the security requirements, including the fingerprint-based security threat assessments, on the drivers of these security sensitive shipments.

The trucking industry has long been dedicated to improving the safety of truck transportation. Similarly, the trucking industry has done much - most of it voluntarily - to ensure the security of truck transportation. It is in the industry's interest from both a customer relations perspective and a financial bottom line perspective. At Con-Way, even though it is not required, we do criminal history record checks on our drivers using third party services that review available records from pertinent jurisdictions. However, at a time when the public and private sectors alike have limited resources, our security efforts must be focused on the most significant risks. The imposition of burdensome and costly programs governing the transportation of hazmat, such as the hazmat background check program, threatens to erode the industry's ability to continue to deliver the goods that the consumer expects. By determining what hazmat truly poses a significant risk and not requiring a fingerprint-based threat assessment for drivers transporting non-threatening hazmat commodities, Congress will be eliminating many of the costs and burdens imposed by TSA's implementation of the USA PATRIOT Act provision while still promoting and protecting homeland security.

**From a Security Perspective, Not All Hazmat is Created Equally**

*There is a need to distinguish hazmat that poses a risk to homeland security from hazmat that poses no significant security risk.*

Congress was rightly concerned about the security of transportation of certain hazmat when it passed the PATRIOT Act. However, by tying the security assessment program to the issuance, transfer or renewal of the HME, Congress greatly overshot the mark. Drivers who haul any placarded load, regardless of the nature of the hazmat, are subject to a fingerprint-based background check. The SAFE Truckers Act would recalibrate the program and direct DHS to focus on those materials that truly pose a significant risk to homeland security.

Materials that have been designated as hazmat by the Secretary of Transportation have been so designated due to characteristics that require special safety considerations while the material is being handled or during clean-up in the event of a release. Similarly, the CDL has always been utilized to indicate a driver's qualification to safely drive a commercial motor vehicle and, with respect to the hazmat endorsement, as a measure of the driver's knowledge of the hazmat regulations to safely transport placarded quantities of hazmat.

The security objective associated with screening individuals in the transportation sector is significantly different from the safety objective underlying the hazmat regulations and the qualifications for an individual to obtain a HME. Therefore, experts in security (both within and outside government) need to closely examine the universe of hazmat from the perspective of risk to homeland security. While parties may disagree as to what materials or quantities should or should not be designated security sensitive, the SAFE Truckers Act provides much-needed guidance on where the focus should be; namely, materials that pose a significant risk due to potential for use in an act of terrorism. We believe that all parties will agree that items like paint, perfume, and soft drink concentrate do not fall within the criteria. ATA is pleased that the SAFE Truckers Act provides that the designation of materials as security sensitive shall be finalized only after notice and opportunity for public comment.

*If screening is still deemed necessary for drivers who transport hazmat that is not a security sensitive material, then it should be name-based instead of fingerprint-based.*

TSA designed the current hazmat background check program to be fingerprint-based, although the terrorist databases and watch lists are populated with names only and the criminal history records databases can be searched using names (as evidenced by the National Instant Criminal Background Check System ("NICS") utilized to check the criminal backgrounds of gun purchasers). This requirement has added significant costs: both direct costs in terms of fees charged to offset the costs

of collecting and processing fingerprints (\$94 in the majority of states) and indirect costs in terms of driver time off work (a full day off in some states, such as Montana, with limited fingerprint collection centers). These costs and the added inconvenience to drivers - not the prospect of being found to be a terrorist - are dissuading more and more drivers from obtaining HMEs.<sup>1</sup>

The SAFE Truckers Act properly focuses a fingerprint-based background check on designated security sensitive materials. The industry can accept reasonable costs associated with this risk-based approach, requiring a fingerprint-based check. However, ATA recommends that the SAFE Truckers Act also include provisions to eliminate the fingerprint-based screening for hazmat that is not security sensitive and, if any background check is retained, that it be limited to name-based screening. Name-based screening would eliminate the need to travel great distances to submit fingerprints and should not cost more than a nominal fee, if anything (TSA has conducted numerous name-based checks of individuals, including the 2.7 million HME holders, without charging additional fees). The industry does not need a security sensitive permit program on top of preserving the current hazmat background check program as is.

#### **Suggested Improvements to the SAFE Truckers Act**

ATA is encouraged by the introduction of the SAFE Truckers Act. With some suggested modifications, the SAFE Truckers Act can first and foremost address specifically identified risks to homeland security posed by transportation of security sensitive materials without unduly burdening those that rely on the efficient transportation of hazmat that does not pose a significant risk. ATA looks forward to working with the Members of this Subcommittee to enact a bill the trucking industry can fully support.

*The security sensitive material permit program must modify and replace part of the existing hazmat background check program - not simply create an additional program.*

ATA's support of the bill presumes that the legislation will be modified during Subcommittee deliberations to address some of the industry's substantial concerns. The primary concern, as mentioned before, is that the fingerprint-based background check required for a security sensitive material permit should replace - and not simply be in addition to - the current background check required under 49 U.S.C. 5103a. Simply put, the States should be prohibited from requiring a fingerprint-based background check to obtain a simple HME. The federal government should be responsible for screening and permitting of individuals transporting security sensitive materials.

*The security sensitive material permit program should be seamlessly integrated into a global screening solution.*

This Subcommittee has oversight of a number of security programs that require threat assessments of individuals. In fact, this Subcommittee recently worked on comprehensive port security legislation that affects truck drivers, including addressing issues with the Transportation Worker Identification Credential ("TWIC"). These security programs should not be conceived and then administered in a vacuum. They should be integrated and coordinated in a manner to avoid duplication to the maximum extent possible.

Specifically, ATA is encouraged by the language in the SAFE Truckers Act that calls for integration of the security sensitive material permit with the TWIC. Yet even so, ATA has reservations that the legislation may be unnecessarily complicating matters. Because the disqualifying criteria for the security sensitive material permit and the TWIC card are identical, it seems that the TWIC, without further modification, could serve as the security sensitive material permit. The TWIC would indicate that an individual has successfully completed a fingerprint-based security threat assessment (a requirement for the security sensitive material permit). Additionally, since security sensitive materials will in all likelihood be a subset of hazmat, the individual will also have a CDL with a HME. These documents would be sufficient to demonstrate to enforcement officials that a driver is authorized to transport security sensitive materials from both a safety and a security perspective.

<sup>1</sup>To our knowledge, the only publicly available numbers for the HME background check program from TSA were contained in a November report to Congress required by the highway bill. As of November 2005, TSA stated they had processed 88,782 applications nationwide. Conservatively assuming the program really got started on May 31, 2005 (when it became effective for renewals and transfers as opposed to the January 31, 2005 date for new applicants), the TSA number projects to a monthly average of 17,800 applications and 213,600 per year. Over 5 years, the projected number of applications is 1.068 million — far short of the 2.7 million HME drivers that TSA stated existed prior to commencement of the background check program.

The intent of the TWIC was to establish one background check and one credential for transportation workers. Trucks connect various secure areas and facilities. Wherever possible, the screening and credentialing programs for access to these secure areas, and for transportation of security sensitive materials, should be brought within one check resulting in one credential. The time to address this, with respect to the security sensitive material permit, is now. Past experience has shown that we cannot rely on DHS or TSA to achieve this on their own accord. The same TWIC that will demonstrate a truck driver has successfully been screened for access to maritime ports should also serve, in conjunction with the HME, as the security sensitive material permit.

*Uniformity is necessary to achieve a consistent level of security nationwide.*

The industry has another concern that impacts the SAFE Truckers Act and other security screening programs - the need for uniformity. Homeland security is one of the preeminent federal interests. Permitting states to implement their own screening requirements not only leads to confusion and greater costs but also jeopardizes the collective security of the whole. Within the current hazmat background check program, the state of New York requires a check of the state's criminal history records databases in addition to the federal criminal history records. If the state of New York has properly uploaded all its appropriate criminal history records into the federal database, there is no need to check the state databases in addition to the federal database. However, if the state of New York has not uploaded all of its data, then the other states (which rely on the federal database when conducting criminal history record searches) are put at risk. For example, an individual applying in Connecticut could be granted a security sensitive material permit where that same individual could be denied if applying in New York, since New York had information it did not share with the federal database. This is no way to provide security nationwide. The solution is to preempt states from adding additional screening requirements where the federal government has already set in place a program and encourage the states to timely upload the appropriate data into the federal databases.

*Notification to the employer is necessary to ensure the most effective security.*

Congress has recognized that failure to notify employers of the final security threat assessment determination under the current hazmat background check program creates an unnecessary risk. Therefore, as part of the highway reauthorization bill, Congress enacted a provision authorizing notification of the employer when TSA has finally determined that a driver poses a security risk warranting denial of the HME. The same rationale that led to Congressional action holds true for the security sensitive material permit program proposed under the SAFE Truckers Act. We strongly encourage the Subcommittee to restore the employer notification requirement in the event a driver is finally determined to pose a security risk warranting denial of a security sensitive material permit.

#### **Conclusion**

Mr. Chairman and members of the Subcommittee, I thank you for the opportunity to share with you the trucking industry's views on the current hazmat background check program and the recently introduced SAFE Truckers Act. If the security sensitive materials permit program established by the bill replaces the current fingerprint-based screening of individuals transporting any hazmat, the trucking industry enthusiastically supports the legislation. If DHS and TSA truly are committed to a risk-based approach to security, then the SAFE Truckers Act grants them the authority to act on that commitment. ATA appreciates the efforts by this Subcommittee to achieve security rationally and reasonably.

Mr. PEARCE. Mr. Spencer, we have a requirement that each presenter be better than the last. Mr. McClimon set the bar pretty high.

Unfortunately, Ms. Hilton here is following two men. So it should not be difficult.

#### **STATEMENT OF TODD SPENCER, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION**

Mr. SPENCER. Well, all I have to do is look both left and right and know I am in a heap of trouble.

Anyway, good morning, Mr. Chairman, members of the committee. I very much appreciate the opportunity to be here today to

speak on H.R. 5604, the Screening Applied Fairly and Equitably to Truckers Act of 2006. That legislation will significantly improve an inefficient, overreaching system, as well as provide a truly risk—based focus on the movement of potentially dangerous materials in our country.

My name is Todd Spencer. I have been involved in trucking for over 30 years, first as a truck driver and then as an owner—operator; and I am here today as a representative of the hardworking men and women in this industry, Small Business Truckers and the Owner—Operator Independent Drivers Association.

Our organization represents this group of people, and trucking is an industry that is comprised mostly of small business. Eighty percent of the trucks in the country are found in fleets of 20 or less, so small business is very much the backbone of our industry.

As you know, the PATRIOT Act, passed by Congress, contained a provision requiring a background check for every driver that has a hazardous materials endorsement. This has been a source of great heartburn to our members and to our organization in that it was very—it overreached in so many areas, while it also missed in so many obvious areas to address the real security issues for truckers.

The chief complaints that OOIDA hears about drivers about the present system are focused on the excessive out—of—pocket costs and potential of lost revenues caused by inefficiencies within the system. In addition, the shortage of facilities, lack of truck parking at facilities, available times of operation for the facilities and the amount of time necessary to get results are commonly voiced frustrations from drivers.

While we don't fault lawmakers or agencies for the rapid response to the tragedy of 9/11, the background check requirement for Hazmat drivers contained in the PATRIOT Act was overly broad in its scope toward existing, veteran Hazmat drivers, while it seriously missed the mark in addressing some of the more obvious or likely ways a commercial vehicle could be used to do great harm.

The typical owner—operator member of our organization has nearly 20 years of experience driving trucks. They are proven professionals, driving safely and responsibly, meeting the needs of our Nation. While only about 12 percent of them haul hazardous materials exclusively, roughly 70 percent of them currently have Hazmat endorsements for the occasional load that will come up that they will need to be in a position to haul. Well over 2 million of these Americans and their fellow drivers will have to undergo background checks when their current commercial driver's licenses come up for renewal next time and at subsequent renewals thereafter.

OOIDA does not believe these veteran drivers are likely to turn into terrorists nor do we believe that most of the Hazmat cargoes they transport would have any appeal to terrorists. OOIDA strongly supports the concept of narrowing TSA's security threat assessments to focus on individuals wishing to haul hazardous materials that have been deemed as security sensitive by amending the PATRIOT Act's Hazmat background check requirements.

OOIDA appreciates that in a time when there is a constant tug between homeland security and individual privacy and regulatory burden, this legislation acknowledges that it is as important for government to make its best efforts to narrow and focus its efforts to those areas where there may be a true homeland security threat and to those persons who have access to security—sensitive areas or materials, to delve into a person's privacy the minimal amount necessary by identifying those hazardous materials that are security sensitive. There is no longer a security reason to continue background checks on drivers of nonsecurity—sensitive hazardous materials.

The association also appreciates the effort made in this bill to resolve overlapping background check requirements of truck drivers. A truck driver who has provided certain information for one background check should not have to go through an entire new process, such as being fingerprinted, facing more waiting time and more fees.

Congressman Carnahan recently introduced H.R. 5560, the Professional Truck Driver Background Check Efficiency Act. That bill serves as a complement to the SAFE Truckers Act by providing TSA strong incentives to ensure efficiency and making sure that this system works the way that it should.

The task force on highway safety is also an excellent initiative. OOIDA suggests the task force scope be expanded to study the homeland security risks to trucking in general. Other security threats already exist in the opportunities terrorists have to steal large trucks, to gain access to food or sensitive cargo. The most—the biggest vulnerability for truckers, and it is a nightly one, is insufficient places for them to park their trucks safely. Terrorists are not going to get a CDL and security—sensitive hazardous material permit if such vehicles are simply sitting ducks in so many places in the country.

Although there are some significant security vulnerabilities in trucking, the SAFE Truckers Act initiates steps towards making the transport of hazardous materials by truck more secure overall without adding unnecessary burdens and expenses. We very much appreciate this committee's interest, look forward to supporting this legislation and seeing it come into law. Thank you.

Mr. LINDER. [Presiding.] Thank you, Mr. Spencer.

[The statement of Mr. Spencer follows:]

#### PREPARED STATEMENT OF TODD SPENCER

Good morning Chairman Lungren, Congresswoman Sanchez, and members of the Subcommittee. Thank you for inviting me to testify regarding H.R. 5604, the Screening Applied Fairly and Equitably to Truckers Act of 2006. That legislation that will significantly improve an inefficient, overreaching system as well as provide a truly risk-based focus on the movement of potentially dangerous materials in our country.

My name is Todd Spencer. I have been involved with the trucking industry for over 30 years, first as a truck driver and an owner-operator; and then as a representative of the hardworking, fiercely patriotic Americans behind the wheel of commercial motor vehicles. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA).

Established in 1973, OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 140,000 members of OOIDA are small business men and women in all 50 states who collectively own and operate more

than 230,000 individual heavy-duty trucks. Small business is the backbone of trucking with 80% of the industry comprised of fleets of 20 or fewer trucks.

The Association actively promotes the views of small business truckers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private entities to advance an equitable business environment and safe working conditions for commercial drivers. The hazardous materials endorsement and the Transportation Security Administration's security threat assessment process directly affects owner-operators, motor carriers and professional drivers, including members of OOIDA.

As you know, the USA PATRIOT Act of 2001 contained a provision requiring background checks for individuals operating motor vehicles transporting hazardous materials. The TSA took on this responsibility initiating a security threat assessment requirement that has caused a considerable number of problems for state administrators, the trucking industry and the shipping community that depends on that industry. Initially the TSA did a name based check on all present hazmat endorsement drivers, but have since instituted an arduous threat assessment process that has required a new system to be put in place by state governments and federal contractors to complete fingerprinting and background checks.

Small business truckers believe that the security threat assessment process that has been put in place by the TSA for general hazmat endorsements are an over-reaching solution to a problem that has not been fully identified, and for which truckers are saddled with unnecessary burdens and expenses. As has been stated by a variety of witnesses at previous hearing held before your subcommittee on this topic, the system that the TSA has put in place is wrought with inefficiencies.

TSA's background check/security threat assessment system is cumbersome and problematic for all involved parties. The chief complaints that OOIDA hears from drivers about the present system are focused on the excessive out-of-pocket costs and potential of lost revenue caused by inefficiencies within the system. In addition, the shortage of facilities, lack of truck parking at facilities, available times of operation for the facilities and the amount of time necessary to get results are commonly voiced frustrations.

#### **Focusing TSA on Security Sensitive Hazardous Materials**

While we do not fault lawmakers or federal agencies for their rapid response to the tragedy of 9/11, the background check requirement for hazmat drivers contained in the Patriot Act was overly broad in its scope toward existing veteran hazmat drivers while it seriously missed the mark in addressing some of the more obvious or likely ways a commercial vehicle could be used to do great harm.

The typical owner-operator member of our organization has nearly twenty years of experience driving trucks. They are proven professionals, driving safely and responsibly meeting the needs of our nation's citizens. While only about 12% of them haul hazardous materials exclusively, roughly 70% of them currently have hazmat endorsements, primarily to keep their load prospects open. Well over 2 million of these Americans and their fellow drivers will have to undergo background checks when their current commercial drivers licenses (CDLs) come up for renewal next and at subsequent renewals thereafter.

OOIDA does not believe these veteran drivers are likely to turn into terrorists nor do we believe that most of the hazmat cargoes they transport would have any appeal to terrorists. By requiring them to undergo TSA background checks, scarce resources in time and money are simply wasted with no corresponding benefit in reducing the likelihood of a terrorist incident.

OOIDA strongly supports the concept of narrowing TSA's security threat assessments to focus on individuals wishing to haul hazardous materials that have been deemed as security sensitive by amending the Patriot Act's hazmat background check requirements.

A general hazardous materials endorsement for loads that are not classified as "Security Sensitive" should be preserved in the CDL licensing process for truck drivers. Hazardous materials that are not deemed to be security sensitive do pose safety risks to truck drivers, dockworkers, the general public and first responders. OOIDA believes that along with mandated training and increased testing requirements for those wishing to obtain a Commercial Drivers License, compulsory training in the handling and transporting of non-security sensitive hazardous materials must also be a part of the licensing/endorsement process.

On behalf of the members of OOIDA and truckers across the country, I want to thank Mr. Lungren, Ms. Sanchez, Mr. Thompson, and other members of the Homeland Security Committee for introducing H.R. 5604, the Screening Applied Fairly and Equitably to Truckers Act of 2006. This legislation outlines a bold effort that is needed to bring commonsense back into homeland security policies that apply to American truck drivers. The SAFE Truckers Act will significantly improve a system

that has already created unnecessary expenses in time and money for the federal government, state governments and thousands of hardworking taxpayers.

**The Screening Applied Fairly and Equitably to Truckers Act of 2006**

OOIDA appreciates that in a time when there is a constant tug between homeland security and individual privacy and regulatory burden, this legislation acknowledges that it is important for the government to make its best effort to narrow and focus its efforts to just those areas where there may be a true homeland security threat; to just those persons who have access to security sensitive areas or materials; to delve into a person's privacy the minimal amount necessary to accomplish the policy goal; and to vigorously protect the public release of any person's private information. By identifying those hazardous materials that are security sensitive, there is no longer a security reason to continue background checks on drivers of non-security sensitive hazardous materials.

The Association also appreciates the effort made in this bill to resolve overlapping background check requirements of truck drivers. A truck driver who has provided certain information for one background check should not have to go through an entire new process, such as being re-fingerprinted and facing more waiting time at processing centers, or face the extra cost, to get very similar background check for a different government agency.

Congressman Carnahan recently introduced H.R. 5560, The Professional Driver Background Check Efficiency Act. That bill serves as a compliment to the Safe Truckers Act by providing the TSA with strong incentives to ensure that the security threat assessment systems that they have in place are designed and implemented with the highest degree of efficiency.

We want to thank the sponsors of Safe Truckers Act for including provisions for appeals and waiver processes. Instituting an appeal process is very important for persons to prove whether negative information collected during the background check pertains to them and whether they have been a victim of mistaken identity or identity theft. Instituting a waiver process is very important to give persons who have turned their life around an opportunity to prove that they are not a security threat.

OOIDA encourages the committee to ask its proposed Task Force on Disqualifying Crimes to produce its recommendations in a format that recognizes that different states have different definitions of various crimes. What is a felony in one state may be a misdemeanor in another. What is murder in one state may be manslaughter in another. With such differences in the same named crime, a trucker in one state may be disqualified while a trucker who committed the same act in a different state may be approved. The list of disqualifying crimes produced by the task force should really be a list of elements of crimes or combinations of elements of crimes. The task force or agency will need to assemble a reference of different states' crimes to make such a determination.

The Task Force on Highway Safety is also an excellent initiative. OOIDA suggests the task force's scope be expanded to study the homeland security risks to trucking in general, not just those hauling security sensitive information. Other security threats already exist in the opportunities terrorists have to steal large trucks, gain access to our food supply or acquire advanced technologies. As we say, if you bought it, a truck brought it. The vulnerability and need for security of all trucks on the road is one that has received scant attention from Homeland Security. We have long said that in the many areas where there is insufficient truck parking, truckers are forced to improvise by finding parking in on-ramps, exit ramps, the side of the road and out-of-the-way industrial areas that close for the night. These are just the kind of places that make truckers vulnerable. Terrorists are not going to get a CDL and security sensitive hazmat permit if such vehicles are "sitting ducks" in so many places in the country.

Finally, until the TSA has the ability to complete or assess background checks on Mexican, Canadian and other truck drivers of foreign origin that are at the very least as stringent and comprehensive as those being completed on American drivers, foreign truck drivers should not be provided with clearance to haul security sensitive hazardous materials. OOIDA sees no rationale, from a security, fairness or public policy standpoint, to give persons from foreign countries any leniency to this directive though in past rulemakings TSA has shown a willingness to do just that. OOIDA understands that Canada may have a similar security check in place for its drivers. But an analysis must be made, with public comment, comparing the two systems before the TSA can determine that the Canadian system is an adequate substitute for U.S. requirements. OOIDA is unaware of any such system in Mexico, and if there were, would consider its accuracy suspect.

### **Conclusion**

Although there are some significant security vulnerabilities in the trucking industry, the SAFE Truckers Act initiates steps towards making the transport of hazardous materials by truck more secure overall without adding unnecessary burdens and expenses to the federal government or commercial motor vehicle operators. Focusing the resources of the Transportation Security Administration on ensuring that individuals with red flags in their backgrounds are not being afforded access to haul security sensitive hazardous materials is an excellent starting point. There are intensive background check/security assessment processes for truck drivers already being utilized by other federal agencies. Integrating those background checks with the TSA and allowing agencies to look to one database for drivers with security sensitive clearance is consistent with both the principles promoted by the 9/11 Commission and the mandates of the highway bill that passed last year. It will also save the government and private individuals both time and money by improving efficiency.

Hazardous materials that are not deemed to be security sensitive do pose safety risks to truck drivers, dockworkers and first responders. A general hazardous materials endorsement for loads that do not qualify, as "Security Sensitive" should be maintained in the licensing process for truck drivers. Along with mandated training and increased testing requirements for those wishing to obtain a Commercial Drivers License, compulsory training in the handling and transporting of non-security sensitive hazardous materials must be a part of the licensing/endorsement process.

Chairman Lungren, Congresswoman Sanchez, and members of the Subcommittee, thank you for providing me with this opportunity to testify on behalf of the members of the Owner-Operator Independent Drivers Association and thank you for introducing the SAFE Truckers Act of 2006.

I look forward to answering questions from the members of the Subcommittee.

Mr. LINDER. Ms. Hilton, I am going to ask you to hold. We have less than 10 minutes left to get to a vote. We will recess the committee upon the call of the Chair. Thank you.

[Recess.]

Mr. LUNGREN. [Presiding.] The Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity will come to order. I have been assured that it reflects on my presentation that no one else is coming back. I apologize to the witnesses for not having been here earlier. We had a small issue on the floor about the war in Iraq, and I was responsible for handling the time, the remaining time—or the last hour, which was this morning's hour.

We completed that, and the vote is taking place, and because it is the last vote of the day, most Members are endeavoring to return to their districts right now. So I will endeavor to play the role of all the members here as we continue.

And as I understand it, we have completed the testimony of two of the panelists, and so now I would recognize Ms. Cynthia Hilton, Executive Vice President of Governmental Affairs of the Institute of Makers of Explosives to testify.

### **STATEMENT OF CYNTHIA HILTON, EXECUTIVE VICE PRESIDENT OF GOVERNMENTAL AFFAIRS, INSTITUTE OF MAKERS OF EXPLOSIVES**

Ms. HILTON. Thank you so much, Chairman Lungren. I appreciate the opportunity to testify important issues surrounding security clearances of people authorized to transport by motor vehicle certain security—sensitive hazardous materials in commerce. My testimony is presented on behalf of the American Chemistry Council, American Pyrotechnic Association, the Chlorine Institute, the Institute of Makers of Explosives, the National Association of Chemical Distributors, the National Industrial Transportation

League, the Nuclear Energy Institute, the Fertilizer Institute, and as of this morning, the American Petroleum Institute.

We are representative of the shipper community. Since virtually all hazardous materials shipments move at some point by motor vehicle, the industries we represent are dependent on the availability of qualified drivers to safely and securely move hazardous materials for manufacturing use. We have a long history of proactive attention to the safety and secure transportation of our products.

Transportation is both intermodal and international. We believe that the current HME process warrants reform. You are to be commended for your leadership and attention to this important issue. Not all placard and shipments of hazardous materials present security sensitivities. The current suite of disqualifications may be too sweeping with the consequence that some persons who do not present a terrorist threat are kept from gainful employment.

We fully support efforts to integrate, streamline and rank security credentialing requirements so that individuals will be subject to no more than one fingerprint—based credential, key to the level of security clearance their job requires. On this latter point, we understand redundancy. Security assessment is a goal of this legislation; however, in its current form, the objective is not quite achieved.

Within DHS alone, we currently count four fingerprint—based security assessments that could apply to drivers of hazardous materials. This legislation proposes a fifth credential for a subset of that driver population. Without ranking these credentials, opportunities for cost savings are lost, opportunities for misuse increase, and instances of noncompliance are likely to rise due to confusion about the scope of various credentials.

Without losing the momentum created by this legislation, we recommend that TSA security credentials for drivers of hazardous materials be separated from DOT and State licensing to operate vehicles or to demonstrate knowledge of hazardous materials regulations; that the security screen to attain an HME be reduced to a records check; that the scope of the TWIC be modified to include drivers transporting security—sensitive materials; that the TWIC allow holders all the privileges afforded holders of an HME, plus those for transporting security—sensitive materials; that all of DHS's fingerprint—based clearances be ranked to determine which standards are higher, and then allow the individual with the higher—rank clearance the rights afforded lower—rank clearance or, if deemed equivalent, to consolidate the security clearances into one program, which would be the initial sion of the TWIC; and finally, that the legislation explicitly provide that non—Federal transportation security credentials be preempted.

A couple of words about our concerns of the penalty provisions of the legislation. We question the stringency of the penalties given other criminal and civil statutes in view of the fact this is a credentialing bill and that the most a shipper can reasonably do is verify the credential of the receiving driver.

We strongly recommend that terms used in the bill to signify aggravated violations or crimes be defined to ensure equal application of the law. We strongly recommend that the subcommittee rein-

state, knowingly, a standard of liability for civil violations and a willful standard for criminal acts.

In closing, we would be remiss if we did not thank you for your understanding of our concerns about a statutorily dictated list of security—sensitive materials. History has shown materials of interest to terrorists has changed over time. It is appropriate for DHS to have the flexibility to adjust through rulemaking materials that would be subject to these requirements.

And finally, we have submitted an attachment to our testimony with specific comments and recommendations for refinements to the bill. We ask the committee to consider these recommendations.

This concludes my testimony. I would be happy to answer any questions.

[The statement of Ms. Hilton follows:]

#### PREPARED STATEMENT OF CYNTHIA HILTON

Chairman Lungren, members of the Subcommittee, I appreciate the opportunity to testify on the important issues surrounding security clearances of persons authorized to transport by motor vehicle certain security sensitive hazardous materials (SSHM) in commerce.

My testimony is presented on behalf of the American Chemistry Council, the American Pyrotechnic Association, The Chlorine Institute, the Institute of Makers of Explosives, the National Association of Chemical Distributors, The National Industrial Transportation League, the Nuclear Energy Institute, and The Fertilizer Institute. We are representative of the shipper community. Since virtually all hazardous materials shipments move at some point by motor vehicle, the industries we represent are dependent on the availability of qualified drivers to move, safely and securely, the hazardous materials we manufacture and use. We have a long history of proactive attention to the safe and secure transportation of our products - transportation that is both intermodal and international.

Our efforts to address transportation security concerns have been aided by government requirements to assess vulnerabilities and to take appropriate corrective actions to bolster the security of our operations. Private efforts to vet the suitability of drivers and other transportation workers stood to be enhanced by government oversight that could assess criminal record databases and tap intelligence about security risks. Before the events of September 11, 2001, the Department of Defense and Nuclear Regulatory Commission were engaged in these vetting operations. Since September 11th, 2001, however, we have seen a plethora of government-mandated security clearance requirements that are duplicative for individuals, unduly restrictive in their disqualifications, and unnecessarily costly. We believe that improvements are warranted.

The legislation we have been asked to comment on today proposes to add yet another fingerprint- based security credential to those already in existence. Within the Department of Homeland Security (DHS) alone, a driver could potentially be subject to the Transportation Security Administration's (TSA) threat assessment program for commercial drivers of hazardous materials (HME), to TSA's transportation worker identification credential (TWIC), to TSA's criminal history records check for unescorted access to security identification display areas, and to the Customs and Border Protection's free and secure trade clearance to expedite border crossings of trucks that provide security information in advance. The creation of the security sensitive materials permit for essentially the same population frustrates expectations that this legislation would simplify security clearance requirements for drivers. We would like to suggest an alternative means to accomplish the goal to create a fingerprint-based security credential for security sensitive materials, as well as recommendations to further simplify driver background checks generally, and to identify aspects of this legislation deserving of support.

#### **TWIC**

We are struck with the redundancy suggested by the pending legislation. The proposal would require a new permit to transport SSHM by motor vehicle, ostensibly indicating that the recipient is being held to a higher standard than the holder of an HME. However, the legislation fails to identify what standards would be used by DHS to disqualify a permit applicant, leaving this critical determination up to the discretion of the department. At the same time, the legislation provides that in-

dividuals holding a TWIC would be deemed to have met the security clearance requirements of the new permit. However, the disqualifications underpinning the HME are the same as used in the TWIC. This legislation unnecessarily complicates the security vetting process without enhancing security or providing relief to HME drivers of non-SSHM. We strongly recommend that the scope of the TWIC be broadened to simply provide that a holder of a TWIC is also eligible to transport SSHM by motor carrier if the holder is otherwise qualified to operate a commercial motor vehicle. We also recommend that the HME threat assessment required by 49 U.S.C. section 5103a be converted to a records-based, not a fingerprint-based, security check. This change will provide appropriate regulatory relief for drivers transporting placarded shipments of the hazardous materials that are not deemed SSHM. Since the TWIC requires the more stringent fingerprint-based security check, it should be made clear that a holder of a TWIC, who is otherwise qualified to operate a commercial motor vehicle, should be eligible to apply for an HME without being subject to the section 5103a threat assessment.

The promise of the TWIC was that it would be the sole credential necessary for transportation workers subject to security assessments. The card would establish identity and would be issued after a determination that the cardholder did not present a security risk. To propose anything in addition is to penalize legitimate, qualified workers.

#### **Penalty Provisions**

The penalty provisions in the legislation were initially lifted in whole cloth from federal hazardous materials transportation law. Despite some changes, we remain concerned about the effect of these provisions. First, this is a credentialing statute, not a statute directed at harms that could be caused by individuals irrespective of whether they do or do not possess a TWIC/SSHM credential. These later violations and criminal acts are the subject of other federal statutes and are unnecessary here.

We understand that a justification for higher civil penalties stems from the provision that makes it a violation to offer or cause security sensitive materials to be transported by motor vehicle if the operator does not hold a valid TWIC/SSHM credential. Even in instances where security sensitive material is offered or caused to be transported by a driver not holding a valid TWIC/SSHM credential, the penalty should be in the thousands, not tens of thousands of dollars. Keep in mind that the offeror only has the wherewithal to check the credential of the driver initially receiving the shipment. The security statuses of individuals who may subsequently handle the shipment for a carrier are beyond the offeror's control. Additionally, each day the violation continues is a separate offense subject anew to accumulating fines. The penalty caps should be limited accordingly.

A number of terms are used in the penalty provisions to trigger more severe consequences. These terms - "bodily injury", "serious illness", "severe injury", and "substantial destruction of property" - are undefined. Without definition, the interpretation of these board terms will likely result in unequal application of the law and justice will not be served.

Finally, the penalty provisions have been stripped of commonly accepted standards of culpability leaving a strict standard of liability. The Subcommittee should reinstate a "knowingly" standard of liability for civil violations and a "willfully" standard for criminal acts.

#### **Preemption**

The proposal's definition of "commerce" suggests that the SSHM credential is to apply to motor carrier movements of SSHM in intrastate, interstate and foreign commerce. However, neither this credential nor the TWIC is given preemptive effect over non-federal transportation security credentials. We recommend that the legislation explicitly provide that non-federal transportation security credentials for activities covered by the TWIC (and by extension the motor carriage of SSHM) be preempted. No state or locality can possibly have more resources or capability than the federal government to assess threats and determine protective actions for a network of critical infrastructure that operates nationwide. A panoply of non-federal credentials is more likely to lead to confusion and non-compliance with federal requirements. All additional or more stringent non-federal security credentialing requirements will do is place an unjustified burden on legitimate transportation workers.

#### **Provisions Deserving Support**

**Determination of Security Sensitive Materials:** We fully support the provision that would task DHS with determining by notice and comment rulemaking to determine the type and quantity of materials to be designated "security sensitive". History has shown that materials of interest to terrorists have changed over time. It is appro-

appropriate for DHS to have the flexibility to adjust through rulemaking materials that would be subject to these requirements.

**Elimination of State Administrative Middleman:** We support provisions in the bill that remove the credentialing of SSHM drivers from the commercial vehicle licensing process. State governments do not control the federal databases through which security checks are vetted.

**Memorandum of Understanding:** We support the provision directing the Secretaries of DHS and the Department of Transportation to enter into a memorandum of understanding about the implementation of transportation credentialing requirements.

**Task Force on Disqualifying Crimes:** We support the establishment of a task force to review the appropriateness of current disqualifying crimes. In particular, we believe that the stringency of some automatic life-time disqualifications warrant review when the triggering event is a non-violent felony.

**Task Force on Redundant Checks:** We fully support efforts to integrate, streamline and rank security credentialing requirements so that individuals will be subject to no more than one finger-print based credential based on the level of security clearance their job requires.

#### **Other Recommendations**

I would like to submit for the record a document that more fully identifies and describes recommended modifications to the pending legislation.

This concludes my testimony.

Mr. LUNGREN. Thank you.

And I thank all of you for your testimony. I know that a number of you have raised in your written testimony and in your oral comments concerns about the potential redundancy of the bill with the current fingerprint—based checks required—already required.

Mr. LUNGREN. [Continuing.] I can just assure you it is the intent of this committee to resolve that problem. There are certain issues we have to address initially in writing the bill that caused us to write it in the way we did, but we certainly not only agree with your suggestions but it is our intent to do that.

Let me ask the three of you, the TSA stated at the end of their prepared testimony that the current HME system is, quote, unquote, working well. Is this opinion shared by all three of you representing your different interests?

Mr. McCLIMON. Chairman, I think it is challenging at best. I would not use the words “working well.” There is in various States a lot of time and certainly expense involved. I know in our case that over a 5—year period it will cost our company \$1.5 million or \$300,000 a year in expense as well as just some lost time and work, so I would not say that it is working well.

Mr. LUNGREN. Mr. Spencer.

Mr. SPENCER. I can concur. Only when I talk about the cost to our company, I am talking about to an individual truck operator, and that is what most of trucking is.

We have mentioned here at the hearing the costs that are associated with the HME background check, which are significant. Now we are looking at the cost for a TWIC card on top of that. But those are just a very small portion of the costs. Because, for most truck operators, our members, they are going to have to close their business, shut their business down for at least a full day to accomplish this. So they can lose between \$500 and \$1,000 per day per truck just shutting down that one day.

They also have the expense of traveling to one of these facilities that I mentioned in my testimony that generally is not trucker—friendly and for the most part it is not really people—friendly and that hours are very, very limited. They go through that ordeal.

And for a trucker, for a truck driver, all the time that is associated with this is on-duty time. It must be logged and charged against the available hours you can have to work for that week.

I am thinking the TSA gentleman said there were over a hundred sites now. We have one member that the closest site to get one done was 170 miles from his house. This is a tremendous obstacle. And that particular member had had numerous background checks done over the past 10 years, been fingerprinted a half a dozen times for DOD, DOE. Talk about redundancy. The normal person would scream.

Mr. LUNGREN. Ms. Hilton.

Ms. HILTON. I would like to align myself with the comments of these gentlemen and just point out that it is too broad. It is too broad in a number of areas, too broad in materials it covers, too broad in some of its disqualifications, and it is unnecessarily complicated with the opportunity to engage States as middlemen in this matter.

I mean, this is a security credential. This is something that the Federal Government knows far more about who those individuals are, and it is hard for us to understand how States add to that process.

Mr. LUNGREN. Again, I was not here for the oral testimony, but one of the concerns that TSA raised in their written comments was that, in the end, trucking companies would still require their drivers to obtain the SSmat permit, and so it really may not make any difference. We are going through a big process to try and divide those things out, and trucking companies are just going to require them all to get it anyway. Can anybody address that concern?

Mr. MCCLIMON. I think the concern is just the repetition of activity that needs to take place. So what we want to try to do or are hoping this bill does is cut through some of that red tape and just make the whole process easier for our employees and, thus, for our customers.

Mr. LUNGREN. Our concept was there is a difference between Hazmat and security—sensitive materials and that, because there is a difference, presumably you wouldn't have all of your drivers required to have the security—sensitive material credential. If that is not the case, then we are going through a whole lot of process for no need whatsoever.

Ms. HILTON. Can I just make an observation here? One of the points we are trying to make in our testimony is that there are a number of fingerprint—based credential programs that are run by TSA, and one of the benefits of this legislation is it is trying to tell people you need to look at that and rank them. That is the term that we use.

When you look at them, either they turn out to be the same standard, in which case you need to eliminate them and rely on one thing—and we use the term TWIC because that was the promise of what the TWIC was—or if some of those credentials are in fact justified to be some kind of higher standard, then you need to prioritize them and give people with the higher ones rights over all the lower ones.

At the end of the day, whether—you asked, are we doing anything here? This is incredibly important. The goal that we need to

be fixed on is, at the end of the day, people will have one credential.

Mr. LUNGREN. We can have one credential. You can have a credential that has different rankings on it. I mean, you can have one document or one card, but we could have a card that has different elements on it which would show that you have got an SSmat versus a Hazmat rating and so forth.

I just happen to think that it is silly for us to consider security—sensitive materials the same as Coca—Cola syrup.

Ms. HILTON. We all agree.

Mr. MCCLIMON. We all agree on that.

In our testimony we said that, that we handle 2,000 hazardous material shipments a day, but only 16 of those would be what we call supersensitive shipments.

Mr. SPENCER. To go along in regard to the individual drivers, while among our membership 70 percent have hazardous materials endorsements but only 12 percent haul hazardous materials on a regular basis, and of those they won't even be the kind that would be security sensitive all the time. So we would be talking about making this change would simplify, would trim the process down and make it much more focused on where the real security issues are.

Mr. LUNGREN. Let me just say sometimes we have to explain why we come up with new legislation. We have to explain to constituents why it makes sense in short order, knowing that we still have a lot to do in terms of firming this bill up. But you recognize what we are trying to do. You have general agreement with what we are trying to do. How would you succinctly state that this would improve the situation with respect to the folks that you represent, in a way that I can make it understandable for other members who can make it understandable for their constituents? I call it the town hall test. You explain it at a town hall you are having so people say, yeah, that makes sense.

Mr. SPENCER. From our perspective it would significantly decrease the economic burden and sort of the hassle factor for commercial truck drivers that work in commerce, while it also would allow the security agency that is supposed to be focused on security to focus on those particular commodities that really do present a hazard and hopefully come up with some recommendations that address our security vulnerabilities that they haven't thus far, like the parking and—

Most drivers are most concerned with someone coming out and putting a gun to their head and saying I am taking this load, if they are actually hauling something that could do great harm. That is the vulnerability they see. And it continues every night. Drivers struggle to find places to park safely.

Ms. HILTON. I would just say that what we have heard is, again, on this redundancy thing, it may have been brought to your attention that just in the last month there has been a final rule at TSA about new fingerprint base checks if you go into an airport facility, and the TWIC just came out for port facilities. So there is this seeming proliferation of these requirements.

From everything that we have heard from your staff and what your comments are, that at the end of the day the goal of this legis-

lation is going to be to eliminate that redundancy. That is incredibly important.

Again, some of us spoke to the need to include a preemption factor here. I like to think — I don't know how you are if you lose your credit card, but I am one of these not so smart. I only have my one credit card. Because if I lose it, I want to be able to report my one card, not the 56 cards.

If we don't somehow bring this back to a more reasonable level, I think people—do you every day get up and check the 50 cards you have in your wallet? Maybe not. We need to get it back to a little more reasonable—

Mr. LUNGREN. My wife doesn't allow me to have 50 cards. If I lose my credit card, I call her and say help.

Ms. HILTON. Smart woman.

Mr. SPENCER. I can add on to that comment, that thought just a little bit, but our organization is very concerned about privacy and about security of information, and we are very concerned with the proliferation of entities that feel that they are entitled to have that personal information.

We have talked about credit cards and things like that. Just last week I got a letter from the Department of Army advising me that my records were included in those that were burglarized from the VA employee's house.

Generally I wouldn't even had the courtesy of anybody notifying me. But I have learned through the years that if you minimize the places where your information is, you also minimize the opportunity for it to be used in ways you don't want.

Mr. LUNGREN. I just wanted to tell you, since you just told me that, I know approximately how old you are. It was only after a certain year. You just revealed something to me in that statement.

The other thing that I have been concerned about in this entire effort that we have in our response to the war on terror is the balance. And if we decide that there are certain disqualifiers with respect to drivers who would be driving SS material, that may be different than what we do with those who are disqualified from driving Hazmat, and why have the scope so wide that you are denying some people an opportunity to work when there is no necessity to do that?

Ms. HILTON. We agree.

Mr. MCCLIMON. We agree.

Mr. LUNGREN. I am concerned particularly about some folks in our communities who may run afoul of the law in their younger years and are attempting to try and get a reasonable, responsible job, of which trucking, if they have the skills, is a good one; and to disqualify them unnecessarily is something I do not want to do.

So that is one of the reasons I am strongly behind this effort. Let's rationalize the process so that, in our effort to respond to real concerns on terror, we are not letting the terrorists win by causing us to overreact and harming our people unnecessarily. That is a general feeling I have, but specifically in this area I think it is important.

We have to understand the distinction between Hazmat and SSmat or whatever we are going to call it—smatter. Try to pronounce it in some way.

I just have to say your testimony is so complete I don't have any more questions. I thank you for your presentation. I thank you for your reaction to our bill. Any further thoughts you have, if you would share with the committee, and we will on a bipartisan basis take that and try to work that into our considerations.

We hope to act on this bill quickly. We hope to get something through our subcommittee, get it through the full committee, get it on the floor and work with the Senate in making some strides here. Because I happen to think it is important for us to get the mechanism moving and remove the duplicative effects that are out there already and introduce this sense of rationality into distinguishing between two different worlds. There is a difference from the world of SSmat and Hazmat, and we ought to recognize it and put it into practice.

With that, I thank you; and the hearing—there has got to be some special words I use here at the very end. I tell you that we are going to have additional questions perhaps for you in writing, and we would ask if you would respond to those in writing if you receive them. The hearing record will be held open for 10 days.

Without objection, the committee stands adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned.]

