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Comments of the Maryland Department of Transportation
To the Transportation Security Administration
Regarding
Docket No. TSA - 2006-26514-27
Notice of Proposed Rulemaking: Rail Transportation Security

The Secretary's Office (TSO) of the Maryland Department of Transportation (MDOT) respectfully submits the following comments and questions in response to the notice of proposed rulemaking issued by the Transportation Security Administration (TSA) in the docket published in 71 Federal Register 76852 *et seq.* (December 21, 2006) on this day, Tuesday, February 20, 2007.

Background

MDOT, its five modal administrations, and the Maryland Transportation Authority are responsible for the State of Maryland's transportation infrastructure. Stakeholders throughout TSO and MDOT's modal transit agency, the Maryland Transit Administration (MTA,) have recently reviewed and discussed the Notice of Proposed Rulemaking. These include management from MDOT headquarters, MTA's Light Rail and Metro subway systems, and the MTA Police Force. For ease of reference, the term "MDOT" will here refer to a consensus among headquarters and modal agencies, unless otherwise noted.

MDOT would like to express concerns and pose questions on four key subjects: 1) Concerns regarding unannounced site inspections, 2) consolidation of security planning efforts, including documents and audit schedules, 3) tasks, workload and training of Rail Security Coordinators, and 4) information-sharing and relationships with TSA inspectors.

1.) Concerns Regarding Unannounced Site Inspections

Individuals responsible for site safety and security, as well as senior management, would like to express their concern over the safety implications of unannounced site visits. MDOT recognizes the importance of unpredictable inspections in gaining an accurate and complete picture of a transit property's compliance with applicable regulations. In addition, coordinating such visits with the inspected property may degrade the usefulness of the exercise, as mentioned on page 76869 of the applicable Federal Register edition.

However, inspecting security measures and general transit operations without warning is an inherently dangerous activity, especially at off-peak hours and without warning. MDOT has strong concerns that unannounced TSA inspectors may cause a safety and security hazard both to themselves and to transit employees. While federal credentials may be legally adequate for access to such facilities, many transit security personnel may be unfamiliar with their appearance. They may consider unannounced, unexpected TSA inspectors to be suspicious or even dangerous intruders.

Has TSA considered last-minute notification of the transit security function, to inform

them that federal personnel will be on-scene? In the absence of such notification, perhaps DHS should consider a training program and training materials for transit security and law enforcement on TSA inspections and the recognition of authentic federal credentials.

Furthermore, each transit property has its own right-of-way and equipment safety procedures. Generic training provided by the federal government may not sufficiently address hazards or procedures at every property that TSA personnel inspect, nor will it fully address the liability questions that might arise should TSA or transit personnel come to harm during such an inspection.

How does TSA intend to provide for appropriate, site-specific training for inspection personnel? In the event that federal inspectors or transit personnel are injured during such an unannounced site inspection, how will liability be addressed? MDOT respectfully submits that language should be inserted clarifying that TSA personnel will receive track-access, railway-worker protection, or similar training from the specific property to be inspected, prior to the actual inspection thereof.

Finally, on page 76869, the Proposed Rule authorizes TSA inspectors to obtain, review, and preserve transit-property records to assess for compliance with applicable regulations and to use them "on occasion, as evidence." This seizure of documents for use as evidence does not mention any need for a warrant, nor does it identify the legal grounds for such seizure in the absence of a warrant.

MDOT requests further clarification of this proposed authority, and expresses concern about the scope, usage, and level of authorization that such document seizures would require.

2.) Duplication of Reporting and Audit Requirements

At the present, the MTA and the MTA Police Force have their safety and security plans and procedures audited by MDOT, by the American Public Transportation Association (APTA,) by TSA, and by the Federal Transit Administration (FTA.) Each agency has its own requirements, and while many of them overlap, they each impose a different burden. In particular, some require different documents for similar purposes. For example, the FTA requires a System Security Plan, while DHS grants require a Security and Emergency Preparedness Plan. Such audits, while important in ensuring compliance activities, can become a drain on agency personnel and resources if too repetitive.

MDOT asks TSA to work with FTA to ensure consistent requirements and criteria during security audits and inspections. MDOT asks that any future requirements for security or safety plans be coordinated between the two agencies, and if possible, that security audits incorporate joint requirements and personnel to reduce duplication of effort and "audit fatigue."

3.) Tasks, Training and Workload of Rail Security Coordinators (RSCs)

The Notice of Proposed Rulemaking, as printed in 71 Federal Register 76852 *et seq.*, suggests that the position of Rail Security Coordinator be filled by railroad police chiefs or their deputies at larger properties. The proposed Rule, on page 76863, also suggests that RSCs be

culled from the ranks of employees whose "related job functions involve compliance with existing Federal regulations."

However, a review of the events for which TSA asks to be notified is inconsistent with the workload of a railroad or transit police chief. TSA asks to be notified (on page 76885) of "tampering with...rail transit vehicles," which could be as loosely defined as graffiti or vandalism. The requirement of reporting "significant" security concerns is so loosely defined that "other incidents involving breaches of...security" is included as a catch-all.

Transit police chiefs or leadership personnel will find it very difficult to sort through such reported information. In contrast, the FTA's guidance on safety & security notification establishes concrete thresholds for what constitutes a reportable event. In addition, significant security issues are ordinarily reported to the FTA-designated Rail Safety & Security Oversight office, which could provide a helpful framework to synthesize the flow of information to the Transportation Security Operations Center (TSOC.)

MDOT respectfully requests that TSA clarify thresholds, precedents, and best practices for the reportability of security events from RSCs to TSOC. Such guidance might be classified as SSI. MDOT further recommends that TSA work with FTA to synthesize these criteria to leverage the existing framework of the State Safety Oversight program without imposing duplicative reporting requirements.

The requirements and evolving nature of the Rail Security Coordinator position would require standardization and national guidance from TSA. Once clearer thresholds for the reporting of suspicious or dangerous activity have been established, it should be easier for TSA to institute training programs for Rail Security Coordinators. As RSCs will come to the position with different backgrounds in different fields, a common knowledge base will be essential.

MDOT encourages TSA to create a national-level training program for Rail Security Coordinators and possibly their support staff. A single-site "academy," instead of repeating the program while taking it on the road, would allow RSCs to network and share best practices, much in the manner that FTA does with State Safety Oversight conferences.

The position of Rail Security Coordinator will become better defined as the proposed rule moves towards implementation. However, with the current information available in the proposed rule, it is difficult for transit or freight rail agencies to accurately estimate the workload or financial burden that the establishment of RSCs would impose.

MDOT respectfully asks TSA to provide further clarification on the workload, training requirements, and average hours devoted to reporting tasks per week for Rail Security Coordinators, with an eye towards better estimating total costs and cost-sharing strategies between the Federal government and the States.

4.) Information-Sharing With TSA Personnel

Page 76857 mentions that this proposed Rule will "complement" the existing DOT regulatory scheme and "enhance oversight." *MDOT again encourages TSA to partner with the*

FTA as well as trade groups, such as APTA, to avoid duplication of effort and to reduce the burden of repeated audits and inspections on transit properties.

Furthermore, Page 76857 states that TSA inspectors would provide a "field presence" for the Federal Transit Administration, as well as State Safety Oversight agencies, to assess compliance and effectiveness of security operations in the field.

If TSA inspectors are to provide a "field presence," what level of access will SSO agencies and FTA be afforded to their information? If TSA personnel were to audit a transit agency for compliance, and their inspection took them to the SSO agency's records, might that not create a conflict of interest if they were acting as a "field presence" for the SSO? MDOT respectfully asks TSA to clarify, perhaps through guidance, the relationship between FTA, SSO agencies, and TSA inspectors regarding information sharing.

The Maryland Department of Transportation thanks TSA and the Department of Homeland Security for their consideration of these comments. MDOT respectfully requests favorable action on the above recommendations and response to the questions asked in this submittal.

I respectfully submit these comments on behalf of the Maryland Department of Transportation.

Sincerely,

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