

OFFICE OF INSPECTOR GENERAL

TSA Oversight of National Passenger Rail System Security



Homeland
Security

May 13, 2016
OIG-16-91



DHS OIG HIGHLIGHTS

TSA Oversight of National Passenger Rail System Security

May 13, 2016

Why We Did This Audit

We conducted this audit to determine the extent to which the Transportation Security Administration (TSA) has the policies, processes, and oversight measures to improve security at the National Railroad Passenger Corporation (Amtrak).

What We Recommend

We made two recommendations to DHS and TSA to implement rail security requirements from the *9/11 Act*. When implemented, these recommendations should strengthen the effectiveness of passenger rail security.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

TSA has limited regulatory oversight processes to strengthen passenger security at Amtrak because the component has not fully implemented all requirements from Public Law 110-53, *Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act)*. Federal regulations require Amtrak to appoint a rail security coordinator and report significant security concerns to TSA. Although the *9/11 Act* requires TSA to establish additional passenger rail regulations, the component has not fully implemented those regulations. Specifically, TSA has not issued regulations to assign rail carriers to high-risk tiers; established a rail training program; and conducted security background checks of frontline rail employees. In the absence of formal regulations, TSA relies on outreach programs, voluntary initiatives, and recommended measures to assess and improve rail security for Amtrak.

TSA attributes the delays in implementing the rail security requirements from the *9/11 Act* primarily to the complex Federal rulemaking process. Although the rulemaking process can be lengthy, TSA has not prioritized the need to implement these rail security requirements. This is evident from TSA's inability to satisfy these requirements more than 8 years after the legislation was passed.

Without fully implementing and enforcing the requirements from the *9/11 Act*, TSA's ability to strengthen passenger rail security may be diminished. The absence of regulations also impacts TSA's ability to require Amtrak to make security improvements that may prevent or deter acts of terrorism.

DHS Response

DHS concurred with the recommendations.



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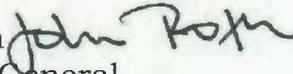
Washington, DC 20528 / www.oig.dhs.gov

May 13, 2016

MEMORANDUM FOR: The Honorable Vice Admiral Peter V. Neffenger
Administrator
Transportation Security Administration

The Honorable Stevan E. Bunnell
General Counsel
Office of General Counsel

FROM:

John Roth 
Inspector General

SUBJECT: *TSA Oversight of National Passenger Rail System Security*

Attached for your action is our final report, *TSA Oversight of National Passenger Rail System Security*. We incorporated the formal comments provided by your offices.

The report contains two recommendations aimed at improving passenger rail security. Your office concurred with both recommendations. Based on information provided in your response to the draft report, we consider recommendations 1 and 2 open and unresolved. As prescribed by the *Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Mark Bell, Assistant Inspector General for Audits, at (202) 254-4100.

Attachment



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Abbreviations

Amtrak	National Railroad Passenger Corporation
CFR	Code of Federal Regulations
GAO	Government Accountability Office
NPRM	Notice of Proposed Rulemaking
OIG	Office of Inspector General
OMB	Office of Management and Budget
TSA	Transportation Security Administration
U.S.C.	United States Code



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Background

Recent global events, such as the August 2015 armed gunman on a passenger train traveling from Amsterdam to Paris, highlighted the vulnerability of rail systems to terrorist attacks and the importance of security for passengers. As a result of this incident, two members of Congress requested that the Transportation Security Administration (TSA) provide an update on the state of domestic rail security, including the progress made on implementing requirements from Public Law 110-53, *Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act)*.

According to the National Railroad Passenger Corporation (Amtrak), it is the sole high-speed intercity passenger railroad provider in the continental United States. Each day, Amtrak operates more than 300 passenger trains, and in fiscal year 2015, carried approximately 31 million passengers throughout 46 states; Washington, DC; and 3 Canadian provinces. Amtrak is funded by passenger ticket revenues, annual Federal appropriations, and Federal and state grants.

Figure 1. Amtrak Rail Stations



Source: Amtrak

Two divisions within Amtrak are primarily responsible for security policies and operations. Amtrak's Emergency Management and Corporate Security Division develops emergency management and security policies and oversees security training and exercises. Amtrak's Police Department conducts passenger security operations, performs counter-terrorism and intelligence functions, and responds to incidents and events.

Amtrak and other passenger rail carriers operate in an open infrastructure with multiple access points. Rail stations are designed primarily for easy access, so this open infrastructure provides challenges for rail carriers and law enforcement to control and monitor passengers for security purposes. For



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example, the number of riders and access points makes it impractical to subject all rail passengers to the type of security that passengers undergo at airports.

TSA is responsible for securing the Nation's transportation systems, including passenger rail systems such as Amtrak. Compared to its responsibilities for aviation security, in which TSA screens passengers, TSA is not a security provider for passenger rail. TSA's main functions for rail are to assess intelligence, share threat information with industry stakeholders, develop industry best practices, and enforce regulations. In FY 2015, TSA dedicated less than 2 percent of its budget for surface transportation (approximately \$123 million).¹

TSA's authority for passenger rail security and the oversight of Amtrak comes from two main sources:

- *Title 49, Section 114 of the United States Code (U.S.C.)* gives TSA overall authority for security in all modes of transportation and authorizes TSA to issue and enforce regulations necessary to carry out TSA functions.
- The *9/11 Act* requires that the Department of Homeland Security, through TSA, create a regulatory framework that addresses the threats facing our passenger rail systems. Examples of requirements include security assessments, background checks for rail employees, security training, and security exercises.

In 2009, the Government Accountability Office (GAO) issued a report on the key actions that TSA needs to take to enhance passenger rail security.² In the report, GAO indicated that TSA had only completed one of the key passenger rail requirements from the *9/11 Act* (establishing a program for conducting rail security exercises) and the remaining requirements were still in progress. In June 2011, TSA provided GAO with a plan for addressing uncompleted *9/11 Act* requirements. The plan contained milestones for each of the remaining *9/11 Act* requirements and listed proposed rules occurring in 2011. However, it did not include expected completion dates. As of FY 2015, three key *9/11 Act* passenger rail requirements — a regulation for rail carriers to complete security assessments, a regulation for rail security training, and a program for conducting background checks on rail employees — remained incomplete.

¹ TSA's FY 2015 funding was \$7.4 billion. TSA's \$123 million surface transportation budget does not include fees collected for Transportation Worker Identification Credentials and hazardous materials.

² GAO-09-678, *Key Actions Have Been Taken to Enhance Mass Transit and Passenger Rail Security, but Opportunities Exist to Strengthen Federal Strategy and Programs*, www.gao.gov.



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Results of Audit

TSA has limited regulatory oversight processes to strengthen passenger security at Amtrak because the component has not fully implemented all requirements from the *9/11 Act*. Federal regulations require Amtrak to appoint a rail security coordinator, report significant security concerns to TSA, and to allow TSA to conduct inspections. The *9/11 Act* requires TSA to establish additional passenger rail regulations; however, the component has not fully implemented them. Specifically, TSA has not issued regulations to assign rail carriers to high-risk tiers; established a rail training program; and conducted security background checks of frontline rail employees. In the absence of formal regulations, TSA relies on outreach programs, voluntary initiatives, and recommended measures to assess and improve rail security for Amtrak.

TSA attributes the delays in implementing the rail security requirements from the *9/11 Act* primarily to the complex Federal rulemaking process. Although the rulemaking process can be lengthy, TSA has not urgently prioritized the need to implement these rail security requirements. This is evident from TSA's inability to satisfy these requirements more than 8 years after the legislation was passed. Without fully implementing and enforcing the requirements from the *9/11 Act*, TSA's ability to strengthen passenger rail security may be diminished. The absence of regulations also impacts TSA's ability to require Amtrak to make security improvements that may prevent or deter acts of terrorism.

TSA Has Limited Regulatory Oversight of Amtrak

TSA's oversight of Amtrak through security directives and regulatory inspections is limited. TSA has an active security directive, which is applicable to Amtrak, but it is partially enforced. Additionally, Title 49, Part 1580 of the Code of Federal Regulations (C.F.R.), imposes two regulatory requirements on Amtrak — appointment of a rail security coordinator and a process in place for reporting significant security concerns. TSA performs compliance inspections to ensure Amtrak meets these requirements.

TSA Security Directive to Amtrak

TSA has statutory authority³ to issue security directives to Amtrak based on emerging threats but does not fully enforce these directives. Following the 2004 terrorist attack on a passenger train in Madrid, Spain, TSA issued a security directive applicable to Amtrak titled *Threat to Passenger Rail Systems – National Railroad Passenger Corporation (AMTRAK) and Alaska Railroad Corporation*.

³ Title 49, Section 114(l) of the United States Code



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This directive contained a series of security measures for Amtrak. TSA incorporated some of these measures into Federal regulations.⁴ These measures require Amtrak to allow TSA to conduct inspections for any security threats, but TSA only conducts inspections to confirm that Amtrak designated a rail security coordinator and reported security concerns to TSA.

The security directive also contains additional security measures for Amtrak to implement. These include the use of bomb-resistant trash receptacles, canine teams, rail car inspections for suspicious items, and passenger identification checks. However, a TSA official said that TSA is not prioritizing enforcement of these remaining security measures and may consider rescinding or modifying the security directive in the future once TSA issues additional passenger rail security regulations.

TSA Regulatory Compliance Inspections

TSA performs regulatory inspections over Amtrak, but they are limited. The inspections ensure that Amtrak has appointed a rail security coordinator (which includes ensuring the coordinator meets certain requirements) and that Amtrak has a process in place for reporting significant security concerns. A significant security concern is defined as any incident, suspicious activity, or related information that could constitute a threat to rail transportation. Although TSA performs inspections to enforce compliance with 49 C.F.R. § 1580, TSA does not evaluate any additional security measures that Amtrak may have in place during these inspections.

TSA Has Not Implemented All 9/11 Act Requirements

TSA has not fully implemented key passenger rail requirements from the *9/11 Act*. The legislation requires TSA to take a number of passenger rail security measures. Among other things, the *9/11 Act* requires TSA to:

- develop a national railroad security strategy,
- assign rail carriers to risk-based tiers,
- award grants to Amtrak,
- establish a security exercise program,
- create a training program for rail carriers, and
- perform background checks on frontline railroad employees.

⁴ Four of 16 security measures of the directive were incorporated into 49 C.F.R. § 1580.



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As shown in table 1, TSA has completed many of these important requirements, but three remain incomplete.

Table 1. 9/11 Act Passenger Rail Requirements Status

Completed Requirements
<ul style="list-style-type: none"> • Award security improvement grants to Amtrak. • Ensure grants are expended. • Develop railroad public outreach and awareness. • Establish a task force to assess risk of a terrorist attack. • Develop a railroad exercise program. • Issue a regulation prohibiting rail carriers from making false statements to employees while undergoing TSA security background checks.
Recurring or Annual Requirements*
<ul style="list-style-type: none"> • Develop and implement a National Strategy for Railroad Transportation Security and submit a report to Congress.
Incomplete Requirements
<ul style="list-style-type: none"> • Issue regulation for high-risk railroad carriers to conduct vulnerability assessments and implement DHS-approved security plans. • Issue regulations for a railroad security training program for frontline employees. • Establish a program to complete security background checks against the terrorist watchlist and immigration status checks.

**TSA has completed the initial requirements and continues to report on a recurring basis as required by the 9/11 Act for these items.*

Source: TSA

TSA officials said that the complex process for issuing a Federal regulation, known as “rulemaking,” is the cause for the delays in completing these requirements. For TSA officials to publish a regulation, they must develop proposed regulatory language, have the regulatory language approved by other Federal agencies, and allow the public to comment on the proposed rule. See appendix C for additional details on the standard Federal rulemaking process.

9/11 Act Requirements

For TSA to be effective in strengthening security for rail carriers, it must implement the requirements from the *9/11 Act*. The legislation sets forth mandatory requirements for TSA and rail carriers to implement industry best practices to improve passenger security. The *9/11 Act* requirements require TSA to identify high-risk carriers, develop training to prepare rail employees for potential security threats, and conduct background checks on rail employees



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against the terrorist watchlist. Without fully implementing and enforcing the *9/11 Act* requirements, TSA cannot require rail carriers to make critical security improvements that may prevent or deter acts of terrorism. For example:

- *Section 1512* of the *9/11 Act* requires TSA to issue a regulation to identify high-risk rail carriers and require those carriers to conduct vulnerability assessments and implement security plans. This section also requires TSA to review and approve those security plans.
- *Section 1517* mandates TSA to issue regulations for a railroad training program to prepare frontline employees for potential security threats.
- *Section 1520* requires TSA to complete a security background check against the consolidated terrorist watchlist and an immigration status check for railroad frontline employees.

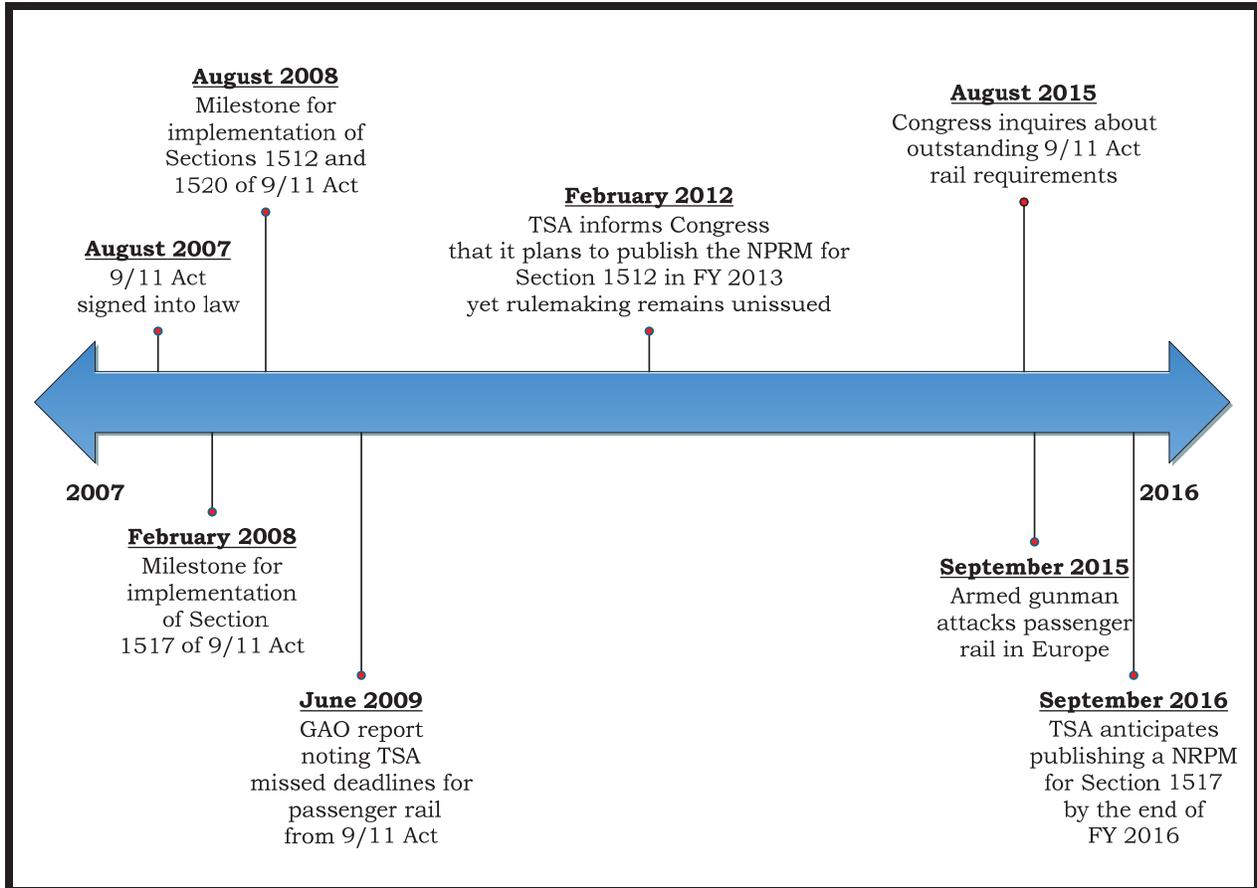
Although TSA has provided insight on the difficult rulemaking process, such as the vetting process with the railroad industry, numerous requirement revisions, and interagency reviews, TSA has not implemented all of the *9/11 Act* provisions.

As shown in figure 2, TSA has not prioritized the implementation of the three remaining *9/11 Act* rail security requirements. This is evident from missed implementation dates and TSA's inability to satisfy these requirements more than 8 years after the legislation was passed. TSA also made commitments during prior audits and during congressional inquiries to issue these regulations in a timelier manner during FYs 2009–15, but it still has not done so.



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Figure 2. Timeline for Implementing Passenger Rail Requirements from 9/11 Act



Source: Office of Inspector General (OIG) analysis of TSA documentation.

TSA Projected Milestones

TSA officials are currently in the process of issuing regulations to satisfy the three remaining 9/11 Act requirements. TSA submitted a draft Notice of Proposed Rulemaking (NPRM) — a document describing TSA’s intent to issue a regulation — on the security training program (Section 1517) to DHS in September 2015 and, as shown in figure 2, anticipates a proposed rule will be published in FY 2016.

For the remaining two requirements, TSA indicated it has not developed detailed timelines or milestones for developing and implementing two additional NPRMs:

- for high-risk railroad carriers to conduct vulnerability assessments and implement DHS-approved security plans (Section 1512);
- to establish a program to complete security background checks against the terrorist watchlist and immigration status checks (Section 1520).



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After the issuance of the draft report, TSA informed us the component changed its course of action for the security planning and vulnerability assessments requirement (Section 1512) and decided to pursue an alternative rulemaking method. As of March 2016, TSA intends to issue an Advanced Notice of Proposed Rulemaking. According to TSA, it changed direction to ensure that the proposed rulemaking will capture the current status of security measures implemented by rail stakeholders, as well as the potential impact of the regulatory requirements on their operations.

TSA Relies on Voluntary Initiatives

In the absence of issuing formal regulations, TSA has developed and implemented a variety of outreach programs, voluntary initiatives, and recommended measures to assess and strengthen rail security for Amtrak. These programs assist Amtrak in enhancing its security baseline, periodically augmenting rail station security and conducting training exercises. However, TSA's following security initiatives are voluntary, and therefore, Amtrak is not required to participate or implement TSA's recommended security measures.

Baseline Assessment and Security Enhancement

TSA uses the Baseline Assessment and Security Enhancement as its primary means to provide security oversight of passenger rail systems. These assessments review Amtrak's security measures against established security benchmarks and result in a performance score. TSA considers a rail carrier to be vulnerable if a security benchmark is not met. TSA uses these assessments in the absence of formal regulations to assess Amtrak's security posture.

Visible Intermodal Prevention and Response Teams

TSA deploys Visible Intermodal Prevention and Response teams to augment the security and law enforcement for rail carriers, including Amtrak. These teams consist of Federal Air Marshals, Behavior Detection Officers, and Transportation Security Inspectors and Officers, and canine teams. These teams conduct joint law enforcement and random screening at rail stations, on trains, and during special events. This heightens security visibility for Amtrak and allows TSA to coordinate team operations based on risk assessments and Amtrak requests.

Intermodal Security Training and Exercise Program

TSA established the Intermodal Security Training and Exercise Program in response to requirements from the *9/11 Act*. TSA uses the program to collaborate with Amtrak and law enforcement primarily during tabletop



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security exercises and to share information including tools, best practices, and lessons learned.

Participation in Information Sharing Forums

TSA exchanges information with rail industry and government partners about best practices and recommended protective measures. TSA regularly communicates with transit and rail operators domestically and internationally through a variety of forums.

Regional Alliance Including Local, State, and Federal Efforts

Amtrak's Regional Alliance Including Local, State, and Federal Efforts activities are coordinated efforts that enhance the visibility of law enforcement at rail stations. They include increased security presence onboard trains, explosives detection canine sweeps, random passenger bag inspections, and counter-surveillance. Although TSA participates and was involved in the development of these coordinated activities, these activities are industry-driven.

Conclusion

Although voluntary initiatives assist TSA in identifying potential security vulnerabilities, they do not replace the need to implement regulatory requirements. TSA's reliance on voluntary initiatives has led to a reduced urgency in implementing the outstanding rail security requirements from the *9/11 Act*. The lack of enforceable regulations diminishes TSA's ability to strengthen security for Amtrak and other passenger rail carriers. This deficiency also prevents TSA from requiring Amtrak to make security improvements that may prevent or deter acts of terrorism.

Recommendations

Recommendation 1: We recommend that the TSA Administrator ensure TSA develops and adheres to a detailed, formal milestone plan to deliver the remaining *9/11 Act* Notices of Proposed Rulemaking to DHS.

Recommendation 2: We recommend that the DHS General Counsel effectively coordinate with the Office of Management and Budget (OMB) to expedite the implementation of the remaining passenger rail requirements of the *9/11 Act*.



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Management Comments & OIG Analysis

DHS provided comments to the draft of this report. According to the response to the draft report, DHS agreed with our recommendations. Additionally, DHS and TSA provided technical comments to this report. We made changes to this report to incorporate their comments, where appropriate. We have included a copy of the management comments in their entirety in appendix B.

In its management comments, TSA explained its role in providing security oversight in the passenger rail mode of transit differs from aviation. In the surface transportation mode, TSA asserted that its role is primarily to help rail entities identify risk, develop programs that address risk, and help entities implement those security programs. To complete this mission, TSA stated it has focused resources on program oversight, system assessments, operator adherence with voluntary industry standards, collaborative law enforcement and security operations, and regulations. Finally, TSA recognized it could not accomplish its essential counterterrorism security mission without partners voluntarily adopting security improvements and sharing best practices.

Recommendation #1: Concur. TSA stated that it continues to work promptly to develop a milestone plan and have assigned the highest of priorities to these rulemakings. TSA asserted that although milestones can be developed, a number of variables are out of TSA's control, making it difficult to predict completion dates with any reasonable degree of certainty. TSA also stated that a number of intervening circumstances, such as legislation, litigation, and world events, have affected regulatory timelines in the past and are very likely to continue to affect regulatory timelines.

OIG Analysis: TSA's actions are partially responsive to this recommendation. Although TSA acknowledged that it places a high priority on completing these passenger rail rulemakings, the component did not provide specific actions it will take to deliver the remaining Notices of Proposed Rulemaking to DHS or targeted milestone dates for doing so. This recommendation will remain unresolved and open until TSA provides its detailed, formal milestone plan with targeted dates to deliver the remaining *9/11 Act* Notices of Proposed Rulemaking to DHS.

Recommendation #2: Concur. The DHS Office of the General Counsel stated it will promptly coordinate with the Office of Management and Budget, as appropriate, for the required review of the remaining passenger rail regulations. DHS' Office of General Counsel will ensure that the rules receive prompt and due consideration in the context of all DHS rulemaking priorities and that the regulations will be fully coordinated within the Department so all key stakeholders have the opportunity for input. However, the Office of General



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Counsel also stated that a number of factors in the rulemaking process are out of the control of DHS, making it difficult to provide a timeline with any reasonable degree of certainty.

OIG Analysis: Although DHS' proposed actions are responsive to the recommendation, they did not provide an estimated completion date for implementation of this recommendation. Even though we recognize dates may change during the rulemaking process, we believe that the Department should establish and share a schedule for the remaining three rulemakings with the Office of Management and Budget to ensure that both agencies are working promptly to implement the requirements of the *9/11 Act*. This recommendation will remain unresolved and open until the DHS Office of General Counsel provides an implementation plan with planned dates.



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Appendix A **Objective, Scope, and Methodology**

The DHS Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of our review was to determine the extent to which TSA has policies, processes, and oversight measures to improve security at the National Railroad Passenger Corporation (Amtrak). To achieve our objective, we reviewed applicable Federal laws and regulations. Specifically, we reviewed 49 U.S.C. § 114, *Transportation Security Administration*, 49 C.F.R. § 1580, *Rail Transportation Final Rule*, and the *9/11 Act*. We also reviewed departmental strategies and goals for passenger railroad security.

We reviewed railroad industry publications and congressional testimonies and inquiries on TSA's role in passenger rail security. We assessed prior audit reports on TSA's progress in implementing the *9/11 Act* requirements. In addition, we reviewed applicable TSA programs, processes, and methods used to perform passenger rail oversight; however, we did not assess the internal controls associated with TSA's voluntary initiatives.

To determine TSA's responsibilities for passenger rail security, we interviewed four TSA offices:

- Office of Security Policy and Industry Engagement
- Office of Security Operations
- Office of Law Enforcement/Federal Air Marshal Service
- Office of Intelligence and Analysis

We met with TSA security inspectors who conduct passenger rail oversight at two Amtrak stations — Union Station in Chicago, IL; and 30th Street Station in Philadelphia, PA. We also met with personnel from the Amtrak Police Department and Amtrak's Emergency Management and Corporate Security.

We conducted this audit between June and December 2015 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
TSA Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 14, 2016

MEMORANDUM FOR: John Roth
Inspector General

FROM: Jim H. Crumacker, CIA, CFE 
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management's Response to OIG Draft Report: "TSA Oversight
of National Passenger Rail System Security" (Project Number
15-039-AUD-TSA)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the Office of Inspector General's (OIG) work in planning and conducting its audit and issuing this report.

The Department is pleased to note OIG's recognition of the extent to which Amtrak has taken voluntary action recommended by the Transportation Security Administration (TSA) to enhance its security posture in light of the terrorist attacks of September 11, 2001. DHS also appreciates OIG's acknowledgment of the complexities of the rulemaking process, including the numerous steps and levels of Federal Government review required prior to publication of a regulation.

TSA oversight of national passenger rail system security differs from the aviation sector. Unlike the aviation mode of transportation, direct responsibility to secure surface transportation systems falls primarily on the system owners and operators. TSA's role is to support these owners and operators in the identification of risk, develop security programs to address that risk, and help the owners and operators implement those security programs. TSA has focused its resources in surface transportation security on program oversight, system assessments, operator adherence with voluntary industry standards, collaborative law enforcement and security operations, and regulations.

It is important to note that security and emergency response planning is not new to our surface stakeholders who have long engaged in such planning under the U.S. Department of Transportation (DOT) programs and regulations in place for many years. Although DOT's regulations relate primarily to safety, many safety activities and programs also benefit security and help to reduce risk. For example, regulations of DOT's Federal Railroad Administration require Amtrak to have an emergency preparedness plan that covers communication, employee training, qualification standards for on-board staffing,



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specific responsibilities in joint operations, special circumstances such as tunnels, liaison with emergency responders, on-board emergency equipment, and passenger communication (*See* 49 CFR § 239.101). These regulations also require conducting full-scale emergency simulations (*See* 49 CFR §§ 239.103 and 239.105).

In the surface environment, TSA has built upon these standards to improve security programs with minimal regulations. For example, TSA augmented the DOT requirements with regulations requiring passenger railroads to have a designated security coordinator and report significant security concerns (*See* 49 CFR part 1580).

TSA could not accomplish its essential counterterrorism security mission without partners voluntarily adopting security improvements and sharing best practices. At the heart of this effort are the 17 Security Action Items (SAIs) jointly created by DOT's Federal Transit Administration and TSA. The 17 SAIs include management and accountability, security and emergency response training, implementation of the Homeland Security Advisory System, public awareness, drills and exercises, risk management and information sharing, facility security and access control, standards for background investigation, document control, and the need for security audits.

TSA deploys 260 Transportation Security Inspectors for Surface to assess and inspect the security posture of surface entities. In 2006, TSA established the Baseline Assessment for Security Enhancement (BASE) program, through which TSA inspectors conduct a thorough security program assessment of mass transit and passenger rail agencies. These inspectors help local systems develop a "path forward" to remediate vulnerabilities identified in the vulnerability assessments, and identify resources that TSA or other areas of the Federal Government can provide to help transit systems raise their security baseline. The results of these assessments are analyzed to influence TSA policy and development of voluntary guidelines to ensure that our voluntary policies and programs are addressing the most critical vulnerabilities from a security perspective. TSA performs these voluntary BASE assessments with emphasis on the 100 largest mass transit and passenger railroad systems measured by passenger volume, which account for more than 95 percent of all users of public transportation. TSA has conducted more than 430 assessments on mass transit and passenger rail systems since 2006. In fiscal year (FY) 2015, TSA Inspectors completed 117 BASE assessments on mass transit and passenger rail agencies, of which 13 resulted in Gold Standard Awards for those entities achieving overall security program management excellence. Amtrak was the first Gold Standard Award recipient and continues to meet the highest standards.

TSA's spending on surface transportation realizes a massive return on its budgetary investment. TSA's funding resources and personnel directly support ongoing security programs by committed security partners who, in turn, spend millions of their own funds to secure critical infrastructure, provide uniformed law enforcement and specialty security teams, and conduct operational activities and deterrence efforts. Industry's



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efforts are fueled by the resources that TSA's funding provides. TSA has invested resources to help its security partners identify vulnerabilities and risk in their agencies. Surface transportation entities know their facilities and their operational challenges, and with their knowledge and TSA's assistance, they are able to more accurately direct their own resources in addition to the hundreds of millions of dollars in Federal security grant funding, to reduce the risk of a terrorist attack. Highlights of this investment include facilitating security exercises that identify vulnerabilities that can then be addressed before an actual event occurs:

- developing security training programs for surface transportation employees;
- engaging with industry in the development of security policy and programs such as best practices and security guidelines, which inform and influence industry on how and where to spend their security dollars;
- providing thorough security system and program assessments to identify areas that need attention, and working with those systems to address those deficient areas to raise their security baselines;
- developing the framework for awarding security grant funds, which have totaled more than \$2.3 billion since FY 2006;
- augmenting local operational deterrence capabilities with Federal teams and support; and
- sharing actionable information in a timely fashion, including guidance on ways in which industry can enhance their security posture in response to potential threats.

TSA has achieved these successes by spending approximately 3 percent of its budget on surface transportation security. These programs demonstrate the collaborative effort among Federal, state, local, and private entities to secure surface transportation systems and assets.

These are only a few of the many security programs through which TSA continues to enhance the security of Amtrak and other modes of surface transportation. The OIG's report focuses on the fact that TSA has not completed all requirements of the "Implementing Recommendations of the 9/11 Commission Act of 2007" (Public Law 110-53). The objective of the audit "was to determine the extent to which TSA has policies, processes, and oversight measures to improve the security at the National Railroad Passenger Corporation (Amtrak)." The report concludes that "the lack of enforceable regulations diminishes TSA's ability to strengthen security for Amtrak and other passenger rail carriers. This deficiency also prevents TSA from requiring Amtrak to make security improvements that may prevent or deter acts of terrorism." While TSA has not issued regulations required by the 9/11 Act, Amtrak is required to have all-hazards emergency response plans and security coordinators and has consistently met the Gold Standard for implementation of the 17 SAls, which go beyond the required



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elements identified in the 9/11 Act. TSA is otherwise unaware of security vulnerabilities within Amtrak resulting from the absence of regulations to date.

Nevertheless, under new leadership, TSA has prioritized the few remaining outstanding requirements of the Act. These mandates include the issuance of regulations related to security training (Sections 1408, 1517, and 1534) and security planning and vulnerability assessments (Sections 1405, 1512, 1531), as well as establishment of a program to complete name-based background and immigration checks for public transportation and railroad employees (Sections 1411 and 1520). TSA is making significant progress on all of these rulemakings and continues to dedicate substantial time and resources toward this effort. TSA will continue its prioritization of these rules notwithstanding the complexity and time-consuming nature of the rulemaking process.

The draft report contained two recommendations with which the Department concurs. Specifically, OIG recommended:

Recommendation 1: That the TSA Administrator ensure TSA develops and adheres to a detailed, formal milestone plan to deliver the remaining *9/11 Act* Notices of Proposed Rulemaking to DHS.

Response: Concur. TSA continues to work swiftly and promptly to complete this objective. TSA also continues to assign the highest of priorities to these rulemakings. While milestones can be developed, there are a number of variables which are out of TSA's control, thereby making it difficult to predict completion dates with any reasonable degree of certainty. There are number of intervening circumstances, such as legislation, litigation, and world events, which have affected regulatory timelines in the past and are very likely to continue to affect regulatory timelines. Of particular note at the current time, priorities, including regulatory priorities, generally change across Administrations, and so it is likely that will happen in these instances as well. Estimated Completion Date (ECD): To Be Determined (TBD).

Recommendation 2: That the DHS General Counsel effectively coordinates with the Office of Management and Budget to expedite the implementation of the remaining passenger rail requirements of the *9/11 Act*.

Response: Concur. The DHS Office of the General Counsel (OGC) will swiftly and promptly coordinate with the Office of Management and Budget, as appropriate, for the required review of these regulations under Executive Order 12866, *Regulatory Planning and Review*. DHS OGC will ensure that these rules receive prompt and due consideration in the context of all DHS rulemaking priorities. DHS OGC is charged with ensuring that all DHS regulations are legally and economically sufficient; for example, ensuring compliance with the Administrative Procedure Act, Regulatory Flexibility Act, Executive Orders 12866 and 13563, and OMB Circular A-4. In addition, in its role as overseer of



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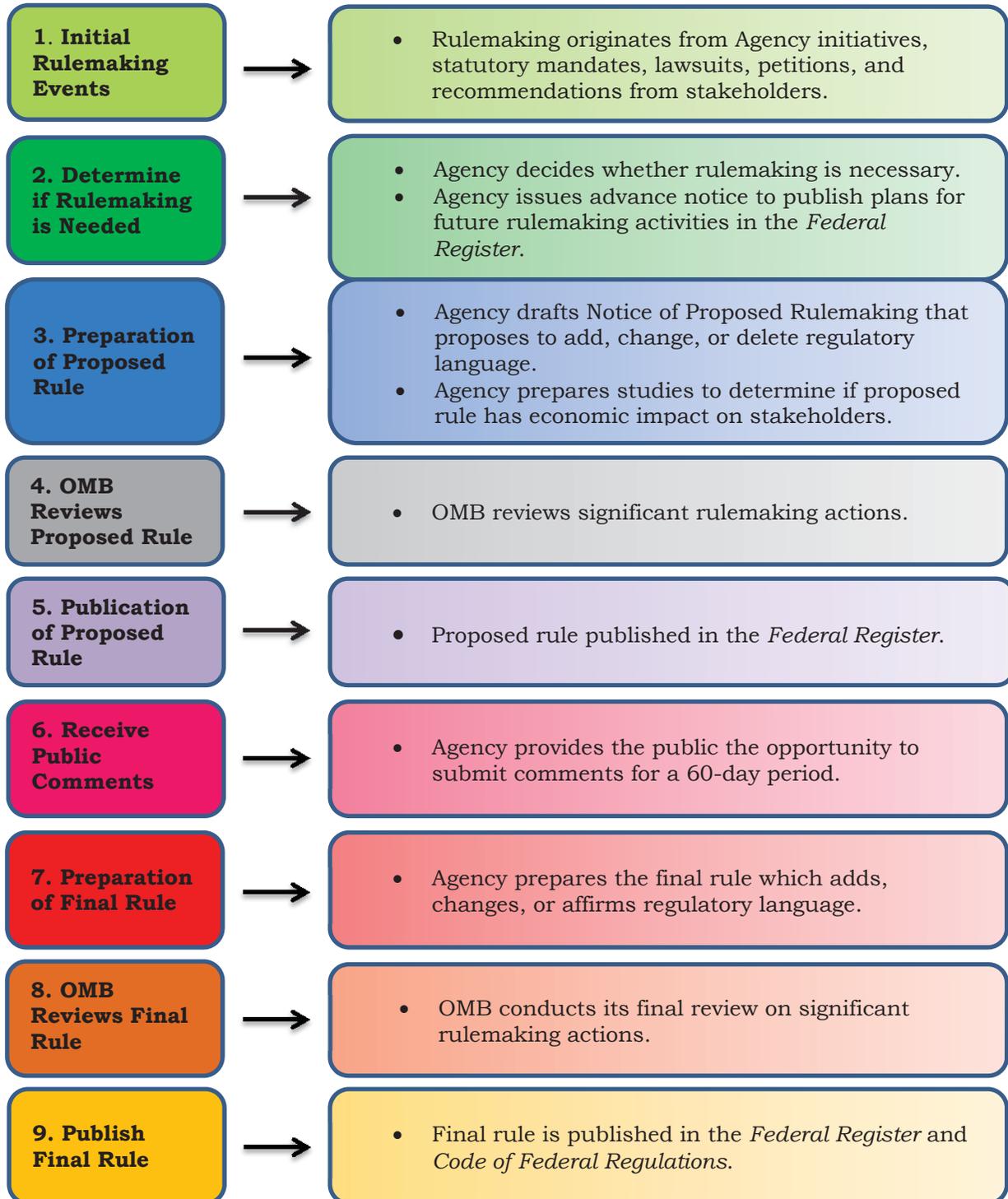
the DHS regulatory program, DHS OGC will ensure that this regulation is fully coordinated within the Department; ensuring that all key stakeholders have the opportunity for input. Inherent to rulemaking process and consistent with TSA's explanation above, there are a number of factors external to OGC and DHS that make it difficult to provide a timeline with any reasonable degree of certainty. ECD: TBD.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.



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Appendix C
Federal Rulemaking Process



Source: OIG analysis of the U.S. General Service Administration’s “Reg Map” at reginfo.gov



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Appendix D
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