

**ANNEX TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF TRANSPORTATION
CONCERNING**

**TRANSPORTATION SECURITY ADMINISTRATION AND
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
COOPERATION ON PIPELINE AND HAZARDOUS MATERIALS
TRANSPORTATION SECURITY**

I. PARTIES

This memorializes an agreement between the Transportation Security Administration (TSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), intended as an Annex to the September 28, 2004 Memorandum of Understanding Between the Department of Homeland Security and the Department of Transportation on Roles and Responsibilities (MOU). The "parties" to this Annex are TSA and PHMSA, which are authorized by the Department of Homeland Security (DHS) and the Department of Transportation (DOT), respectively, to execute this Annex.

All terms used in this Annex that also appear in the MOU have the meanings used in the MOU, except as otherwise provided; further, this Annex will be interpreted in a manner that is consistent with the interpretation of the MOU.

II. PURPOSE

The parties to this Annex have a mutual interest in ensuring coordinated, consistent, and effective activities that have the potential to materially affect their respective missions. The purpose of this Annex is to delineate clear lines of authority and responsibility and promote communications, efficiency, and nonduplication of effort through cooperation and collaboration between the parties in the area of transportation security based on existing legal authorities and core competencies. To achieve this purpose, the parties agree to abide by the terms of this Annex, subject to applicable Federal laws, regulations, Presidential Directives, and relevant policies.

III. BACKGROUND AND AUTHORITIES

a. Homeland Security Presidential Directive No. 7, December 17, 2003 *Critical Infrastructure Identification, Prioritization, and Protection* (HSPD-7) directs that "[t]he Department of Transportation and the Department [of Homeland Security] will collaborate in regulating the transportation of hazardous materials by all modes (including pipelines)."

b. In accordance with the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Homeland Security Act) and HSPD-7, DHS holds lead authority, primary responsibility, and dedicated resources for security activities in all modes of transportation. Pursuant to the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71) and specific delegation by the Secretary of Homeland Security, TSA acts as the lead Federal entity for transportation security, including hazardous materials and pipeline security.

c. TSA enters into this Annex pursuant to 49 U.S.C. §§ 106(m) and 114(m); the Homeland Security Act, § 430 ; the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638; HSPD-7; and Homeland Security Presidential Directive No. 8, December 17, 2003, *National Preparedness* (HSPD-8). At the direction of the Secretary of Homeland Security, TSA has primary authority for the development of the National Strategy for Transportation Security.

d. PHMSA is responsible for administering a national program of safety in natural gas and hazardous liquid pipeline transportation including identifying pipeline safety concerns and developing uniform safety standards. See Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118 Stat. 2423 (2004) at § 2(f), 49 U.S.C. § 108 (f). PHMSA also is responsible for promulgating and enforcing regulations and administering a national program of safety, including security, in multimodal hazardous materials (hazmat) transportation. Within DOT, other operating administrations have specific delegated authority with respect to the transportation of hazardous materials. This Annex does not commit DOT organizations other than PHMSA.

e. PHMSA enters into this Annex pursuant to 49 U.S.C. § 301, 49 U.S.C. § 322, 49 U.S.C. § 5103, 5125, 49 U.S.C. §§60101 *et seq.* and 60103 *et seq.*, 49 C.F.R §§ 1.45(a), 1.53, and HSPD-7.

IV. PROGRAM ELEMENTS

The parties recognize the following program elements are important to development and deployment of an enhanced security strategy for the transportation of hazardous materials by all modes, including pipeline.

1. Identification of Critical Infrastructure/Key Resources and Risk Assessments. As a basis for further planning, the parties will review existing definitions of criticality and consider the need, if any, to further refine definitions based on known and anticipated risks. To the extent possible, the parties will consider life, safety, and economic and environmental impacts, so that the ongoing development of plans and countermeasures for protecting critical infrastructure/ key resources (CI/KR) can be prioritized on a risk basis.

To support TSA efforts in this area, PHMSA agrees to provide compliance data, and other information collected in the course of security inspections or reviews of security plans (including those required under 49 CFR 172.800) and activities of transportation carriers and shippers. PHMSA will provide this data to TSA's Office of Transportation Sector Network Management. Further, PHMSA will coordinate with TSA on observations or recommended

measures derived from safety inspections and assessments to evaluate whether they conflict with or adversely affect current or planned security requirements.

TSA will coordinate with PHMSA on observations or recommended measures derived from the results of criticality and vulnerability assessments, including on pipelines, to evaluate whether they conflict with or adversely affect current or planned safety requirements.

2. Strategic Planning. Security planning will be based on risk. To the extent possible, the parties will seek consensus concerning measures to reduce risk and minimize consequences of emergencies involving critical hazardous materials transportation packagings, systems and pipeline infrastructure. To promote communications, efficiency, and nonduplication of effort, the parties will identify initiatives and activities for achieving performance goals and will develop a program framework and timetable for their completion.

3. Standards, Regulations, Guidelines and Directives. In accordance with the MOU, the parties will seek early and frequent coordination in the development of standards, regulations, guidelines, or directives affecting transportation security and will work together to obtain any necessary clearance of such documents. In the course of discharging their safety and security missions, the parties will review the adequacy of existing standards in the private and public sector, identifying any gaps that should be addressed through rulemaking, guidelines, or directives. In carrying out this review, the parties will consider private sector investments and resources, identify best practices, and consider opportunities to promote these practices. Where current standards need strengthening, the parties will explore opportunities to build on existing standards-setting activities or processes and are committed to doing so in a manner that minimizes duplication and regulatory burdens.

The parties recognize that emergencies or other exigent circumstances may preclude thorough coordination prior to dissemination of these types of measures. The parties will coordinate as extensively as circumstances allow and review actions taken as necessary.

4. Inspections and Enforcement. The parties will explore opportunities for collaboration in inspection and enforcement activities, with the objective of maximizing the use of available resources and targeting enforcement resources on the basis of system risks. The parties will immediately develop procedures for referral of safety and security issues to PHMSA and TSA, respectively; will inventory existing inspection and enforcement resources; and will develop specific plans for closer coordination in the deployment and use of inspectors, including any necessary additional training.

5. PHMSA Technical Support. The parties recognize that exigent circumstances or other contingencies may tax available security resources. In these situations, TSA may seek to supplement its resources with PHMSA personnel and/or other assets. If TSA determines such support is necessary to develop, support, staff, implement, or enforce transportation security regulations, orders, directives, plans, programs, or other measures, or to conduct security reviews during a period of elevated security threat, TSA will request such assistance from PHMSA in writing.

6. Sharing Information During an Emergency Response. The parties participate in established emergency response procedures. However, the parties acknowledge in this Annex that they both require timely information during emergencies and commit themselves to promptly sharing information about emergency situations that implicate the missions and interests of the other party. Information in this context includes both the initial incident report and ongoing information about incident developments. The timely sharing of such information serves the public interest in the operation of a secure and safe national transportation system. Each party requires this information to enable the execution of their respective roles in responding to the incident, including dedication of Federal resources, coordinating other forms of assistance, and advising the White House or other Federal agencies, as necessary.

7. Public Communication, Education and Outreach. The parties will build on existing relationships with stakeholders in order to identify and respond to security-related needs and concerns. To these ends, the parties will review existing protocols for public communication concerning security-related matters, specifically including review of existing protocols for publication of information contained in the national pipeline mapping system. The parties also will identify opportunities to improve alignment among themselves and other agencies with related missions.

8. Communicating Protective Measures to Affected Organizations. In pursuit of the joint interest in ensuring the highest state of security and safety awareness and readiness, to the extent practicable, TSA will consult with PHMSA prior to disseminating security requirements (including regulations, orders, and security directives) and voluntary standards and guidelines to the public. Additionally, to the extent practicable, PHMSA will consult with TSA prior to disseminating requirements (including regulations and orders) and voluntary standards and guidelines that impact security to the public.

9. Research and Development. The parties will conduct a review of their recently completed and ongoing safety- and security-related projects and will identify opportunities to collaborate and support their strategic plan through identification, development and testing of new or modified technologies or processes. The parties will establish protocols for ongoing information sharing and participation in their respective research and development planning processes.

10. Legislative Matters. In matters affecting pipeline and hazardous material transportation security, the parties will consult with each other as soon as possible on the development of proposed legislation, comments on legislative proposals, draft testimony or briefings to be given before Congressional bodies or staff, and answers to questions for the record.

11. Budget. The parties agree to communicate throughout the budget development, justification, and execution process in order to develop and present a coordinated position on transportation security funding matters and to avoid duplicative requests for funding in connection with pipeline and hazardous material transportation security.

V. IMPLEMENTATION

The parties to this Annex commit themselves to coordinate, to the maximum extent practicable, their programs and activities in order to improve transportation security in the United States while minimizing duplication, disruptions to transportation operations, and costs imposed on transportation stakeholders and the public.

It is the objective of the parties to specifically delineate roles, responsibilities, resources, and actions needed to advance execution of the program elements identified in Section IV. To that end, within fourteen (14) days of the execution of this Annex, each party will designate one or more members to a working group to develop a multi-year action plan, including specific timelines for implementing the parties' general commitments, as set forth in Section IV. The action plan will, as appropriate, identify and involve other agencies or stakeholders in particular activities contemplated by the plan. Except as otherwise provided below, the working group designated under this Annex will complete its work within six months and will continue to confer on a regular basis thereafter for the purpose of overseeing, evaluating and monitoring compliance with the plan.

The working group will coordinate its activities to complement the National Response Plan pursuant to HSPD-5 ("Management of Domestic Incidents"), the domestic all-hazards preparedness goals and structures required by HSPD-8 ("National Preparedness"), the National Infrastructure Protection Plan and the Transportation Sector Specific Plan (TSSP) as required by HSPD-7 ("Critical Infrastructure Identification, Prioritization, and Protection"), as well as the TSSP Pipelines Modal Implementation Plan Annex. Existing working groups developing or implementing any of these efforts will be used as appropriate to assist in the development of the multi-year action plan. The working group will also ensure that its efforts are completed under the requirements of any future Executive Orders.

VI. COORDINATION MEETINGS

In addition to the regular coordination envisioned by the MOU and this Annex, the parties agree to hold coordination meetings as necessary at the headquarters level, and at regional offices, to discuss:

- (1) coordinating training for their field inspectors;
- (2) coordinating inspections and enforcement actions by their respective inspectors to
 - (A) minimize disruption to entities being inspected,
 - (B) maximize the use of inspector resources, and
 - (C) ensure that both parties provide consistent information to industry on security matters and safety matters with security implications;
- (3) emerging security threats based on intelligence indicators; and

(4) such other matters as warranted by the interaction of the parties in pursuit of their respective missions or as necessitated by the operational environment, emergency circumstances, or other contingencies.

VII. GENERAL PROVISIONS

1. **Principal Agency Contacts.** Subject to updates by the parties, the following are the designated points of contact for this Annex:

Transportation Security Administration
Assistant Administrator, Office of Transportation Sector Network Management (TSNM)
601 South 12th Street
Arlington, VA 22202-4220

Pipeline and Hazardous Materials Safety Administration
Chief Safety Officer
400 Seventh Street S.W.
Washington, DC 20590
V. (202) 366-0656
F. (202) 366-5713

2. **Reservation of Authorities.** This Agreement does not modify existing Agency authorities by reducing, expanding, or transferring any of the statutory or regulatory authorities and responsibilities of either of the signatory agencies.

3. **Severability.** Nothing in this Annex or any supplement thereto is intended to alter or conflict with statutory provisions, regulations, orders, or directives of DHS, DOT, TSA, PHMSA, or any other Federal agency or entity. If a provision of this Annex, or any supplement thereto is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this Annex and any supplement thereto will remain in full force and effect.

4. **Rights and Benefits.** Nothing in this Annex is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, officers, or employees, state agencies or officers carrying out programs authorized under Federal law, or any other person.


5. **Period of Agreement/Termination.** This Annex shall be effective as of the date of final signature by both parties and remain in effect until terminated by either PHMSA or TSA. Either PHMSA or TSA may terminate this Annex and any supplement hereto upon ninety (90) days written notice to the respective contact listed in Section VII(1) herein.

6. **Reimbursement.** Absent subsequent agreement, each party will be responsible for its own expenses. If, at a future date, a party desires to address issues of reimbursement with regard to particular activities, that Party will request a meeting on the subject of reimbursement with the other party prior to incurring expenses related to those activities. In that event, the parties will meet promptly to determine whether reimbursement will be addressed by a separate agreement or not at all. Any such reimbursements will be in accordance with the provisions of the Economy Act and applicable agency procedures. If a party seeking such reimbursement is not satisfied with the outcome of such a meeting, it may refuse to provide the other party resources for which it desires reimbursement.

7. **Amendment and Modification.** If, in addition to the matters specifically covered in this Annex, either party identifies additional matters on transportation security that should be specifically included in this Annex, that party will request that the Annex be amended accordingly, and the parties will meet to discuss the need for such an amendment. Any agreed upon amendment or modification must be in writing, and executed by the appropriate representatives of TSA and PHMSA.

APPROVED BY:

TRANSPORTATION SECURITY ADMINISTRATION



Assistant Secretary

9 August, 2006
Date

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION



Administrator

7 August 2006
Date