

**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 TRANSPORTATION SECURITY AND SAFETY**

I. PARTIES

This document memorializes an understanding 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.

Except as otherwise provided, all terms used in this Annex have the meanings used in the MOU; further, this Annex will be interpreted in a manner that is consistent with the interpretation of the MOU. For the purposes of this document, the term "Annex" includes any subsequent supplements applicable to this Annex.

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 non-duplication of effort through cooperation and collaboration between the parties in the area of transportation security and safety 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

1. In accordance with the Homeland Security Act of 2002 (Homeland Security Act), Pub. L. No. 107-296 (116 Stat. 2135; Nov. 25, 2002), DHS holds lead authority, primary responsibility, and dedicated resources for the protection and resilience of critical infrastructure, as well as the security of all modes of transportation. Pursuant to the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71 (115 Stat. 597; Nov. 19, 2001) and specific delegation by the Secretary of Homeland Security, TSA is the lead Federal entity for transportation security, including hazardous materials and pipeline security. At the direction of the

Secretary of Homeland Security, TSA has primary authority for the development of the National Strategy for Transportation Security.

2. In accordance with the Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, as delegated by the Secretary of Transportation pursuant to 49 CFR § 1.97, PHMSA administers a national program of safety in natural gas and hazardous liquid pipeline transportation, liquefied natural gas (LNG) facilities, and underground natural gas storage facilities, including identifying pipeline safety concerns, developing uniform safety standards, and promulgating and enforcing safety regulations to protect against risks to life, property and the environment.
3. Presidential Policy Directive (PPD)-21, *Critical Infrastructure Security and Resilience* (Feb. 12, 2013), directs the Secretary of Homeland Security to provide strategic guidance, promote a national unity of effort, and coordinate the overall Federal effort to promote the security and resilience of the Nation's critical infrastructure. In carrying out these responsibilities, the Secretary coordinates with Sector-Specific Agencies (SSAs). PPD-21 designates DHS and DOT as Co-SSAs for the Transportation Systems Sector. The scope of the sector includes the transportation of hazardous materials by all modes, including pipelines.
4. TSA enters into this Annex pursuant to 49 U.S.C. § 114(m); 6 U.S.C. 238; the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 (118 Stat. 3638; Dec. 17, 2004); Presidential Policy Directive (PPD)-8, *National Preparedness* (March 30, 2011), and PPD-21, or any successors.
5. PHMSA enters into this Annex pursuant to 49 U.S.C. §§ 301, 322, and 60101 *et seq.*; 49 CFR §§ 1.81 and 1.97; PPD-8; and PPD-21.

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 pipeline.

1. Information Sharing between TSA and PHMSA

Information sharing is a central tenet of TSA and PHMSA's working relationship. TSA and PHMSA recognize the need for timely sharing of information to ensure a common operating picture and to institutionalize processes for providing unity of message and effort. TSA and PHMSA use an interagency protocol to enhance timely sharing of information that is intended to facilitate the agencies' sharing of information with the federal pipeline stakeholder community. TSA and PHMSA will continue to identify opportunities to improve alignment of communication efforts between themselves and pipeline stakeholders.

- PHMSA will continue to share information on pipeline incidents and accidents with TSA.
- TSA will share information with PHMSA on pipeline security incidents and threats to

pipeline infrastructure.

- The parties will notify each other when practicable before conducting inspections or assessments of facilities that cross the border between the United States and Canada to coordinate efforts to advance the security and safety of pipelines in the United States that are operated from pipeline control rooms located in Canada.

2. Critical Infrastructure Security and Resilience

TSA and PHMSA will evaluate ongoing efforts to collaborate effectively with the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA). These efforts will include identification of pipeline critical infrastructure. TSA and PHMSA will also work collaboratively to support CISA's coordination efforts with the Department of Energy, as the Energy Sector Specific Agency (SSA), and the Transportation Systems Sector Co-SSAs to carry out its cybersecurity and critical infrastructure activities. For example, TSA and PHMSA should ensure information sharing protocols and processes established pursuant to other sections of this MOU are capable of enabling effective communication on response and recovery efforts with CISA following natural disasters and man-made events.

3. Strategic Planning

TSA and PHMSA will support each other's risk assessment efforts through the sharing of institutional knowledge, geospatial data, and other pertinent information. To the extent possible, the parties will seek consensus concerning measures to minimize the consequences of man-made and natural disasters involving pipeline infrastructure. To promote communications, efficiency, and non-duplication of effort, the parties will identify and share initiatives and activities for achieving performance goals.

4. Standards, Regulations, Guidelines, and Directives

In the course of discharging their respective security and safety 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 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.

Recognizing that DHS has the overall lead for transportation security regulations, as identified in Section III of this Annex, PHMSA will seek early and frequent coordination with TSA in the development of standards, regulations, guidelines, or directives having an effect on pipeline transportation security and will work with TSA to obtain any necessary clearance to the extent practicable. Similarly, recognizing that PHMSA has the overall lead for transportation safety regulations, as identified in Section III of this Annex, TSA will seek early and frequent coordination with PHMSA in the development of standards, regulations, guidelines, or directives having an effect on pipeline transportation safety and will work with PHMSA to obtain any necessary clearance to the extent practicable.

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.

5. Technical Support

The parties recognize that exigent circumstances or other contingencies may tax available resources. In these situations, either party may request additional support and assistance from the other party. 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. Similarly, PHMSA may request assistance from TSA, in writing, in support of PHMSA's safety mission, as it relates to security, reliability or resilience. Any request for support and assistance will be evaluated to ensure compliance with appropriations laws, the Antideficiency Act, Economy Act, and all other applicable laws.

6. Public Communication, Education, and Outreach

The parties will continue to build on their existing relationships with public and private stakeholders to identify and respond to stakeholders needs and concerns. Recognizing the often overlapping nature of security and safety, the parties will regularly review existing protocols for public communication concerning issues that could affect security and safety.

7. Communicating Protective Measures to Affected Organizations

To ensure the highest state of security and safety awareness and readiness, to the extent practicable, TSA will consult with PHMSA prior to disseminating requirements, voluntary standards, best practices, and guidelines to the public. Additionally, to the extent practicable, PHMSA will consult with TSA prior to disseminating requirements, voluntary standards, best practices, and guidelines that impact security.

8. Research and Development

The parties will conduct a review of their recently completed and ongoing security and safety related projects and will identify opportunities to collaborate and support their strategic objectives through identification, development, and testing of new or modified technologies or processes.

9. Legislative Matters

In matters that could affect pipeline transportation security and safety, including protection of sensitive but unclassified information, the parties shall, to the extent practicable, consult with each other as soon as possible on the development of legislative proposals, comments on legislative proposals, draft testimony, briefings to be given before Congressional bodies or staff, and answers to questions for the record.

10. Budget

The parties agree to communicate to avoid duplicative requests for funding regarding pipeline 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 and safety 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, the parties will, as appropriate, identify and involve other agencies or stakeholders in particular activities to aid in the execution of this Annex.

Except as otherwise provided below, the parties designated under this Annex will continue to confer on a regular basis thereafter for the purpose of overseeing, evaluating, and monitoring compliance with Section IV. TSA and PHMSA will coordinate their activities under this Annex to complement the National Response Framework pursuant to Homeland Security Policy Directive-5, *Management of Domestic Incidents* (Feb. 28, 2003), the domestic all-hazards preparedness goals and structures required by PPD-8, the National Infrastructure Protection Plan and the Transportation Systems Sector-Specific Plan as required by PPD-21, as well as the National Strategy for Transportation Security Pipeline Security Plan. TSA and PHMSA will also ensure that their efforts under this Annex are executed in a manner consistent with the requirements of any future Executive Orders and presidential directives.

VI. COORDINATION MEETINGS

In addition to the ongoing coordination necessary to implement the MOU and this Annex, the parties agree to hold formal coordination meetings, as necessary.

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, Policy, Plans, and Engagement
601 South 12th Street
Arlington, VA 20598

Pipeline and Hazardous Materials Safety Administration
Associate Administrator, Office of Pipeline Safety
1200 New Jersey Ave. SE
Washington, DC 20590

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 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 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 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 signature by both parties and remain in effect until terminated by either TSA or PHMSA. Either TSA or PHMSA may terminate this Annex ninety (90) calendar days after written notice to the applicable contact listed in Section VII.1.

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. Periodic Reviews of the Annex

The parties commit to reviewing this Annex at least once every five years, or whenever authorities or directives affecting TSA and/or PHMSA are revised or modified. The parties agree to revise the Annex as necessary and appropriate to ensure that all provisions stay current regarding legal and policy developments.

8. Amendment and Modification

If, in addition to the matters specifically covered in this Annex, either party identifies additional matters on transportation security or safety 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.

9. Supersession of Prior Agreements

This Annex shall supersede the Annex entered into by the parties on August 9, 2006 with respect to cooperation on pipeline and hazardous materials transportation security.

APPROVED BY:

Transportation Security Administration

David P. Roberts

Administrator

2-1-20

Date

Pipeline and Hazardous Materials Safety Administration

Neil Smith

Administrator

2-26-20

Date