



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

February 27, 2003

The Honorable James M. Loy
Under Secretary of Transportation for Security
U.S. Department of Transportation
Washington, DC 20590

Dear Jim:

Please know that you have my gratitude for the outstanding work the Transportation Security Administration (TSA) has done in working with the Department of Transportation's (DOT) management team to map a plan for future cooperation and coordination of our mutual obligations.

It is very important that this close relationship between TSA and DOT be preserved and nurtured in the months and years ahead. Secretary Ridge and his entire team will continue to have my strongest possible support for the Department of Homeland Security's vital mission.

I have reviewed and approved the Memorandum of Agreement proposed between TSA and the Federal Aviation Administration (FAA). We have defined carefully the collaborative relationships so necessary to guarantee a secure aviation system for America. The TSA/FAA agreement lays out important institutional relations between DOT and TSA that will ensure a smooth transition and an effective partnership.

Although formal agreements between TSA and other modal administrators at DOT are not necessary at this juncture, I am writing to affirm DOT's commitment to the general principles laid out in the TSA/FAA agreement. With this letter I commit to an equally close partnership with TSA on matters relating to land and sea policies, particularly issues affecting DOT responsibilities regarding transit, freight rail, passenger rail, highways, motor carriers, pipelines and the maritime community.

As you move to the new Department of Homeland Security, I want to share my view of what the people we serve should expect from us. Consistent collaboration and cooperation will be needed to avoid both overlaps and gaps in our respective authorities for transportation safety and mobility, and for transportation security. I am convinced we should work toward four core outcomes:

1. An effective focus on transportation security for people, cargo, infrastructure and intermodal connectivity.

2. Clear security performance goals to support the Nation's transportation systems.
3. Timely communication of accurate and useful information concerning security-related matters for transportation stakeholders, both public and private.
4. Optimal use of available governmental resources.

To achieve these outcomes, coordination and communication must be constant at all levels between TSA and DOT. I will soon name a senior official within the Office of the Secretary who will serve as DOT's liaison to TSA. This individual will be a one-stop point of contact for TSA, as well as the coordinator of internal DOT work in support of TSA's mission. The new DOT liaison office will provide support regarding all non-routine policy issues, intelligence analysis, public and transportation industry communications and operational planning. Before appointment of this liaison officer, you should continue to coordinate non-routine matters through the office of Deputy Secretary Michael Jackson.

In the areas of security-related legislation, rulemaking, and budget development, we must cooperate early and closely. I think the common sense rule of "no surprises" should be our guide. Regarding security standards, TSA will establish standards for all modes of transportation, while DOT will assist as possible and appropriate with implementation. For example, in aviation matters, TSA's own workforce will implement airport screening and other key aviation security measures, while FAA will implement policies that involve airspace management or aircraft design standards. Modal specific security measures pertaining to surface and marine security standards will be coordinated on an ongoing basis with TSA, and the U.S. Coast Guard as appropriate, for each mode. Each will present unique issues for TSA and DOT to reconcile.

Where our joint security activities involve other Federal or State agencies, TSA will be the chief point of contact and coordination. TSA will also serve as the principal liaison with the Intelligence Community for transportation security matters, although close coordination with DOT will be essential.

I look forward to our continued work together to obtain core transportation security results and build upon TSA's strong foundation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Norman Y. Mineta". The signature is stylized and written in a cursive-like font.

Norman Y. Mineta



United States Department of Transportation
TRANSPORTATION SECURITY ADMINISTRATION

400 Seventh Street, S.W.
Washington D.C. 20590

February 28, 2003

The Honorable Norman Y. Mineta
Secretary of Transportation
Washington, DC 20590

Dear Mr. Secretary:

Thank you for your letter of February 27, 2003, and for your constancy of purpose and direction as we stood up the Transportation Security Administration (TSA) this past year.

I, too, recognize the Congressionally mandated emphasis on aviation security during TSA's initial year and that, under the law, TSA has responsibilities for the security of all components of the National Transportation System (NTS). As you suggest in your letter, we will accept the challenges outlined in the Memorandum of Agreement with the Federal Aviation Administration and use both its principles and those outlined in your letter as our guide to collaboration with the entire Department of Transportation (DOT).

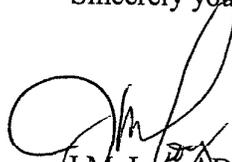
I have outlined a National Transportation System Security Plan (NTSSP) as an umbrella document to define the spectrum of work associated with our mutual goal of a secure NTS. That work begins with standard setting and proceeds systematically through vulnerability assessments, mitigation strategy identification, action plan development, and tasking obligations. It ends with an accountability requirement as performance-based feedback to determine whether the standards have been met and if the various security systems fit as designed into the NTSSP. TSA will develop our approach to this design and documentation effort using the principles and outcomes identified in your letter as our guide.

I further believe our challenge in each dimension of the NTS centers on the security of people, both crew and passengers; cargo; and infrastructure, meaning both conveyances and facilities. Our goal must be to provide the highest possible security balanced with the need to foster the free movement of people and commerce. I expect to develop and publish the NTSSP within 2 months of our arrival in the Department of Homeland Security (DHS). With input from the appropriate stakeholders, I then expect to develop subordinate security plans for aviation, maritime, transit, rail, highways, and pipelines.

In each of these subordinate plans, the spectrum from domain awareness through prevention/protection, response/restoration, and consequence management will be documented and offered to DHS for approval. I will seek your participation and clearance on these plans as they are developed.

Mr. Secretary, I pledge my personal commitment to building an NTSSP that meets the security requirements of the NTS, and acknowledge in advance the value of your continual direction, support, and assistance as we press forward to meet our mutual responsibilities for the security of America's transportation system.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J.M. Loy', written over the typed name.

J.M. Loy, ADM
Under Secretary of
Transportation for Security

SUMMARY OF SIGNIFICANT CHANGES MADE BY DOT TO THE
LAST TSA-FAA COORDINATED VERSION – PRIOR TO SIGNATURE
BY ADMINISTRATOR BLAKEY & UNDERSECRETARY LOY

- Added standard language defining “coordinate” and “reasonable notice” to all annexes which did not already have such language.
- Added a new paragraph or sub-paragraph to all annexes which did not already have it, entitled: “Actions Requiring Departmental Approval”.
- Changed MOA para 6.q. to say that SOP’s with broad application will be signed by the Administrator *subject to the approval of the Secretary of Transportation*.
- Modified Annex II (Resources) para 4 by deleting language which indicated that the Parties would share draft budget justification testimony during the drafting process prior to submission to their Departments for review.
- Added a requirement to the Purpose statement of Annex V (Intelligence) stating that any information provided by TSA to FAA shall also be provided to the Secretary of Transportation’s Director of Intelligence and Security, S-60.
- Revised Annex IX (International Aviation) para 3. a. General Coordination to state that the Parties will also make good faith efforts to coordinate with DOT General Counsel and Assistant Secretary for Aviation and International Affairs on activities affecting economic aspects of international civil aviation.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE TRANSPORTATION SECURITY ADMINISTRATION
AND
THE FEDERAL AVIATION ADMINISTRATION
REGARDING RESPONSIBILITIES AND COOPERATION FOR
CIVIL AVIATION SECURITY AND COMMERCIAL SPACE
TRANSPORTATION SECURITY**

1. PARTIES. The "Parties" to this Memorandum of Agreement (MOA) are the Transportation Security Administration (TSA) and the Federal Aviation Administration (FAA).

2. AUTHORITY.

a. TSA enters into this MOA pursuant to 49 U.S.C. §§ 106(m), 114(m), and 70103(c).

b. FAA enters into this MOA pursuant to 49 U.S.C. § 106(m).

3. PURPOSE. The purpose of this MOA is to delineate clear lines of authority and responsibility between the Parties based on existing legal authority and core competencies. By establishing a cooperative interagency relationship emphasizing organizational capabilities, the Parties intend to improve services to and relationships with each other, other modal administrations, other federal, state, and local agencies, non-governmental stakeholders, and the American public. The Parties intend this MOA to define their strategic relationship with an aim towards identifying and leveraging their respective core competencies, capabilities, resources, and authorities to enhance the safety and security of aviation and commercial space transportation in the United States, and to achieve national performance security goals for the National Airspace System (NAS). To this end, the Parties will cooperate in accordance with the principles and actions set forth in paragraphs 6 and 7 of this MOA.

4. BACKGROUND.

a. The events of September 11, 2001 significantly changed the Nation's homeland security posture. Recognizing the importance of transportation security, on November 19, 2001, the President signed into law the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597 (2001), which among other things established TSA as a new administration within the Department of Transportation (DOT). In enacting ATSA, Congress recognized the importance of security for all forms of transportation and related infrastructure. Accordingly, Congress established TSA and conferred upon the Under Secretary of Transportation for Security responsibility for security in all modes of transportation, including carrying out 49 U.S.C. chapter 449, relating to civil aviation security, and related research and development activities, and security responsibilities over other modes of transportation that are exercised by

DOT. On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. 107-295, 116 Stat. 2064 (2002) which transfers TSA to the Department of Homeland Security (DHS).

b. In order to achieve the desired level of multi- and inter-modal transportation security, TSA requires a strong partnership with FAA to reduce the vulnerability of aviation passengers, employees, and systems to criminal violence, aircraft piracy and terrorism. Further, FAA continues to have statutory responsibility for areas impacting transportation security, including those related to the air traffic control system, airworthiness standards, and commercial space launch infrastructure, including launch vehicles and sites, as well as operators. Consequently, FAA will continue to play an integral role in maintaining and improving aviation transportation security and securing utilization of the NAS.

5. DEFINITIONS. As used in this Agreement and its Annexes:

a. The term "coordinate" means to take action which provides reasonable notice of an agency's activities and which affords the notified agency, when possible, a reasonable opportunity to address concerns raised by such notice.

b. The term "National Airspace System" (or NAS) means the common network of U.S. airspace; airports or landing areas; rules, regulations, and procedures; air navigation facilities, equipment, and services; aeronautical charts; technical information; and manpower and material. NAS includes system components shared jointly with the military.

c. The term "reasonable notice" means as soon as possible, preferably prior to action, without placing an activity in jeopardy.

d. The term "security information" means intelligence, security, law enforcement, or threat information affecting the U.S. transportation system.

6. ACTIONS. The Parties agree to the following principles and actions:

a. **Overall Security Responsibility.** The Under Secretary has overall responsibility for security in all modes of transportation, including carrying out 49 U.S.C. chapter 449, relating to civil aviation security, and related research and development activities, and security responsibilities over other modes of transportation that are exercised by DOT. In this regard, TSA will leverage inter-modal relationships to achieve national transportation security performance goals, and to unify the security measures of the various modes into a consistent and integrated national system.

b. **TSA Lead.** In accordance with paragraph 6a of this MOA, TSA will be the lead agency for security policy, compliance and related issues for civil aviation and commercial space transportation except for matters committed to FAA jurisdiction by statute, Executive Order or regulation.

c. **FAA Lead.** FAA remains the lead agency for aviation safety regulation and oversight management of the NAS, commercial space transportation licensing and regulation, and aviation security matters that are committed to FAA jurisdiction by statute, Executive Order, or regulation.

d. **FAA Internal Security.** All aspects of FAA internal security including, but not limited to, information, personnel, operations, communications, automated information systems security, and employee investigations within FAA authority, remain the responsibility of the FAA. FAA managers responsible for NAS and other FAA assets and personnel at airports will insure that FAA facility and personnel security plans and actions at such airports are consistent with the respective Airport Security Plan and are coordinated, as appropriate, with the responsible TSA Federal Security Director (FSD).

e. **National Standards and FAA Assistance.** TSA, in consultation with FAA, stakeholders, and the other components of DOT, as appropriate, will continue to develop national standards designed to achieve established national performance goals for transportation security. FAA will assist TSA by providing, as requested and consistent with FAA's resources, expert advice to TSA on aviation operations, aircraft and aircraft equipment, air traffic control systems, airports, airman certification, hazardous materials transportation by air, and commercial space transportation.

f. **Safety and Security.** In connection with civil aviation and commercial space transportation, TSA's focus is on transportation and related infrastructure security, but its activities may have an effect on NAS and other aviation safety and efficiency matters in the United States and abroad. Similarly, while FAA has some security responsibilities, FAA's primary focus is on safety and efficiency; but its activities may have an effect on security matters under TSA's jurisdiction. Each Party will seek early and frequent coordination with the other Party whenever its activities may substantially affect the other Party's mission.

g. **Outreach.** The Parties will, within their respective jurisdictions, and to the extent of their legal authority, develop relationships with domestic and international stakeholders, both governmental and non-governmental, with interests in civil aviation security and commercial space transportation security. TSA's development of such relationships will focus on aviation and commercial space transportation security issues, but may have an impact on aviation safety or commercial space launch sites or operator issues. FAA's development of such relationships will focus mostly on civil aviation safety, NAS efficiency, and commercial space launch sites and operator issues, but may have an impact on transportation security issues under TSA's jurisdiction. Each Party will seek early and frequent coordination with the other Party when developing such relationships that may substantially impact the other Party's mission.

h. **Taxes and User Fees.** In the event that both FAA and TSA expect to derive resources from taxes and user fees imposed on the same segments of the civil aviation industry, each Party will consult with the other on proposals for changes in tax or fee structures to evaluate the impact of these changes on the civil aviation industry.

i. **Adequacy of Security Measures.** TSA will assure the adequacy of security measures at transportation facilities and provide for the secure transportation of passengers and cargo and will fulfill that responsibility by, among other actions, setting appropriate transportation security standards and criteria and facilitating inter-modal coordination. FAA will assist TSA in implementation of those security measures by providing, as requested and consistent with FAA's resources, expert advice to TSA on aviation operations, aircraft and equipment, air traffic control systems, airports, runways, hazardous materials transportation by air, and commercial space transportation facilities and operations.

j. **Policy.** The Parties will coordinate on the formulation of policy initiatives and the resolution of policy issues, both domestic and international, that have the potential to materially affect the mission of the other Party.

k. **Public Affairs.** To provide consistent and authoritative information to the public, the Parties will coordinate public affairs activities on items that have the potential to materially affect the mission of the other Party.

l. **Data.** The Parties have mutual interests in (1) avoiding duplication or conflict in agency data collection and provision and (2) providing consistent and authoritative data to the U.S. Congress, stakeholders or other interested parties, and other persons. The Parties, consistent with all applicable laws, including the Privacy Act, will make available to each other such internal data, databases, records and statistics that have the potential to materially affect the operations, planning, and performance measurement systems of the other Party. This data may include aircraft and airman registry information, air traffic operation and delay statistics, aviation activity forecasts, and such other databases or systems of records as may be identified in the future.

m. **Sensitive Security Information.** The Parties agree to collaborate and coordinate on measures, consistent with the Parties' available resources, including appropriate staff, and take other actions necessary to protect from unauthorized disclosure information designated as Sensitive Security Information (SSI) by TSA pursuant to 49 U.S.C. § 114(s) and 49 CFR Part 1520 (2002), or by DOT pursuant to 49 U.S.C. § 40119.

n. **Research and Development.** The Parties will coordinate on research and development (R&D) efforts that have the potential to materially affect the mission of the other Party. Coordination will include sharing of research priorities and research results. The Parties have defined R&D processes in a Resources Annex to this MOA.

o. **Litigation and Related Matters.** TSA will make available to FAA such persons and records as are required for litigation support, response to official inquiries and investigations arising from incidents or events that occurred prior to November 19, 2001. The Parties will make available to each other such persons and records as are required for litigation support, official inquiries, investigations and related matters arising from incidents or events that occurred on or after November 19, 2001.

p. **Annexes.** This MOA will be implemented through annexes that describe specific activities, programs, and projects related to: Resources; Legislative Activities; Rulemaking, Enforcement, and Adjudication; Crisis Management; Intelligence; Air Carriers and Commercial Operators; General Aviation; Hazardous Materials Transportation; International Aviation; Airports; Air Traffic; and the Aviation Whistleblower Protection Program. Additional annexes may also be incorporated by reference into this MOA in the future based upon the mutual agreement of the Parties.

q. **Standard Operating Procedures.** The Parties will develop and revise as appropriate standard operating procedures (SOP) that set forth detailed procedures for specific activities that have the potential to materially affect the mission of the other Party. Program-specific SOPs may be signed by the executives responsible for the programs in question within FAA and TSA. SOPs with broad application or significant resource implications will be signed by the Administrator or his or her designee, subject to the approval of the Secretary of Transportation, and the Under Secretary or his or her designee, or the Under Secretary's successor, or his or her designee.

r. **Accident Investigations.** The Parties will treat an aircraft crash of unknown cause as a matter for priority investigation and as both a suspected criminal act and a suspected safety problem until information is developed which either rules out or strongly indicates a cause.

(1) FAA will preserve relevant records and support and assist the National Transportation Safety Board (NTSB) in the safety investigation as desired by the NTSB.

(2) TSA will determine if there was a failure in passenger, cargo or baggage screening.

(3) The Parties agree to facilitate the deployment and access of TSA transportation explosives specialists to the site in question to provide specialized assistance, as desired, to NTSB or the Federal Bureau of Investigation (FBI).

(4) The Parties also agree to collaborate in assisting NTSB with the retrieval of Cockpit Voice Recorders and Flight Data Recorders from foreign crash sites and expeditious return of those recorders to the U.S. for analysis.

(5) The Parties also agree to immediate and continuing coordination between themselves and with NTSB and FBI or other agencies as appropriate during and in response to aviation accidents, aircraft sabotage and related matters.

s. **Common Strategy.** The Parties will coordinate on the development and adjustments, as appropriate, to the principles and doctrine that will apply to the management of aircraft piracy, attempted aircraft piracy and related incidents. They further agree that they will coordinate with each other and with other agencies, as appropriate, to insure that the training of flight and cabin crew, Federal flight deck officers, Federal air marshals, air traffic controllers, Federal Security

Directors and local law enforcement personnel is consistent with current, agreed "Common Strategy" principles.

t. **Other Strategies.** The Parties will coordinate with each other and with other agencies, as appropriate, concerning strategies to respond to terrorism, other acts of criminal violence, and threats to security.

u. **Actions Requiring Departmental Approval.** In addition to the coordination described above, if either Party engages in activities which could ultimately result in an action requiring the approval of the head of the Department in which either Party operates, the Parties will follow any applicable Departmental approval and coordination policies.

v. **Responses to Inquiries.** The Parties will coordinate with one another regarding communication to or from any stakeholder or other interested party or person regarding the implementation of a directive, policy, procedure or regulation of either Party involving the mission of the other.

7. OTHER PROVISIONS.

a. **Severability.** Nothing in this MOA or any annex thereto is intended to conflict with current law, regulations, Secretarial Orders, or Secretarial Directives. If a provision of this MOA or any annex 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 MOA and any annex thereto will remain in full force and effect.

b. **Rights and Benefits.** Nothing in this agreement 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 by any party against the United States, its agencies or officers, state agencies or officers carrying out programs authorized under federal law, or any other person.

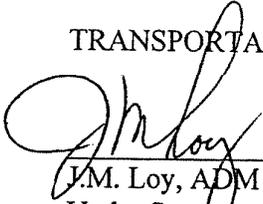
c. **Transition of TSA to the Department of Homeland Security.** It is the intent of the Parties that they will continue to comply with the provisions of this MOA and its annexes when TSA transitions to the Department of Homeland Security (DHS) and until such time as they may be amended or modified.

c. **Amendment and Modification.** This MOA and any annexes hereto may be amended or revised at any time with the written agreement of the Administrator and the Under Secretary or his or her successor in function at the Department of Homeland Security.

d. **Period of Agreement/Termination.** This MOA will be effective as of the date of final signature by both Parties and remain in effect until terminated by either Party. Either Party may terminate this MOA and any annexes hereto upon ninety (90) days written notice.

APPROVED BY:

TRANSPORTATION SECURITY ADMINISTRATION



J.M. Loy, ADM
Under Secretary of Transportation for Security

2/28/03
Date

FEDERAL AVIATION ADMINISTRATION



Marion C. Blakey
Administrator

2/28/03
Date

ANNEXES:

- I Resources
- II Legislative Activities
- III Rulemaking, Enforcement, and Adjudication
- IV Crisis Management
- V Intelligence
- VI Air Carriers and Commercial Operators
- VII General Aviation
- VIII Hazardous Materials Transportation
- IX International Aviation
- X Airports
- XI Air Traffic
- XII Aviation Whistleblower Protection Program