



U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

The Inspector General

Office of Inspector General  
Washington, DC 20590

January 14, 2003

The Honorable James L. Oberstar  
Ranking Democratic Member  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Oberstar:

In response to your March 13, 2002 letter, we are reviewing the Transportation Security Administration's (TSA) progress in implementing provisions of Sections 106 and 138 of the Aviation and Transportation Security Act (Act). This is an interim report on TSA's progress in implementing these provisions. We will continue to monitor TSA's progress and report out to you as appropriate.

As you know, the provisions of Sections 106 and 138 were incorporated into the Act to further protect secure areas of the Nation's airports. Section 106 mandates, among other things, that **all** individuals, vehicles and other equipment, goods, and property be screened or inspected before being allowed entry into secure areas of the airport and onboard aircraft. Section 138 mandates new background investigations, with more thorough criminal history checks, for all current employees with unescorted access to secure areas of the airport, security screeners and their supervisors, and for individuals who have *regularly escorted access* to secure areas of the airport. These provisions are not tied to any specific deadline, unlike other provisions of the Act such as the requirement to screen all checked baggage using explosives detection systems by December 31, 2002.

TSA efforts so far have mostly focused on meeting its 2002 deadlines to have a federalized passenger screener workforce in place by November 19<sup>th</sup> and to begin screening all checked baggage by December 31<sup>st</sup>. Nevertheless, there has been some measurable progress in implementing the provisions of Sections 106 and 138.

Actions to address certain provisions of Section 106 were implemented following September 11, and prior to enactment of the Act in November 2001. Airport perimeter security was strengthened by mandatory directives issued by the Federal Aviation Administration (FAA) that limited the number of access points and required tighter controls over the remaining perimeter access points, such as random screening of individuals, vehicles, and property before entry into secure areas of the airport.<sup>1</sup>

Actions to address certain provisions of Section 138 were implemented following enactment of the Act, when FAA issued a rule making criminal history checks mandatory for all current employees with access to secure areas of the airport. This requirement was expected to be completed by the end of December 2002, when criminal history checks should have been processed and adjudicated on an estimated 750,000 employees at airports nationwide.

Although we have seen some progress, much work remains before the provisions of Sections 106 and 138 are fully implemented. TSA needs to (1) issue a regulation addressing security requirements for airport vendors and tenants, and (2) move forward with implementing the countermeasures it has identified to strengthen airport perimeter access security, including identifying the associated costs and sources of funding. TSA also needs to issue its rulemaking requiring background investigations and criminal history checks for all individuals who have *regularly escorted access* to secure areas of the airport. In order to do so, TSA must first clarify the conditions it has put forth for exempting individuals from such a requirement. We have discussed these issues with TSA officials who have agreed that further corrective actions are necessary.

Further details of what we found are provided below.

**Section 106: Improved Airport Perimeter Access Security.** Immediately following September 11, 2001, FAA instituted a series of security directives to bolster airport and aircraft security. As part of its security directives, FAA mandated that airports limit the number of access points to secure areas of the airport and conduct random inspections of individuals and vehicles at airport perimeter access points. FAA also mandated that air carriers conduct random screening of their service personnel with access to aircraft before they enter the aircraft and monitor catering operations from the point of preparation to delivery to the aircraft.

Since September 11, there has been much improvement in controlling unauthorized access to secure areas of the airport, as indicated by the results of our undercover audits of airport and air carrier security at airports nationwide. In testing conducted from

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<sup>1</sup> Subsequent to the enactment of the Aviation and Transportation Security Act (Act) in November 2001, TSA assumed the civil aviation security program responsibilities from the FAA, along with all of FAA's civil aviation security programs, plans, regulations, orders, and directives.

November 2001 to July 2002, we were denied unauthorized access to secure areas of the airport via airside perimeter<sup>2</sup> access points significantly more often than during our access control testing prior to September 11.<sup>3</sup> Based on our testing, it is evident that protection against unauthorized access to secure areas of the airport via airport perimeter access points has improved; however, further improvements could be expected by executing more robust security policies and procedures, and by addition of advanced access control technologies.

To further address the provisions of Section 106, TSA established an Airside Working Group (Group) in early March 2002, tasked to assess the risk of terrorist acts via the airside perimeter and identify countermeasures to reduce those risks, such as screening or inspecting all individuals and vehicles before entry into secure areas of the airport and onboard aircraft. In one of the Group's early efforts, a pilot project was set up at Miami International Airport to review its employee screening process.<sup>4</sup> According to TSA, Miami is currently the only airport screening **all** employees with authorized access to secure areas of the airport.

The results and countermeasures of the Group's assessment were reported to TSA on October 3, 2002. The report provides a detailed analysis of the relative risk associated with a number of threat scenarios, such as the threat of a bomb introduced via the catering system or a bomb placed aboard an aircraft by a non-passenger who gains airside access to the aircraft. For each threat scenario, the Group identified one or more countermeasures that could be implemented to reduce the relative risk, such as random physical checks or full screening of employees at access points before entrance into a secure area of the airport; manning all vehicle gates; and thorough vehicle searches. The report goes on to say that many of the countermeasures can be implemented in a short timeframe, while other countermeasures require further analysis.

However, absent from the report was an assessment of the Section 106 provision requiring vendors with direct access to the airfield and aircraft to develop security programs. These programs would prescribe security requirements on the vendors designed to prevent or deter a terrorist or criminal act against the airport or onboard aircraft. Such requirements could include providing employees with basic airport security awareness training such as airport identification display and challenge procedures; conducting employee background investigations and criminal history checks on all employees, not just those requiring unescorted access to secure areas of

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<sup>2</sup> Airside perimeter is the airport boundary around air operations areas including secure areas of the airport and aircraft.

<sup>3</sup> Our test results, which include security sensitive information, will be provided under separate cover.

<sup>4</sup> Prior to September 11, 2001, Miami was screening all employees authorized access to secure areas of the airport as a result of a Department of Justice sting operation involving air carrier employees who were bribed to smuggle drugs, contraband and weapons onboard passenger aircraft.

the airport; accounting for and controlling use of employees' airport identification; and securing vehicles and equipment from unauthorized entry or use.

TSA informed us that it would soon issue regulations that greatly enhance security concerning airport vendors and tenants. Although no regulations have been issued, TSA has directed both aircraft and airport operators to conduct criminal history checks on all individuals who are employed or perform duties in the airport **sterile area**.<sup>5</sup> However, to further strengthen airside perimeter security, TSA needs to move forward with developing and executing a standard security program for all airport tenants.

While we agree with the conclusions drawn by the Group in its assessment, along with most of its countermeasures, there is little new information in this assessment that has not been reported in risk assessments prior to September 11, 2001. TSA needs to move away from the study phase and into the implementation phase with its countermeasures expeditiously. However, before this can happen, TSA needs to identify the costs associated with implementing its countermeasures, who will bear these costs, and how the costs will be funded. TSA also needs to identify and prioritize those countermeasures that are near term (less than 1 year), intermediate term (1 to 3 years), and long term (3 to 5 years).

**Section 138: Employment Investigations and Restrictions.** In December 2001, TSA published a rule mandating that airport operators and air carriers conduct new background investigations on all current employees. As of December 23, 2002, airport operators and air carriers have processed 800,008 background investigations, including criminal history checks, for employees who have *unescorted* access to secure areas of the airport. TSA anticipated that the remaining background investigations for these individuals would be completed by the end of December 2002.

However, the requirement that background investigations and criminal history checks be completed for all individuals who have *regularly escorted access* to secure areas of the airport has not been implemented. Individuals who have regularly escorted access can include employees of companies under contract with the airlines that provide catering, fueling and aircraft parts delivery and repair services, and also employees of companies under contract with the airport for airside construction projects. TSA has prepared a draft Notice of Proposed Rulemaking (Rule) addressing this provision and is currently awaiting instructions from the Department on whether it is to be published or incorporated as part of another Rule under development addressing employee background investigations and criminal history checks.

We have reviewed a draft of the Rule and have made recommendations to strengthen it. First, the term *regularly escorted access* has not been defined. Instead, the proposed

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<sup>5</sup> Once a person passes through passenger screening he/she enters the **sterile area**. Airport concourses that include the boarding gates for airport departures and arrivals are sterile areas.

rule identifies four conditions under which individuals may be exempted from criminal history checks. One such condition would exempt criminal history checks when individuals undergo screening prior to access. However, it is not clear to what extent individuals and their property will be screened prior to access, or whether such screening will ensure at least the same level of protection as will result from screening of passengers and their baggage.

Second, the Act requires that an employment investigation, including a criminal history check, be conducted for individuals who regularly have escorted access to secure areas of the airport. The proposed Rule **only requires a criminal history check**. However, employment investigations are necessary to verify the individuals' whereabouts and employment history over the past 10 years. This is especially true for aliens and resident aliens who have only been in the United States for a few years and for whom little is known about their employment or other activities outside the United States.

Based on our review of the draft Rule, we have recommended that TSA (1) clarify each of the four conditions under which individuals may be exempted from background investigations, including criminal history checks; and (2) revise its Rule to require that an employment investigation, including a criminal history check, be conducted for individuals who regularly have escorted access to secure areas of the airport.

We are preparing a separate report to TSA on these matters. In that report, which contains security sensitive information, we will be making a series of recommendations to TSA for improving access to secure areas of the airport. We are available to brief you and your staff on specific security sensitive information related to these two sections of the law. If you have any additional questions or require further information, please call me at (202) 366-1959 or Todd J. Zinser, my Deputy, at (202) 366-6767.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth M. Mead". The signature is fluid and cursive, with the first name "Kenneth" being the most prominent part.

Kenneth M. Mead  
Inspector General