

DEPARTMENT OF TRANSPORTATION**Transportation Security Administration****49 CFR Part 1511**

[Docket No. TSA-2002-11334]

RIN 2110-AA02

Aviation Security Infrastructure Fees**AGENCY:** Transportation Security Administration, DOT.**ACTION:** Interim final rule.

SUMMARY: The Transportation Security Administration (TSA) announces a fee that will be imposed on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation effective February 18, 2002. For purposes of this rule, the fee is described as the Aviation Security Infrastructure Fee. The Aviation Security Infrastructure Fee is imposed pursuant to the provisions of the Aviation and Transportation Security Act and is in addition to the September 11th Security Fee imposed on passengers pursuant to an interim final rule published in the **Federal Register** on December 31, 2001. The Aviation Security Infrastructure Fee is necessary to help defray TSA's costs of providing U.S. civil aviation security services. In order to assist TSA in determining the statutory cap for these fees, each air carrier and foreign air carrier who paid for passenger and property screening in calendar year 2000 must complete Appendix A to this part and submit it to TSA by May 18, 2002. The Aviation Security Infrastructure Fee imposed on each air carrier and foreign air carrier will be based on the information the carrier provides in Appendix A. The fee imposed on each air carrier and foreign air carrier for the period running from February 18 through April 30, 2002, must be remitted to TSA by May 31, 2002. Thereafter, payment must be remitted to TSA by the last calendar day of each month.

DATES: This interim final rule is effective on February 18, 2002. Although the imposition of the Aviation Security Infrastructure Fee is statutorily exempted from the rulemaking notice and comment procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553, comments received on or before March 18, 2002 will be reviewed and considered.

ADDRESSES: Submit written, signed comments to TSA Docket No. 2002-11334, the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-

0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard on which the following statement is made: "Comments to Docket No. TSA-2002-11334." The post card will be date stamped and mailed to the sender. Comments also may be sent electronically to the Dockets Management System (DMS) at: <http://dms.dot.gov> at any time. Those who wish to file comments electronically should follow the instructions on the DMS web site.

Public Meeting: TSA is considering the possibility of holding a public meeting on this matter and, if so, will issue a separate document in the **Federal Register** to inform the public as to the exact date and location of such a meeting.

FOR FURTHER INFORMATION CONTACT: For guidance involving technical matters: Randall Fiertz, Deputy Director, Cost and Performance Management, Federal Aviation Administration, c/o Department of Transportation (DOT), Office of the Secretary, Office of the Assistant Secretary for Budget and Programs, 400 Seventh St., SW., Room 10101, Washington, DC 20590; telephone (202) 366-9192. For other matters: Rita M. Maristch, Department of Transportation, Office of the General Counsel, Office of Environmental, Civil Rights and General Law, 400 Seventh St., SW., Room 10102, Washington, DC 20590; telephone (202) 366-9161. Office hours are from 9:00 a.m. to 5:30 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Availability of the Interim Final Rule and Comments Received**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov>.

Internet users can access this document and all comments received by TSA through DOT's docket management system web site, <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. However, because TSA was just established on November 19, 2001, pursuant to Aviation and Transportation Security Act, Pub. L. 107-71, it does not yet have the infrastructure or personnel to provide such information and guidance. Until such time that it does, the Office of the Secretary of Transportation will handle all SBREFA inquiries. Accordingly, any small entity that has a question regarding this document may contact the individuals listed under the caption **FOR FURTHER INFORMATION CONTACT**.

Background*The September 11 Terrorist Attacks and the Aviation and Transportation Security Act*

The September 11, 2001 terrorist attacks and the potential for future attacks led Congress to enact the Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA), November 19, 2001, which established TSA as an administration within DOT. TSA is headed by the Under Secretary of Transportation for Security (Under Secretary).

Section 118 of ATSA added § 44940 to Title 49, U.S.C. Section 44940 requires that within 60 days of ATSA's enactment, or as soon as possible thereafter, (1) TSA impose security service fees on passengers of air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation (air transportation) who are enplaning aircraft on flights originating at airports in the United States; and (2) to the extent the passenger fees are insufficient to cover TSA's costs of providing civil aviation security services, TSA may impose additional fees on air carriers and foreign air carriers in air transportation. The fees are to help pay the costs of providing U.S. civil aviation security services, which are described in § 44940(a)(1) as:

(1) The salary, benefits, overtime, retirement and other costs of screening personnel, their supervisors and managers, and Federal law enforcement personnel deployed at airport security screening locations;

(2) The costs of training such personnel and the acquisition, operation, and maintenance of equipment used by these personnel;

- (3) The costs of performing background investigations of personnel;
- (4) The costs of the Federal air marshals program;
- (5) The costs of performing civil aviation security research and development under Title 49, U.S.C.;
- (6) The costs of Federal Security Directors; and
- (7) The costs of deploying Federal law enforcement personnel.

According to § 44940(a)(1), the Under Secretary must determine the amount of the costs of providing these civil aviation security services. His determination is conclusive and not subject to judicial review.

Section 44940(c) provides that the security service fee imposed on passengers may not exceed \$2.50 per enplanement or \$5.00 per one-way trip. On December 31, 2001, TSA published an interim final rule "Imposition and Collection of Passenger Civil Aviation Security Service Fees" (September 11th Security Fees) in the **Federal Register**, 66 FR 67698. This IFR imposed a September 11th Security Fee in the amount of \$2.50 on certain passengers enplaning aircraft in air transportation. Passengers may not be charged for more than two enplanements per one-way trip or more than four enplanements per round trip. Pursuant to 49 CFR 1510, direct air carriers and foreign air carriers were required to begin collecting the September 11th Security Fee on February 1, 2002.

The September 11th Security Fee is set at the maximum amount permitted by ATSA because the costs of providing civil aviation security services, as determined by the Under Secretary, are greater than the amount that would be recovered by the collection of fees at that level. Based on collections beginning on February 1, 2002, the September 11th Security Fees collected at the statutory maximum would yield less than \$1 billion in fiscal year 2002. The yield would be slightly more in future fiscal years, but will still be insufficient to cover TSA's costs in providing security services identified in 49 U.S.C. 44940.

Section 44940(a)(2)(A) expressly states that if revenues from the September 11th Security Fee are expected to fall short of the amount required to cover civil aviation security service costs, TSA may impose a fee on air carriers and foreign air carriers in air transportation to cover that shortfall. Pursuant to the terms of ATSA, the amount of that fee collected each fiscal year by TSA may not exceed the aggregate amount air carriers and foreign air carriers paid for screening passengers and property in calendar

year 2000, as determined by the Under Secretary. For fiscal years 2002 through 2004, the fee imposed on each air carrier and foreign air carrier is limited to the amount that carrier paid for screening passengers and property in calendar year 2000, as determined by the Under Secretary. In addition, the fee collected in fiscal year 2002 may not exceed the amount each carrier paid for screening passengers and property for the period of time in calendar year 2000 proportionate to the period of time in fiscal year 2002 during which the fees are collected. Beginning in fiscal year 2005, the Under Secretary may determine the per-carrier limitation on the basis of market share or any other appropriate measurement, rather than on the carrier's actual screening costs in calendar year 2000.

ATSA requires that the air carrier fee is to be imposed through publication of a notice in the **Federal Register**. However, the statute exempts the imposition of these fees from the procedural rulemaking requirements of 5 U.S.C. 553 and the user fee requirements of 31 U.S.C. 9701.

Section 44940(e)(4) permits the Under Secretary to require an air carrier or foreign air carrier to provide any information necessary to verify that the amount of the fee imposed on the carrier is correct and that the fees are remitted in accordance with law and regulation. According to § 44940(e)(5), the air carrier fee is not considered to be part of the amount paid for taxable transportation under 26 U.S.C. 4261. In addition, § 44940(e)(6) prohibits an air carrier and foreign air carrier from retaining any portion of the fee to cover the carrier's costs of remitting the fee.

The Interim Final Rule

Effective February 18, 2001, the Under Secretary is imposing a fee on air carriers and foreign air carriers engaged in air transportation to pay for the costs of providing U.S. civil aviation security service. For purposes of this rule, the fee will be described as the Aviation Security Infrastructure Fee. The applicability of this part is currently limited to air carriers and foreign air carriers operating passenger aircraft in air transportation. In accordance with 49 U.S.C. 44901(f), TSA is currently considering the screening system necessary to ensure the security of cargo that is transported by all-cargo aircraft in air transportation.

Section 1511.3 provides definitions for various terms used in this part. If a term is not specifically defined in this section, the definitions provided in 49 U.S.C. 40102 apply. TSA anticipates

issuing additional general definitions, which will provide further guidance.

According to § 1511.5 of this part, TSA may not collect Aviation Security Infrastructure Fees in an amount that would exceed the aggregate amount air carriers and foreign air carriers paid for screening passengers and property in calendar year 2000, as determined by the Under Secretary. For fiscal years 2002 through 2004, this limitation is constrained by a "per-carrier" limitation. More specifically, TSA may not collect Aviation Security Infrastructure Fees from an air carrier or foreign air carrier in an amount that exceeds the amount that carrier paid for screening passengers and property in calendar year 2000, as determined by the Under Secretary. For fiscal years 2005 and beyond, the Under Secretary will redetermine the "per-carrier" limitation and such redeterminations may be based on the carrier's respective market share or any other appropriate measure in lieu of its actual screening costs in calendar year 2000. Because the "per-carrier" limit through fiscal year 2004 must be based on each carrier's screening costs in 2000, air carriers and foreign air carriers that were not engaged in air transportation as defined in this part in calendar year 2000 will not be subject to the imposition of the Aviation Security Infrastructure Fee until 2005.

Accordingly, TSA must determine the aggregate amount carriers paid for passenger and property screening in calendar year 2000 and the amount each individual carrier paid for screening during that same year. Therefore, all air carriers and foreign air carriers engaged in air transportation in 2000 must fully complete the form set forth in Appendix A to this part, "Calendar Year 2000 Costs for Passenger and Property Screening" and submit the form to TSA pursuant to the instructions provided therein by May 18, 2002. In the case of a merger, acquisition, corporate restructuring, reorganization, or name change involving an air carrier or foreign air carrier that paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000, the successor entity must include those costs on Appendix A of this part and submit those costs together with its own costs to TSA on one form by May 18, 2002. Any other air carrier or foreign air carrier that is no longer providing air transportation, but was doing so in calendar year 2000, must also complete the form set forth in Appendix A and submit the form to TSA by May 18, 2002. Broad applicability of this requirement is necessary because the

aggregate amount paid by air carriers and foreign air carriers for screening passengers and property in calendar year 2000 will serve as the "overall limit" on the collection of Aviation Security Infrastructure Fees. This is particularly relevant to fiscal years 2005 and beyond since the "per-carrier" limitation will no longer be tied to an individual carrier's screening costs in 2000, and the costs of providing civil aviation security services will greatly exceed the revenues from fees collected pursuant to this part and part 1510. Information submitted in Appendix A will be used to assist the Under Secretary in determining the amount of Aviation Security Infrastructure Fee to be imposed on each carrier.

We specifically invite comments with respect to Appendix A. Other than comments placed in the public docket, information submitted pursuant to 49 U.S.C. 44940(a)(2)(B) or this part, including that contained in Appendix A, will be deemed Sensitive Security Information and subject to the non-disclosure requirements of 49 U.S.C. 40119(b). In addition, confidential business information provided in Appendix A will be protected from public disclosure, as appropriate, under 5 U.S.C. 552, 18 U.S.C. 1905, and 14 CFR 302.12. Requests for confidentiality for purposes of confidential business information must be filed with the Office of the General Counsel (C-10), Department of Transportation, at the address indicated in Appendix A.

Section 1511.7 of the interim final rule mandates that by May 31, 2002, each air carrier and foreign air carrier engaged in air transportation remit to TSA 3.273 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Under Secretary. Payment in this amount will represent the Aviation Security Infrastructure Fee due for the period running from February 18 through February 28, 2002. Also by May 31, 2002, these air carriers and foreign air carriers must remit 16.666 percent of the total amount the carrier has indicated in Appendix A, or an amount as otherwise determined by the Under Secretary. Payment in this amount will represent the Aviation Security Infrastructure Fee due for the period running March 1 through April 30, 2002. By the last calendar day of each month following May 2002 through September 2004, each air carrier and foreign air carrier must remit to TSA 8.333 percent of the total amount the carrier has indicated in Appendix A, or an amount as otherwise determined by the Under Secretary. By the last calendar day of each month

following September 2004, each air carrier and foreign air carrier must remit to TSA 8.333 percent of the total amount as determined by the Under Secretary.

Aviation Security Infrastructure Fees are payable to the "Transportation Security Administration" in U.S. currency and must be drawn on a U.S. bank. A monthly payment totaling \$1,000 or more must be remitted by electronic funds transfer. Although TSA strongly encourages that payment less than \$1,000 also be remitted by electronic funds transfer, such payment may be remitted by check, money order, wire transfer or draft. Carriers will be responsible for paying any bank processing charges on fees remitted pursuant to this part when such charges are assessed on the U.S. government. Specific instructions concerning remittance will be provided directly to air carriers and foreign air carriers and will be posted on the DOT web site at www.dot.gov in the near future.

Section 1511.9 of this interim final rule requires an air carrier or foreign air carrier to retain any and all documents, records, or information related to the amount of the Aviation Security Infrastructure Fees imposed on that carrier, including all information applicable to the costs submitted in Appendix A, and information that is reasonably necessary to complete an audit. No later than July 1, 2002, each air carrier and foreign air carrier must submit to TSA an audit performed by an independent certified public accountant of the information the carrier provided pursuant to this part. The accountant must express an opinion as to the fairness and reasonableness of the air carrier's or foreign air carrier's procedures for accounting for and remitting the fees. The accountant's working papers with respect to the audit must be included with this submission. Specific instructions concerning the submission of the audit and working papers will be provided directly to the air carriers and foreign air carriers and will be posted on the DOT web site at www.dot.gov in the near future.

This rule requires air carriers and foreign air carriers to allow certain authorized Federal representatives to review and audit any of the carrier's books and records and to provide other information necessary to verify that submissions pursuant to 49 U.S.C. 44940(a)(2)(B) and this part, including that contained in Appendix A, are true and correct and that the aviation security infrastructure fees were remitted consistent with law and regulation.

The rule's enforcement provision states that in addition to any other remedies allowed by law, falsification by any party, directly or indirectly, of information provided by an air carrier or foreign air carrier pursuant to this part, including information submitted in Appendix A, may be prosecuted criminally resulting in a fine and/or imprisonment under 18 U.S.C. 1001. An air carrier's or foreign air carrier's failure to comply with the requirements 49 U.S.C. 44940 or the provisions of this part may result in a claim due the United States by the carrier, which shall be collectable pursuant to Federal Claims Collection Act and implementing DOT regulations at 49 CFR part 89.

Good Cause for Immediate Adoption

Section 44940(d)(1) of title 49, U.S.C., explicitly exempts the imposition of the civil aviation security service fees authorized in § 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553. In addition, it would be impractical and contrary to the public interest to provide for notice and an opportunity for comment before issuing this rule. Immediate action is expressly contemplated by ATSA and necessary to begin collecting the security service fees provided for by the statute. However, TSA will consider all comments received on or before the closing date for comment, including comments received before the issuance of this rule. We will also consider comments filed late to the extent practicable. We may amend this rule in light of the comments we receive.

Paperwork Reduction Act

TSA has determined that this interim final rule will impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35) (PRA). TSA is required to submit this proposed collection of information to the Office of Management and Budget (OMB) for review and approval and, accordingly, seeks public comments. Pursuant to 5 CFR 1320.13, *Emergency processing*, TSA has asked OMB for temporary emergency approval for this collection. Interested parties are invited to send comments regarding any aspect of the information collection requirements, including: (1) Whether the collection of information is necessary for TSA's performance of its statutory duties, including whether the information has practical utility; (2) the accuracy of the estimated burden provided to OMB; (3) ways to enhance the quality, utility, and

clarity of the collection of information, and (4) ways to minimize the collection burden without reducing the quality of the information collected. For further information or to comment you may contact: The Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention Desk Officer for the Transportation Security Administration. You may also contact Rita Maristch at the address listed under **FOR FURTHER INFORMATION CONTACT** or Steven Cohen, Office of the General Counsel (C-10), at (202) 366-4684.

Summary: The TSA has submitted a request for emergency processing of a public information collection to OMB for review and clearance of the reporting and recordkeeping requirements associated with this interim final rule in accordance with PRA. The Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden.

Type of Request: New.

Abstract: For purposes of collecting information necessary to establish the Aviation Security Infrastructure Fee, which will help pay for the costs of providing civil aviation security services as described in 49 U.S.C. 44940 that are not otherwise covered by the collection of the September 11th Security Fee (66 FR 67698, December 31, 2001), air carriers and foreign air carriers will be required to provide information regarding their costs for screening passengers and property in calendar year 2000 and provide for an independent audit of this information to establish and administer this fee.

Form Number: An application for a control number for the form has been submitted to OMB.

Affected Public: The information collection requirement applies to air carriers or foreign air carriers providing air transportation, foreign air transportation, and intrastate air transportation.

Number of Respondents: This information request will apply to approximately 195 air carriers and foreign air carriers.

Frequency: This is a one-time collection.

Estimated Annual Burden: Using the above estimate of 195 carriers who will have to respond, with an estimate of 40 hours of preparation to collect and provide information regarding security costs for screening passengers and property in calendar year 2000, at an assumed rate of \$50 an hour, the estimated cost of collecting and

preparing the information necessary for 195 respondents is \$390,000. In addition, the cost of preparing and submitting 195 independent audits of this information, with an estimate of 120 hours of time to conduct each audit, at an assumed rate of \$150 per hour, is \$3,510,000. Adding in a postage cost of \$218.40 (195 responses at a cost of \$1.12 to mail each one), we estimate that it will cost \$3,900,218.40 for the affected air carriers and foreign air carriers to prepare, audit, and submit the information necessary to satisfy the information collection requirement.

Economic Analyses

This rulemaking has been reviewed under the provisions of § 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review, as well as under DOT's regulatory policies and procedures because it may impose significant costs on air carriers and foreign air carriers. An assessment in accordance with the Executive Order will be conducted in the future. No additional regulatory analysis or evaluation accompanies this rule. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980. When no notice of proposed rulemaking has first been published, the Regulatory Flexibility Act does not apply.

Executive Order 13132, Federalism

The TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, the TSA has not prepared a statement under the Act.

Environmental Review

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended. (42 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1511

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Fees, Foreign air carriers, Recordkeeping and reporting requirements, Security measures.

Issued in Washington, DC, on February 14, 2002.

John W. Magaw,

Under Secretary of Transportation for Security.

For the reasons set forth in the preamble, the Transportation Security Administration adds a new part 1511 in Title 49 in Chapter XII, Subchapter A, of the Code of Federal Regulations to read as follows:

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

Sec.

- 1511.1 Applicability and purpose.
- 1511.3 Definitions.
- 1511.5 Imposition of Aviation Security Infrastructure Fees.
- 1511.7 Remittance of Aviation Security Infrastructure Fees.
- 1511.9 Accounting and auditing requirements.
- 1511.11 Federal oversight.
- 1511.13 Enforcement.

Appendix A to Part 1511—Aviation Security Infrastructure Fee.

Authority: 49 U.S.C. 44901 and 44940.

§ 1511.1 Applicability and purpose.

(a) This part prescribes the imposition of a fee on air carriers and foreign air carriers in air transportation to pay for the costs of providing U.S. civil aviation security services as described in 49 U.S.C. 44940.

(b) For purposes of this part, the fee will be described as the "Aviation Security Infrastructure Fee."

§ 1511.3 Definitions.

The following definitions apply for purposes of this part. For other definitions that may be applicable to this part refer to 49 U.S.C. 40102.

Air transportation means the carriage by passenger aircraft of persons or property for compensation or hire in intrastate air transportation, interstate air transportation, or foreign air transportation.

Aircraft means a device that is used or intended to be used for flight in the air.

Fiscal year means the fiscal year for the Federal government, which begins each year October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends, e.g., fiscal year 2002 is the year beginning October 1, 2001, and ending September 30, 2002.

Foreign air transportation means air transportation between a place in the United States and any place outside of the United States.

Interstate air transportation means air transportation within the United States.

Intrastate air transportation means air transportation wholly within the same State of the United States.

Passenger aircraft means an aircraft that is used to transport passengers in air transportation.

Property means mail, cargo, carry-on and checked baggage, and any other articles transported by passenger aircraft operated by an air carrier or foreign air carrier in air transportation, but excluding property transported under the "Known Shipper Program."

Under Secretary means the Under Secretary of Transportation for Security or the Under Secretary's designee.

§ 1511.5 Imposition of Aviation Security Infrastructure Fees.

(a) Effective February 18, 2002, an Aviation Security Infrastructure Fee will be imposed on air carriers and foreign air carriers engaged in air transportation.

(b) The amount of the Aviation Security Infrastructure Fee for each fiscal year will not exceed, in the aggregate, the amounts paid in calendar year 2000 by air carriers and foreign air carriers for the screening of passengers and property transported by passenger aircraft in the United States, as determined by the Under Secretary.

(c) For fiscal years 2002, 2003 and 2004, the amount of the Aviation Security Infrastructure Fee imposed on each air carrier and foreign air carrier

will not exceed the amount each such carrier paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000, as determined by the Under Secretary.

(d) Each air carrier and foreign air carrier that paid for the screening of passengers and property in calendar year 2000 must fully complete the form set forth in Appendix A to this part titled, "Calendar Year 2000 Costs Paid for Passenger and Property Screening," and submit the completed form to the Transportation Security Administration by May 18, 2002.

(e) In the case of a merger, acquisition, corporate restructuring, reorganization, or name change involving an air carrier or foreign air carrier that paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000, the successor entity must include those screening costs in Appendix A of this part and submit those costs together with its own costs on one form in accordance with paragraph (d) of this section. Any other air carrier or foreign air carrier that paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000 but is no longer providing air transportation must also complete the form set forth in Appendix A and submit the form in accordance with paragraph (d) of this section.

(f) The Under Secretary has determined that the information submitted pursuant to this part and 49 U.S.C. 44940(a)(2)(B) is Sensitive Security Information and is subject to the non-disclosure requirements of 49 U.S.C. 40119(b).

(g) The amount of the Aviation Security Infrastructure Fee imposed on each air carrier and foreign air carrier will be redetermined for fiscal years 2005 and beyond, and such redeterminations may be based on the carrier's respective market share or any other appropriate measure in lieu of the measure provided in paragraph (c) of this section.

§ 1511.7 Remittance of Aviation Security Infrastructure Fees.

(a) No later than May 31, 2002, each air carrier and foreign air carrier engaged in air transportation must remit to TSA.

(1) 3.273 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Under Secretary, which will represent the Aviation Security Infrastructure Fee due for the

period running from February 18 through February 28, 2002; and,

(2) 16.666 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Under Secretary, which will represent the Aviation Security Infrastructure Fee due for period running from March 1 through April 30, 2002.

(b) Each air carrier and foreign air carrier engaged in air transportation must remit to TSA 8.333 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Under Secretary, by the last calendar day of each month following May 2002 up to and including September 2004.

(a) Each air carrier and foreign air carrier engaged in air transportation must remit to TSA 8.333 percent of the total amount as determined by the Under Secretary pursuant to section 1511.5(g) of this part by the last calendar day of each month following September 2004.

(b) Aviation Security Infrastructure Fees must be payable to the "Transportation Security Administration" in U.S. currency and drawn on a U.S. bank.

(1) Aviation Security Infrastructure Fees of \$1,000 or more must be remitted by electronic funds transfer.

(2) Aviation Security Infrastructure Fees under \$1,000 may be remitted by electronic funds transfer, check, money order, wire transfer, or draft.

(a) Air carriers and foreign air carriers are responsible for paying any bank processing charges on Aviation Security Infrastructure Fees remitted under this part when such charges are assessed on the U.S. government.

§ 1511.9 Accounting and auditing requirements.

(a) Each air carrier and foreign air carrier must submit an audit performed by an independent certified public accountant of the information provided pursuant to this part to the Transportation Security Administration by July 1, 2002. The cost of the audit will be borne by the carrier. The accountant must express an opinion as to the fairness and reasonableness of the air carrier's and foreign air carrier's procedures used for accounting and remitting the fees. The accountant's working papers with respect to the audit must accompany this submission.

(b) Each air carrier and foreign air carrier must maintain and retain any and all documents, records, or information related to the amount of the Aviation Security Infrastructure Fees imposed on the carrier pursuant to this

part, including all information applicable to the costs submitted in Appendix A, and information that is reasonably necessary to complete an audit.

§ 1511.11 Federal oversight.

(a) Upon request, air carriers and foreign air carriers must allow any authorized representative of the Secretary of Transportation, the Under Secretary of Transportation for Security, the Inspector General of the Department of Transportation, or the Comptroller General of the United States to audit or review any of the books and records and provide any other information necessary to verify that:

(1) The information submitted pursuant to 49 U.S.C. 44940(a)(2)(B) and this part, including that provided in Appendix A, is true and correct; or

(2) The Aviation Security Infrastructure Fees were remitted consistent with this part.

§ 1511.13 Enforcement.

(a) In addition to any other remedies allowed by law, willful falsification by any party, directly or indirectly, of information provided by an air carrier or foreign air carrier pursuant to this part, including information submitted in Appendix A as required by section 1511.5 of this part, may be prosecuted criminally resulting in a fine and/or imprisonment under 18 U.S.C 1001.

(b) An air carrier's or foreign air carrier's failure to comply with the requirements of 49 U.S.C. 44940 or the provisions of this part may result in a claim due the United States by the carrier, which claim shall be collectable pursuant to 31 U.S.C. Chapter 37 and the Department of Transportation's implementing regulations at 49 CFR part 89.

Appendix A to Part 1511—Aviation Security Infrastructure Fee

Instructions

General guidance

When filling out this form, the responding air carrier or foreign air carrier shall include all costs incurred in calendar year 2000 by that air carrier for the screening of passengers and property. Costs are those attributed to the screening of passengers and property in the United States for both flights within the United States and flights from the United States to foreign destinations. Reported costs must be consistent with the air carrier's financial accounting information reported in accordance with generally accepted accounting principles.

Where actual costs of screening passengers and property cannot be directly identified through an air carrier's accounting system, the air carrier shall use an appropriate alternate cost assignment methodology. Documentation that explains and supports the assignment methodology used, the applicable pool and the allocation basis must be made available upon request. For costs related to capitalized property, please report the associated depreciation expense incurred during calendar year 2000. Capitalization policy must also be made available upon request.

To the extent necessary, the reporting air carrier may aggregate those specific costs that have been incurred but cannot be stated in the detailed cost categories requested by this form. However, all of the costs identified by this form must be included in the total calculations. In addition, explanations regarding costs that have been aggregated need to be provided. Costs reported in Appendix A do not need to include costs that may have been incurred for a position higher than those of the air carrier's director of security (or equivalent). Costs incurred for higher positions, such as those of the air carrier's chief executive officer, do not need to be included.

When including cost information on acquired and/or merged air carriers, the successor air carrier must specify the names of all of such entities whose calendar year

2000 passenger and property screening costs are included in that air carrier's submission as Appendix A.

The costs listed below are to be in US dollars, rounded to the nearest dollar. Place a zero in the appropriate box to indicate cost categories in which the air carrier did not incur costs for passenger and property screening in calendar year 2000.

Supporting Notes

Examples of cost types that appear in the supporting notes below are for illustrative purposes only and are not intended to set forth all relevant costs that must be reported by air carriers and foreign air carriers. In submitting information to TSA, air carriers and foreign air carriers must submit all of their relevant costs, regardless of whether those costs have been specifically illustrated in the notes.

Submission of Data

This form will be available electronically from the Department of Transportation's website at www.dot.gov. Air carriers are asked to return the completed form by certified mail to: Chief Financial Officer, Transportation Security Administration, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. Please also submit the same information in Microsoft Word either on a computer disk or by e-mail to TSA-Fees@ost.dot.gov.

Confidentiality of Data

Consistent with 49 CFR § 1511.5(f), information submitted in Appendix A is deemed to be Sensitive Security Information and will be so protected from public disclosure under 49 U.S.C. 40119(b). In addition, confidential business information and economic information provided in Appendix A will be protected from public disclosure, as appropriate, under 5 U.S.C. § 552 (the Freedom of Information Act), 14 CFR § 302.12, and 18 U.S.C. § 1905. Requests for confidentiality must be filed with the Office of the General Counsel, Department of Transportation (C-10), 400 Seventh Street, SW, Room 10102, Washington, DC 20590

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Calendar Year 2000 Costs for Passenger and Property Screening

Air Carrier name(s): _____

Date Form Completed: _____

| | <u>Cost Categories</u> | <u>Costs Incurred Directly by Air Carriers^a</u> | <u>Costs Incurred Through Security Firm Contracts^b</u> | <u>Costs Incurred Through Other Means^c</u> | <u>Total Costs Incurred</u> |
|----|--|--|---|---|-----------------------------|
| 1 | Checkpoint Screening Personnel | | | | |
| 2 | Exit Lane Monitors | | | | |
| 3 | Cargo Screeners | | | | |
| 4 | Checked Baggage Screeners | | | | |
| 5 | Baggage Runners | | | | |
| 6 | Supervisory Personnel | | | | |
| 7 | Non-Labor Costs | | | | |
| 8 | Background Checks | | | | |
| 9 | Training and Testing | | | | |
| 10 | Training Records | | | | |
| 11 | Evaluations | | | | |
| 12 | Drug and Alcohol Testing and Treatment | | | | |

A) Screening Personnel and Supervisors:

| | <u>Cost Categories</u> | <u>Costs Incurred Directly by Air Carriers</u> | <u>Costs Incurred Through Security Firm Contracts^b</u> | <u>Costs Incurred Through Other Means^c</u> | <u>Total Costs Incurred</u> |
|-------------------------------------|---|--|---|---|-----------------------------|
| 13 | Uniforms | | | | |
| 14 | Canines | | | | |
| 15 | Cost of Obtaining Security Clearances | | | | |
| | Total for Section A | | | | |
| 16 | Screening Equipment Installation | | | | |
| 17 | Operating, Operational Maintenance and Testing of Installed Screening Equipment | | | | |
| 18 | Maintenance of Sterile Areas | | | | |
| 19 | Checkpoint Signs and Related Equipment | | | | |
| 20 | Exceptional Screening for Persons and Property | | | | |
| 21 | Security Company Contracts | | | | |
| | Total for Section B | | | | |
| 22 | Real Estate | | | | |
| 23 | Utilities | | | | |
| | Total for Section C | | | | |
| B) Equipment and Procedures: | | | | | |
| C) Property and Plant: | | | | | |

| | <u>Cost Categories</u> | <u>Costs Incurred Directly by Air Carriers</u> | <u>Costs Incurred Through Security Firm Contracts^b</u> | <u>Costs Incurred Through Other Means^c</u> | <u>Total Costs Incurred</u> |
|--|----------------------------|---|---|---|-----------------------------|
| D) Program Management and Contract Oversight: | 24 | Ground Security Coordinators | | | |
| | 25 | Security Program Management | | | |
| | 26 | Security Contract Administration and Oversight | | | |
| | 27 | Screener/Supervisor Background Check Audits | | | |
| | 28 | Legal Support | | | |
| | 29 | Accounting Support | | | |
| | 30 | Other Administrative Support | | | |
| | 31 | Insurance | | | |
| | 32 | Law Enforcement Costs | | | |
| | 33 | Recruitment Expenses | | | |
| | Total for Section D | | | | |
| E) Security Consortium Costs: | 34 | Management Fees for Oversight of Consortium Contracts | | | |
| | | Total for Section E | | | |

| | <u>Cost Categories</u> | <u>Costs Incurred Directly by Air Carriers</u> | <u>Costs Incurred Through Security Firm Contracts^b</u> | <u>Costs Incurred Through Other Means^c</u> | <u>Total Costs Incurred</u> |
|------------------|--------------------------------|--|---|---|-----------------------------|
| <i>F) Other:</i> | 35 Other | | | | |
| | <i>Total for Section F</i> | | | | |
| | <i>Total for all Sections:</i> | | | | |

Supporting Notes

a. These are costs that the air carrier incurred directly. Includes costs incurred for air carrier personnel salaries and benefits, equipment owned, leased or rented directly by that air carrier and any other costs directly incurred.

b. These are costs that the air carrier incurred through contracts with security firms. Includes personnel, equipment and other costs incurred through contracts with third party security companies.

c. These are costs that the air carrier incurred through other means. Includes costs incurred through air carrier security consortiums.

1. Salary, benefits, overtime, retirement and other costs of checkpoint screening personnel.

2. Salary, benefits, overtime, retirement and other costs of exit lane monitors.

3. Salary, benefits, overtime, retirement and other costs of cargo screeners.

4. Salary, benefits, overtime, retirement and other costs of checked baggage screeners.

5. Salary, benefits, overtime, retirement and other costs of all baggage runners who move property such as baggage to and from screening areas.

6. Salary, benefits, overtime, retirement and other costs of all supervisory personnel, including Checkpoint Screening Supervisors.

7. All associated expensed non-labor costs including computers, communications equipment, time management systems, supplies, parking, identification badging, furniture, fixtures, and travel.

8. All costs of performing required background investigations on all screening personnel and supervisors. Screening personnel and supervisors includes checkpoint screening personnel, exit lane monitors, cargo screeners, checked baggage screeners, baggage runners, and their supervisors.

9. All costs incurred for the training and testing of all screening personnel and supervisors, including initial, recurrent and remedial training. Includes any computer-based training and the development of training programs for the screening of persons and property as well as any travel, room and board, and all other such expenses related to training.

10. The costs of implementing and maintaining training records for all screening personnel and supervisors.

11. The costs of completing evaluations for all screening personnel and supervisors.

12. All costs for drug and alcohol testing as well as any associated counseling and/or treatment for all screening personnel and supervisors.

13. All costs of renting, purchasing, maintaining, and/or cleaning of uniforms and

any related equipment such as flashlights and batons for all screening personnel and supervisors.

14. All costs incurred by air carriers for the use of canines and their handlers used for the screening of persons and property.

15. All costs associated with obtaining security clearances for personnel relating to the screening of persons and property.

16. All costs associated with the purchase, installation, and testing of all screening equipment. In instances where the equipment is capitalized, provide the depreciation expense in lieu of costs associated with purchase, installation, and final acceptance testing. This includes such equipment as Metal Detection Devices, Hand Wands, X-ray screening machines, Explosives Trace Detection Devices, Explosives Detection Systems, or any other such similar technologies. Includes any costs incurred or depreciation costs recognized in calendar year 2000 for the modification and/or construction of any facility needed to accommodate screening, including architecture and engineering. Also includes the costs of any refurbishment and/or modernization of the equipment.

17. Costs of operating, maintaining, and calibrating installed screening equipment. This includes such equipment as Metal Detection Devices, Hand Wands, X-ray screening machines, Explosives Trace Detection Devices, Explosives Detection Systems, or any other such similar technologies. Includes such costs as test objects and X-ray radiation surveys, electricity costs and maintenance contract costs incurred for the operations of such equipment.

18. Costs of maintaining integrity of sterile areas. Includes costs of opening sterile areas, emergency evacuations of sterile areas, and re-screenings not included elsewhere.

19. The cost of purchase or rent, installation, testing, and maintenance of checkpoint signs, barriers, lane markers, and exit lane doors.

20. Any additional costs for special screening such as for disabled passengers, VIP passengers, classified and/or high value items.

21. All security company contract costs for the screening of persons and property that cannot be detailed into any other cost category.

22. All direct costs for the real estate utilized for the screening of persons and property. Includes space at airports for the performance of these functions, as well as such space used for break rooms, private screening rooms, storages space, training rooms, and office space. Also includes appropriate space for the oversight of the

screening functions outside of airports such as in headquarters or regional offices.

23. All costs for utilities used for screening. Includes electricity, heating/ventilation/cooling, and telecommunications costs not elsewhere specified.

24. All costs incurred for the Ground Security Coordinator's oversight of the screening functions. Includes personnel salaries, benefits, retirement, training, and non-labor costs.

25. All air carrier head office, regional, or airport specific costs associated with the administration and oversight of screening not elsewhere specified. Includes personnel salaries, benefits, retirement, training, and non-labor costs.

26. All costs associated with the administration and oversight of screening contracts. Includes personnel, benefits, retirement, training, and non-labor costs.

27. All costs not elsewhere specified for background audit checks for all screeners and supervisors.

28. All legal support costs incurred during calendar year 2000 relating to aviation security screening. Includes legal assistance for the implementation and execution of security screening contracts.

29. All costs for accounting and financial services incurred for the support of the screening functions.

30. Includes all labor and non-labor costs for such items as human resource administration, clerical assistance, information technology, and other support functions related to screening.

31. All insurance costs relating to screening. Includes worker's compensation and general liability insurance.

32. All costs incurred by the air carriers for law enforcement personnel costs that were reimbursed by the air carriers for services performed in connection with the screening of persons and property.

33. All costs associated with the recruitment of screening personnel and supervisors. Includes signing bonuses, travel, and other recruitment expenses.

34. Any costs incurred for fees charged by other organizations for the management of contracts for the screening of persons and property.

35. Any costs incurred not elsewhere specified during calendar year 2000 for the screening of passengers and property. These costs should be itemized on a separate sheet. Includes any fines or monetary penalties incurred for screening as well as any profit/bonuses paid to contractors for screening services not included elsewhere on the form.

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Certification:

I certify that the information contained in this form (Appendix A-Part 1511) is true and accurate under penalty of law. Willful falsification of any information contained in this form under Part 1511 in Title 49, Chapter XII may be prosecuted criminally and result in a fine and/or imprisonment. (18 U.S.C. 1001)

Certifying Officer (signature)_____
Date_____
Print Name and Title (CEO, CFO or COO)_____
Telephone Number***Contact Information:***

Listed below are the contact name, title, address and telephone number of the person responsible for the payment of the Aviation Security Infrastructure Fees to the Transportation Security Administration:

Name: _____

Title: _____

Address: _____

Telephone: _____

Person Who Prepared Document:

Listed below are the contact name, title, address and telephone number of the person who prepared this document:

Name: _____

Title: _____

Address: _____

Telephone: _____