

related reporting requirements and ensuring that data filed by carriers are adequate, truthful, and thorough.

#### IV. Ordering Clauses

Pursuant to section 410(b) of the Communications Act of 1934, 47 U.S.C. 410(b), that the Federal-State Joint Conference on Accounting Issues be convened.

Pursuant to section 410(b) of the Communications Act of 1934, 47 U.S.C. 410(b), that the Federal-State Joint Conference shall be chaired by the Honorable Michael K. Powell or his designee and shall be comprised of any or all of the other Federal commissioners and representatives from up to five State commissions, who shall be recommended by the National Association of Regulatory Utility Commissioners.

#### List of Subjects in 47 CFR Parts 32, 42, 51, and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## 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 (TSA), DOT.

**ACTION:** Final waiver of audit submission requirements.

**SUMMARY:** TSA is issuing this document to inform all air carriers and foreign air carriers that, under certain conditions, it will defer enforcement of the independent audit submission deadline set forth in the regulations on Aviation Security Infrastructure Fees. This will be the final such deferral.

**DATES:** Under the conditions described in this document, TSA is allowing air carriers and foreign air carriers until December 31, 2002 to finalize and submit to TSA the independent audits required by 49 CFR part 1511.

**FOR FURTHER INFORMATION CONTACT:** For guidance on technical matters contact

Randall Fiertz, Acting Director of Revenue, (202) 385-1209. For guidance on legal or other matters contact Steven Cohen, Office of Chief Counsel, (202) 493-1216.

**SUPPLEMENTARY INFORMATION:** In order to offset the costs of providing civil aviation security services, TSA published in the **Federal Register** an interim final rule (67 FR 7926; February 20, 2002), codified at 49 CFR part 1511, that imposed the Aviation Security Infrastructure Fee on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation.

Sections 1511.5 and 1511.7 require these carriers to provide TSA with certain information on their costs related to screening passengers and property incurred in 2000. This information was due to be received by TSA by May 18, 2002. Section 1511.9 requires each such carrier to provide for and submit to TSA an independent audit of these costs, which were due to be received by TSA by July 1, 2002.

As reflected in the public docket on the Aviation Security Infrastructure Fee regulation, TSA-2002-11334, as available online at <http://dms.dot.gov>, TSA denied several requests that it alter the audit requirement and extend the July 1, 2002 audit deadline.

However, on three occasions TSA has announced that it would temporarily defer enforcement of the audit submission deadline against carriers that meet certain criteria related to the fees by certain dates. These criteria are that the carriers must make timely and proper fee payments, must submit any necessary revisions to their part 1511 Appendix A submission(s), and must remit all adjusted fee payments retroactive to February 18, 2002. The first announcement appeared in TSA's "Guidance for the Aviation Security Infrastructure Fee," as published in the **Federal Register** on May 1, 2002 (docket item no. 20). The second announcement was in TSA's July 24, 2002, response letter to the Air Transport Association (docket item no. 35). The third such announcement, which extended this conditional waiver of enforcement of the regulation's audit submission deadline until October 31, 2002, was published in the **Federal Register** on September 4, 2002 (docket item no. 39).

TSA's motivation in allowing additional time for the carriers to provide for and submit independent audits of their Appendix A submissions has been twofold. First, the agency was responding to numerous public requests for more time to allow the carriers to

conduct proper audits. Second, TSA was allowing for time for the 107th Congress to consider one of the Department of Transportation's proposed technical corrections to Section 118 of the Aviation and Transportation Security Act (Pub. L. 107-71), codified at 49 U.S.C. 44940. Among other changes, this proposed correction would have revised the current fee structure by setting the total fee at a flat amount that would then be apportioned among air carriers and foreign air carriers by TSA according to market share or another appropriate method, beginning in fiscal year 2003. This revision would have eliminated the need for each carrier to provide TSA with an independent audit of its Appendix A submissions regarding their calendar year 2000 costs related to screening passengers and property.

To date, Congress has not acted on this proposal. Because it now appears unlikely that this proposed revision will be enacted during the current session of Congress, TSA is issuing this document to allow time for carriers to finalize and submit to TSA the independent audits required by 49 CFR part 1511. By this document, under the above conditions, TSA extends the current temporary deferral of enforcement for air carriers and foreign air carriers whose independent audits are received by TSA on or before December 31, 2002. TSA is neither waiving nor deferring enforcement of any other requirement set forth in 49 U.S.C. 44940 or 49 CFR part 1511. Absent relevant statutory change prior to December 15, 2002, please note that TSA will not grant further general deferrals or waivers of the independent audit submission requirement. Air carriers and foreign air carriers that are not in compliance after December 31, 2002, will be subject to civil enforcement and other appropriate actions.

Issued in Washington, DC, on October 28, 2002.

**James M. Loy,**

*Acting Under Secretary of Transportation for Security.*

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