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DEPT. OF TRANSPORTATION  
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BEFORE THE  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

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In the matter of :  
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NOTICE OF PROPOSED RULEMAKING :  
CONCERNING THE CERTIFICATION OF :  
SCREENING COMPANIES :  
 :  
Notice No. 99-21 :  
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Docket No. 1999-6673 - 46

**SUPPLEMENTAL COMMENTS  
OF THE  
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.**

The Air Transport Association of America, Inc. submits these supplemental comments about the proposed rule concerning the certification of screening companies.<sup>1</sup> We offer these comments because of a significant change in circumstances that has occurred since the April 4, 2000 deadline for submitting comments in this docket. These comments supplement those that we filed on that date.

Congress enacted the "Airport Security Improvement Act of 2000," Pub. Law No. 106-528 on November 22, 2000. Section 2 of that legislation amended

<sup>1</sup> ATA's members are Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International, Federal Express, Hawaiian Airlines, Midwest Express, Northwest Airlines, Polar Air Cargo, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways. ATA's associate members are Aeromexico, Air Canada, KLM—Royal Dutch Airlines, and Mexicana Airlines.

49 U.S.C. §44936(a)(1) to require that criminal history record checks be performed on persons applying for positions as screeners.

That provision, however, does not specify how the results of such checks are to be handled. For example, it does not designate the screening company that employs the prospective screener as the entity to initiate the fingerprint check process and be the recipient and custodian of the resulting record-check information. Equally important, neither existing provisions of the Federal Aviation Regulations nor the new Part 111 that is proposed in this rulemaking proceeding assign those responsibilities.

The absence of any assignment of those responsibilities has created significant public policy issues and practical problems that have become apparent since the December 23<sup>rd</sup> implementation of Pub. Law No. 106-528. Criminal history record check information now is transmitted to the air carrier that has engaged the screening company to perform passenger screening services. The prospective screener, of course, is an employee of the screening company—not of the air carrier. In other words, information that (1) is necessary for a *screening company's* determination about the employability of a person in a screening position and (2) which by its nature can be extraordinarily sensitive is being communicated to a third party, the airline. Moreover, the involuntary recipient—the airline—is compelled to safeguard information about the employee of another firm, to establish a custodial and retrieval system, and to forward it to the proper recipient, the screening company.

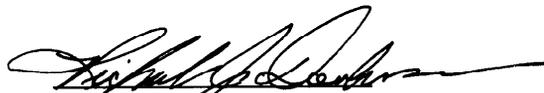
This obviously is an unsatisfactory arrangement. No need exists to have a private-sector intermediary with no relationship to the subject of the criminal history check involved in the handling and dissemination of this sensitive information. Indeed, there is no justification for it.

Instead, the screening company, which would become a regulated party under the proposed Part 111, should submit the fingerprint card and receive the results of the criminal history check. This is appropriate because its employee is the subject of the check.

We therefore respectfully request that Part 111 include a provision specifying that the screening company—and not the air carrier—is responsible for obtaining and transmitting fingerprints for criminal history checks and that it is the exclusive recipient and custodian of the results of such checks.

The change that we suggest would properly formalize the role of screening companies under the regime that Pub. Law No. 106-528 has created. Furthermore, it would more effectively safeguard clearly sensitive information about individuals.

Respectfully submitted,



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