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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 154

[Docket No. FAA - 2001-11172 Notice No. 01-13]

EP 12/17/01

RIN 2120-AH60

Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates

AGENCY: Federal Aviation Administration (FAA) DOT...

ACTION: Notice of proposed rulemaking.

SUMMARY: For part 154.

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We are proposing procedures for certain operators to apply for reimbursement of allowable costs incurred to comply with certain security requirements imposed by the FAA or Transportation Security Administration (TSA) on or after September 11, 2001. These procedures are needed to inform airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers how to apply for reimbursement of allowable costs. In the event that funds are appropriated for this purpose, the FAA or

Pub: 12/21/01
Cmt DATE: 1/22/02
Reply 12/15/01 @ 9:57pm

TSA would use the applications to approve reimbursement of allowable costs as described in this proposed rule.

DATES: Submit comments by [insert date 30 days after publication in the Federal Register.]

ADDRESSES: Address your comments to the Dockets Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590. You must identify the docket number FAA-2001-11172 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA and the TSA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to <http://dms.dot.gov>.

You may review the public docket containing comments to these regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Barry Molar, Manager, Airports Financial Assistance Division, Office of the Associate Administrator for Airports, (202) 267-3831, or Frank J. San Martin, Manager, Airports Law Branch, Office of the Chief Counsel, (202) 267-3199/3473 Federal Aviation Administration, 800 Independence Avenue, SW, Washington DC, 20590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. The proposals in this Notice may be changed in light of the comments received.

See "ADDRESSES" above for information on how to submit comments.

Availability of Proposed Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the rulemaking.

You can also get an electronic copy using the Internet through FAA's web page at <http://www.faa.gov/avr/armhome.htm> or the ^{Government Printing Office} Office of the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information and advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

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Background

As a consequence of the terrorists attacks on the United States on September 11, 2001, airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers have been required to dramatically increase security.

Acting to preserve the continued viability and security of the U.S. air transportation system, Congress enacted, and President Bush signed, the Aviation and Transportation Security Act ("the Act"), Public Law 107-71, 115 Stat. 597 (November 19, 2001).

Section 121(a) of the Act authorized to be appropriated to the Secretary of Transportation for fiscal years 2002 and 2003 a total of \$1.5 billion to reimburse airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers for direct costs incurred to comply with new, additional, or revised security requirements imposed by the FAA or the TSA on or after September 11, 2001. Under Section 121(b), costs must be documented to the satisfaction of the Secretary using sworn financial statements or other appropriate data demonstrating that the cost is eligible for reimbursement and was in fact incurred.

Section 121(c) requires that within 30 days (by December 19, 2001) and after consultation with airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers, the Secretary publish in the Federal Register the procedures for filing claims for reimbursement under section 121 of eligible costs incurred. In December 2001, FAA airports, security, and counsel staff consulted on proposed claim procedures, as required by the Act, with representatives of Airports Council International, Metropolitan Washington Airports Authority, Maryland Aviation Administration, American Association of Airport Executives, National Air Transportation Association (NATA), individual NATA members who provide services to air carriers, and vendors of on-airfield services. Consultations with representatives of on-airport parking lots are pending. Airport operators advised that a high percentage of on-airport parking lots are controlled by the airports and not by independent business entities.

This ^{action} notice contains the proposed procedures for filing claims for reimbursement under section 121 of eligible costs incurred by airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers.

Section-by-Section Analysis

Subpart A - General Provisions

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§154.1 What is the purpose of this part?

This section states the purpose of part 154, which is to carry out the statutory provisions of the Act with respect to reimbursement of airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers for direct costs, incurred to comply with new, additional, or revised security mandates imposed by the FAA or TSA on or after September 11, 2001.

§154.3 Definitions

This section provides definitions for the terms used in the Act. Several definitions incorporate terms from the Act or other existing sources. The term “air carrier” is defined as in 49 U.S.C. § 40102 and “airport” is defined as it is found in 49 U.S.C § 47102(2). The definition of “airport operator” is broader than current definitions because the Act does not limit reimbursement to airport operators who are eligible to receive federal Airport Improvement Program grants or to airports in the National Plan of Integrated Airport Systems (NPIAS).

The terms “on-airport parking lot” and “vendor of on-airfield direct services to air carriers” are defined to identify the two other groups of possible applicants for reimbursement under the Act. The definition of “on-airport parking lot” excludes those on-airport parking lots controlled by airport operators. Claims for direct costs incurred by an on-airport parking lot controlled by an airport operator would be included in the airport operator's application. The statutory term “vendor of on-airfield direct services to air carriers” by terms requires that the direct service to an air carrier be conducted on the airfield. Direct services to an air carrier include cleaning, fueling, maintenance, baggage handling, food and beverage service, or other services for aircraft on the airfield. The

term "on-the airfield" is not defined in the Act or in Title 49, United States Code. For purposes of this Part the term airfield denotes the aircraft operating area of an airport, where most of the aeronautical activities occur. The location of the vendor's business need not be on the airport so long as the work is performed on the airfield. For example, a vendor that repairs aircraft must perform at least part of the service on the airfield to be covered. Other definitions were incorporated with modifications from the Federal Acquisition Regulations, 48 CFR part 31, Office of Management and Budget circulars, and similar sources reflecting generally accepted accounting terms.

The definition of "eligible security requirements" reflects the condition imposed by the Act that reimbursement be limited to direct costs incurred to comply with new, additional, or revised security requirements imposed by the FAA or TSA on or after September 11, 2001. The security requirements found in security directives, emergency amendments, orders, regulations, approved airport and air carrier security programs, contingency measures, and implementing instructions constitute sensitive security information (SSI) under 14 CFR part 191. Applicants are required to associate a specific provision in the applicable Security Directive, emergency amendment to a security program under Part 107, Part 108, or Part 129, order, regulation or other directive with each claimed direct cost and identify it as security sensitive information under 14 CFR part 191 in the application. That information would be withheld from public disclosure under the terms of part 191. Claims for reimbursement submitted under these procedures would be initially reviewed by the field offices of the FAA's Office of Civil Aviation Security Operations or the appropriate office of the TSA to determine whether the claim

is appropriately based on new, additional, or revised security requirements imposed by the FAA or TSA on or after September 11, 2001.

§154.5 What funds will the FAA distribute under this part?

The Act authorizes to be appropriated to the Secretary of Transportation \$1.5 billion in reimbursement of direct costs for fiscal years (FY) 2002 and 2003. As of the date of this proposed rule no funds have been appropriated for reimbursements under Section 121. The FAA plans to disburse funds under Section 121 of the Act after appropriation by Congress for FY 2002 and/or FY 2003. In contrast to Section 119 of the Act, which provides for funding for aviation security with Airport Improvement Program (AIP) funds under 49 U.S.C. §47101 *et seq.*, the amount authorized to be appropriated under Section 121 is not considered AIP funds.

Reimbursements provided under Section 121 of the Act would qualify as Federal assistance pursuant to 49 U.S.C. § 47133. Therefore, airport operator recipients of reimbursements under Section 121 of the Act would be subject to the restriction on use of airport revenues of 49 U.S.C. § 47133. Neither Section 47133 nor its legislative history explained the term Federal assistance. In Section II (A) of FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 FR 7696, (February 16, 1999), the FAA provided a non-exclusive list of five types of federal airport grants and conveyances that it considered to be Federal financial assistance. Reimbursements under Section 121 would be similar to federal airport grants in that they constitute reimbursement for funds spent by the airport operator.

§154.7 How much of an eligible applicant's estimated reimbursement will be distributed under this part?

As discussed below, June 1, 2002 would be the due date for applications, and only costs incurred between September 11, 2001 and March 31, 2002 will be considered. The FAA would consider all applications together to determine the allowable costs. If the total of allowable costs exceeds the amounts appropriated, the FAA would allocate funds on a pro-rated basis, based on the ratio of each applicant's allowable costs to the total of all allowable costs claimed. If additional funds are subsequently appropriated, the FAA would give priority to fully reimbursing unreimbursed allowable costs incurred before March 31, 2002.

If the total of allowable costs is less than the amounts appropriated, the FAA would pay claimed expenses in full (subject to 10 percent withholding for audited results) and establish by Federal Register notice a due date for a new round of applications. Consistent with the Act applicants will receive reimbursement for which they demonstrate that they are eligible. To be eligible to receive reimbursement, an applicant would have to demonstrate to the satisfaction of the FAA that it has actually incurred direct costs for the purposes specified in the Act. The burden of proof with respect to eligibility rests with applicants applying for reimbursement.

§154.9 What are the limits on reimbursement to the applicants?

Pursuant to the Act, applicants would only be reimbursed for direct costs incurred to comply with new, additional, or revised security requirements imposed by the FAA or TSA on or after September 11, 2001. Initial applications would be limited to allowable costs incurred during the period between September 11, 2001 and March 31, 2002, so

that applicants may have time to determine their direct costs under their normal accounting procedures. Direct costs, as explained in the discussion of the definitions section above, would be the only costs allowable for reimbursement under Section 121 of the Act. Direct costs are those costs that airport operators, on-airport parking lots and vendors of on-airfield direct services to air carriers can demonstrate to be unique to the new, additional, or revised security requirements. Unallowable costs include indirect costs, lost revenue, operating losses, prudent measures, normal costs, and capital costs, as well as pre-September 11, 2001 costs. In addition, costs that would be eligible for reimbursement but that are otherwise recovered by the eligible applicant are generally not reimbursable. Where costs are recovered by a direct surcharge or charge-back for incremental security costs, or by a specific grant, insurance payment, or other financial assistance device, the costs would not be reimbursed. Where the cost was recovered by a general increase in prices or rates and charges, the FAA may approve reimbursement, subject to a requirement that the eligible applicant provide an appropriate rebate to its customers, tenants, or users.

§154.11 Who is eligible to apply for compensation under this part?

Airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers would be eligible to apply. Airport operator applicants would not be limited to public airports or certain categories of privately owned public use airports that are eligible to receive AIP grants under the terms of 49 U.S.C. 47102, and they would not be limited to airports in the National Plan of Integrated Airport Systems (NPIAS).

Subpart B - Application Procedures

§154.13 When must applicants apply for reimbursement?

All eligible entities would submit a completed application in triplicate, which must be received by June 1, 2002. Submissions would reflect costs incurred from September 11, 2001 through March 30, 2002. Unless an applicant could demonstrate to the satisfaction of the FAA that extremely unusual extenuating circumstances, completely beyond its control, prevented it from making a timely submission, the FAA would not accept a late submission. If funds initially appropriated under this Part exceed total allowable costs or if additional funds become available, the FAA would publish a new due date for new applications in the Federal Register.

§154.15 To what address must applicants send their applications?

This section provides the address to which applicants must submit their application. The FAA would not accept applications sent to another address. In addition, applications would be required to be mailed or personally delivered. Faxes and e-mails alone would not be acceptable, unless hard copies are also submitted by mail or personal delivery. Hand-carried applications will be subject to arrangements to receive hand-carried applications consistent with current FAA security procedures. Applications also must be complete, containing all the required information. The FAA would not accept incomplete applications.

§154.17 What documentation is necessary to support an application?

The application must include the completed form in Appendix A. The applicant would be required to support the costs it claims for reimbursement with the normal

invoices, vouchers, payrolls and supporting accounting records that constitute adequate documentary evidence for the purposes of an independent audit. Supporting accounting records include general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, and vouchers. Audited financial statements are adequate support provided they show the specific costs submitted for reimbursement. Documentary evidence would be required to show that the amounts requested for reimbursement were actually incurred. Budget estimates or cost allocations would not be sufficient by themselves to establish a claim for reimbursement. This standard of documentation is the same as the standard used in FAA's Policy and Procedures Concerning the Use of Airport Revenue.

Applicants would be required to identify the specific security requirement and the FAA or TSA source document associated with each claimed allowable cost. This information would be identified as security sensitive information, subject to confidential treatment under 14 CFR Part 191 and would be marked with the warning provided in Section 154.17. The FAA or TSA would review this information to verify that the cost was incurred to satisfy an eligible security requirement. Questions concerning security requirements applicable to a particular eligible applicant may be addressed to Special Projects Officer, Office of Civil Aviation Security Operations (202) 267-7296 or 7262 at the Federal Aviation Administration. Airport operators must also certify that they have consulted with their non-air carrier tenants regarding an adjustment of rates and charges in accordance with section 122 of the Act.

§154.19 Must applicants certify the truth and accuracy of data they submit?

This section provides the form of a certification that the Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer, or equivalent official, of an applicant would be required to make with respect to applications for reimbursement and participation in the reimbursement program. The certification would attest to the truth and accuracy of the information and compliance with Section 121 of the Act.

§154.21 What records must applicants retain?

An applicant that applies for reimbursement under this part would be required to retain all books, records, and other source and summary documentation supporting its claims for reimbursement of direct costs pursuant to Section 121 of the Act. This requirement includes, but is not limited to, retaining supporting evidence and documentation demonstrating the validity of the data provided; obtaining and retaining all reports, working papers, and supporting documentation pertaining to audits or review conducted by independent auditors under the requirements of this part.

An applicant would be required to preserve and maintain this documentation for five years in a manner that readily permits its audit and examination by representatives of the FAA, the TSA, the Office of the Secretary, Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other authorized Federal agencies. An applicant must make all requested data available within one week from a request by such authorities.

§154.23 Are applicants that participate in this program subject to audit?

All claims by applicants are subject to audit by the FAA, TSA, Office of the Secretary of Transportation (including the Office of Inspector General), the Comptroller

General, or other authorized Federal agencies. All information submitted with the application and all records and documentation retained would be subject to audit.

To accommodate each applicant's normal fiscal year and audit cycle, the FAA would partially release approved reimbursements prior to completion of the annual audit on the condition that the audit will be forwarded to the FAA (same address as the application) within 30 days after completion. Until completion of the audit, the FAA would retain 10% of the approved reimbursement. Upon receipt of the audit, the Department would adjust the reimbursement to conform to the results of audit and the requirements of this Rule.

Airport operators must follow the Office of Management and Budget Circular No. A-133 Single Audit Requirements (for availability see 5 CFR 1310.3); consequently, their requests for reimbursement must be treated as though the amount had been a Federal award and audited in accordance with OMB Circular A-133. If the airport operator did not have Federal assistance of \$300,000 or more to meet the criteria for having a single audit, that operator may rely on the submission of supporting documentation as specified in section 154.17. Vendors of on-airfield direct services to air carriers, parking lot operators, and other entities that request reimbursement but are not subject to OMB Circular A-133 would be required to comply with the following requirements. For requests of \$300,000 or more, the amount must be subject to annual audit and the amount for the period under audit must be commented upon and certified by the auditor. If the amount requested for reimbursement spans more than one audit period, the independent auditor must comment and certify the amount for each period. As an alternative, the applicant may submit a single certified audit report that specifically addresses the amount

requested for reimbursement. For requests under \$300,000, the applicant, as an alternative to audit, may submit with its application its supporting documentation, as specified in Section 154.17.

Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA), specifically the application documents that airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers must submit to the FAA to obtain reimbursement. The title, description, and respondent description of the information collections as well as an estimate of the annual recordkeeping and periodic reporting burden are shown below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures for Reimbursement of Airports for Security Mandates

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The FAA would use the data submitted by the applicants to determine whether the applicants' documented costs are eligible for reimbursement under the Act as direct costs, incurred by operators, on-airport parking lots, or vendors of on-airfield direct services to air carriers to comply with new, additional, or revised security requirements imposed by the FAA or TSA on or after September 11, 2001.

Frequency: For this final rule, the FAA will collect the information once, unless an additional application period is necessary to apply for additional appropriated funds.

Respondents: The respondents include a possible estimated 4000 applicants. This number is based on an estimate of the number of commercial service airports, with assumptions of one parking operator per airport and 5 vendors of on-airfield services to air carriers.

Burden Estimate: Total of 16,000 burden hours (4 hours per application multiplied by an estimated 4,000 potential applicants). Total cost to industry would be approximately \$455,200.

Form(s): The data would be collected both electronically and from paper sources.

Average Burden Hours per Respondent: 4 hours per applicant at an average cost of about \$114 per respondent.

The Office of Management and Budget has approved this information collection, with Control Number .

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Under this proposed rule no entity would be required to take any action so that the economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Procedures. We do not need to do the latter analysis where the economic impact is minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. §§601-612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

Under this proposed rule no entity would be required to take any action. Those that choose to apply under this proposed rule may obtain a benefit. The costs of complying are those stated in the Paperwork Reduction Act section in this preamble, and are minimal. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 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 UMRA 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.

This ~~notice~~^{proposed rule} does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA 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 proposal does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this proposal has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended (42 U.S.C.

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6362) and FAA Order 1053.1. It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 154

Airports, ~~Airport parking lots, Vendors of on airfield services, reimbursement~~

Business + industries, Reporting and recordkeeping requirements, Security measures.

The Amendments

For the reasons set forth in the preamble, the FAA proposes to add new part 154 to Title 14, Code of Federal Regulations, to read as follows:

PART 154 -- PROCEDURES FOR REIMBURSEMENT OF AIRPORTS, ON-AIRPORT PARKING LOTS AND VENDORS OF ON-AIRFIELD DIRECT SERVICES TO AIR CARRIERS FOR SECURITY MANDATES

Subpart A -- General Provisions

- 154.1 What is the purpose of this part?
- 154.3 Definitions.
- 154.5 What funds will the FAA distribute under this part?
- 154.7 How much of an eligible applicant's estimated reimbursement will be distributed under this part?
- 154.9 What are the limits on reimbursement to applicants?
- 154.11 Who is eligible to apply for reimbursement under this part?

Subpart B -- Application Procedures

- 154.13 When must applicants apply for reimbursement?
- 154.15 To what address must applicants send their applications?
- 154.17 What documentation is necessary to support an application?
- 154.19 Must applicants certify the truth and accuracy of data they submit?
- 154.21 What records must applicants retain?
- 154.23 Are applicants that participate in this program subject to audit?

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Appendix A to Part 154 - Form for Application for Reimbursement

Authority: Section 121 of Pub. L. 107-71, 115 Stat. 597.

Subpart A – General Provisions

§154.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 121 of the Aviation and Transportation Security Act (“the Act”), Public Law 107-71, 115 Stat. 597. This statutory provision authorizes appropriations to reimburse airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers, for direct costs incurred by such operators to comply with new, additional, or revised security requirements imposed by the FAA or the Transportation Security Administration (TSA) on or after September 11, 2001.

§154.3 Definitions

The following terms apply to this part:

Air carrier means any U.S. air carrier or foreign air carrier as defined in 49 U.S.C. §40102.

Airport means any U.S. airport as defined in 49 U.S.C. §47102.

Airport operator means the owner or individual, public, or business entity that controls the daily operation, maintenance, and management of an airport.

Allowable cost means the direct costs incurred by an eligible applicant to comply with eligible security requirements on or after September 11, 2001.

Capital cost means a cost that in accordance with accrual accounting procedures would not be charged as an expense to a single fiscal period. Capital costs include expenditures for extensive terminal or parking garage remodeling, road construction, and installation of permanent barricades. The costs of minor terminal and parking alterations, installation of temporary barricades, such as Jersey barriers, and minor purchases of equipment are not considered to be capital costs. Any project or purchase that would be AIP eligible under the standards of eligibility in effect prior to enactment of the Act is a capital expenditure. The eligible applicant's normal cost accounting procedures will weigh heavily for determining whether a transaction should be considered a current year expenditure or a capital expenditure. Entities that are on a cash accounting basis should apply accrual accounting principles to determine whether a transaction is a current year expenditure or a capital expenditure.

Costs otherwise recovered means costs that would otherwise be eligible for reimbursement under this part, but that the eligible agency passed through to vendors,

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customers, subcontractors, or the public, or costs that were recovered through insurance, grant programs, or other kinds of aid.

Direct costs means the costs that eligible applicants can specifically identify as being unique to new, additional, or revised security requirements imposed by the FAA or the TSA on or after September 11, 2001. Such costs must be incurred on or after September 11, 2001 and may not be allocable from or to other cost pools or cost objectives.

Eligible applicant means an airport operator, on-airport parking lot, or vendor of on-airfield direct services to air carriers eligible to apply for reimbursement under this part.

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Eligible security requirement means a new, additional, or revised security requirement imposed by the FAA or the TSA through a Security Directive, emergency amendment to a security program under Part 107, Part 108, ^g or Part 129, ^{of this chapter} order, regulation, or other directive on or after September 11, 2001.

Indirect costs are any costs that are not directly identified with a single, final cost objective. Indirect administrative costs are the accounting, budgeting, data processing, legal services, insurance, office space, utilities, printing, reproduction, and other costs that are not directly traceable to the new, additional, or revised security requirements. Indirect management costs are those costs incurred from the corporate, division, and local officers and supervisors that were responsible for implementing the new, additional, or revised security requirements, but who also continued to have their normal managerial or supervisory responsibilities. For example, a local supervisor may have been responsible for implementing the reissuance of security badges, but that supervisor may have also

continued with his normal duties, such as, the routine scheduling of shift personnel or the supervision of personnel in the normal course of their duties.

Lost revenue means those revenues which the eligible applicant would have earned were it not for measures required by the Department of Transportation or law enforcement agencies in response to the events of September 11, 2001. An example of lost revenue is the lost revenue from parking spaces that were placed out of services as the result FAA security requirements. Lost revenue also includes, but is not limited to, the loss of airport landing fees resulting from decreased air traffic as the result of FAA suspending air operations, and reduced fees paid by airport vendors due to the lost sales that they incurred as the result of FAA suspending air operations.

Normal costs means the costs incurred by eligible applicants for the purpose of airport security that are not directly related to the new, additional, or revised security requirements imposed by the FAA or the TSA on or after September 11, 2001.

On-airport parking lot means the individual or business entity, other than an airport operator, that controls through lease or other business arrangement with an airport operator, the daily operation, maintenance, and management of a parking lot located on land identified as airport property on an airport property map.

Operating losses mean the losses resulting from decreased revenue or increased expenses resulting from FAA security requirements.

Pre-September 11, 2001 costs means costs otherwise budgeted or expended prior to September 11, 2001.

Prudent measure means a new or additional measure undertaken by an eligible applicant to improve airport and passenger security which was not directly ordered by the

FAA. Contracting for on-airport catering to provide meals for law enforcement officers located at the airport in response to an FAA security directive but not specifically directed by the FAA would be an example of a prudent measure.

Unallowable costs means those costs that do not meet the definitions of allowable and direct costs. Unallowable costs include capital costs, indirect costs, normal costs, lost revenue, operating losses, and prudent measures, as well as pre-September 11, 2001 costs.

Vendor of on-airfield direct services to air carriers means an individual or business entity, other than the serviced air carrier or airport operator, that provides through a fee arrangement cleaning, fueling, maintenance, baggage handling, food and beverages or other services for aircraft on the airfield. For the purposes of this definition, an air carrier that performs such services for another air carrier is considered to be a vendor when performing the same or similar services on the airfield. For purposes of this part the term airfield denotes the aircraft operating area of an airport where most of the aeronautical activities occur. The location of the vendor's business need not be on the airport so long as the work is performed on the airfield.

§154.5 What funds will the FAA distribute under this part?

(a) Through the regulations in this part, the FAA is distributing reimbursement authorized under section 121 of the Act, to the extent such funds are appropriated by Congress. As of [insert the date of publication in the Federal Register], no such funds have been appropriated

(b) The reimbursement provided under this part to an airport is Federal assistance within the meaning of 49 U.S.C. 47133, and Federal financial assistance within the meaning of the FAA Policy and Procedures Concerning the Use of Airport Revenue published at ^{on 7} ~~49 FR 7696, 7715~~ (February 16, 1999) *(For availability see <http://www.faa.gov/ARP/Feedreg/htm>)*

§154.7 How much of an eligible applicant's estimated reimbursement will be distributed under this part?

Upon appropriation, and after all applications are received in accordance with this part, the FAA will determine the total amount of all allowable costs requested. In the event that total allowable costs exceed appropriated funds, the FAA will approve reimbursement of a uniform percentage of allowable costs that equates the total approved reimbursements with the appropriated amount. In the event that additional funds are subsequently made available, the FAA will give priority to fully reimbursing allowable costs claimed in initial applications. If total allowable costs are less than appropriated funds, the FAA will publish a notice in the Federal Register of the due date for the filing of further applications.

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§154.9 What are the limits on reimbursement to applicants?

(a) The FAA approves reimbursement only for allowable costs, subject to the limitation in ~~subsection (c)(3)~~ *of this section*

(b) Initial applications must be limited to allowable costs incurred during the period between September 11, 2001 and March 31, 2002.

(c) The following items are not eligible for reimbursement:

(1) Unallowable costs.

(2) Lost Revenue

(3) Costs otherwise recovered. Where the costs are recovered by direct charge, surcharge, or charge-back for incremental or new security costs, or by a specific grant, insurance payment, or other financial assistance device, the costs will not be reimbursed.

Where the cost are recovered by a general increase in prices or rates and charges, the FAA may approve reimbursement, subject to a requirement that the eligible applicant provide an appropriate rebate of reimbursed amounts to its customers, tenants, or users.

§154.11 Who is eligible to apply for reimbursement under this part?

the following are eligible to apply for reimbursement under this part:

(a) Airport operators.

(b) On-airport parking lots.

(c) Vendor of on-airfield direct services to air carriers.

Subpart B - Application Procedures

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§154.13 When must applicants apply for reimbursement?

(a) All eligible applicants must submit an initial completed application covering the period September 11, 2001 through March 31, 2002. The FAA must receive applications by June 1, 2002.

(b) If funds initially appropriated for reimbursement under this part exceed total allowable costs included in all applications, or if additional funds subsequently become available, the FAA will publish a new application due date in the Federal Register.

§154.15 To what address must applicants send their applications?

(a) You must submit your application, and all required supporting information, in hard copy (not solely by fax or electronic means) in triplicate to the following address: ←

Federal Aviation Administration, Office of Airport Planning and Programming,
Airport Financial Assistance Division, APP-500, 800 Independence Avenue SW,
Washington, D.C. 20591

(b) If your complete application is not sent to the address in paragraph (a) of this section, the FAA will not accept it.

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§154.17 What documentation is necessary to support an application?

(a) The application must include the completed form in Appendix A of this Part. You must support the costs of claims for reimbursement with the normal invoices, vouchers, payrolls, and supporting accounting records that constitute adequate documentary evidence for the purposes of an independent audit. Supporting accounting records include general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses, and corroborating evidence such as invoices and vouchers. You must supply a copy of this supporting documentation to the FAA upon request. Audited financial statements are adequate support provided they show the specific costs submitted for reimbursement. Documentary evidence must show that the amounts requested for reimbursement were actually incurred. Budget estimates or cost allocations are not sufficient by themselves to establish a claim for reimbursement.

(b) You must designate the specific security requirement and the Federal Aviation Administration or Transportation Security Administration source document associated with each claimed allowable cost by citing the Security Directive number and paragraph, Emergency Amendment number and paragraph, or other specific cite. You

must identify this information as sensitive security information (SSI) under 14 CFR Part 191, by marking the top and bottom of the first page "Sensitive Security Information" and marking each page that contains SSI with the following:

WARNING:

THIS DOCUMENT CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER THE PROVISIONS OF 14 CFR PART 191. THE INFORMATION MAY NOT BE RELEASED IN ANY FORM WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE ADMINISTRATOR OR ASSOCIATE ADMINISTRATOR FOR CIVIL AVIATION SECURITY, ACS-1. IN ACCORDANCE WITH 49 U.S.C. 40119, THIS INFORMATION IS EXEMPT BY STATUTE FROM DISCLOSURE UNDER THE FOIA. UNDER THE PROVISIONS OF 14 CFR 191.5(D), VIOLATORS ARE SUBJECT TO CIVIL PENALTY OR OTHER ACTION BY THE FAA.

(c) The Federal Aviation Administration or Transportation Security Administration will review this information to verify that the cost was incurred to satisfy an eligible security requirement. Questions concerning security requirements applicable to a particular eligible applicant may be addressed to Special Projects Officer, Office of CAS Operations (202) 267-7296 or 7262 at the Federal Aviation Administration.

(d) You must certify that you have consulted with airport tenants regarding adjustment in rental rates in accordance with section 122 of the Act.

(e) You must document the extent to which you recovered costs otherwise eligible for reimbursement.

§ 154.19 Must applicants certify the truth and accuracy of data they submit?

The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or the Chief Operating Officer (COO) must certify the request for reimbursement on the form in Appendix A of this part. The certification must attest to the truth and accuracy of the information and to compliance with Section 121 of the Aviation and Transportation Security Act.

§154.21 What records must applicants retain?

As an applicant that applies for reimbursement under this part:

(a) You must retain all books, records, and other source and summary documentation supporting your claims for reimbursement of direct costs pursuant to Section 121 of the Act. This requirement includes, but is not limited to:

(1) Supporting evidence and documentation demonstrating the validity of the data you provide, and

(2) All reports, working papers, and supporting documentation pertaining to audits or review conducted by independent auditors under the requirements of this part.

(b) You must preserve and maintain this documentation in a manner that readily permits its audit and examination by representatives of the FAA, the TSA, the Office of the Secretary, Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other authorized Federal agencies.

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(c) You must retain this documentation for five years.

(d) You must make all requested data available within one week from a request by the FAA, the TSA, the Office of the Secretary, the Department of Transportation

(including the Office of the Inspector General), the Comptroller General of the United States, or other authorized Federal agencies.

§154.23 Are applicants that participate in this program subject to audit?

(a) All requests for reimbursement are subject to audit. All information you submit with your applications and all records and documentation that you retain are also subject to audit.

(b) To accommodate each eligible applicant's normal fiscal year and audit cycle, the FAA will partially release approved reimbursements prior to completion of the annual audit on the condition that the audit will be forwarded to the FAA (same address as the application) within 30 days after completion. Until completion of the audit, the FAA will retain 10% of the approved reimbursement. Upon receipt of the audit, the Department will adjust the reimbursement to conform with the results of audit and the requirements of this ^{part} ~~rule~~.

(c) Airport operators that are non-Federal local governments, and non-profit organizations, must follow the Office of Management and Budget Circular No. A-133 Single Audit Requirements (for availability see 5 CFR 1310.3). Consequently, their requests for reimbursement must be treated as though the amount had been a Federal award and must be audited in accordance with OMB Circular A-133. If the airport operator did not have Federal assistance of \$300,000 or more to meet the criteria for having a single audit, that operator follow the procedures set forth in ^{paragraph} ~~subsection~~ (d)(2) ^{of the section} governing requests "under \$300,000."

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(d) Vendors of on-airfield direct services to air carriers, parking lot operators, and other eligible applicants that request reimbursement but are not subject to OMB Circular A-133 (for availability see 5 CFR 1310.3) must comply with the following requirements:

(1) For requests of \$300,000 or more, the amount must be subject to annual audit and the amount for the period under audit must be commented upon and certified by the auditor. If the amount requested for reimbursement spans more than one audit period, the independent auditor must comment and certify the amount for each period. As an alternative, the applicant may submit a single certified audit report that specifically addresses the amount requested for reimbursement.

(2) For requests under \$300,000, the eligible applicant, as an alternative to audit, may submit with its application copies of its supporting documentation, as described in ~~subsection~~ [§] 154.17(a) upon request by the FAA.

(e) Questions regarding audit procedures or the reimbursement form may be addressed to AAS-400, at (202) 267-5879.

(f) The auditor is not responsible for expressing an opinion on whether a particular claimed cost was incurred to comply with an eligible security requirement. That determination will be made by the FAA or the TSA based on the information submitted with the application as set forth in ~~section~~ [§] 154.17. Information identified in ~~section~~ [§] 154.17(b) is SSI and may be disclosed to auditors only on a need to know basis, in accordance with part 191 of this chapter. Each auditor is considered to be employed by, contracted to, or acting for an airport operator or air carrier, and is responsible for restricting disclosure of SSI in accordance with §191.5 of this chapter.

APPENDIX A TO PART 154 - FORM FOR APPLICATION
FOR REIMBURSEMENT.

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Appendix A to Part 154

AVIATION AND TRANSPORTATION SECURITY ACT SECTION 121

APPLICATION TO PART 154 FOR REIMBURSEMENT OF NEW, ADDITIONAL, OR REVISED SECURITY REQUIREMENTS

Name	Type of entity (airport operator, on-airport parking lot, vendor of on-airfield direct services to air carriers).
Address	Telephone Number
Airport(s) Associated with the Request for Reimbursement (list on attachment if required)	
Filing – Is this a revised or Original Filing?	

ACCOUNT INFORMATION

Bank Routing Number	(9 Positions)
Account Number	
Name of Account	
Type of Account	
Total Reimbursement Claimed (from attached cost incurred sheets)	\$

CERTIFICATIONS

I Certify that the information contained in this form is a true and accurate request for reimbursement of the allowable - direct costs permitted under Section 121 of the ATSA P.L.107-71, 115 Stat. 597. I understand that falsification of this claim for reimbursement may result in criminal prosecution resulting in fine and/or imprisonment. (18 U.S.C. 1001)
[APPLICABLE ONLY TO AIRPORT OPERATORS] I Certify that the airport identified above has consulted with tenants at the airport regarding adjustments in rental rates in accordance with the terms of section 122 of the ATSA, P.L. 107-71, 115 Stat. 597.

Certifying Officer (signature)

Date

Print Name and Title (CEO, CFO, or COO)

Telephone Number

Cost Incurred By Category

Please provide a separate sheet for each category of cost for which you request reimbursement. For instance, new background checks, reissuance of security badges, additional security patrols, additional security check points, installation of barricades, and terminal, airfield, cargo, and parking facility modifications are separate cost categories.

Cost Category	
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Description of the new, additional, or revised security requirement imposed by the FAA or the TSA on or after September 11, 2001.

Type –New, Additional, or Revised	
------------------------------------------	--

COST SUMMARY

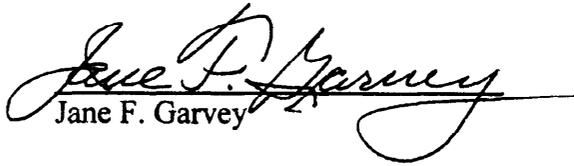
Expense	Contracted for or Budgeted amount Prior to 9/11/01	Actual Cost	Difference
Wage and Salary			
Contracts			
Equipment			
Materials			
Land			
Miscellaneous (not to exceed 5% of the cost category)			
Other (Please attached a list)			
Subtotals			

RECOVERED COSTS SUMMARY

Costs recovered through direct charge, surcharge, charge-back, insurance payment, grant etc.	\$
Costs recovered through general increase in prices, lease rates or rates and charges	

Total Reimbursement Claimed for Cost Category	\$
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Issued in Washington, DC, on this ⁹ DEC 17 2001 day of ~~2001~~ ^{AM} 12-17-01


Jane F. Garvey

Administrator