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Docket Management System
U.S. Department of Transportation
Docket No.: TSA-2002-11602
Room PL401
400 Seventh St., SW
Washington, DC 20590-0001

Re: Comments – Sections 1542.209 and 1544.229 – Fingerprint-based criminal history records checks (CHRC).

Gentlemen:

Thank you for the opportunity to comment on the final rule of 49 CFR Parts 1542 and 1544 – Civil Aviation Security Rules.

The New York State Office of Public Security is responsible for developing a comprehensive statewide homeland security strategy to protect New York State from acts of terrorism and terrorist threats. Our office directs and coordinates all State efforts to detect, prevent, identify, address and respond to terrorist threats and/or acts occurring within the State. Our efforts include all State Agencies, Departments and Public Authorities. We have a vital interest in the safety and security of air travel and on behalf of our State we commend the Transportation Security Administration for its efforts in enhancing civil aviation security.

We are pleased that the TSA has recently determined to include individuals who perform certain checked baggage or cargo functions (e.g. ticket agents, skycaps, remote site check-in personnel) in the criminal history records check requirements (49 CFR 1542.209 and 49 CFR 1544.229). However, workers in sterile areas of airports, such as concessionaires, food court employees, newsstand employees, etc. are not required to undergo a CHRC. The compelling reason for including employees who are regularly assigned to work in this critical area of an airport has been articulated by the Federal Aviation Administration in 66 F.R. 63474-63475 (December 6, 2001):

> ***… it is likely that … [a terrorist organization] has sought or will seek to place members in positions at airports to facilitate future attacks, or that it will attempt to co-opt individuals already in such positions…***

We concur wholeheartedly with this assessment.

Accordingly, it is most appropriate to require fingerprint-based criminal history records checks for these employees in the same manner as the TSA now requires for those with unescorted SIDA access, screeners and their supervisors, and accepters of checked baggage.

Governor George Pataki is poised to introduce state legislation to require that employees assigned to sterile areas undergo criminal history records checks as a condition of employment at airports that are required to file security plans with the TSA. To be binding upon the Port Authority of New York and New Jersey – the operator of John F. Kennedy and LaGuardia Airports – legislation with identical effect must be enacted by the State of New Jersey. Our New Jersey homeland security counterparts, in close cooperation with this office, are developing such legislation for introduction…

Rather than leaving it to proactive state governments to legislate closure of this security gap on a state-by-state basis, it would be far more preferable for the TSA to include these workers by a broadening of the scope of Sections 1542.209 and 1544.229 for uniform applicability throughout the United States.

We are of the opinion that counterarguments relying upon the presumption that such workers in sterile areas are screened upon each entry into such sterile areas are not persuasive.

We appreciate the opportunity to comment on the Civil Aviation Security Rules. We look forward to working with the Transportation Security Administration on aviation and other relevant security matters to deter, detect and prevent future acts of terrorism in the State of New York.

Sincerely,

James K. Kallstrom