[4910-62-P]

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Docket No. TSA-2003-16345

Notice Requesting Comment on the Imposition of the Aviation Security Infrastructure Fee

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice; request for comments.

SUMMARY: TSA seeks comment on possible changes to the way it sets the Aviation Security Infrastructure Fee (ASIF), which is a fee imposed on air carriers and foreign air carriers to help pay the Government's costs of providing civil aviation security services. Beginning in fiscal year 2005, TSA may set the per-carrier fee based on each carrier's market share or other appropriate factors. TSA seeks comments on issues such as how to impose the ASIF, and whether, when, and how often the ASIF should be adjusted.

DATES: Submit comments by [insert date 60 days after date of publication on the Federal Register].

ADDRESSES: Comments Submitted by Mail or In Person: Address written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590-0001.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments. Comments containing trade secrets, confidential commercial or financial information, or

SSI should be appropriately marked as containing such information and submitted by mail to the individual listed in FOR FURTHER INFORMATION CONTACT.

Comments Filed Electronically: You may also submit comments through the Internet at http://dms.dot.gov. Please be aware that anyone is able to search the electronic form of all comments received into any of these dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement in the Federal Register published on April 11, 2000, (65 FR 19477) or you may visit http://dms.dot.gov.

Reviewing Comments In the Docket: All submissions to the public docket may be viewed 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.

See SUPPLEMENTARY INFORMATION for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 5, TSA-14, 601 South 12th Street, Arlington, VA 22202; e-mail: TSA-Fees@dhs.gov, telephone: 571-227-2323.

SUPPLEMENTARY INFORMATION:

Comments Invited

The TSA invites interested persons to submit written comments, data, or views on the issues described in this notice, including comments relating to the economic, environmental, energy, or federalism impacts. See ADDRESSES above for information on where to submit comments.

Do not submit to the public regulatory docket any comments that you believe include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) governed by 49 CFR part 1520. Such comments should be appropriately marked as containing such information and submitted by mail to the individual listed in FOR FURTHER INFORMATION CONTACT. When a commenter properly designates and submits confidential commercial or financial information or information the submitter considers to be a trade secret, TSA does not place it in the public docket and TSA will handle it in accordance with applicable safeguards and restrictions on access. TSA will hold it in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA would treat the request as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 CFR part 5.

With each comment, please include your name and address, identify the docket number at the beginning, and give the reason for each comment, including any supporting data. You may submit comments and material electronically, in person, or by mail as

provided under ADDRESSES, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want the TSA to acknowledge receipt of your comments, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Except for comments properly submitted as containing confidential information or SSI, we will file in the public docket all comments we receive. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable.

Document Availability

You can get an electronic copy using the Internet by--

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html; or

(3) Visiting the TSA's Law and Policy web page at http://www.tsa.dot.gov/public/index.jsp.

In addition, copies are available by writing or calling the individual in the FOR FURTHER INFORMATION CONTACT section. Make sure to identify the docket number.

Background

Section 118 of the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71, November 19, 2001), as codified in 49 U.S.C. 44940, authorized TSA to impose fees known as the September 11th Security Fee and the Aviation Security Infrastructure Fee (ASIF) to help pay TSA's costs of providing civil aviation security services. In imposing these fees, TSA must ensure they are reasonably related to TSA's costs of providing services rendered. 49 U.S.C. 44940(b).

TSA has imposed the September 11th Security Fee and the ASIF through regulations that appear at 49 CFR parts 1510 and 1511. The September 11th Security Fee is a fee in the amount of $2.50 per enplanement imposed by TSA on passengers of domestic and foreign air carriers in air transportation and intrastate air transportation originating at airports in the United States. This fee is limited to $2.50 per enplanement for up to two enplanements (or up to $5) per one-way trip or four enplanements (or up to $10) per round trip. 49 CFR 1510.5(a).

Section 118 of the ATSA authorizes TSA to impose the ASIF to the extent that the September 11th Security Fee is insufficient to pay TSA's costs of providing civil aviation security services. Specifically, the annual aggregate amount of the ASIF may not exceed the difference between TSA's estimate of the total cost of providing civil aviation security services listed in 49 U.S.C. 44940(a)(1) and TSA's estimate of its September 11th Security Fee collections. 49 U.S.C. 44940(a)(2)(A).

In addition, section 118 provides that through the end of fiscal year 2004, the amount of ASIF collected by TSA from the carriers, both overall and per carrier, cannot exceed the carriers' aggregate and individual costs, respectively, for screening passengers

and property in calendar year 2000. 49 U.S.C. 44940(a)(2)(B)(i), (ii). Beginning in fiscal year 2005, TSA is authorized to change the way the per-carrier limit is determined. TSA may set the limit based on market share or other appropriate measure in lieu of the carriers' actual screening costs in calendar year 2000. 49 U.S.C. 44940(a)(2)(B)(iii).

In setting the ASIF at its current level, TSA solicited information from all carriers engaged in air transportation and intrastate air transportation in 2000 on their calendar year 2000 costs related to screening passengers and property. Within the parameters of section 44940(a) and (b), TSA set the ASIF at the maximum allowable amount by requiring each carrier engaged in air transportation and intrastate air transportation to remit to TSA, on a monthly basis, an amount equal to 8.333 percent of the total amount that the carrier indicated in its calendar year 2000 screening costs submission. Consistent with section 44940, TSA determined that those carriers currently engaged in air transportation and intrastate air transportation, but with no costs for screening passengers and property in calendar year 2000, are not subject to the imposition of the ASIF at this time.

After TSA initially imposed the ASIF through issuance of an interim final rule on February 20, 2002 (66 FR 7926), the agency received various comments and correspondence suggesting that this formula for imposing each carrier's ASIF should be adjusted. Reasons given for this proposed adjustment include: (1) the ASIF does not adequately take into account the economic hardship faced by the aviation industry since September 11, 2001; (2) the ASIF does not take into account any growth or reduction in a carrier's business since calendar year 2000; (3) the ASIF provides an unfair advantage to new carriers; (4) the ASIF rewards carriers who spent less on security in 2000; (5) the

ASIF discriminates against smaller carriers who had higher costs for the same services; (6) basing the ASIF on calendar year 2000 costs prioritizes industry stability over individual equity; and (7) the ASIF does not pass on to the carriers any savings achieved by the Government due to economies of scale, consolidation of overhead, and by other means. TSA will respond fully to these and other comments on the ASIF, as well as issue a regulatory evaluation and any necessary regulatory amendments, when we finalize the interim final rule.

Request for Comments

TSA is requesting public comment to assist the agency in determining whether to change the way it sets the per-carrier limit for the ASIF in fiscal year 2005 and for subsequent years, whether on the basis of market share or another factor(s).

Due to the carriers' various sizes, business models, and other factors, there are many ways to define both what the "market" is and what constitutes a carrier's "share" of the market. For example, a carrier's market share could be based on its passenger enplanements, passenger revenue miles, tickets sold, revenues, or other factors or combinations of factors. Therefore, TSA seeks input into: (1) whether to adjust the current system of determining each carrier's ASIF limitation based on its screening-related costs in calendar year 2000; (2) when to make such an adjustment; (3) how to determine the new basis for the per-carrier limitation on imposition of the ASIF; and (4) how often imposition of the ASIF should be updated based on the new factors. TSA seeks proposals on factors for TSA to consider in reaching each of these determinations. This input may also address procedural details, such as how to deal with carriers exiting and entering the market between updates of the per-carrier imposition of the fee, or how

to collect and confirm relevant market data, from whom, and how often. TSA also seeks any other information that the commenter believes would be helpful to TSA in considering this matter.

Issued in Arlington, VA, on OCT 3 0 2003

James M. Loy,

Administrator