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Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Re: Interim Final Rule concerning Protection of Sensitive Security
Information, Docket No. TSA-2003-15569; Amendment No. 1520-1

The American Association of Airport Executives (AAAE) and the Airports Council International North America (ACI-NA) appreciate the opportunity to comment on the Interim Final Rule concerning Protection of Sensitive Security Information ("SSI").

AAAE is a not-for-profit professional individual association of the airport management industry. Founded in 1928, AAAE is the largest professional organization for airport executives in the world. Representing thousands of airport management personnel at over 800 U.S. airports, the Association includes executives of large and medium-size airports, as well as hundreds of managers from smaller airports. ACI-NA is a membership organization representing approximately 150 State, regional, and local governing bodies that own and operate the principal airports served by scheduled air carriers in the United States and Canada. ACI-NA member airports handle approximately 98 percent of the domestic and virtually all of the international air passenger traffic and cargo traffic in North America.

ACI-NA and AAAE support the protections provided by Part 15 and Part 1520. The proposed changes to Part 15 and Part 1520, in general, will be workable for AAAE and ACI-NA members. Certain features of the proposal, however, should be modified, or clarified, as described below, so that airport personnel as well as others working for local governmental entities that own or operate airports can continue to execute their existing responsibilities to manage airports, and to allow airport administration, security, and fire and rescue services to function effectively.

Comments on Specific Sections follow:

1) §1520.5(b)(4) defines certain performance specifications as SSI. Under both local and federal requirements, airports conduct virtually all significant procurements of goods, and of most services, using competitive bidding procedures. Section 1520.5(b)(4) should be interpreted to provide that airports can share sufficient information with potential bidders to permit bidders to respond to the airport procurement solicitation. AC+NA and AAAE encourage DOT/DHS to use existing stakeholder working groups to develop policies and procedures to be used to protect SSI, where some aspects of SSI must be shared with entities submitting bids in airport procurements for security-related acquisitions or airport improvements.

2) §15.7 and §1520.7, defining "covered persons" could be problematic for those airport operators that work closely with other governmental entities under formal or informal arrangements, such as mutual aid agreements. The definition of covered persons should be expanded to include parties to such agreements, as well as any law enforcement agency or prosecutor's office working with, or in support of, a covered person. In the alternative, §1520.11(a) should be interpreted to include such officials as having a "need to know."

3) §1520.5(b)(8), specifies that SSI is (among other things) "*Security Measures*. Specific details of aviation or maritime transportation security measures, both operational and technical, whether applied directly by the federal government or another person, including — (i) Security measures or protocols recommended by the Federal government..." In the definition of "Security Measures" it would be useful to specifically exclude locally developed rules and regulations for the behavior and responsibilities of persons granted unescorted access to the Sterile and/or Restricted areas provided such rules and regulations are not SSI under another provision of § 1520.5. For example, airports should be able to put guidelines on security procedures into their local Security Training Program and Security Operating Directive so that they can teach, and enforce, the regulations when dealing with employees who do not have SSI clearance.

4) §§1520.13 and 15.13 require that each page of a paper record containing SSI must be marked with a protective marking and a distribution limitation standard. These sections of the rule appear designed for a situation in which every page of a document contains SSI. However, in many documents SSI appears only on certain pages, or in one or more appendices or attachments. The cited sections of the interim final rule should be revised to permit airports to mark only those pages containing SSI (as well as the front and back covers, as described in subsection (1)). This would conform the rule to an interpretation already provided by some TSA representatives.

5) Under §1520.9(a)(3), a covered person must "refer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS." Some state Open Records statutes permit an airport operator to deny release of records to

applicants if the release of such a record would be contrary to a federal regulation with the force of law. DOT/DHS could take advantage these state laws by removing or modifying 1520.9(a)(3) to read "In the absence of state or local law barring release of SSI, a covered person must refer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS."

6) §1520.11, "Persons with a need to know", currently lacks a provision that permits government officials required to approve contracts, or funding/grant agreements from seeing SSI as part of that approval process. Either this section should be amended to permit SSI contained in an agreement to be disclosed to a governmental agency required by law to approve the agreement, or §1520.11(a) should be interpreted to include such governmental officials as having a "need to know."

7) §1520.9(b) requires covered persons receiving records containing SSI to mark those records in accordance with §1520.13. Airport operators agree with the theory behind this requirement, but in practice it may not always be clear which records not already identified as SSI would be covered by this provision. DOT/DHS should refrain from instituting civil penalties actions under §1520.17 where questions arise concerning the requirement that a covered person receiving a record containing SSI mark it with the SSI designation.

AAAE and ACI-NA appreciate the opportunity to submit the foregoing comments.

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