

2003; or Revision 3, dated July 23, 2004, comply with the requirements specified in this AD.

#### Definition of Engine or Hot Section Module Shop Visit

(j) For the purposes of this AD, an engine or hot section module shop visit is defined as the introduction of the engine or hot section module into a shop that includes separating major case flanges.

#### Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(l) Contact Mark Bouyer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [mark.bouyer@faa.gov](mailto:mark.bouyer@faa.gov); telephone (781) 238-7755; fax (781) 238-7199, for more information about this AD.

#### Material Incorporated by Reference

(m) You must use General Electric Alert Service Bulletin No. CT7-TP S/B 72-A0464, Revision 04, dated December 12, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594-3140; fax (781) 594-4805 for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Burlington, Massachusetts, on April 2, 2007.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 331

[Docket OST-2006-25906]

RIN 2105-AD61

#### Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area

AGENCY: Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule provides reimbursement to fixed-base general aviation operators and providers of general aviation ground support services at five metropolitan Washington, DC area airports, for the direct and incremental financial losses they incurred while the airports were closed due to Federal government actions taken after the terrorist attacks on September 11, 2001. The airports are: Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC.

**DATES:** This rule is effective May 9, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Interested persons with questions about this regulation should contact James R. Dann, U.S. Department of Transportation, Office of General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590; telephone 202-366-9154. Interested persons with questions about how to apply for assistance, the status of application reviews, etc. should contact Tim Carmody, U.S. Department of Transportation, Office of Aviation Analysis, 400 7th Street, SW., Room 6417, Washington, DC 20590; telephone 202-366-2348. Application materials and data sources that may assist applicants in preparing applications are available at the Department of Transportation, Office of the Secretary's Web site at <http://ostpxweb.dot.gov/aviation/index.html> under "Programs," and then "General Aviation Operator and Services Reimbursement: Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area."

**SUPPLEMENTARY INFORMATION:** Following the terrorist attacks on the United States on September 11, 2001, general aviation activity in the Washington, DC metropolitan area was suspended. Five airports were most affected: Ronald Reagan Washington National Airport (DCA); College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. While DCA and the three Maryland airports have since been reopened to transient general aviation traffic, the volume of general aviation activity has not returned to

pre-September 11, 2001 levels due to continuing security restrictions, and the South Capitol Street Heliport was not reopened to general aviation traffic and is now used exclusively by the Washington DC Metropolitan Police. Because of the reduction in general aviation activity at these locations, the fixed-base operators and service providers that supported general aviation were also affected, with many claiming that they were incurring sustained and significant financial losses due to the closures.

These fixed-base operators and service providers were not eligible for either compensation or loan guarantees under the Air Transportation Safety and System Stabilization Act, Pub. L. 107-42 (Sept. 22, 2001), which had been enacted to provide compensation to "air carriers" who had incurred financial losses due to the terrorist attacks. Under that program, approximately \$4.6 billion has been paid to qualifying air carriers.

In 2003, the United States House of Representatives Committee on Appropriations requested that the Department of Transportation (DOT) prepare a report detailing the documented financial losses by holders of real property leases at the five affected airports that were attributable to the Federal actions since September 11, 2001. (House Report 108-243, July 30, 2003, p. 8.) The Committee stated that such a report would assist the Congress in considering "potential federal reimbursement for a portion of these unusual financial losses." In October 2005, the Secretary of Transportation submitted to the Committee the requested report, which was entitled: *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report* (October 2005 DOT study). A copy of this Report has been placed onto the Office of the Secretary's Web site, at the address noted above. (See **FOR FURTHER INFORMATION CONTACT**).

The October 2005 DOT study identified sixteen general aviation leaseholders at the five airports, and estimated the financial losses that each incurred during its study period (which ran from September 11, 2001 to January 23, 2004) due to the Federal actions taken after the terrorist attacks. The estimates reflected the difference in net income stated on a pre-tax basis between what the companies projected for the study period and the actual pre-tax net income for that period, and included both losses in pre-tax net income and one-time costs attributable directly to compliance with new restrictions or regulations resulting from the terrorist attacks. In formulating its

estimates, the Department's consultant relied primarily on voluntary information provided by each entity, and while interviews were conducted to confirm the general reasonableness and consistency of the numbers provided, no independent analysis, audit or certification was conducted. Therefore, the October 2005 DOT study advised that these estimates were merely preliminary and meant solely to inform Congress in determining whether and in what amount to appropriate funds to reimburse these general aviation entities. The October 2005 DOT study also indicated that, if compensation were to be made available, "the financial data establishing the basis for any payment, especially forecast revenue, cost and net income, should \* \* \* be subject to a more rigorous verification regime." (*Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report, at fn. 3.*)

The total estimated financial losses for the period reviewed were \$10,443,936, with more than half of that amount being reported for one firm, Signature Flight Support. The estimates were in current dollars and reflected no consideration for the time value of money.

On November 30, 2005, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006, became law. Section 185 of the Act provides for the reimbursement of "fixed-base general aviation operators and the providers of general aviation ground support services" at the five cited airports for the "direct and incremental financial losses incurred while such airports were closed to general aviation operations, or as of the date of enactment of this provision in the case of airports that have not reopened to such operations, by these operators and service providers solely due to actions of the Federal government following the terrorist attacks on the United States that occurred on September 11, 2001." The Act provides up to \$17 million to reimburse these general aviation entities; however, it states that, of the \$17 million provided, an amount not to exceed \$5 million, if necessary, is to be available on a pro rata basis to fixed-base general aviation operators and the providers of general aviation ground support services located at the three Maryland airports: College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland.

Section 185 further states that the appropriated funds included the cost of "an independent verification regime"; that no funds shall be obligated or distributed to such general aviation entities until an independent audit is completed; that losses incurred as the result of violations of law, or through fault or negligence of such entities or of third parties (including airports) are not eligible for reimbursement; and that the obligation and expenditure of funds are conditional upon full release of the United States Government for all claims for financial losses resulting from such actions.

On October 4, 2006, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) in order to implement this Act (71 FR 58546 *et seq.*). There, the Department proposed definitions of various terms found in the Act; the eligibility requirements for applicants; the methodology for determining the losses to be reimbursed, including the forms by which applications would be made; the time periods at each airport for which reimbursement of losses would be made; the procedures for verifying and auditing claims; and various other matters. The Department invited comments on its proposals, and 16 responsive comments were received.

Below, we summarize the comments that we received and describe our response to those comments, including, where appropriate, the modifications we are making based upon those comments.

#### **Eligibility of Airports Per Se To Apply for Reimbursement**

One commenter, a small airport, contended that airports should be eligible for reimbursement for their losses under the Rule, because they "provide leaseholds to those who operate, service, and otherwise support general aviation aircraft," and simply by doing so provide "general aviation ground support services."

*DOT Response:* DOT believes that Section 185 should not be read, and was not meant to be read, to include airports *per se* as "providers of general aviation ground support services" eligible for reimbursement under this program. First, providing a facility that others may use for general aviation support is not the same as itself providing "services" to general aviation, and the latter formulation represents an interpretation that is more faithful to the language Congress actually used. Second, Congress clearly knows what an "airport" is, and if it intended that airports "as airports" be reimbursed for losses it surely would have plainly provided for that in Section 185, rather

than using the less direct "providers of general aviation services" language it chose. Finally, Congress, DOT, and other public authorities have used other vehicles to provide financial assistance to airports to reflect increased security and other requirements after the September 11 terrorist attacks, under which we understand various airports here recovered at least some elements of their added costs. The history of this legislation indicates that it was designed to assist those general aviation entities who were not eligible under other programs to recover their losses after 9/11.

Of course, if an airport here can show that it served as a fixed-base operator, or provider of general aviation ground support services as those terms are defined in Section 331.3 of the Rule, then it would qualify in that capacity for reimbursement under this program.

#### **Eligibility of General Aviation Entities That Did Not Operate at One of the Five Airports on September 11, 2001**

Glenwood Aviation, a leaseholder and fixed-base general aviation operator at the South Capitol Street Heliport who initiated operations there after the September 11 attacks (specifically, on October 1, 2002), expressed concern that certain language in the NPRM preamble, proposed rule, and application forms could be construed as precluding it from qualifying for reimbursement. DOT's language causing this concern generally referenced eligible applicants as limited to those that had operations at one or more of the five airports on September 11, 2001. The commenter stated that, in fact, Section 185 imposes no such restriction, and should be read more broadly to include the commenter within the class eligible for reimbursement.

*DOT Response:* The relevant language of Section 185 appropriates funds to reimburse general aviation operators and the providers of general aviation ground support services "at" the five airports for direct and incremental financial losses, incurred while the airports were closed solely due to the actions of the Federal government after the terrorist attacks of September 11, 2001. Thus, the commenter is correct in asserting that the legislative language does not limit general aviation entities eligible for reimbursement to those operating at one or more of the airports on September 11, 2001.

The commenter does not disclose, in its comment, how it became the fixed-base operator at South Capitol Street, and in particular, whether it has any contractual relationship with its predecessor, Air Pegasus. Air Pegasus

abandoned its lease to operate at that facility on September 30, 2002, and Glenwood Aviation states that it began its operations on October 1, 2002, the following day. If Glenwood is simply asserting rights to reimbursement based on an assignment of these rights to it by Air Pegasus, the Department would consider its application so long as there is a full disclosure of this basis for doing so, the necessary information from Air Pegasus was supplied, and copies of the contractual documents are attached.

However, if the commenter's theory of recovery is not as an assignee, there is a further issue: Section 185 limits reimbursement to those losses that were incurred "solely due to the actions of the Federal government following the terrorist attacks on the United States that occurred on September 11, 2001" (emphasis supplied). On October 1, 2002, when the commenter began its operations at South Capitol Street, the Federal government had already taken its actions to close that facility to general aviation operations. The commenter knew or had constructive knowledge of that closure, and presumptively assumed the risk when it negotiated the lease and began its operations that security or other considerations could require that the facility remain closed for some time, and perhaps never be reopened at all. Further, the status and uncertain future of the heliport should have permitted one then negotiating for a lease to obtain terms reflecting this risk-laden situation. Thus, in these instances, the notion that a "loss" was incurred "solely" due to actions taken by the Federal government following the attacks—and not due at least in part to miscalculation of risk or failure to adequately provide for it—is difficult to envision.

Nonetheless, because the statute itself does not foreclose reimbursement to applicants that were not operating at one of the airports on September 11, we will not foreclose reimbursement to this or other similarly-situated parties without affording them an opportunity to demonstrate, to DOT's satisfaction, that they can meet the other requirements of the statute and regulation. To meet those requirements, they would still need to supply an actual or, if none exists, a reasonable forecast showing post-9/11 business expectations absent the actions of the Federal government following the September 11 terrorist attacks, and show further that any claimed losses were solely due to those actions.

DOT will therefore modify § 331.5 to read as follows: "If you are or were a fixed-base general aviation operator or provider of general aviation ground

support services (collectively "operators or providers") at an eligible airport or airports in the Washington, DC area, and incurred direct or incremental losses during the applicable reimbursement periods stated at § 331.13 that were solely due to the actions of the Federal government following the terrorist attacks on the United States on September 11, 2001, you may apply for reimbursement under this part \* \* \*."

DOT will also modify the application form item 3 on Appendix A to read "At which of the following airports did the applicant operate as a fixed-base operator or provider of general aviation ground support services during the eligible period for reimbursement?"

These modifications do not reflect any change to the reimbursement methodology that will be employed, or to the showing of loss and sole cause for loss that will be necessary to have an application approved.

#### Reimbursement Methodology

A number of commenters raised concerns about the inclusiveness of the rule's methodology for determining the eligibility of losses. They maintained that losses due to foreclosure on homes, loss in value of real property, the adverse effect on their credit, fixed expenses, required maintenance, the cost of loans, personal savings invested in the business, and debts and wages that had gone unpaid should constitute eligible losses for which there would be reimbursement. Several also indicated that DOT's "lost profits" approach failed to recognize that some GA entities were small businesses, which tended to reinvest in the business rather than "take profits."

*DOT Response:* As background, the reimbursement methodology proposed by DOT in the NPRM relied on an applicant's forecast of revenues and expenses had the 9/11 attacks not occurred, which would then be compared with the actual revenues and expenses that occurred for the period of eligibility. As proposed, the claimant would generally be reimbursed for the difference in forecast revenues and expenses and actual revenues and expenses for the period.

Some of the loss items asked about by commenters would be addressed within this reimbursement scheme. For example, their forecasts would presumably itemize their projected "fixed expenses," "maintenance," "wages," etc., and their actual expenses for those same items over the reimbursement period would be tallied. However, personal (as opposed to business) losses are not compensable under Section 185, nor can DOT

reimburse for speculative losses or for losses that were not fully borne, in the normal course of business, during the allowable eligibility period.

As to debt and equity investment represented by loans and use of personal funds, these would normally be reported as "debt and equity investment" on the balance sheet of the business as offsets to increased cash in compliance with accounting principles. The reimbursement methodology proposed by DOT would permit carrying the interest on the loan as a non-operating business expense on the income statement. This expense, along with other non-operating expenses and operating expenses would be, in essence, subtracted from forecast revenues to produce an adjusted income, to be compared against forecast income in determining the amount of any loss. Funds "reinvested" back into a company constitute an investment that would be carried as additional capital invested (an increase in equity), or retained earnings, on the balance sheet. These retained earnings or additional invested capital increase the value of the firm that inures to the benefit of equity holders on a continuing basis, and so would not be reimbursed as a loss within the proposed methodology.

DOT believes its methodology for determining loss is appropriately comprehensive and fully satisfies the intent of Congress. We therefore are not proposing any modifications to it as a result of the comment process.

#### Tax Treatment Issues

One commenter questioned whether the intent of the legislation is to reimburse for damages rather than replacement of income, in which case the Rule should specify that any reimbursements should be tax-free. Another commenter urged that the Department's reference to net income be clarified to specify income before taxes, and that any other calculations of amount should be based on income before tax.

*DOT Response:* DOT does not view the language or intent of the legislation as providing reimbursement for damages, and disagrees that payments under the reimbursement program should be tax-free. DOT agrees with the second comment, viewing Section 185 as providing for reimbursement of losses through payments that essentially serve as replacement revenues to offset the losses incurred while the airports were closed due to Federal government actions. These replacement revenues, like normal business revenues, would be subject to taxes. Since the reimbursements granted here would be

subject to taxation, they should not be calculated on the basis of taxes that have already been paid. For clarification, we are therefore revising § 331.7 to change four references to “net income” to read “net income before taxes” instead, and, in the application form, modifying the reimbursement claim form by using the term “adjusted income,” which reflects the net of operating revenues and expenses and certain prescribed non-operating expenses and revenues upon which taxes are calculated.

#### Mitigation of Losses

One commenter, who had been able to recapture some losses by moving operations to another, non-impacted airport, argued that “although it is possible to estimate, it would be complex and somewhat judgmental for [it] to attempt to measure secondary effects at other locations, not reflected in any financial documents, that may be attributable in part to the closure by the government of operations at DCA and to determine how this may or may not have affected [its] DCA’s losses.” It further asserted that, as a company with operations around the world, it engaged in many aviation and non-aviation income-producing activities before and after September 11, 2001, which have no relationship with the shutdown of DCA and should not be a factor relating to its reimbursement.

*DOT Response:* DOT is proposing no change to the Rule in this regard. If an applicant was able to derive increased profits at another airport or airports as a result of diversion of traffic due to closure of one or more of the eligible airports, then those increases should serve to offset its reimbursable losses. While quantifying that offset amount may be “complex and somewhat judgmental,” the commenter conceded that it was possible to estimate, and DOT staff and, if necessary, an independent audit can help to ensure that an appropriate adjustment is made. If a narrower methodology were adopted, focusing only on an entity’s revenues and expenses associated with an eligible airport and ignoring the fact that some operations had migrated to another airport and produced income there, it could produce a windfall profit for the entity that DOT believes was not intended by Congress.

#### Time Value of Money

The intent of Congress was to reimburse eligible claimants for “the direct and incremental financial losses incurred.” In the NPRM, we proposed that applicants would report forecasted net income for the applicable

reimbursement period and actual net income earned for that period. We explicitly excluded from the reimbursement the time value of money through the payment of interest on lost profits for the period of time the funds were available for use, tentatively determining that, as a legal matter, the Department is precluded from payment of interest under the circumstances present here. *See, e.g., United States v. Alcea Bank of Tillamook*, 341 U.S. 48, 49 (1951). While several commentators asserted that interest should be reimbursable in the context of compensation paid pursuant to a governmental taking, such as the closure of airports, we do not believe that this comparison is valid. As noted below, the analogy to a governmental taking is inapt. A closer analogy is to the compensation paid under the Air Transportation Safety and System Stabilization Act, Pub. Law 107–42. That compensation, which was distributed in up to three tranches over time, did not include interest payments in any of the three distributions, including payments made even into 2004 and 2005. While the time period for applicants under Section 185 does differ from the time periods for applicants under the Stabilization Act, we believe that the payment of interest should be excluded here as it was there.

One commenter asserted that, however the Department must treat interest, “time value of money” represents a different concept and may and should be paid. In its view, the time value of money reflects the erosion in the value of money due to inflation, as well as the fact that funds available for use today can be put to productive use that will increase returns in the future. However, the erosion in the value of money is compensated for by paying interest, and, as explained, DOT is precluded by law from paying interest. However, as to lost capital earnings, the reimbursement calculus does permit an applicant to receive compensation if it can successfully demonstrate that its forecast showed a likely increase in net income that was planned for further investment at a reasonable rate, which increase and investment did not occur due to Federal government actions after September 11. In doing so, applicants must provide suitable supporting documentation for their specific claims because it would be highly speculative to hypothesize as to how earnings would have been reinvested and how those investments would fare, especially in the volatile economic climate after September 11. DOT will not simply provide a generalized “time value”

percentage to all claims, which would effectively be a payment in lieu of interest.

#### Fifth Amendment Taking

A large fixed-base operator argued that reimbursement under this program should follow just compensation principles of the Fifth Amendment, specifically in the payment of interest. This commenter asserted that the intent of Section 185 was to reimburse claimants for the effective taking of their property, in accordance with the Fifth Amendment to the Constitution.

*DOT Response:* DOT has not used a Fifth Amendment takings approach in proposing its methodology for reimbursing eligible GA entities. This action is consistent with and follows from the decision of the United States Court of Appeals for the Federal Circuit, in *Air Pegasus of DC, Inc. v. United States*, 424 F. 3d 1206 (2005). In affirming a decision by the United States Court of Federal Claims, the Federal Circuit there found that the Federal regulations restricting aviation activity in the District of Columbia area did not effect a taking of the private property of Air Pegasus, a lessee of real property at the South Capitol Street Heliport. Fifth Amendment takings precedents are thus not applicable to our Rulemaking here.

#### Lobbying Expenses

One commenter questioned the NPRM’s general preclusion of legal and lobbying expenses as eligible for reimbursement. The commenter argued that general lobbying and legal expenses are reasonable expenses, and a necessary cost of doing business. However, it allowed that lobbying expenses specifically incurred in an effort to “obtain funding for the shutdown” may be excluded by law.

*DOT Response:* The Department believes this comment has merit, and accordingly will modify § 331.7(g) of the Rule to read: “Lobbying and attorneys” fees incurred to promote reimbursement for losses resulting from the terrorist attacks or enact Section 185 of Pub. L. 109–115 are not eligible for reimbursement.” The Department will also modify § 331.21(i) of the Rule to change “lobbying expenses” to “lobbying expenses incurred to promote reimbursement for losses resulting from the terrorist attacks or enact Section 185 of Pub. L. 109–115.”

#### Eligible Reimbursement Period

Section 185 provides reimbursement for losses incurred while the five airports “were closed to general aviation operations, or [up to] the date of

enactment of this provision [i.e., November 30, 2005] in the case of airports that have not reopened to such operations. \* \* \* Only one airport, the South Capitol Street Heliport, remained closed to general aviation traffic through November 30, 2005. The other four airports were reopened to general aviation in stages: (1) First, after September 11, 2001, but only via special waiver, (2) then, opened to limited general aviation operations for based aircraft, (3) and then, opened to include transient traffic. Due to continuing security restrictions, in no case has general aviation activity reached the same level as it had before September 11, 2001. Because the statute speaks in terms of binary “closed” and “reopened” airports, admitting of no intermediate stages, the issue arises as to what point during the reopening process the airports ceased to be “closed” and should be considered “reopened” for purposes of determining the ending date for any reimbursement payments.

The NPRM addressed the issue at length. It proposed that the airports be considered reopened for purposes of the statute as of the date that transient traffic was permitted back. Under that proposal, the ending date for eligibility for reimbursement at Ronald Reagan Washington National Airport would be October 18, 2005; for College Park, Potomac, and Washington Executive/ Hyde Field would be February 13, 2005; and for the South Capitol Street Heliport, since it was never reopened to transient general aviation traffic, the date of enactment of the Act, or November 30, 2005.

Three commenters with interests at one of the Maryland airports, and one national association on behalf of Ronald Reagan Washington National Airport, argued that general aviation activity at these airports remains subject to security restrictions and that the airports are not operating at their pre-9/11 levels. While not contesting the fact that the four airports allow transient traffic to land, these commenters urged that the eligibility period be extended to the latest possible ending date in recognition of the fact general aviation aircraft do not have the same practical access to these airports as they did before September 11, 2001.

*DOT Response:* DOT agrees that the levels of general aviation activity at none of the five airports have returned to those experienced prior to September 11, 2001. However, it is clear that, aside from the South Capitol Street heliport, the airports are no longer closed to general aviation traffic and have reopened to some degree; the question

is whether they have “reopened” in the sense that Congress provided in the Act. The commenters did not address the Department’s reasoning, in the NPRM, that Congress must not have considered all five airports to be “closed” at the time it passed the statute. Had it done so, Congress would have simply provided for reimbursement through the date of enactment of the Act for each of the airports, and not provided for a case-by-case determination as to when each “reopened.” Congress of course was aware of the continuing security requirements and operational restrictions at the airports, and nothing in relevant legislative history indicates any basis other than airport “reopening” as the point at which eligibility for reimbursement was to terminate. The Department believes that the interpretation it proposed in the NPRM is the one most consistent with the Act’s language, and provides for a reasonably generous and consistent treatment among the airports. As a result, we have not modified the ending dates for the reimbursement periods in this Final Rule.

#### Hyde Field Closure

A number of commenters having their businesses or interests at Hyde Field argued that excluding any reimbursements for the period that airport was closed for the second time due to a security violation is not in keeping with the intent of the legislation and would create an undue hardship for them. Typically, they further asserted that they were not responsible for any violations, that the closure was for a minor security violation that should have taken but a few days to resolve, and that the length of the closure was due to government delay.

*DOT Response:* Section 185 states, “That losses incurred as a result of violations of law, or through fault or negligence, of such operators and service providers or of third parties (including airports) are not eligible for reimbursements.” While the commenters may be correct that they themselves may not have been at fault or otherwise responsible for the security violation that closed the airport, neither was the United States, and the statute authorizes reimbursement only for losses that were “solely due to the actions of the Federal government following the terrorist attacks on the United States that occurred on September 11, 2001.” Moreover, the exclusionary language is directed at a situation like the one at Hyde Field, and the legislative intent is clear that reimbursements not be available if the losses were proximately caused by third

parties and not the United States. As a consequence, the Department determines that Hyde Field and its general aviation service providers will not be eligible for reimbursement during the period that the airport was closed as a result of violations of the law.

#### Washington, DC Air Defense Identification Zone (ADIZ)

One comment raised concerns about the economic impact of the Washington, DC Air Defense Zone (ADIZ) on other airports and businesses in the Washington, DC metropolitan area. The comment further proposed that the ADIZ should be rescinded or modified to reduce the economic impact on airports.

*DOT Response:* Any losses that are not covered by Section 185 of the 2006 Appropriations Act are outside the scope of this rule and compensation for such losses is beyond the authority of the Department. Modifications to the ADIZ, the flight restrictions and maintenance of the ADIZ security zone are also not within the scope of this Rule.

#### Independent Audit Costs

The NPRM preamble stated that “larger claims, and any questioned claims, would be subject to audit,” and that the Department is “proposing to retain the flexibility to recover the costs of the audit from the amount of reimbursement.” While the NPRM did not go on to explain the reasoning behind the latter proposal, it was intended to provide an incentive for applicants to resolve their reimbursement claims short of an audit. It would also prevent audit costs from always being spread as overhead across the entire program, which could unfairly reduce reimbursements on a pro rata basis for small entities whose applications did not give rise to any issues on review.

One commenter, a large entity, asserted that the large size of a claim should not dictate that it must be audited, and that audits should only occur where claims are unresolved after DOT consultation. It also argued that Section 185 provides funding for both audits and reimbursement of all eligible losses up to the \$17 million ceiling. Thus, in its view, “Full reimbursement should be made for any accepted claim unless all the funds available have been expended and the Department has no choice but to reimburse an applicant for less than its accepted claim for losses.” Several other commenters asserted that Section 185 does not provide for any reductions in reimbursement for audit costs, one adding that the costs of an

audit can be substantial, and if this offset principle were effectuated it could swallow up the entire amount of a claim.

*DOT Response:* While larger claims are more likely to involve significant issues and to require an audit, the decision to audit a claim will be based on the Department's evaluation of the completeness and reasonableness of a claimant's entire application. While DOT has the flexibility to offset the cost of an audit against the reimbursement amount, it will do so only when reimbursements would need to be reduced because ceiling amounts have been reached, and where the reason for the audit involved questioned amounts that could not be resolved informally. Moreover, the maximum offset would be one-third of the total audit cost incurred by the Department. A reduction by one-third is considered sufficient to achieve the aims of dissuading unsupported claims and encouraging cooperation during the resolution process.

It is, of course, entirely possible that an audit would sustain the full amount of an applicant's claim, in which case the claim would be paid in full (subject of course to the overall \$17 million ceiling). Only applicants whose claims are not supported by audits would have their verified reimbursement allocations reduced, by a maximum of one-third of their total Departmental audit costs.

#### **Reimbursement for Professional Fees Used in the Application Process**

A trade association argued that fees for professional service used in the application process for reimbursement should be eligible for repayment by the Federal government. The association stated that many of the applicants are small businesses that do not have the resources to outsource attorney or accountant services to assist in the application process, and that the application process required activities that would not be necessary absent the events of September 11 and the subsequent airport closures.

*DOT Response:* Upon review, DOT agrees that the application process would benefit, overall, if claimants were able to utilize the services of professionals familiar with accounting standards and rules in submitting their applications. Particularly where applicants are subject to audit and, potentially, to have to pay the costs of that audit if any part of their claim is rejected, DOT believes they should have professionals available to them to help ensure that their applications comply with generally accepted accounting standards and thereby meet the Department's requirements.

Accordingly, we are amending the application form to include a separate line item for professional accounting services required in the submission of the application, which DOT may reimburse at 80%. (A sharing of cost will reduce the prospect for the provision of unnecessary services.) No reimbursements will be made for more general accounting or other legal or professional services, and all claims will be subject to a review for reasonableness. Invoices for services rendered must be attached to the application form to allow for prompt determinations to be made on allowability. The reimbursement would also be capped at a maximum amount of \$2,000, which should be more than sufficient in at least the great majority of cases for an accountant to provide the services needed.

#### **Submission Period**

Several commenters requested an extension of our proposed submission deadline of 30 calendar days from the effective date of the Final Rule. Two suggested a minimum submission period of 90 days. We recognize that some small claimants may need additional time to compile their supporting data; however, consideration of giving extra time must also factor in other concerns that potential applicants are interested in receiving their reimbursement as soon as possible. On this point, a trade association had complained that DOT had already taken considerable time to publish the NPRM, and called for the remainder of the process to be "clear, concise, and timely." In order to balance these competing concerns, and also to provide sufficient time for accounting professionals to assist applicants, we are establishing a submission period of 60 calendar days from the effective date of the final rule. We believe that this extension will benefit potential applicants that require additional time without burdening all applications with 90-day waits.

#### **Funds Available if Set-Aside Reimbursements Underrun \$5 Million**

Section 185 requires at least \$5 million to be set aside for claims originating from College Park Airport, Potomac Airpark, and Washington Executive/Hyde Field. One commenter requested that DOT clarify what it will do with any funds remaining after all claims are processed from these three airports.

*DOT Response:* Under the statutory language, after the claims from these designated airports are processed, if there are any funds remaining from the

\$5 million set-aside, then that money will be available to reimburse valid claims originating from other airports.

To clarify this point in the Rule, DOT will add a Section 331.37, to read as follows:

§ 331.37. What will happen to any remaining funds if operators and providers at the three Maryland airports make reimbursable claims totaling less than \$5 million?

If the operators and providers who are eligible for the \$5 million set-aside do not exhaust the funds designated under the set-aside, then any remaining money from the set-aside will be made available for other valid claims made under this Part.

#### **Assistance Available During the Application Process**

A trade association commented that many of the applicants eligible for reimbursement are small businesses and do not regularly develop full financial statements and forecasts. The association therefore requested that Departmental staff be flexible and provide as much assistance as possible to the applicants that need help.

*DOT Response:* As discussed above, DOT will provide fee reimbursements, to a limited degree, to enable small businesses to obtain professional assistance in preparing their applications. We have also posted other potentially useful information on DOT's Web site. DOT personnel will, to the extent resources permit, answer general questions and provide information on such matters as reimbursement eligibility and processing status. However, DOT staff will not be able to assist in the actual preparation of the applications, or provide tax or accounting advice or interpretations.

#### **Regulatory Analyses and Notices**

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The rule establishes procedures to provide reimbursement to eligible applicants from funds appropriated by Congress. The Department administers a number of programs entailing similar procedures. This rule therefore does not represent a significant departure from existing regulations and policy. Furthermore, once implemented, this rule would have only minimal cost impacts on regulated parties.

##### *Federalism*

This rule does not directly affect the States, the relationship between the national government and the States, or the distribution of power among the

national government and the States, such that consultation with the States and local governments is required under Executive Order 13132.

#### *Regulatory Flexibility Act*

The Department certifies that this rule would not have significant economic effects on a substantial number of small entities. Many of the applicants for reimbursements are likely to be small entities. However, the overall benefits to be provided to applicants are modest in size and application costs themselves are likely to be low. In the aggregate, the cost among all applicants for gathering information and submitting an application should range from \$2,501 to \$5,003.

#### *Paperwork Reduction Act*

This rule contains information collection requirements subject to the Paperwork Reduction Act of 1995, specifically the application documents that fixed-base general aviation operators and providers of general aviation ground support services must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. 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 (and Form) for Reimbursement of General Aviation Operators and Service Providers in Washington, DC Area.

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

*Use of Information:* The Department of Transportation will use the data submitted by the fixed-base general aviation operators and providers of general aviation ground support services to determine their reimbursement for direct and incremental financial losses incurred while the airports were closed due to Federal government actions taken after the terrorist attacks on September 11, 2001.

*Frequency:* For this final rule, the Department will collect the information once from fixed-base general aviation operators and providers of general aviation ground support services.

*Respondents:* The respondents include an estimated 24 fixed-base general aviation operators and providers of general aviation ground support service. This estimate is based on the number of fixed-base general aviation

operators and providers of general aviation ground support services identified in the October 2005 DOT study.

*Burden Estimate:* Total applicant burden of between \$2,501 and \$5,003 based on a burden of between three (3) and six (6) hours per applicant and a weighted average cost per hour of \$34.74.

*Form(s):* The data will be collected on the Form entitled, "Application Form for Reimbursement Under Section 185 of Public Law 109-115," and referenced in this part.

*Average Burden Hours per Respondent:* A weighted average of four (4) hours per application. The Department has requested approval from the Office of Management and Budget for this information collection.

#### *Other Statutes and Executive Orders*

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department must consider in all rulemakings, but which the Department has determined are not sufficiently implicated by this rule to require further action. Specifically, this rule does not impact the human environment under the National Environmental Policy Act, does not concern constitutionally protected property rights such that Executive Order 12630 is implicated, does not involve policies with tribal implications such that Executive Order 13175 is invoked, does not concern civil justice reform under Executive Order 12988, does not involve the protection of children from environmental risks under Executive Order 13045, and will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### **List of Subjects in 14 CFR Part 331**

Air Transportation, Airports, Airspace, Claims, Grant programs, Reporting and recordkeeping requirements.

Issued this 28th day of March, 2007, at Washington DC.

**Mary E. Peters,**  
*Secretary of Transportation.*

■ For the reasons set forth in the preamble, the Department adds 14 CFR part 331 to read as follows:

#### **PART 331—PROCEDURES FOR REIMBURSEMENT OF GENERAL AVIATION OPERATORS AND SERVICE PROVIDERS IN THE WASHINGTON, DC AREA**

##### **Subpart A—General Provisions** Sec.

- 331.1 What is the purpose of this part?
- 331.3 What do the terms used in this part mean?
- 331.5 Who may apply for reimbursement under this part?
- 331.7 What losses will be reimbursed?
- 331.9 What funds will the Department distribute under this part?
- 331.11 What are the limits on reimbursement to operators or providers?
- 331.13 What is the eligible reimbursement period under this part?
- 331.15 How will other grants, subsidies, or incentives be treated by the Department?
- 331.17 How will the Department verify and audit claims under this part?
- 331.19 Who is the final decision maker on eligibility for, and amounts of reimbursement?

##### **Subpart B—Application Procedures**

- 331.21 What information must operators or providers submit in their applications for reimbursement?
- 331.23 In what format must applications be submitted?
- 331.25 To what address must operators or providers send their applications?
- 331.27 When are applications due under this part?

##### **Subpart C—Set-Aside for Operators and Providers at Certain Airports**

- 331.31 What funds are available to applicants under this subpart?
- 331.33 Which operators and providers are eligible for the set-aside under this subpart?
- 331.35 What is the basis upon which operators and providers will be reimbursed through the set-aside under this subpart?
- 331.37 What will happen to any remaining funds if operators and providers at the three Maryland airports make reimbursable claims totaling less than \$5 million?

Appendix to Part 331—Application Form for Reimbursement Under Section 185 of Public Law 109-115

**Authority:** 49 U.S.C. 322(a).

##### **Subpart A—General Provisions**

###### **§ 331.1 What is the purpose of this part?**

The purpose of this part is to establish procedures to implement section 185 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006 ("the Act" or "the 2006 Appropriation Act"), Public Law 109-115, 119 Stat. 2396. Section 185 is intended to reimburse certain fixed-base general aviation operators or providers of general aviation ground support services at five airports in the Washington, DC metropolitan area for direct and incremental losses due to the actions of the Federal government to close airports to general aviation operations following the terrorist attacks of September 11, 2001.

**§ 331.3 What do the terms used in this part mean?**

The following terms apply to this part:

*Airport* means Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; or Washington South Capitol Street Heliport in Washington, DC.

*Closed* or *closure* means the period of time until the first general aviation operations were generally permitted at Ronald Reagan Washington National Airport; until November 30, 2005 at Washington South Capitol Street Heliport; or the earliest that transient traffic was generally permitted to return to the three Maryland airports.

*Department* means the U.S. Department of Transportation and all its components, including the Office of the Secretary (OST) and the Federal Aviation Administration (FAA).

*Direct and incremental losses* means losses incurred by a fixed-base general aviation operator or a provider of general aviation ground support services as a result of the Federal government's closure of an airport following the terrorist attacks against the United States on September 11, 2001. These losses do not include any losses that would have been incurred had the terrorist attacks on the United States of September 11, 2001 not occurred.

*Fixed-base general aviation operator* means an entity based at a particular airport that provides services to and support for general aviation activities, including the provision of fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing, and the provision of air charter services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts supplier).

*Forecast* or *forecast data* means a projection of revenue and expenses during the eligible reimbursement period had the attacks of September 11, 2001 not occurred.

*Incurred* means to become liable or subject to (as in "to incur a debt").

*Loss* means something that is gone and cannot be recovered.

*Provider of general aviation ground support services* means an entity that does not qualify as a fixed-base general aviation operator but operates at a particular airport and supplies services, either exclusively or predominantly, to support general aviation activities, including flight schools or security services. The term does not include an

entity that exclusively provides products for general aviation activities (e.g. a parts or equipment supplier).

*You* means fixed-base general aviation operators or providers of general aviation ground support services.

**§ 331.5 Who may apply for reimbursement under this part?**

If you are or were an eligible fixed-base general aviation operator or provider of general aviation ground support services (collectively "operators or providers") at an eligible airport or airports in the Washington, DC area, and incurred direct or incremental losses during the applicable reimbursement periods stated at § 331.13 that were solely due to the actions of the Federal government following the terrorist attacks on the United States on September 11, 2001, you may apply for reimbursement under this part. If you are applying for reimbursement based on losses at more than one airport, then you must submit separate applications for each airport. For example, if you are a provider of general aviation ground support services at Ronald Reagan Washington National Airport and Potomac Airfield in Fort Washington, Maryland, you must submit two separate applications.

**§ 331.7 What losses will be reimbursed?**

(a) You may be reimbursed an amount up to the difference between the adjusted income you actually or reasonably forecasted for the eligible reimbursement period and the actual adjusted income you earned during the eligible reimbursement period. If you did not forecast for the eligible reimbursement period or any part of the eligible reimbursement period, you may be reimbursed for the difference between what you can show you would have reasonably expected to earn as adjusted income during that period had the airport at which you are or were an operator or provider not been closed as the result of Federal government actions, and the actual adjusted income you earned during the eligible reimbursement period. Adjusted income is calculated on a pretax basis. It is the total of Operating Profit or Loss (i.e., Total Operating Revenues minus Total Operating Expenses) and Nonoperating Income (Loss); however, it excludes certain expenses, including lobbying expenses that were incurred to promote reimbursement for losses after the terrorist attacks or enact what became Section 185 of Pub. L. 109–115. Extraordinary, non-recurring, or unusual adjustments, and capital losses are normally ineligible for reimbursement. If you wish to claim for

such an adjustment or loss, you must demonstrate that such adjustments were solely attributable to the Federal government's closure of the five Washington-area airports, are in conformity with Generally Accepted Accounting Principles, were fully borne within the statutory reimbursement period, that the loss was not discretionary in nature, and that reimbursement would not be duplicative of other relief.

(b) A temporary loss that you recovered after the attacks of September 11, 2001, or that you expect to recover, is not eligible for reimbursement under this part. You will not be reimbursed for those losses incurred through your own fault, negligence, or violation of law, or because of the actions of a third party (e.g. an airport).

(c) If you engaged in any non-aviation income-producing activities after September 11, 2001, such income must be reported under question number 5 in the appendix to this part.

(d) So called "cost savings" claims (i.e. increasing the claimed amount of reimbursement by reducing actual expenses to "adjust" for savings in expense categories asserted not to have been affected by the terrorist attacks) are not eligible for reimbursement.

(e) You cannot claim reimbursement for the lost time value of money (i.e. interest on lost profits for the period of time the funds were not available for your use).

(f) Lobbying fees and attorneys' fees incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Pub. L. 109–115 are not eligible for reimbursement.

(g) Your calculation of revenues, expenses and income must be based on financial documents maintained in the ordinary course of business that were prepared for the eligible reimbursement period, such as income statements, statements of operations, profit-and-loss statements, operating forecasts, budget documents or other similar documents.

**§ 331.9 What funds will the Department distribute under this part?**

The Department will distribute the full amount of reimbursement it determines is payable to you under section 185 of the Act. Payment may be made in one or more installments.

**§ 331.11 What are the limits on reimbursement to operators or providers?**

(a) You are eligible to receive reimbursement subject to the set-aside (subpart C of this part) for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington,



Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The amount available to you as reimbursement may be reduced to cover the cost of independent verification and auditing, as set forth in § 331.17.

(b) If you receive more reimbursement than the amount to which you are entitled under section 185 of the Act or the subpart C set-aside, the Department will notify you of the basis for the determination and the amount that you must repay to the Department. The Department will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) to the extent required by law, in recovering such overpayments.

(c) Payment will not be made to you until you have agreed to release the United States Government for all claims for financial losses resulting from the closure of the five airports in the Washington, DC area. The Department will provide a release form to applicants that must be completed before any payment is made under Section 185 of the Act.

**§ 331.13 What is the eligible reimbursement period under this part?**

The eligible reimbursement period for direct and incremental losses differs by airport:

(a) For Ronald Reagan Washington National Airport the eligibility period for reimbursement is from September 11, 2001 until October 18, 2005.

(b) For College Park Airport in College Park, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(c) For Potomac Airfield in Fort Washington, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(d) For the Washington South Capitol Street Heliport in Washington, DC, the eligibility period for reimbursement is from September 11, 2001 to November 30, 2005.

(e) For Washington Executive/Hyde Field in Clinton, Maryland, there are two eligibility periods for reimbursement. The first period is from September 11, 2001 until May 16, 2002. The second period is from September 29, 2002 until February 13, 2005.

**§ 331.15 How will other grants, subsidies, or incentives be treated by the Department?**

Grants, subsidies, or incentives that you have received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security

programs, or maintaining or providing general aviation services and facilities, will be considered revenues and should be reported as such on your application.

**§ 331.17 How will the Department verify and audit claims under this part?**

Departmental staff will initially review each claim in detail, and contact you should questions arise. If they are unable to satisfactorily resolve the matter following consultation with you, your claim will be forwarded to the Office of the Inspector General, or another independent auditor, for verification and, if necessary, an audit. In addition, the Department may consult with, or make referrals to, other government agencies, including the Department of Justice. If an audit is necessary, a ceiling amount reached, and the audit does not support the claimed amount, your reimbursement may be reduced to cover one-third the cost of the audit.

**§ 331.19 Who is the final decision maker on eligibility for, and amounts of reimbursement?**

The Assistant Secretary of Aviation and International Affairs will make a final determination of your eligibility and the amount of reimbursement you will receive.

**Subpart B—Application Procedures**

**§ 331.21 What information must operators or providers submit in their applications for reimbursement?**

(a) You must submit the *Application Form for Reimbursement under Section 185 of Public Law 109-115* (“Application Form”), located in the appendix to this part, along with the profit and loss statements, forecasts, or other financial documents (collectively “supporting financial documents”) generated as a routine matter for the purposes of managing your business, and relied upon in completing your application.

(b) To the extent that your calculation of revenues, expenses and incomes are based on monthly records, you must adjust your calculation, on a pro-rata basis, to conform to the eligibility period. For example, if you utilize a monthly financial record to prepare a calculation of your September 2001 revenues, you should apportion your results for the period between September 11 and September 30, 2001.

(c) If multiple forecasts were prepared for the same period, you must utilize the one most recently approved, prior to September 11, 2001, so long as it is otherwise objective and reliable.

(d) If you provided information to the Department as part of its study entitled

*Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area* (Oct. 2005) (“2005 General Aviation Study”), you should not simply reiterate the same data provided to the Department at that time; you must provide the most current information that is available to you. If you do reiterate that same data provided to the Department for the 2005 General Aviation Study, the basis for your estimates must be verifiable from the supporting financial documents that you submit with your application.

(e) Failure to include all required information will delay consideration of your application by the Department and may result in a rejection. You have the burden to document and substantiate your claim; the Department will provide reimbursement only if it is satisfied that payment is fully supported.

(f) If, prior to September 11, 2001, you did not prepare a forecast covering the entire eligible reimbursement period, or if the forecast you completed is not relevant to the information required by this part, you may submit an “after-the-fact” estimate of the amount that you would have reasonably expected to accrue as adjusted income had the airport at which you are or were an operator or provider not closed. “After-the-fact” estimates must consider items particular to your business, including labor agreements and the terms of contracts in place at the time of the eligible reimbursement period, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, and other similar documents. You must explain the methodology that you used when preparing your reconstructed forecast.

(g) You must certify that the information on the application in the appendix to this part and all of the supporting financial documents that you are submitting is true and accurate under penalty of law and that you acknowledge that falsification of information may result in prosecution and the imposition of a fine and/or imprisonment.

(h) You must retain all materials you relied upon to establish your claim for losses.

(i) You must provide mitigating expenses, lobbying expenses incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of the Act, and special expenses, as well as extraordinary adjustments, as instructed in the appendix to this part.

(j) If you need professional accounting services to assist in the preparation of your application, you may claim reimbursement for 80% of the actual

amount you paid for such services, up to a maximum reimbursement of \$2,000. You may claim reimbursement only for professional services; your own time in applying for reimbursement is not reimbursable. Any claim for professional accounting services must be accompanied with appropriate documentation as to the nature and extent of services performed, the amount billed, and payment.

Employment or use of such professional services does not relieve you of the responsibility for the accuracy and completeness of the application.

(k) If you believe that the release of financial information provided to the Department in support of your application would cause you substantial harm if released by the Department to the public upon an appropriately made request, you may request that the Department hold portions of your application as confidential. Your request must specify the portions of your application that should be held by the Department as confidential, and you must provide an explanation as to how the release of such information would cause you substantial harm.

**§ 331.23 In what format must applications be submitted?**

(a) The Application Form, located in the appendix to this part, must be submitted in hardcopy format and, if possible, in electronic format. The Department has made available an electronic version of this form at the following Web site: *http://ostpxweb.dot.gov/aviation/index.html*. (Click on "Programs" and scroll to "General Aviation Operator and Service Provider Reimbursement.")

(b) All supporting financial documents must be submitted in hard copy. In addition, you may submit financial and accounting tabular data in Excel spreadsheet format, utilizing a 3.5" floppy disk, compact disk, or flash memory device, and doing so may expedite the processing of your claim.

(c) Faxed and e-mailed applications are not acceptable and will not be considered.

**§ 331.25 To what address must operators or providers send their applications?**

(a) You must submit your application and all required supporting information, to the following address: U.S. Department of Transportation, Office of Aviation Analysis (X-50) Aviation Relief Desk, Room 6401, 400 7th Street, SW., Washington, DC 20590.

(b) Your application must be submitted via courier or an express package service, such as registered U.S.

Postal Service, Federal Express, UPS, or DHL.

(c) If complete applications are not submitted to the address in paragraph (a) of this section, they will not be accepted by the Department.

**§ 331.27 When are applications due under this part?**

You must submit your application by June 8, 2007.

**Subpart C—Set-Aside for Operators or Providers at Certain Airports**

**§ 331.31 What funds are available to applicants under this subpart?**

The Department is setting aside a sum of \$5 million to reimburse eligible operators or providers, as set forth in section 185 of the Act.

**§ 331.33 Which operators and providers are eligible for the set-aside under this subpart?**

Operators or providers at the following three airports during the eligible reimbursement periods are eligible for the set-aside:

- (a) College Park Airport in College Park, Maryland;
- (b) Potomac Airfield in Fort Washington, Maryland; and
- (c) Washington Executive/Hyde Field in Clinton, Maryland.

**§ 331.35 What is the basis upon which operators or providers will be reimbursed through the set-aside under this subpart?**

Operators or providers eligible under this subpart will be reimbursed pursuant to the same procedures set forth in subpart B of this part. If total losses for all eligible claims at the three airports set forth in § 331.31 of this part are less than \$5 million, then such claims will be paid in full. If the total losses for all eligible claims at the three airports set forth in § 331.31 of this part exceed \$5 million, then the total losses will be divided on a pro rata basis, and a proportionate amount for each claim will be distributed to applicants.

**§ 331.37 What will happen to any remaining funds if operators and providers at the three Maryland airports make reimbursable claims totaling less than \$5 million?**

If the operators and providers who are eligible for the \$5 million set-aside do not exhaust the funds designated under the set-aside, then any remaining money from the set-aside will be made available for other valid claims made under this part.

**Appendix to Part 331—Application Form for Reimbursement Under Section 185 of Public Law 109-115**

1. Applicant name: \_\_\_\_\_

2. Applicant address:

3. At which of the following airports did the applicant operate as a fixed-base operator or provider of general aviation ground support services during the eligible period for reimbursement?

- Ronald Reagan Washington National Airport
- College Park Airport in College Park, Maryland
- Potomac Airfield in Fort Washington, Maryland
- Washington Executive/Hyde Field in Clinton, Maryland
- Washington South Capitol St. Heliport, Washington, DC

4. Briefly describe the nature of the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

5. Did the applicant or any part of it conduct non-fixed-base general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

Yes. Briefly describe the non-fixed-base general aviation activities and non-aviation ground support services.

No.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services.

7. In response to the events of September 11, 2001, did the applicant take any action to lessen or offset the impact of those events?

Yes. Briefly describe those actions and the effect they had on the applicant.

No.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

Yes. Specify the filing status under which the applicant filed (corporation, partnership, sole proprietorship, etc.)

No.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual

forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

10. The requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses), adjusted as indicated, with a similarly

adjusted company forecast/budget of operating results that existed prior to September 11, 2001 if such a forecast/budget was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document can reasonably be expected to earn during

the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

11. Reimbursement Claim

Financial Data

	Column A	Column B	Column C
	Pre 9-11-01 Forecast or after-the-fact estimate for the eligible period*.	Actual results for the eligible period*.	Column A minus Column B
Line 1—Total Operating Revenues			
Line 2—Total Operating Expenses			
Line 3—Operating Profit or (Loss)			
Line 4—Nonoperating Revenue			
Line 5—Nonoperating Expenses.			
Line 6—Nonoperating income (loss) before taxes.			
Line 7—Professional Application Fee (@80%, max. \$2000).			
Total—Adjusted Income Line 3 plus line 6 and line 7 in the last column.			

The table above applies to the period 9-11-01 through 2-13-05 for the three Maryland airports, including Washington Executive/Hyde Field. However, for Hyde Field please prepare separate claims for the periods before, during and after the ineligible period, 5-17-02 through 9-28-02. For Ronald Reagan Washington National Airport, the eligible period is from 9-11-02 through 10-18-05 and for Washington South Capitol Street Heliport, the period is from 9-11-01 through 11-30-05.

Lobbying expenses incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Public Law 109-115 are to be excluded from both Columns A and B.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation Transportation Security Act (ATSA) Public Law 107-71 November 19, 2001, and the Airport Improvement Program (AIP)).

- Yes. Enter amount = \$ \_\_\_\_\_.
- No.

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned "What information must operators

or providers submit in their applications for reimbursement?"), or extraordinary, non-recurring, or unusual adjustments?

- Yes. Briefly describe these expenses and the amount of each, and state if they have been included in or excluded from the totals in the table at item number 11.

- No.

14. Certification. I certify the above information and all attached documents as true and accurate under penalty of law, and acknowledge that falsification of information may result in prosecution and imposition of a fine and/or imprisonment.

Signature of Company Official (must be President, CEO, COO, or CFO)

Printed Name of Company Official

Position (President, CEO, COO, or CFO) of Company Official

Phone Number of Company Official:  
(voice) \_\_\_\_\_  
(fax) \_\_\_\_\_

Date \_\_\_\_\_

Name of Contact Person (if different from above)

Position of Contact Person (if different from above)

Phone Number of Contact Person:  
(voice) \_\_\_\_\_  
(fax) \_\_\_\_\_

E-mail Address of Contact Person: \_\_\_\_\_

**Instructions for Completing Application Form for Reimbursement Under Section 185 of Public Law 109-115**

1. Applicant name.

This is the person or legal entity who undertakes to act as a fixed-base general aviation operator or who provides general aviation ground support services, directly or by a lease or any other arrangement.

2. Applicant address.

The applicant address is that location within the local tax authority jurisdiction that is held out to the public as the business or airport address.

3. Airport of operation on September 11, 2001.

This question asks the applicant to identify those airports in the Washington, DC area where it provided either fixed-base general aviation services or general aviation ground support services on September 11, 2001. Check as many airports as you served on September 11, 2001.

4. Briefly describe the nature of the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

You should describe the specific fixed-base general aviation services or general aviation ground support services that you provided at each of the airports.

5. Did the applicant or any part of it conduct non-fixed-base general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

Check "Yes" if you conducted any non-fixed-base general aviation activities or provided non-aviation ground support services during the 2001 through 2005 period. Describe the activities that you undertook during this period that did not directly support general aviation at the airport.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services.

You should describe how the level and conduct of your operations as a fixed-base general aviation operator or your operations as a provider of general aviation ground support services were changed as a result of September 11, 2001 and the ensuing security restrictions that were imposed by the Federal government.

7. Did the applicant undertake any actions to lessen or offset the impact of the Federal government's closure of airports in the Washington, DC area following the attacks of September 11, 2001?

Check "Yes" if you attempted to minimize the impact that the terrorist attacks of September 11, 2001 had on your business. Briefly describe your actions and the effect that they had on you. Include any activities or services undertaken after September 11, 2001 that did not provide support for general aviation but that did provide revenues to sustain your business.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

Check "Yes" if you filed income taxes during this period, and indicate the filing status under which you filed your income tax returns.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

This question directs applicants to provide the Department with certain financial documents in order to verify and substantiate their claims. Documents that you have already prepared should be sufficient. When necessary, you should supplement these documents with footnotes or explanations that are pertinent to your reimbursement claim. The financial data may include such documents as income statements, statements of operations, forecasts of operating results, income projections, pro forma budget projections, budget documents, tax preparation support material, information presented in investment perspectives and

registrations, or other similar information that in whole or in part cover the period from 1999 through 2005.

10. The requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses) (adjusted as shown), with a similarly adjusted company forecast of operating results that existed prior to September 11, 2001 if such a forecast was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document that it reasonably expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

Indicate here whether an "after-the-fact" forecast was prepared, and briefly describe the methodology used in preparing the forecast. Your methodology must take into account items relevant to your businesses, such as the terms of existing contracts, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, existing labor agreements and leasing agreements, and other similar types of documents.

In preparing your "after-the-fact" forecast, you may wish to consult a July 2001 report prepared for the FAA, entitled Forecasting Aviation Activity by Airport. This report was prepared by GRA, Incorporated (GRA), for the FAA's Office of Aviation Policy Plans Statistical and Forecast Branch (APO-110). While the Department recognizes that fixed-base general aviation operators and providers of general aviation ground support services are different entities than larger airports at which scheduled service is provided, the Department believes that this document offers relevant guidance to applicants who do not prepare forecasts as part of regular business operations. This July 2001 report may be accessed at: [http://www.faa.gov/data\\_statistics/aviation\\_data\\_statistics/forecasting/media/AF1.doc](http://www.faa.gov/data_statistics/aviation_data_statistics/forecasting/media/AF1.doc).

The July 2001 report explains the basic steps usually utilized in preparing forecasts, including: Identifying parameters and measures to forecast; collecting forecast information of expected revenues or expenses, including budgets; gathering and evaluating data; selecting a forecast method (such as regression and trend analysis, share analysis, or exponential smoothing); applying methods and evaluating results; and summarizing and documenting the results.

Additionally, data sources to assist you in making adjustments to your forecast are available from the Department's Web site at <http://ostpxweb.dot.gov/aviation/index.html> (Click on "Programs" and scroll down to "General Aviation Operator and Service Provider Reimbursement"). The Department notes that, while it can answer questions for applicants that might arise while applicants develop forecasts, the Department is not in a position to propose or develop projections for applicants.

11. Reimbursement Claim.

For purposes of completing the information in the reimbursement claim table, total operating revenues (line 1) include the inflow of funds to the applicant resulting from the sale of goods and services related to the activities of a fixed-base operator or a provider of general aviation services. Examples include, but are not limited to, monetary amounts or value received for providing: aircraft fuel or oil; delivery of aircraft fuel or oil; transient and long-term storing, tie down parking and sheltering of aircraft; maintenance, inspection, checking, upgrading of aircraft and aircraft related equipment and for polishing and cleaning property and equipment; providing flight instruction services and materials; and miscellaneous items for purchase such as maps, books, flight clothing, sectional charts, devices and parts for aircraft, food services, hospitality services, auto rentals, aircraft custodial and sanitation services, assistance grants from state and Federal government agencies, insurance payments, and revenues derived from the business activities conducted at alternative airports to those that were closed.

Total operating expenses (line 2) include the cost to the applicant of providing the goods and services related to the activities of a fixed-base operator or a provider of general aviation services. Examples include, but are not limited to: Labor costs for all categories of employees (including compensation, vacation and sick leave pay, medical benefits, workmen's compensation contributions, accruals or annuity payments to pension funds, training reimbursements, professional fees, licensing fees, educational or recreational activities for the benefit of the employee, stock incentives, etc.); the cost of fuel and oil including nonrefundable aircraft fuel and oil taxes; insurance; flight and ground equipment parts; general services purchased for flight or ground equipment maintenance; depreciation of flight and ground equipment; amortization of capitalized leases for flight and ground equipment; provisions for obsolescence and deterioration of spare parts; insurance premiums; and rental expenses of flight and ground equipment expenses associated with business activities conducted at alternative airports to those that were closed. Advertising, promotion and publicity expenses, landing fees, clearance, customs and duties, utilities, bookkeeping, accounting, recordkeeping and legal services are also part of the total operating expenses.

Operating profit or loss is calculated by subtracting the total operating expenses from the total operating revenues. If the total operating revenues exceed the total operating expenses, the calculation results in an operating profit. If the total operating expenses exceed the total operating revenues, the calculation results in an operating loss.

Nonoperating income and expenses include: income and loss incident to commercial ventures not inherently related to the direct provision of fixed-base operator services or general aviation ground support services; other revenues and expenses attributable to financing or other activities that are extraneous to and not an integral part of general aviation services; and special recurrent items of a nonperiod nature.

Examples of non-operating income include, but are not limited to: Interest income; foreign exchange gains; equity investment in an investor controlled company; intercompany transactions; dividend income; and net unrealized gains on marketable equity securities.

Examples of non-operating expenses include, but are not limited to: Interest on long-term debt and capital leases; interest on short-term debt; imputed interest capitalized; amortization of discount and expense on debt; foreign exchange losses; fines or penalties imposed by governmental authorities; costs related to property held for future use; donations to charities, social and community welfare purposes; losses on reacquired and retired or resold debt securities; and losses on uncollectible non-operating receivables.

For reasons set forth elsewhere in § 331.7 of this part, you may not include lobbying expenses that were incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Pub. L. 109-115. Non-operating income is the result of subtracting the non-operating expenses from the non-operating revenues. Professional application fees provide for reimbursement of 80 percent of the cost of professional accounting services required in the preparation and submission of the application. Adjusted Income for each of the Columns A and B is the sum of the Operating profit (or loss) (line 3) plus line 6, Non-operating income (loss). Each line of Column C is the result of subtracting Column B from Column A, except on line 7, Professional Application Fees, where the claimant may enter 80 percent of professional application fees (up to a maximum of \$2,000). The Adjusted Income figure on the Total line of Column C represents the amount claimed as total reimbursement; it may of course be adjusted as the result of Department review. All Adjusted Income figures do not reflect taxes due in the current period, as a consequence, reimbursements will be pre-tax and income taxes may be due on reimbursed funds.

The difference between column A and B is the basis for column C. This constitutes the total amount of your claim for reimbursement. As the eligibility periods, for the most part, begin and end on days other than the first or last days of the month, quarter or year, data from already existing financial statements must be adjusted, on a pro rata basis, to reflect the eligibility periods. For example, the period of eligibility for all applicants begins on September 11, 2001 and therefore, the only time period during the month of September that is eligible for reimbursement is September 11 through September 30, a period of 20 days. Applicants should be prepared to show both how they apportioned such financial data into the reimbursement periods, and why they chose the apportionment approach used. Applicants can then use these estimates for the specified periods at the beginning and end of the eligible period to add to the financial amounts for 2002, 2003, and 2004 to calculate the total amounts sought in Appendix A.

12. Has the applicant or any of its subsidiaries or affiliates received grants,

subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation and Transportation Security Act of 2001 (Public Law 107-38) and the Airport Improvement Program under the Airport and Airway Improvement Act of 1982 (Public Law 97-248).)

This question requires that you disclose all grants, subsidies, or incentives that you received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities.

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned "What information must operators or providers submit in their applications for reimbursement?"), or extraordinary adjustments?

Check "Yes" if you incurred any such expenses or experienced any such adjustments. You must briefly describe the nature of such expenses and adjustments, including the amounts. Additionally, you must indicate whether or not such expenses or adjustments have been included in or excluded from the totals in the table at item number 11.

Lobbying includes any amount paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

Mitigating expenses include the utilization of property, the provision of services and the sale of goods that were undertaken to mitigate losses arising from the Federal government's closure of airports attendant to the September 11, 2001 attack. These could include expenses incurred for the provision of services and sale of goods moved from restricted airports to unrestricted airports or compensation for non-aviation oriented goods and services provided at restricted airports. Mitigating expenses may also include operating expenses for aviation-related fixed assets or capital utilized outside of the restricted airport.

Special expenses include, but are not limited to, moving expenses, additional security equipment and facilities, and loss on sales of assets that arose from the direct imposition of restrictions during the period September 11, 2001 through the applicable eligible date. Any item reported under Special Expenses shall not also be expensed in other expense categories that are reflected in the calculation of the reimbursement claim. Details regarding special expenses should be noted in footnotes.

Extraordinary adjustments are events or transactions that are material to your business and unusual in nature and infrequent in occurrence.

14. Certification.

You must certify that all information contained on the Background and Eligibility Form *and* the documents submitted in support of your application (e.g., profit and loss statements, actual forecasts, after-the-fact forecasts, etc.) are accurate. This certification is made under penalty of law. Falsification may be grounds for monetary and/or criminal sanctions. This certification must be made by a company President, CEO, COO, or CFO.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 101

[Docket No. RM04-12-000]

#### Accounting and Financial Reporting for Public Utilities Including RTOs; Notice of Extension of Time

April 2, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule: notice of extension of time.

**SUMMARY:** On December 16, 2005, the Commission issued Order No. 668, a Final Rule amending the Commission's regulations to update the accounting and reporting requirements for public utilities and licensees, including independent system operators and RTOs. Because the Commission has updated the submission software used to file FERC Form Nos. 1 and 1-F, the Commission is issuing a notice extending the filing deadline for the filing of 2006 FERC Form Nos. 1 and 1-F.

**DATES:** The filing deadline for 2006 FERC Form Nos. 1 and 1-F is extended to May 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Brenda D. Devine, Division of Financial Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8522.

#### SUPPLEMENTARY INFORMATION:

#### Notice Granting Extension of Time for Filing FERC Form Nos. 1 and 1-F

On December 16, 2005, the Commission issued Order No. 668, a Final Rule amending the Commission's regulations to update the accounting and reporting requirements for public utilities and licensees, including independent system operators and