4910-62-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1510 and 1511

[Docket No. TSA-2001-11120 and TSA-2002-11334; Amendment Nos. 1510-2 and 1511-1]

RIN 1652-AA29

Temporary Suspension of the September 11th Security Fee and the Aviation Security Infrastructure Fee

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Temporary final rule

SUMMARY: The Transportation Security Administration (TSA) is issuing this rule to temporarily suspend the September 11, 2001, Passenger Civil Aviation Security Service Fee and the Aviation Security Infrastructure Fee (ASIF) during the period beginning June 1, 2003, and ending September 30, 2003, as provided in Public Law 108-11, enacted on April 16, 2003, titled, "Emergency Wartime Supplemental Appropriations Act, 2003" (Appropriations Act).

TSA interprets the Appropriations Act to prohibit TSA from requiring passengers to pay the September 11th Security Fee if they purchase air transportation during the suspension period, regardless of whether the air transportation actually takes place during the suspension period. Accordingly, TSA will not impose the September 11th Security Fee on air transportation purchased from 12:00 a.m., Eastern Daylight Time, on June 1, 2003, through 11:59 p.m., Eastern Daylight Time, on September 30, 2003.

The Appropriations Act also prohibits TSA from imposing the ASIF during the suspension period. Therefore, air carriers and foreign air carriers engaged in air transportation will not incur any obligations to make ASIF payments to TSA for the months of June, July, August, and September of 2003, which otherwise would have been required to be paid to TSA by the last day of July, August, September, and October of 2003, respectively.

DATES: This rule is effective from June 1, 2003, through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Revenue, Office of Finance and Administration, Transportation Security Administration Headquarters, West Building, Floor 5, TSA-14, 400 Seventh Street, SW., Washington, DC 20590; e-mail: TSA-Fees@dhs.gov, telephone: 571-227-2323; or Susan Truax, Office of the Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA-2, 400 Seventh Street, SW., Washington, DC 20590; e-mail: Susan.Truax@dhs.gov, telephone: 571-227-1996.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

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

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

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

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

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

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the individuals listed in FOR FURTHER INFORMATION CONTACT. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at http://www.sba.gov/advo/laws/law_lib.html.

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for notice and comment, and it provides for an effective date less than 30 days after publication in the Federal Register.

Section 44940(d)(1) of title 49, U.S.C., explicitly exempts the imposition of the civil aviation security fees authorized in section 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553 of the Administrative Procedure Act (APA). Apart from that exemption, the APA allows an agency to forego notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). TSA finds good cause under 5 U.S.C. § 553 that notice and comment are impracticable and contrary to the public interest before issuing this rule. Immediate action

is necessary to provide sufficient time to direct and foreign air carriers to implement any necessary changes in their business practices before the beginning of the suspension period.

Further, as the Appropriations Act mandates the effective dates for the suspension period of the civil aviation security fees, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective less than 30 days after the date of publication in the Federal Register.

Background

Under 49 U.S.C. 44940 and the Transportation Security Regulations at 49 CFR parts 1510 and 1511, respectively, air carriers and foreign air carriers are required to pay to TSA fees known as the September 11th Security Fee and the Aviation Security Infrastructure Fee (ASIF).

The September 11th Security Fee is a fee in the amount of $2.50 per enplanement imposed by TSA on passengers of domestic and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States. This fee is limited to $2.50 per enplanement for up to two enplanements (or up to $5) per one-way trip or four enplanements (or up to $10) per round trip. 49 CFR 1510.5(a). Section 118 of the Aviation and Transportation Security Act (ATSA) (Pub.L. 107-71; 11/19/2001) authorized TSA to impose the September 11th Security Fee to help pay TSA's costs of providing civil aviation security services. Under 49 CFR 1510.9(a) and (b), direct air carriers and foreign air carriers must collect from each passenger a September 11th Security Fee on air transportation sold on or after February 1, 2002.

The ASIF is a fee imposed by TSA on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation, based on each carrier's security costs incurred in the year 2000. Section 118 of the ATSA authorized TSA to impose the ASIF, to the extent that the September 11th Security Fee was insufficient to pay TSA's costs of providing civil aviation security services. Under 49 CFR 1511.5 and 1511.7(b), each air carrier and foreign air carrier engaged in air transportation must pay to TSA the ASIF incurred for each month by the last calendar day of the following month. For months up to and including September of 2004, the payment is 8.333 percent of the total amount of the carrier's costs of screening passengers and property transported by passenger aircraft in the United States during calendar year 2000.

On April 16, 2003, the President signed into law the Appropriations Act, which among other things, prohibits the Under Secretary for Border and Transportation Security (BTS) of the Department of Homeland Security from imposing the September 11th Security Fee and the ASIF during the period beginning June 1, 2003, and ending September 30, 2003 (suspension period). TSA, which is an agency within the Department of Homeland Security and operating under the direction of the Under Secretary of BTS, is the agency charged with imposing these fees by regulation. Therefore, TSA is publishing this rule to temporarily suspend these fees as required by the Appropriations Act. Unless otherwise defined in this document, any terms used in this document have the meaning set forth in 49 CFR parts 1510 and 1511.

Discussion of the Rule

During the suspension period from June 1, 2003, through September 30, 2003, TSA is suspending §§ 1510.5 and 1510.9(a) through (c), as well as §§ 1511.5(a) through (c) and 1511.7(b), and adding new §§ 1510.23 and 1511.15, respectively.

Suspension of the September 11th Security Fee.

The Appropriations Act prohibits TSA from imposing the September 11th Security Fee during the suspension period. TSA interprets this provision to mean that TSA may not require passengers to pay the September 11th Security Fee if they purchase air transportation (tickets) during the suspension period, regardless of whether the air transportation actually takes place during the suspension period. Accordingly, TSA is establishing the following requirements governing direct and foreign air carrier compliance with 49 CFR part 1510 during the suspension period.

Tickets Purchased During the Suspension Period. Under TSA's regulation at 49 CFR 1510.9, where a passenger purchases a ticket from a direct or foreign air carrier, or from the carrier's agent such as a travel agent, the carrier must collect the September 11th Security Fee from the passenger at that time. Notwithstanding 49 CFR 1510.9(a) and (b), a direct air carrier or foreign air carrier must not collect the September 11th Security Fee from any passenger for air transportation sold during the suspension period. This means that when a passenger purchases a ticket from a direct or foreign air carrier or its agent and the passenger pays in full for the ticket at any time from 12:00 a.m., Eastern Daylight Time, on June 1, 2003 through 11:59 p.m., Eastern Daylight Time, on September 30, 2003, the carrier must not collect the September 11th Security Fee from the passenger. Since 49 CFR 1510.5(c) imposes the security fee on passengers obtaining tickets by redeeming

frequent flyer awards, the carrier must not collect the fee on such tickets issued during the suspension period. In addition, notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such uncollected fee to TSA.

Under 49 CFR 1510.9(d), direct and foreign air carriers may not collect the September 11th Security Fee unless required by part 1510. Therefore, if a direct or foreign air carrier collects a September 11th Security Fee from a passenger who purchases a ticket during the suspension period, the carrier must refund the fee to the passenger.

Direct and foreign air carriers must continue to collect the September 11th Security Fee on air transportation purchased by passengers through 11:59 p.m., Eastern Daylight Time, on May 31, 2003, even if the flight for which the transportation is purchased is to be operated during the suspension period.

Tickets Reissued During the Suspension Period. If a passenger purchases a ticket before the suspension period begins and the carrier reissues a replacement ticket during the suspension period without any changes to the original itinerary, the carrier continues to be responsible for collecting the amount of the September 11th Security Fee that applied upon the initial purchase of the ticket. If, as a result of the reissuance, however, the ticket is repriced during the suspension period, TSA considers the date the ticket was reissued to be the date the passenger purchased the ticket. Therefore, the September 11th Security Fee will not apply to the reissued ticket. Repricing a ticket means a transaction in which the itinerary of a paid ticket is revised due to voluntary changes made by the passenger and the ticket is reissued to determine the new price of the itinerary. Section 1510.5(c) of 49 CFR imposes the fee on tickets obtained by redeeming frequent flyer awards. However, upgrades using these awards are not charged an additional fee. Therefore, redeeming these

awards during the suspension period for cabin upgrades must not be treated as repricing the ticket and the fee must continue to be charged. Free upgrades also do not constitute repricing and therefore do not result in refund of the fee.

Example 1. A passenger purchases a round-trip ticket before the suspension period with two enplanements per one-way trip (for a total of four enplanements) and, due to changes made by the passenger, the carrier reissues the ticket during the suspension period with a revised itinerary of one enplanement per trip (for a total of two enplanements), which results in repricing of the itinerary. The carrier must refund to the passenger the amount of the September 11th Security Fee previously collected when the passenger initially purchased the ticket, and the carrier must not collect the fee for the reissued ticket.

Example 2. If a passenger purchases a ticket before the suspension period and the carrier reissues the ticket during the suspension period because the passenger redeems frequent flier awards in order to obtain an upgrade, the carrier must not refund the September 11th Security Fee it collected when the passenger initially purchased the ticket. Similarly, if the carrier reissues the ticket during the suspension period because the carrier provided a free upgrade, the carrier must not refund the September 11th Security Fee.

Example 3. If a passenger purchases a ticket prior to the suspension period and the travel is already underway during the suspension period and there is a repricing of the ticket, the carrier must not collect the September 11th Security Fee for the changed or unused portion of the itinerary. Therefore, any fee collected for the changed or unused portion of the itinerary must be refunded to the passenger.

Prepaid Air Transportation. In the case of prepaid air transportation (for example, prepaid ticket advice), if the passenger fully prepays air transportation before the

suspension period and the carrier issues a ticket against the prepaid amount during the suspension period, the carrier must collect the September 11th Security Fee for that ticket, because TSA considers the air transportation to have been purchased before the suspension period. However, if a passenger fully prepays air transportation during the suspension period and the carrier issues a ticket against the prepaid amount during or after the suspension period, the carrier must not collect the September 11th Security Fee for that ticket.

Tickets for Passengers on Public Charter Flights. As discussed above, under TSA's regulation at 49 CFR 1510.9, where a passenger purchases a ticket from a direct or foreign air carrier, or from the carrier's agent such as a travel agent, the carrier must collect the September 11th Security Fee from the passenger at the time of ticket purchase. On January 25, 2002, TSA issued a letter clarifying when the fee is considered to be collected in the case of passengers who purchase tickets on public charter flights.[1]

Unlike in the case of scheduled passenger flights, passengers on public charter flights purchase their tickets from a public charter operator. Regulations of the Department of Transportation require the charter operator to place all funds collected from passengers in an escrow account and to forward payment to the direct or foreign air carrier operating the flight at a later date.[2] In its January 25th letter, TSA made clear that tickets purchased by public charter passengers are not considered to be sold for purposes of TSA's regulations governing the September 11th Security Fee, until the earlier of: 1) the time the

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[1] You may obtain an electronic copy of the letter by accessing TSA's electronic docket for TSA 2001-11120. Using the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search), type in the last 5 digits of the docket number shown above. Click on "search." On the next page, which contains the docket summary information for the docket you selected, click on the link for TSA 2001-11120-11.

[2] See 14 CFR 212.8.

direct or foreign air carrier receives funds from the public charter escrow account; or 2) the date the direct or foreign air carrier operates the flight. The purpose of this interpretation by TSA was to more closely align a direct or foreign air carrier's obligation to pay the fee to TSA with its actual receipt of the fee from the public charter operator. TSA will maintain the existing payment structure for the charter operators to remit the September 11th Security Fees to direct and foreign air carriers while also maintaining the requirements for direct and foreign air carriers to remit the fees to TSA during and after the suspension period.

As a result, however, the definition of when air transportation is sold on a public charter flight for purposes of 49 CFR part 1510 does not coincide with the time the passenger actually purchases a ticket for that flight. As discussed above, the Appropriations Act suspends the imposition of fees on air transportation that a passenger actually purchases during the suspension period. Accordingly, TSA is providing the following guidance to direct and foreign air carriers related to air transportation on public charter flights. During the suspension of the September 11th Security Fee, TSA will 1) continue to allow direct air carriers to remit the already collected fees to TSA according to the structure identified in the January 25, 2002, letter; however 2) Charter operators may not collect September 11th Security Fees from passengers paying in full during the suspension period.

Additional Guidance for Suspension of Fees for Public Charter Passengers. For passengers on public charter flights, when the passenger purchases a ticket from the charter operator, which means paying the charter operator in full for the ticket at any time from 12:00 a.m., Eastern Daylight Time, on June 1, 2003 through 11:59 p.m., Eastern Daylight

Time, on September 30, 2003, the public charter operator must not collect the September 11th Security Fee from the passenger. In addition, since the fee will not be imposed on passengers, the direct or foreign air carrier operating the flight must not collect the September 11th Security Fee from the charter operator for any passengers who purchased tickets from the public charter operator during the suspension period. Notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such fee (not collected from passengers) to TSA.

Continuing Payment of Fees to TSA. Under 49 CFR 1510.13(a), direct and foreign air carriers must pay all September 11th Security Fees imposed each calendar month to TSA by the last calendar day of the month following the imposition of the fee. Therefore, direct and foreign air carriers must pay to TSA any September 11th Security Fees imposed on tickets purchased during the month of May, 2003, no later than June 30, 2003. In addition, any other security fees imposed prior to the suspension period, but not remitted by air carriers to TSA, are still due to TSA during and after the suspension period.

In the case of tickets purchased on public charter flights, direct and foreign air carriers must continue to forward to TSA, in accordance with 49 CFR 1510, any September 11th Security Fees paid by passengers who purchased tickets prior to the beginning of the suspension period. These payments continue to be due to TSA by the last calendar day of June, July, August, and September of 2003.

For example, if a passenger purchases a ticket from a public charter operator on May 15, 2003, for a flight that will take place on June 15, 2003, the public charter operator will collect the September 11th Security Fee from the passenger and place it in an escrow account. As explained in TSA's letter of January 25, 2002, in order to more closely align a

direct or foreign air carrier's obligation to pay the fee to TSA with the carrier's actual receipt of the fee from the public charter operator, the ticket is considered to be sold at the time the charter operator provides the escrow funds to the direct or foreign air carrier operating the flight or the date the flight occurs, whichever comes first. If the public charter operator, in the example, provides the escrow funds to the carrier on June 14, 2003, the carrier must pay the fee to TSA by July 31, 2003. If a direct or foreign air carrier does not collect the appropriate fee from a passenger, the air carrier is still responsible for paying the fee to TSA.

A carrier may offset fees refunded to passengers during the suspension period against future amounts of September 11th Security Fees due to TSA in June 2003 and following months under 49 CFR part 1510.

Resumption of Imposition of the September 11th Security Fee. TSA will resume imposition of the September 11th Security Fee beginning at 12:00 a.m. on October 1, 2003, without any further notice. Therefore, direct and foreign air carriers must resume collecting and paying to TSA the September 11th Security Fee on tickets purchased by passengers beginning on 12:00a.m., Eastern Daylight Time, on October 1, 2003, in accordance with the requirements of 49 CFR part 1510. If an air carrier does not collect the appropriate fee from a passenger, that should have been collected before the suspension period, the air carrier is still responsible for paying the fee to TSA.

In the case of public charter flights, because public charter operators will not collect September 11th Security Fees from passengers who purchase tickets during the suspension period, there will be instances where the escrow payments that direct or foreign air carriers receive from public charter operators after September 30, 2003, will not include September

11th Security Fees for some or all of the tickets sold for a flight. If the public charter operator did not collect the fee due to the suspension, the direct or foreign air carrier will not incur any obligation to pay those fees to TSA, notwithstanding 49 CFR part 1510.

Reporting Requirements Continue During the Suspension Period. In accordance with 49 CFR 1510.17, each direct and foreign air carrier must continue to provide TSA with quarterly reports that provide an accounting of fees imposed, collected, refunded, and remitted to TSA. If a carrier collects no fees during the suspension period, the carrier must submit the required report showing zeros in the appropriate fields in the report. The Bureau of Transportation Statistics collects such data for TSA. The Bureau website address for reporting the data is http://www.bts.gov/oai/tsa/. For further information on these reporting requirements, air carriers may also contact Ms. Nancy Sharpe, Data Administrator, Bureau of Transportation Statistics, Office of Airline Information, K-14, 400 7th Street, SW, Room 4125, Washington, DC 20590, phone: 202-366-2261, fax: 202-366-3383.

Travel Involving More than One Carrier. For purposes of 49 CFR part 1510, a direct air carrier or foreign air carrier that provides or offers to provide air transportation is considered to be the selling carrier. If a passenger's air transportation includes travel on two or more carriers, or if the passenger's air transportation is otherwise on an aircraft not operated by the selling carrier, the selling carrier is responsible for paying the September 11th Security Fee applicable to the air transportation.

Suspension of the ASIF

The Appropriations Act prohibits TSA from imposing the ASIF during the suspension period, June 1, 2003, to September 30, 2003. Therefore, notwithstanding 49

CFR 1511.5 (a) through (c) and 1511.7(b), air carriers and foreign air carriers engaged in air transportation will not incur any obligations to make payments to TSA for the months of the suspension period that otherwise would be required under 49 CFR 1511.7(b) to be paid in July, August, September, and October of 2003. Payment due under 49 CFR 1511.7(b) for May of 2003 remains due by June 30, 2003. Any other ASIF incurred prior to the suspension period, but not remitted to TSA, continues to be due to TSA during and after the suspension period.

TSA will resume imposition of the ASIF beginning October 1, 2003, without any further notice. Therefore, direct and foreign air carriers must resume making payments to TSA under 49 CFR part 1511, beginning with the payment due under 49 CFR 1511.7(b) no later than November 30, 2003.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the TSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of

Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined that the economic impact of this rule does not meet the standards for a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. However, TSA has determined that because of the public interest in the subject of security fees, this rule is considered significant and, therefore, has been reviewed by the Office of Management and Budget. Although a regulatory analysis or evaluation does not accompany this rule, TSA recognizes the rule will impose no or de minimus costs on the aviation industry and the public other than those weighed by Congress in passing the Appropriations Act. Air carriers will benefit through not having to collect the security fees and the public will benefit by not having to pay the security fees. The September 11th Security Fee that passengers will not have to pay and air carriers will not have to collect and remit to TSA is estimated to be $600 million. The Aviation Security Infrastructure Fee that air carriers will not incur, and therefore will not remit to TSA, is estimated to be $100 million. This mandatory security fee suspension totaling $700 million is imposed by the Appropriations Act and is not a direct impact of

this rulemaking. This rule addresses implementation of the suspension of the fee as it relates to the initial fee imposition requirements provided in 49 CFR 1510.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. When no notice of proposed rulemaking has first been published, no such assessment is required for a final rule.

International Trade Impact Assessment

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

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal

governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

The TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

The TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects for 49 CFR Parts 1510 and 1511

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

The Amendment

In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

SUBCHAPTER A—ADMINISTRATIVE AND PROCEDURAL RULES

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

1. The authority citation for part 1510 continues to read as follows:

Authority: 49 U.S.C. 44940.

2. From June 1, 2003, through September 30, 2003, suspend §§ 1510.5 and 1510.9(a) through (c), and add a new § 1510.23 to read as follows:

§ 1510.23 Temporary suspension of the September 11th Security Fee.

(a) Suspension of the September 11th Security Fee. (1) Notwithstanding 49 CFR 1510.9(a) and (b), a direct air carrier or foreign air carrier must not collect the September 11th Security Fee from any passenger for air transportation sold during the suspension period. For purposes of this section, the suspension period is 12:00 a.m., Eastern Daylight Time, on June 1, 2003, through 11:59 p.m., Eastern Daylight Time, on September 30, 2003. When a passenger purchases a ticket from a direct or foreign air carrier or its agent and the passenger pays in full, including through redemption of frequent flier awards, for the ticket during the suspension period, the carrier must not collect the September 11th Security Fee from the passenger. In addition, notwithstanding 49 CFR

1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such uncollected fee to TSA.

(2) If a direct or foreign air carrier collects a September 11th Security Fee from a passenger who purchases a ticket during the suspension period, the carrier must refund the fee to the passenger.

(3) Direct and foreign air carriers must continue to collect the September 11th Security Fee on air transportation purchased by passengers through 11:59 p.m., Eastern Daylight Time, on May 31, 2003, even if the flight for which the transportation is purchased is to be operated during the suspension period.

(b) Tickets reissued during the suspension period. (1) If a passenger purchases a ticket before the suspension period begins and the carrier reissues a replacement ticket during the suspension period without any changes to the original itinerary, the carrier continues to be responsible for collecting the amount of the September 11th Security Fee that applied upon the initial purchase of the ticket. If, as a result of the reissuance, however, the ticket is repriced during the suspension period, the September 11th Security Fee will not apply to the reissued ticket. Repricing a ticket means a transaction in which the itinerary of a paid ticket is revised due to voluntary changes made by the passenger and the ticket is reissued to determine the new price of the itinerary. Redemption of frequent flyer awards during the suspension period for cabin upgrades does not constitute repricing of the ticket and therefore the fee must continue to be charged. Free upgrades do not constitute repricing and therefore do not result in refund of the fee.

(i) Example 1. A passenger purchases a round-trip ticket before the suspension period with two enplanements per one-way trip (for a total of four enplanements) and, due

to changes made by the passenger, the carrier reissues the ticket during the suspension period with a revised itinerary of one enplanement per trip (for a total of two enplanements), which results in repricing of the itinerary. The carrier must refund to the passenger the amount of the September 11th Security Fee previously collected when the passenger initially purchased the ticket, and the carrier must not collect the fee for the reissued ticket.

(ii) Example 2. If a passenger purchases a ticket before the suspension period and the carrier reissues the ticket during the suspension period because the passenger redeems frequent flier awards in order to obtain an upgrade, the carrier must not refund the September 11th Security Fee it collected when the passenger initially purchased the ticket. Similarly, if the carrier reissues the ticket during the suspension period because the carrier provided a free upgrade, the carrier must not refund the September 11th Security Fee.

(iii) Example 3. If a passenger purchases a ticket prior to the suspension period and the travel is already underway during the suspension period and there is a repricing of the ticket, the carrier must not collect the September 11th Security Fee for the changed or unused portion of the itinerary. Therefore, any fee collected for the changed or unused portion of the itinerary must be refunded to the passenger.

(2) Prepaid air transportation. In the case of prepaid air transportation (for example, prepaid ticket advice), if the passenger prepays air transportation before the suspension period and the carrier issues a ticket against the prepaid amount during the suspension period, the carrier must collect the September 11th Security Fee for that ticket. However, if a passenger prepays air transportation during the suspension period and the

carrier issues a ticket against the prepaid amount during or after the suspension period, the carrier must not collect the September 11th Security Fee for that ticket.

(c) Tickets for passengers on public charter flights. (1) A direct or foreign air carrier operating a public charter flight must not collect the September 11th Security Fee from the charter operator for any passengers who purchased air transportation (tickets) from the public charter operator and paid in full during the suspension period. Notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such fee (not collected from passengers) to TSA.

(d) Continuing payment of fees to TSA. (1) Direct and foreign air carriers must pay to TSA any September 11th Security Fees imposed on tickets purchased during the month of May, 2003, no later than June 30, 2003. In addition, any other security fees imposed prior to the suspension period, but not remitted by air carriers to TSA, remain due to TSA during and after the suspension period.

(2) In the case of tickets purchased on public charter flights, direct and foreign air carriers must continue to forward to TSA, in accordance with 49 CFR 1510, any September 11th Security Fees paid by passengers who purchased tickets prior to the beginning of the suspension period. These payments continue to be due to TSA by the last calendar day of June, July, August, and September of 2003.

(i) Example. If a passenger purchases a ticket from a public charter operator on May 15, 2003, for a flight that will take place on June 15, 2003, the public charter operator will collect the September 11th Security Fee from the passenger and place it in an escrow account. If the public charter operator provides the escrow funds to the carrier on June 14, 2003, the carrier must pay the fee to TSA by July 31, 2003.

(ii) [Reserved]

(3) A carrier may offset fees refunded to passengers during the suspension period against future amounts of September 11th Security Fees due to TSA in June 2003 and following months under 49 CFR part 1510.

(4) If a carrier does not collect the appropriate fee from a passenger that should have been collected before the suspension period, the air carrier remains responsible for paying the fee to TSA.

(e) Resumption of imposition of the September 11th Security Fee. (1) TSA will resume imposition of the September 11th Security Fee beginning at 12:00 a.m. on October 1, 2003, without any further notice. Therefore, direct and foreign air carriers must resume collecting and paying to TSA the September 11th Security Fee on tickets purchased by passengers beginning on 12:00a.m., Eastern Daylight Time, on October 1, 2003, in accordance with the requirements of 49 CFR part 1510. These fees imposed in October 2003 are due to TSA no later than November 30, 2003.

(2) In the case of public charter flights, because public charter operators will not collect September 11th Security Fees from passengers who purchase tickets during the suspension period, there will be instances where the escrow payments that direct or foreign air carriers receive from public charter operators after September 30, 2003, will not include September 11th Security Fees for some or all of the tickets sold for a flight. If the public charter operator did not collect the fee for this reason, the direct or foreign air carrier will not incur any obligation to pay those fees to TSA, notwithstanding 49 CFR part 1510.

(f) Reporting requirements continue during the suspension period. In accordance with 49 CFR 1510.17, each direct and foreign air carrier must provide TSA

with quarterly reports that provide an accounting of fees imposed, collected, refunded, and remitted to TSA. If a carrier collects no fees during the suspension period, the carrier must submit the required report showing zeros in the appropriate fields in the report. The Bureau of Transportation Statistics collects such data for TSA. The Bureau website address for reporting the data is http://www.bts.gov/oai/tsa/. For further information on these reporting requirements, air carriers may also contact Ms. Nancy Sharpe, Data Administrator, Bureau of Transportation Statistics, Office of Airline Information, K-14, 400 Seventh Street, SW., Room 4125, Washington, DC 20590, phone: 202-366-2261, fax: 202-366-3383.

(g) Travel involving more than one carrier. For purposes of 49 CFR part 1510, a direct air carrier or foreign air carrier that provides or offers to provide air transportation is considered to be the selling carrier. If a passenger's air transportation includes travel on two or more carriers, or if the passenger's air transportation is otherwise on an aircraft not operated by the selling carrier, the selling carrier is responsible for paying the September 11th Security Fee applicable to the air transportation.

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

3. The authority citation for part 1511 continues to read as follows:

Authority: 49 U.S.C. 44901 and 44940.

4. From June 1, 2003, through September 30, 2003, suspend §§ 1511.5(a) through (c) and 1511.7(b), and add a new § 1511.15 to read as follows:

§ 1511.15 Temporary Suspension of the ASIF

(a) Notwithstanding 49 CFR 1511.5 (a) through (c) and 1511.7(b), an air carrier or foreign air carrier engaged in air transportation will not incur any obligation to

make payments to TSA for the months of the suspension period that otherwise would be required under 49 CFR 1511.7(b) to be paid in July, August, September, and October of 2003. Payment due under 49 CFR 1511.7(b) for May of 2003 remains due by June 30, 2003. Any other ASIF incurred by an air carrier or foreign air carrier prior to the suspension period, but not remitted to TSA, continues to be due to TSA during and after the suspension period.

(b) TSA will resume imposition of the ASIF beginning October 1, 2003, without any further notice. Therefore, each air carrier and foreign air carriers must resume making payments to TSA under 49 CFR part 1511, beginning with the payment due under 49 CFR 1511.7(b) no later than November 30, 2003.

Issued in Arlington, VA, on MAY 15 2003

James M. Loy,

Administrator.