

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 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