



[9110-05-P]

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1510

[Docket No. TSA-2001-11120; Amendment No. 1510-5]

RIN 1652-AA68

Adjustment of Passenger Civil Aviation Security Service Fee

AGENCY: Transportation Security Administration, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Transportation Security Administration (TSA) is issuing this interim final rule (IFR) to address a statutory change affecting the IFR published on June 20, 2014 (2014 IFR), which implemented the passenger civil aviation security service fee (security service fee) increase mandated by the Bipartisan Budget Act of 2013. This IFR conforms TSA's regulations to statutory amendments enacted since publication of the 2014 IFR. These amendments impose a round-trip limitation on the security service fee. All other aspects of the regulations, including those made by the 2014 IFR and provisions unchanged by this rule, remain in effect. TSA is also requesting comments on added definitions related to imposition of a round-trip limitation. TSA is not soliciting comments with respect to any other issues concerning the 2014 IFR, except to the extent affected by this rule, as the deadline for such comments has expired.

DATES: Effective date: [Insert date of publication in the Federal Register], except for the definition of “co-terminal” in § 1510.3, which is effective [Insert date 30 days after publication in the Federal Register].

_____ Comment date: Comments must be received by [Insert date 60 days after date of publication in the Federal Register].

_____ Applicability date: Direct air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States (air carriers) will be held responsible for applying the round-trip limitation to all relevant air transportation sold on or after 12 am (Eastern Standard Time) on December 19, 2014.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; fax (202) 493-2251. The Department of Transportation (DOT), which maintains and processes TSA’s official regulatory dockets, will scan the submission and post it to FDMS.

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

FOR FURTHER INFORMATION CONTACT: Michael Gambone, Office of Revenue, TSA-14, Transportation Security Administration, 701 South 12th Street, Arlington, VA 20598-6014; telephone (571) 227-2323; e-mail: tsa-fees@dhs.gov.

SUPPLEMENTARY INFORMATION:

Retroactive Application

This IFR conforms TSA’s regulations to recently enacted amendments to 49 U.S.C. 44940(c) that require a limitation for round-trip air transportation.¹ As the law stipulates that the statutory amendment shall apply “to a trip in air transportation or intrastate air transportation that is purchased on or after the date of the enactment of this Act,”² the statutory amendments became effective on December 19, 2014. Therefore, direct air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States (air carriers) will be held responsible for applying the round-trip limitation to all relevant air transportation sold on or after 12 am (Eastern Standard Time) on December 19, 2014.

Comments Invited

TSA is requesting public comment on this IFR. TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views.

Comments must be limited to the issues raised in this IFR as the comment period for the

¹ Pub. L. 113-294 (Dec. 19, 2014; 128 Stat. 4009).

² Id. at sec. 1(b).

2014 IFR has closed. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

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

TSA will file all comments to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and sensitive security information (SSI). Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the

Federal Register on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the Internet at <http://www.regulations.gov>. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. and 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366-9826. This docket operations facility is located in the West Building Ground Floor, Room W12-140 at 1200 New Jersey Avenue, SE, Washington, DC 20590.

Availability of Rulemaking Document

You may obtain an electronic copy of this document using the Internet by—

- (1) Searching the electronic Federal Docket Management System (FDMS) web page at <http://www.regulations.gov>;
- (2) Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily published Federal Register edition; or accessing the "Search the Federal Register by Citation" in the "Related Resources" column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or
- (3) Visiting TSA's Security Regulations web page at <http://www.tsa.gov> and accessing the link for "Stakeholders" at the top of the page, then the link "Research Center" in the left column.

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

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person 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.

Background

The security service fee was initially authorized under the Aviation and Transportation Security Act (ATSA), enacted in 2001 following the events of September 11, 2001 and the government's assumption of civil aviation services previously provided by air carriers.³ As enacted under ATSA, the fee was limited by statute to no more than \$2.50 per enplanement or \$5.00 per one-way trip.⁴ The ATSA provision was implemented through an IFR published in December 2001 (2001 IFR).⁵ In the 2001 IFR, the passenger fee was set at \$2.50 per enplanement. The regulation further limited application of the passenger fee to no more than two (2) enplanements per one-way trip or four (4) enplanements per round trip. As enacted by ATSA, the law provided that the

³ Pub. L. 107-71 (115 Stat. 597; Nov. 19, 2001) (codified in relevant portions at 49 U.S.C. 44940).

⁴ See 49 U.S.C. 44940(c) (2002).

⁵ 66 FR 67698 (Dec. 31, 2001), codified at 49 CFR part 1510.

fee “may not exceed” [emphasis added] \$2.50 per enplanement or \$5.00 per one-way trip, thus vesting TSA with discretion to cap fees at a lower amount, such as by including a cap on enplanements charged per round trip.⁶

In December of 2013, Congress amended 49 U.S.C. 44940(c) as part of the Bipartisan Budget Act of 2013 (Budget Act of 2013).⁷ The Budget Act of 2013 amended 49 U.S.C. 44940 to restructure the basis and amount of the fee. As amended, 49 U.S.C. 44940(c) stated that the fee “shall be \$5.60 per one-way trip” TSA implemented the Budget Act of 2013’s amendments through an IFR published on June 20, 2014 (2014 IFR),⁸ which took effect July 21, 2014.

Since publication of the 2014 IFR, sec. 44940(c) was further amended by Congress in December 2014 to include a round-trip limitation.⁹ The section now reads (amendment in *italics*):

“ . . . Fees imposed under subsection (a)(1) shall be \$5.60 per one-way trip in air transportation or intrastate air transportation that originates at an airport in the United States, except that the fee imposed per round trip shall not exceed \$11.20.

The amendment also added a definition of round trip:

“ . . . In this subsection, the term “round trip” means a trip on an air travel itinerary that terminates or has a stopover at the origin point (or co-terminal).

Finally, the law specified that the changes “shall apply with respect to a trip in air transportation or intrastate air transportation that is purchased on or after the date of the enactment of this Act.” As a result, the round-trip limitation became effective for all

⁶ 49 U.S.C. 44940(c) (2002).

⁷ Pub. L. 113-67 (127 Stat. 1165; Dec. 26, 2013).

⁸ 79 FR 35461 (June 20, 2014)

⁹ Pub .L. 113-294.

tickets sold after 12:00 a.m. (EST) on December 19, 2014 (the day the legislation was signed by the President).

Good Cause for Adoption without Prior Notice and Comment

This action is being taken without providing the opportunity for notice and comment. Section 44940(d) of title 49, U.S.C., exempts the imposition of the civil aviation security fees authorized in sec. 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 the statutory exemption discussed above, the APA allows an agency to forego notice and comment rulemaking when “the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁰ Public Law 113-294 took effect on December 19, 2014, creating a discrepancy between TSA’s regulations and what is statutorily required. Because the requirement is in effect without this rulemaking, TSA finds that good cause exists under 5 U.S.C. 553(b) for making this an IFR without advance notice and comment. In addition, as the statute has already taken effect and passengers and industry may seek confirmation from TSA with respect to proper implementation of the statute, TSA believes that further delays associated with notice and comment procedures would be impracticable and contrary to the public interest.

This IFR only includes a delayed effective date for the co-terminal definition (including the approved list of co-terminals referenced in that definition), which has not

¹⁰ See 5 U.S.C. 553(b).

been previously included in TSA's regulations – although it has been consistently applied throughout the history of implementing the security service fee. The APA allows an agency to implement a rule immediately, rather than requiring a 30-day delayed effective date, if the agency finds good cause.¹¹ This regulation is necessary to make TSA's regulations consistent with adjustments to the security service fee that took effect on December 19, 2014. Publication of this IFR does not modify the effective date of the statutory requirement contained in Pub. L. 113-294; air carriers are required to apply a round-trip limitation to the security service fee for air transportation sold on or after December 19, 2014. Therefore, TSA finds good cause to implement these conforming regulations immediately, as the statutory requirements are already in effect, and thus a delayed effective date is unnecessary.

Although this action is exempt from notice and comment requirements, TSA has chosen to issue this rulemaking as an IFR to provide an opportunity for comments before the 2014 IFR is finalized. TSA will accept comments on this rulemaking supplement to the 2014 IFR until [Insert date 60 days after publication in the Federal Register]. TSA is not soliciting comments with respect to any other issues concerning the 2014 IFR, except to the extent affected by this rule, as the deadline for such comments has expired. See DATES and SUPPLEMENTARY INFORMATION for guidance on the schedule and method for submitting comments. TSA will address the comments received on this IFR in a subsequent final rule.

¹¹ See 5 U.S.C. 553(d)(3).

Issuance of Interim Final Rule

In light of amendments to the relevant statutory provision while TSA is in the rulemaking process to implement previous amendments to the same provision, TSA is issuing an IFR to conform its regulations consistent with the statute (i.e., 49 U.S.C. 44940(c) as amended by Pub. L. 113-294). This IFR, like the 2014 IFR, implements the requirements of 49 U.S.C. 44940 in TSA regulations and allows TSA to ensure consistent implementation of the statute as it affects passengers in air transportation until such time as a final rule is published.

Changes to the 2014 Interim Final Rule

The amendments made by Pub. L. 113-294 provide that the fee imposed per round trip shall not exceed \$11.20 and define “round trip” to mean a trip on an air travel itinerary that terminates or has a stopover at the origin point (or co-terminal). Therefore, 49 CFR 1510.5 is amended by this IFR to add that passengers may not be charged more than \$11.20 per round trip, conforming the regulation to the amendments made by Pub. L. 113-294. The definition of a “round trip” stipulated in Pub. L. 113-294 is being added to 49 CFR 1510.3. As previously noted, a “round trip” is defined in 49 U.S.C. 44940(c)(2)¹² as “a trip on an air travel itinerary that terminates or has a stopover at the origin point (or co-terminal).”¹³ This definition is the same definition in use before the 2014 IFR for purposes of determining with a round-trip limitation applied. Consistent with previous practice, TSA notes that just as it is possible for there to be multiple one-way trips on an itinerary, there can also be multiple round trips on an

¹² As amended by Pub. L. 113-294.

¹³ See 49 U.S.C. 44940(c)(2) as the provision is amended by Pub. L. 113-294.

itinerary.¹⁴ In addition to including the definition of “round trip” provided in the statute, which is consistent with TSA’s use of this term in the past for implementing the fee,¹⁵ this IFR also includes definitions for other terms used in the statutory definition of “round trip.” These terms include “co-terminal,” “origin point,” and “terminates.” The term “stopover,” which is also used in the statute, was previously defined in the 2014 IFR.

Consistent with the statute and previous practice before July 21, 2014, a trip on an air travel itinerary that terminates or has a stopover at either the origin point, or a co-terminal of the origin point, is subject to the round-trip limitation. A “co-terminal” is defined to incorporate situations where multiple airports provide service to the same geographic area.¹⁶ Co-terminal relationships are used by some air carriers for fare construction or routing, such as standby and flight changes.

The docket for this rulemaking includes a comprehensive list of co-terminal airports (both domestic and foreign airports) which TSA has approved for determining application of the security service fee. TSA has based its list of approved co-terminals on consistent use of these designations by the industry for purposes of fare construction and routing and by TSA for compliance reviews associated with the security service fee. Through this IFR, TSA invites comments on the co-terminal designations. TSA will publish a notice in the Federal Register should the list of approved co-terminals be revised in the future.

¹⁴ See U.S. DHS/TSA Letter re: Rule-Fees-ATA Docket Response and Clarification Letter TSA 06-11-07 (dated October 24, 2006) (TSA 2006 Letter). This document is available at www.regulations.gov, under docket number TSA-2001-11120-0075.

¹⁵ Id.

¹⁶ Although TSA has not previously defined “co-terminal” for these purposes, TSA provides a definition here to foster transparency and consistent application of the fee across airlines and reservation systems. TSA anticipates that the definition is consistent with the historic practice of airlines in this context.

The terms “origin point” and “terminates” are added solely for the purpose of determining whether the round-trip limitation applies. In other words, the “origin point” of an itinerary is considered for purposes of determining whether the round-trip limitation applies; the definition has no bearing on the determination whether a trip is in “air transportation . . . that originates at an airport in the United States.”¹⁷ The security service fee applies to any one-way trip in air transportation that departs from an airport in the United States, including certain domestic flights that are part of air travel to or from a foreign country.¹⁸

TSA welcomes comment on each of these changes.

In Table 1 of the 2014 IFR, TSA provided an analysis comparing itinerary examples showing the difference in fee imposition between the 2001 IFR and the 2014 IFR. In Table 1 of this IFR, TSA updates that analysis to reflect a comparison between fee imposition under the 2014 IFR and imposition as a result of Pub. L. 113-294.¹⁹ Consistent with past practice under the regulatory round-trip limitation that existed until July 2014, the only itinerary example in this analysis affected by the round-trip limitation is the trip that begins in Newark, sequential stopovers in Chicago, Denver, Las Vegas, and Chicago, then returns to Newark (the penultimate itinerary in Table 1).

¹⁷ 49 U.S.C. 44940(c) (2014); see also 49 U.S.C. 44940(a) (the TSA Administrator “shall impose a uniform fee, on passengers of air carriers and foreign air carriers in air transportation and intrastate air transportation originating at airports in the United States”).

¹⁸ See 79 FR at 35465.

¹⁹ TSA has removed examples intended to demonstrate differences in the definition of “stopover,” as they are not relevant to this rulemaking.

**Table 1—Comparison of Current Fee Imposition (under 49 CFR part 1510)
(effective July 21, 2014) and Fee Imposition Resulting from Pub. L. 113-294
(effective December 19, 2014)**

Itinerary Examples	49 CFR Part 1510	Pub. L. 113-294
Washington Dulles to Chicago (stopover), Chicago to Washington Dulles.	\$11.20; 2 one-way trips.	\$11.20; 1 round trip with 2 chargeable one-way trips.
Washington Dulles to Chicago, Chicago to Washington Dulles.²⁰	\$5.60; 1 one-way trip.	\$5.60; 1 round trip with 1 chargeable one-way trip.
Washington Dulles to Chicago, Chicago to Los Angeles (stopover), Los Angeles to Chicago, Chicago to Washington Dulles.	\$11.20; 2 one-way trips.	\$11.20; 1 round trip with 2 chargeable one-way trips.
Washington Dulles to Chicago, Chicago to Los Angeles, Los Angeles to Seattle (stopover), Seattle to Los Angeles, Los Angeles to Chicago, Chicago to Washington Dulles.	\$11.20; 2 one-way trips.	\$11.20; 1 round trip with 2 chargeable one-way trips.
Washington Dulles to Chicago, Chicago to Los Angeles, Los Angeles to Seattle (stopover), Seattle to Los Angeles.	\$11.20; 2 one-way trips.	\$11.20; 2 one-way trips.
Paris to New York, New York to Chicago.	\$5.60; 1 one-way trip.	\$5.60. 1 one-way trip.

²⁰ This itinerary example is being added in response to questions received to clarify that application of the fee to this itinerary is unchanged from how it has been charged since the security service fee was first collected in 2002.

Itinerary Examples	49 CFR Part 1510	Pub. L. 113-294
Chicago to New York (stopover), New York to Frankfurt (stopover), Frankfurt to Chicago, Chicago to Minneapolis.	\$16.80; 3 one-way trips.	\$16.80; 3 one-way trips.
Newark to Chicago (stopover), Chicago to Denver (stopover), Denver to Las Vegas (stopover), Las Vegas to Chicago (stopover), Chicago to San Francisco.	\$28.00; 5 one-way trips.	\$28.00; 5 one-way trips.
<u>Newark to Chicago (stopover), Chicago to Denver (stopover), Denver to Las Vegas (stopover), Las Vegas to Chicago (stopover), Chicago to Newark.</u>	\$28.00; 5 one-way trips.	\$11.20; 1 round trip with 2 chargeable one-way trips.
Orlando to Pittsburgh (stopover), Pittsburgh to Orlando (stopover), Orlando to Pittsburgh (stopover), Pittsburgh to Orlando (stopover), Orlando to Pittsburgh (stopover), Pittsburgh to Orlando.	\$33.60; 6 one-way trips.	\$33.60; 3 round trips with 6 chargeable one-way trips (2 chargeable one-way trips per round trip).

Regulatory Impact Analyses

Executive Orders (E.O.s) 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This IFR consists of an administrative revision necessary to conform TSA regulations to a self-executing amendment to 49 U.S.C. 44940(c), which took effect on the date of enactment – December 19, 2014.²¹ This rulemaking is significant under E.O. 12866 and, therefore, OMB has reviewed this IFR. TSA has prepared an analysis of its estimated costs and benefits, presented in the following paragraphs using the current 2014 IFR as a baseline. Table 2 presents the OMB Circular A-4 Accounting Statement for this IFR.

Table 2: OMB A-4 Accounting Statement	
(Fiscal Year 2015 – Fiscal Year 2023)	
Category	Estimate
Benefits	
Annualized monetized benefits	--
Annualized quantified, but unmonetized, benefits	--
Qualitative (un-quantified) benefits	Provides a regulatory efficiency by aligning current regulations with Legislation.
	--
	Allow TSA to continue providing security functions made possible by the collection of fees.
Costs	
Annualized monetized costs	--
Annualized quantified, but unmonetized, costs	--
Qualitative (un-quantified) costs	Direct air carriers and foreign air carriers may incur costs to update their computer and ticket sales systems to reflect the new fee structure.

²¹ Pub. L. 113-294.

Transfers		
Annualized monetized transfers	\$85,917,221	7%
	\$86,699,144	3%
From whom to whom?	From the government to air passengers.	

Costs

As previously noted, this IFR consists of an administrative revision to make TSA’s regulations consistent with an amendment to 49 U.S.C. 44940(c), which requires air carriers to apply a round-trip limitation of \$11.20 to the security service fee for air transportation sold on or after December 19, 2014.²² As this limitation was not included in the Budget Act of 2013, it was not considered for the analysis of the 2014 IFR. As such, to estimate the impact of this IFR, TSA compares the impact of the fee structure imposed by the Budget Act of 2013 (considered as baseline) and the fee structure with a round-trip limitation as imposed by Pub. L. 113-294.

Under the Budget Act of 2013, TSA was required to deposit a specified amount of revenue per year from 2014-2023 to the general fund of the Treasury, with the remaining receipts offsetting TSA appropriations. Table 3 below shows this breakdown, as it was presented in the 2014 IFR.

Table 3—Fee Allocation Under the Budget Act of 2013 (No Round-Trip Limitation)

Fiscal Year	Fee Allocated for Security Services	Fees Allocated for the General Fund	Total Fees Collected- \$5.60 per One-Way Trip
FY14 Q4 ...	\$560,070,072	\$390,000,000	\$950,070,072
FY15.....	2,453,125,839	1,190,000,000	3,643,125,839
FY16.....	2,465,988,356	1,250,000,000	3,715,988,356
FY17.....	2,510,308,123	1,280,000,000	3,790,308,123
FY18.....	2,546,114,285	1,320,000,000	3,866,114,285

²² Pub. L. 113-294.

FY19.....	2,583,436,571	1,360,000,000	3,943,436,571
FY20.....	2,622,305,302	1,400,000,000	4,022,305,302
FY21.....	2,662,751,408	1,440,000,000	4,102,751,408
FY22.....	2,704,806,437	1,480,000,000	4,184,806,437
FY23.....	2,748,502,565	1,520,000,000	4,268,502,565
Total.....	\$23,857,408,958	\$12,630,000,000	\$36,487,408,958

The estimated fees collected, as presented in Table 3, do not include a round-trip limitation. As described in the Background section of this preamble, the Budget Act of 2013 amended 49 U.S.C. to restructure the basis and amount of the security service fee and also removed TSA’s ability to provide for a round-trip limitation in its regulations. TSA implemented the Budget Act of 2013’s amendments through the 2014 IFR.

A round-trip limitation is now being imposed as a result of the amendment to 49 U.S.C. 44940(c) made by Pub. L. 113-294. To estimate the fee collection with the \$11.20 limitation on round trips, TSA first determined the number of round-trip itineraries using data from the Bureau of Transportation Statistics (BTS).²³ According to BTS data, approximately 66 percent of all tickets are considered round-trip tickets. Using the number of round-trip versus not-round-trip tickets, TSA estimates that approximately 79 percent²⁴ of total one-way trips are part of a round-trip itinerary. Table 4 presents the breakdown of trips. As required by Pub. L. 113-294, imposition of a round-trip limitation took effect at 12:00AM on December 19, 2014. As such, TSA only accounts for 285 days in FY15 in order to estimate the impact of the statutory amendment upon implementation.

²³ TSA uses the Airline Origin and Destination Survey (DB1B) showing the Number of Passengers by Market Coupons for 2012. According to the BTS, a coupon is defined as a piece of paper or series of papers indicating the itinerary of a passenger. Each segment, or trip, on an itinerary has one coupon.

²⁴ TSA estimated that 79 percent of total trips are part of a round trip itinerary by dividing (c) by (a) on Table 4.

Table 4: Breakdown of One-Way Trips by Itinerary Type

Fiscal Year	One-Way Trips as part of Round-Trip Itinerary²⁵	One-Way Trips	Total Trips
	(a)	(b)	(c)
FY15.....	403,606,577	104,363,513	507,970,090
FY16.....	527,237,644	136,331,705	663,569,349
FY17.....	537,782,397	139,058,339	676,840,736
FY18.....	548,538,045	141,839,506	690,377,551
FY19.....	559,508,806	144,676,296	704,185,102
FY20.....	570,698,982	147,569,822	718,268,804
FY21.....	582,112,962	150,521,218	732,634,180
FY22.....	593,755,221	153,531,643	747,286,864
FY23.....	605,630,326	156,602,275	762,232,601
Total.....	4,928,870,961	1,274,494,316	6,203,365,277

The imposition of a fee limitation for round trips results in a decrease in fees assessed from air passengers for those one-way trips that are part of a round-trip itinerary. To establish this difference, TSA again used BTS data to determine the average number of segments per each round-trip flight. Based on the BTS data of round-trip itineraries with more than two flight-coupons,²⁶ TSA estimates that the average round-trip itinerary has 3.1 coupons. TSA uses the number of coupons to represent the number of one-way trips on a single itinerary. The fee limitation allows TSA to collect security service fees for two segments of an average round-trip itinerary. As a result, on average, TSA estimates the round-trip limitation will result in not collecting 1.1 security service fees for each itinerary with more than two segments.²⁷ Table 5 provides TSA's estimates of the

²⁵ The number of one-way trips as part of a round trip itinerary is calculated by multiplying the total number of trips by 79 percent.

²⁶ Each coupon represents a distinct trip, or travel segment, of the itinerary. As such, the number of coupons on an itinerary equals the number of one-way trips that could potentially require a security service fee.

²⁷ This estimate is based on data from the BTS DB1B ticket query. To calculate the average number of coupons, TSA divided the total number of coupons for round trip itineraries with more than two coupons by the itinerary count. On average, an itinerary with more than two coupons has 3.1 coupons.

count and amount of revenue collected with a round-trip limitation. The total fees collected over the period of analysis would be \$33.95 billion undiscounted, or \$24.19 billion and \$29.17 billion, discounted at 7 and 3 percent, respectively.

Table 5: Estimated Fees Collected with Estimated Round Trips

Fiscal Year	Total Count of Round Trip Fees²⁸	Count of One-Way Fees	Fees Collected Round Trip	Fees Collected One-Way	Total Fees Collected
	(A)	(B)	(C=Round Trip Fees x \$11.20)	(D=One-Way Fees x \$5.60)	(F)=(C)+(D)
FY15	196,059,350	104,363,513	\$2,195,864,720	\$584,435,673	\$2,780,300,393
FY16	256,115,425	136,331,705	2,868,492,755	763,457,547	3,631,950,302
FY17	261,237,733	139,058,339	2,925,862,610	778,726,698	3,704,589,308
FY18	266,462,488	141,839,506	2,984,379,863	794,301,232	3,778,681,095
FY19	271,791,737	144,676,296	3,044,067,460	810,187,257	3,854,254,716
FY20	277,227,572	147,569,822	3,104,948,809	826,391,002	3,931,339,811
FY21	282,772,124	150,521,218	3,167,047,785	842,918,822	4,009,966,607
FY22	288,427,566	153,531,643	3,230,388,741	859,777,198	4,090,165,939
FY23	294,196,117	156,602,275	3,294,996,516	876,972,742	4,171,969,258
Total	2,394,290,112	1,274,494,316	\$26,816,049,25	\$7,137,168,171	\$33,953,217,429

Comparing the fee structure, with and without a round-trip limitation, results in an estimated decrease in revenue collected from passengers of \$785.63 million over the period of analysis.²⁹ Table 6 compares the estimated revenue as analyzed in the 2014 IFR to the estimated revenue as a result of the amendments made by Pub. L. 213-294.

Table 6: Comparing Estimated Revenue from 2014 IFR with Imposition of Round-Trip Limitation under Pub. L. 113-294

(3,500,928/1,126,565=3.1). If collections are limited to two one-way trips per itinerary, TSA will be forfeiting the collection of 1.1 security service fees (3.1 – 2).

²⁸ To estimate the number of round trip fees, TSA subtracts the number of fees not collected from the number of one-way trips as part of a round-trip itinerary and divides by two. Fees not collected is calculated by multiplying the number of round trips with more than two coupons by 1.1 coupons not considered for collection, which is then subtracted from the total number of trips to estimate the total number of trips with fees collected. This is then subtracted from the total number of fees to estimate the fees not collected.

²⁹ To compare the 2014 IFR to this rule, TSA uses a period of analysis that includes the remaining portion of FY15 through the end of FY23, as that is the remaining period for which allocated funds to the general fund of the Treasury are specified.

Fiscal Year	2014 IFR	Pub. L. 113-294	Difference (Lost Revenue)	Lost Revenue (Discounted at 7%)	Lost Revenue (Discounted at 3%)
FY15...	\$2,844,632,50	\$2,780,300,39	(\$64,332,112)	(\$60,123,469)	(\$62,458,361)
FY16...	3,715,988,356	3,631,950,302	(84,038,053)	(73,402,090)	(\$79,213,925)
FY17...	3,790,308,123	3,704,589,308	(85,718,814)	(69,972,086)	(\$78,444,858)
FY18...	3,866,114,285	3,778,681,095	(87,433,191)	(66,702,363)	(\$77,683,258)
FY19...	3,943,436,571	3,854,254,716	(89,181,855)	(63,585,430)	(\$76,929,051)
FY20...	4,022,305,302	3,931,339,811	(90,965,492)	(60,614,148)	(\$76,182,167)
FY21...	4,102,751,408	4,009,966,607	(92,784,801)	(57,781,711)	(\$75,442,534)
FY22...	4,184,806,437	4,090,165,939	(94,640,497)	(55,081,631)	(\$74,710,083)
FY23...	4,268,502,565	4,171,969,258	(96,533,307)	(52,507,723)	(\$73,984,742)
Total...	\$34,738,845,5	\$33,953,217,4	(\$785,628,123)	(\$559,770,652)	(\$675,048,979)
Annualized				(\$85,917,221)	(\$86,699,144)

Because these changes affect information provided in the 2014 IFR, Table 7 provides a revised analysis of the revenue to be collected from the security service fee in terms of the allocations available to offset TSA's appropriations for providing civil aviation security.

Table 7: Revised Revenue Allocation

Fiscal Year	Fee Allocated for Security Services	Fees Allocated for the General Fund	Total Fees Collected
FY15 ³⁰	\$1,590,300,393	\$1,190,000,000	\$2,780,300,393
FY16.....	2,381,950,302	1,250,000,000	3,631,950,302
FY17.....	2,424,589,308	1,280,000,000	3,704,589,308
FY18.....	2,458,681,095	1,320,000,000	3,778,681,095
FY19.....	2,494,254,716	1,360,000,000	3,854,254,716
FY20.....	2,531,339,811	1,400,000,000	3,931,339,811
FY21.....	2,569,966,607	1,440,000,000	4,009,966,607
FY22.....	2,610,165,939	1,480,000,000	4,090,165,939
FY23.....	2,651,969,258	1,520,000,000	4,171,969,258
Total.....	\$21,713,217,429	\$12,240,000,000	\$33,953,217,429

³⁰ For Table 7, TSA presents fees allocated for security services and total fees collected based on 285 days in FY15, but includes the total FY15 allocation for the General Fund as mandated in the Budget Act of 2013.

From the \$33.95 billion collected over the period of analysis, \$12.24 billion will be credited as offsetting receipts and deposited in the general funds of the Treasury, as specified in the Budget Act of 2013. As such, TSA will see a \$785.63 million reduction in fees collected from air passengers for security services over the period of analysis, as compared to the 2014 IFR.³¹

TSA anticipates that there might be costs associated with each direct and foreign air carrier updating their current computer and ticket sales systems to reflect the new fee structure. Such costs are associated with the changes required by the statute that took effect on December 19, 2014.

Alternatives Discussion

As this IFR is simply conforming TSA's regulations to changes in the statute, TSA has limited discretion when formulating this rule. Because of the unambiguous nature of the legislative language, there are no feasible alternatives for TSA to explore with this rulemaking that were not discussed in the 2014 IFR.

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

³¹ Under the 2014 IFR, TSA would collect \$23.30 billion for security services, whereas under this rule, TSA would collect \$21.71 billion for the period of analysis.

definition of a small entity. When no notice of proposed rulemaking has first been published, no such assessment is required for a final rule. Furthermore, 5 U.S.C. 553(b)(B) exempts rules from the requirements of the RFA when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. As discussed in the preamble, this IFR is exempt from the procedural rulemaking requirements of 5 U.S.C. 553.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA sec. 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

Information collection requirements associated with the security service fee requirements of 49 CFR part 1510 have been approved by the OMB through August 31, 2015, under the PRA provisions, and assigned OMB Control Number 1652-0001. There are no changes to the information collection resulting from this rulemaking.

International Trade Impact Assessment

The Trade Agreements Act of 1979³² 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.

³² Pub. L. 96-39 (93 Stat. 144; July 26, 1979).

TSA has assessed the potential effect of this rulemaking and as TSA has determined that it does not impose significant barriers to international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995³³ (UMRA), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final 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.” Before TSA promulgates a rule for which a written statement is needed, sec. 205 of UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of sec. 205 do not apply when they are inconsistent with applicable law. In addition, the requirements of Title II of UMRA do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, TSA has not prepared a written statement.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is TSA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. TSA

³³ Pub. L. 104-4 (109 Stat. 66; March 22, 1995).

has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

The ICAO guidance document on aviation fees and charges, ICAO Document 9082 (Ninth Edition—2012), ICAO's Policies on Charges for Airports and Air Navigation Services, recommends consultations before fees are imposed on carriers. In addition, Article 12 of the Air Transport Agreement between the United States of America and the European Community and its Member States, signed on April 25 and 30, 2007, encourages consultation between the charging authority and affected carriers.

As the change to the security service fee has been set by Congress and there are no additional changes to how the program is implemented by TSA, no additional consultations by TSA are required.

Executive Order 13132, Federalism

TSA has analyzed this IFR under the principles and criteria of E.O. 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or on 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

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969³⁴ (NEPA) and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion (CATEX) number A3(b) in DHS Management Directive 023-01 (formerly Management

³⁴ 42 U.S.C. 4321 et seq.

Directive 5100.1), Environmental Planning Program, which guides TSA compliance with NEPA.

Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act³⁵ (EPCA). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1510

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

The Amendments

For the reasons set forth in the preamble, the Transportation Security Administration amends part 1510 of Chapter XII of Title 49, Code of Federal Regulations as follows:

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. 114, 40113, and 44940.

2. In § 1510.3, add definitions for “co-terminal,” “origin point,” “round trip,” and “terminates” in alphabetical order to read as follows:

§ 1510.3 Definitions.

* * * * *

³⁵ Pub. L. 94-163 (89 Stat. 871; Dec. 22, 1975), as amended (42 U.S.C. 6362).

Co-terminal means an airport serving a multi-airport city or metropolitan area that has been approved by TSA to be used as the same point for purposes of determining application of the security service fee imposed under § 1510.5 of this part. Copies of the approved list are available on TSA's website at www.tsa.gov or by contacting tsa-fees@dhs.gov.

* * * * *

Origin point means the location at which a trip on a complete air travel itinerary begins.

* * * * *

Round trip means a trip on an air travel itinerary that terminates or has a stopover at the origin point (or co-terminal).

* * * * *

Terminates means the location at which a trip on a complete air travel itinerary ends.

3. In § 1510.5, revise paragraph (a) to read as follows:

§ 1510.5 Imposition of security service fees.

(a) Each direct air carrier and foreign air carrier described in § 1510.9(a) shall impose a security service fee of \$5.60 per one-way trip for air transportation originating at an airport in the United States. Passengers may not be charged more than \$5.60 per one-way trip or \$11.20 per round trip.

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Issued in Arlington, Virginia, on May 29, 2015.

Mark Hatfield,

Acting Deputy Administrator.

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