

file meaningful comments given the intervening weekend and Christmas holiday. See 47 CFR 1.46; see also 47 CFR 1.45(e), 47 CFR 1.3. We therefore grant Requestors unopposed Request and set the new deadline for filing Oppositions to Replies to January 10, 2023. The deadline for filing Oppositions remains December 19, 2022.

## II. Ordering Clauses

6. Accordingly, *it is ordered* that, pursuant to section 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), and §§ 0.204, 0.392, and 1.46 of the Commission's rules, 47 CFR 0.204, 0.392, 1.46, the Request for Extension of Time filed by Requestors is granted.

7. *It is further ordered* that the date to file Oppositions to Replies in response to the Petition *is extended* to January 10, 2023.

Federal Communications Commission.

**Lauren Kravetz,**

*Chief of Staff, Public Safety and Homeland Security Bureau.*

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## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 49 CFR Part 1548

[Docket No. TSA-2020-0002]

RIN 1652-AA72

#### Frequency of Renewal Cycle for Indirect Air Carrier Security Programs

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Transportation Security Administration (TSA) is proposing to modify its regulations to reduce the frequency of renewal applications by indirect air carriers (IACs). Rather than requiring these entities to submit an application to renew their security program each year, TSA is proposing to require renewal once every three years. This modification would reduce the burden of compliance without a negative impact on security and would support this industry's economic recovery from the impacts of the COVID-19 public health crisis.

**DATES:** Submit comments on or before February 27, 2023.

**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. To avoid duplication, please use only one of the following methods:

- **Electronic Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS. Comments must be postmarked by the dates indicated above.

- **Fax:** (202) 493-2251.

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

**FOR FURTHER INFORMATION CONTACT:** Angel Rodriguez, telephone 1-571-227-2108; email [angel.l.rodriguez@tsa.dhs.gov](mailto:angel.l.rodriguez@tsa.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. You may submit comments, identified by the TSA docket number for this rulemaking, to the **ADDRESSES** noted above. With each comment, please include this docket number at the beginning of your comments. 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 in person 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. TSA will stamp the date on the postcard and mail it to you.

All comments, except those that include confidential or sensitive security information (SSI)<sup>1</sup> will be

<sup>1</sup> "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

posted to <https://www.regulations.gov>, and will include any personal information you have provided. Should you wish your personally identifiable information redacted prior to filing in the docket, please clearly indicate this request in your submission. 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 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. Comments containing this type of information should be submitted separately from other comments, appropriately marked as containing such information, and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section. TSA will take the following actions for all submissions containing SSI:

- 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.

- TSA will treat requests to examine or copy information that is not in the public docket as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security (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 or signed the comment (*e.g.*, if submitted by an association, business, labor union, *etc.*). For more about privacy and the docket, review the Privacy and Security Notice for the

FDMS at <https://www.regulations.gov/privacy-notice>, as well as the System of Records Notice DOT/ALL 14—Federal Docket Management System (73 FR 3316, January 17, 2008) and the System of Records Notice DHS/ALL 044—eRulemaking (85 FR 14226, March 11, 2020).

You can review TSA's electronic public docket at <https://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 DOT facility is located in the West Building Ground Floor, Room W12-140 at 1200 New Jersey Avenue SE, Washington, DC 20590.

You can find an electronic copy of rulemaking documents relevant to this action by searching the electronic FDMS web page at <https://www.regulations.gov> or at <https://www.federalregister.gov>. 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 NPRM.

### Abbreviations and Terms Used in This Document

CCSF—Certified Cargo Screening Facility  
 CEQ—Council on Environmental Quality  
 DHS—Department of Homeland Security  
 DOT—Department of Transportation  
 E.O.—Executive Order  
 FOIA—Freedom of Information Act  
 IAC—Indirect Air Carrier  
 IACSSP—Indirect Air Carrier Standard Security Program  
 NEPA—National Environmental Policy Act  
 OMB—Office of Management and Budget  
 PRA—Paperwork Reduction Act of 1995  
 SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996  
 SSI—Sensitive Security Information  
 TSA—Transportation Security Administration

## I. Executive Summary

### A. Purpose of the Regulatory Action

An IAC, sometimes called a freight forwarder, acts as an intermediary between a shipper of air cargo and an air carrier by receiving and consolidating cargo from one or more shippers for transport on one or more aircraft flights. IACs are a critical component of a secure, air cargo supply-chain in the United States, helping to ensure the safe, timely, and efficient movement of goods every day. Approximately 3,800 IACs are operating in the United States and registered with TSA, ranging from

sole proprietors working out of their homes to large corporations.

Currently, TSA's regulations require IACs to renew their registration each year. TSA is proposing to modify 49 CFR 1548.7 to reduce the frequency at which IACs must renew their registration from annual to once every three years. This modification will reduce the burden of compliance by decreasing the time and effort an IAC must devote to renewing their registration, permitting them to focus on other operational and business priorities, including meeting supply chain demands as the industry recovers from the impact of the COVID-19 public health crisis.

TSA has determined this modification reduces the cost of compliance without any negative impacts on security. As noted below, TSA estimates that over ten years, cost savings aggregate to \$7.8 million undiscounted, \$6.6 million discounted at 3 percent, and \$5.4 million discounted at 7 percent. The rulemaking would realize an annualized \$800,000 in cost savings discounted at 7 percent over 10 years.

## II. Background

### A. Regulation of IACs

As noted above, IACs play a critical role in ensuring a secure, air cargo supply-chain, acting as an intermediary between the shipper and the aircraft operator.<sup>2</sup> To ensure the security of the air cargo system, TSA imposes security requirements on IACs in 49 CFR part 1548. Through these regulations, TSA ensures "IACs are held accountable for securing the goods entrusted to them throughout those legs of the supply chain for which they are responsible."<sup>3</sup>

Under 49 CFR 1548.5, each IAC must adopt and carry out the IAC Standard Security Program (IACSSP). Persons interested in becoming IACs are vetted by TSA and are required to implement security requirements in the IACSSP. These requirements are intended to ensure security during the period between when a package leaves a shipper and when it is presented to the aircraft operators. IACs must also ensure their employees understand and are

<sup>2</sup> TSA's regulations define an IAC as "any person or entity within the United States not in possession of [a Federal Aviation Administration] air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of an air carrier." See 49 CFR 1540.5. The scope includes businesses engaged in the indirect transport of cargo on larger commercial aircraft, regardless of whether the operation is conducted with a passenger aircraft or an all-cargo aircraft.

<sup>3</sup> See Proposed Rule, Air Cargo Security Requirements, 69 FR 65257, 65269 (Nov. 10, 2004).

trained to implement their security responsibilities.

TSA uses a web-based, centralized system for businesses to obtain IAC approval and to renew this approval. Through this process, TSA checks whether an applicant is a legitimate business and determines whether the business or its personnel pose a threat to transportation security. TSA may withdraw approval of an IAC if individuals or companies are found to be security risks during revalidation.

### B. Requirement for Annual Renewal

Current 49 CFR 1548.7(b) presents the processes an IAC must follow annually to seek renewed approval from TSA to operate under the IACSSP. In general, annual renewal is a continuation of current practices and security measures in the IACSSP, including any TSA-approved amendments issued under 49 CFR 1548.7(c), (d), and/or (e). IACs must submit the renewal request to TSA at least 30 calendar days prior to expiration of the IACSSP, as well as other standards for the submission.

Since 2006, TSA has required IACs to renew their registration each year. This requirement was based on the following considerations. First, other entities regulated by a TSA security program, such as aircraft operators and airports, must obtain annual FAA certification, which involves the submission and verification of information relating to the entity and its operations. IACs are not required to do so. Second, TSA found that the IAC industry has a high degree of turnover. The current regulations require the IAC to certify that it has provided TSA with its most up-to-date information and to acknowledge that intentional falsification of the information may be subject to civil and criminal penalties.<sup>4</sup>

Since the annual renewal requirement was imposed in 2006, TSA has determined that it is unnecessary to continue requiring annual renewal and that the program could be renewed once every three years without having a negative impact on security. As discussed below, this determination is based on two key factors: (1) TSA's inspection processes and priorities for IACs negate the need for annual renewals, and (2) the triennial renewal requirement for other TSA air cargo programs that have proven to be effective and secure.

<sup>4</sup> See Air Cargo Security Requirements; Final Rule, 71 FR 30477, 30514 (May 26, 2006).

First, when the annual renewal requirement was imposed in 2006,<sup>5</sup> TSA expected that the annual cycle of renewals would be the primary method to ensure the agency regularly reviewed each IAC and confirmed compliance with TSA security requirements.<sup>6</sup> TSA, however, actually ensures compliance with the program through regular inspections of IACs. IACs are typically subject to a comprehensive inspection on a one, two, or three-year cycle depending on TSA's assessment of the relative security risk for each individual IAC. This security risk determination reflects vulnerabilities that exist based on the results of prior compliance reviews. For example, TSA generally conducts more frequent inspections of IACs that have lower compliance rates in order to ensure the IACs being inspected are performing all actions necessary to provide the required level of security. These reviews include targeted and supplemental inspections.

An additional safeguard is provided by 49 CFR 1540.301, which allows TSA to withdraw approval of an IAC security program if TSA determines continued operation is contrary to security and the public interest.<sup>7</sup> If TSA withdraws approval, an IAC must discontinue operation immediately, regardless of the renewal date of its program certification. See discussion in Section III.A. of this NPRM.

Second, in addition to recognizing the effectiveness of its regular inspections to ensure compliance with the IAC program, TSA also considered the requirements for the IAC program compared to other aviation security requirements, specifically requirements applicable to Certified Cargo Screening Facilities (CCSFs) under 49 CFR part 1549. When TSA finalized the rule establishing the Certified Cargo Screening Program in 2011,<sup>8</sup> TSA provided a three-year renewal period for CCSFs.<sup>9</sup> Over more than a decade of implementing the Certified Cargo Screening Program validates that the triennial recertification cycle does not have a negative impact on security. The proposed rule does not change the required actions that IACs must perform to recertify or the requirements they must meet to maintain approval to operate as an IAC; the proposed rule

simply reduces the frequency with which they must recertify.

### C. Benefits of Proposed Modification of Renewal Period

Consistent with the principles of Executive Order (E.O.) 12866 of September 30, 1993 (Regulatory Planning and Review) and E.O. 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), TSA is committed to ensuring its regulations do not impose more stringent or burdensome requirements than are necessary to provide the intended security benefits. This action is also consistent with the burden-reduction principles of E.O. 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government). Whether imposing or revising a regulation, TSA is required by 49 U.S.C. 114(l)(3) to consider, as one factor in a final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide.

TSA has determined that the security benefits of annual recertifications do not outweigh the cost of annual renewal applications. As noted below, TSA estimates that over ten years the cost savings aggregate to \$7.8 million undiscounted, \$6.6 million discounted at 3 percent, and \$5.4 million discounted at 7 percent. The rule would realize annualized savings of \$0.8 million in 2020 dollars discounted at 7 percent.

This change in the renewal requirement would not have a negative impact on security as the security enhancements provided by annual recertifications are minimal for the following two reasons. First, IACs are required to notify TSA within 30 days if there are any changes to the information provided in their application. See 49 CFR 1548.7(a)(5). This requirement ensures that TSA always has current information regarding the IAC. Second, and as previously noted, TSA's existing inspection program for IACs ensures that those IACs that might be at risk of losing certification are inspected more frequently to ensure they are meeting minimal program requirements. TSA would continue to perform compliance inspections with the same frequency as the current program operation and prioritization. The present inspection schedule, the requirements for inspections, and the scope of required inspections are not modified by this action.

### D. Impact of COVID-19 Public Health Crisis on Air Cargo Supply Chain

The current COVID-19 public health crisis has disrupted critical supply chains globally, including throughout the United States. IACs are challenged by the combination of increased demand for air cargo shipments and limitations resulting from the impact of COVID-19 on personnel. As a result, many IACs are facing logistical, operational, and personnel challenges. While the change to the rule may not have a significant economic impact, TSA believes it is appropriate to provide relief from regulatory requirements during this time, enabling IACs to focus their time and effort on the essential tasks of delivering essential goods and services.

### III. Summary of the Proposed Rule

TSA is proposing to make limited amendments to the text of paragraphs (a) and (b) in 49 CFR 1548.7, to change the periodic renewal of all IAC security programs from one year to three years. As noted in section I, this modification will reduce the burden of compliance by reducing the time and effort an IAC must devote to renewing their registration, permitting them to focus on other operational and business priorities, including meeting supply chain demands as the industry recovers from the COVID-19 public health crisis. The net result of these changes is a three-year renewal period for the approval to operate as an IAC under the IACSSP.

#### A. Duration of Program

Currently, 49 CFR 1548.7(a)(4) states that a program remains effective from the time it is approved until the end of the calendar month one year after the month it was approved. The proposed rule removes the words "one year after the month it was approved" in paragraph (a)(4) and adds in their place: "three years after the month it was approved, or until the program has been surrendered or withdrawn, whichever is earlier".

In addition to the specific change in the renewal period in this section, TSA is proposing to add "or until the program has been surrendered or withdrawn, whichever is earlier", to the duration language to ensure greater consistency across TSA's cargo programs.<sup>10</sup> The process for becoming an IAC can be seen as analogous, in some respects, to an enforceable contractual relationship between TSA

<sup>5</sup> *Id.* at 30495. See also Proposed Rule, Air Cargo Security Requirements, 69 FR 65257, 65269 (Nov. 10, 2004).

<sup>6</sup> See *supra* n. 4.

<sup>7</sup> See 49 CFR 1548.7(f) and 1540.301(b).

<sup>8</sup> See Final Rule, Air Cargo Screening, 76 FR 51847 (Aug. 18, 2011).

<sup>9</sup> See 49 CFR 1549.7(b).

<sup>10</sup> See, e.g., text relating to Certified Cargo Screening Program renewal periods in 49 CFR 1549.7(a)(6).

and the regulated entity. We grant persons permission to operate as an IAC on condition that they agree to comply with TSA’s requirements. There are three actions that could result in a person no longer being able to represent themselves as an IAC: (1) the IAC fails to renew the program by the required deadline;<sup>11</sup> (2) the IAC informs TSA that it no longer intends to function as a TSA-approved IAC (*i.e.*, the IAC surrenders approval to operate as an IAC, similar to the concept of surrender of approval in other TSA programs); or (3) TSA withdraws approval consistent with the standards and procedures in TSA’s regulations.<sup>12</sup> The implementation of the changes proposed in this rule would increase the consistency and clarity of regulatory requirements across TSA’s air cargo security regulations.<sup>13</sup> TSA is proposing similar changes for paragraph (b)(4), which addresses duration of an IAC’s program after renewal.

**B. Changes in Information**

Paragraph (a)(5) includes the requirement for IACs to notify TSA if any of the information relevant to TSA’s approval of the program changes. In this section, TSA is proposing to make clear that the rule covers changes made both after submission of the initial application and information submitted as part of the renewal application. This additional language would clarify TSA’s intent and ensure TSA has current information about the IAC’s operations that could affect security and the IAC’s approval to operate under the IACSSP.

**C. Conforming Changes**

Under § 1548.7(b)(1), IAC’s must submit their application for renewal at least 30 calendar days “prior to the first day of the anniversary month of initial

approval.” TSA is proposing to revise this language to conform with the proposed three-year duration of the program by requiring applications for renewal to be submitted 30 calendar days prior to the 36th month after the initial approval of its security program.

**IV. 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 the **FOR FURTHER INFORMATION CONTACT** section. Persons can obtain further information regarding SBREFA on the Small Business Administration’s web page at <https://www.sba.gov/category/advocacy-navigation-structure/regulatory-policy/regulatory-flexibility-act/sbrefa>.

**V. Regulatory Analyses**

TSA considered numerous statutes and Executive orders related to rulemaking when developing this rule. The following summarizes TSA’s analyses of the impact of the rulemaking as directed by these statutes or Executive orders.

**A. Regulatory Planning and Review**

**1. Background**

E.O. 12866 of September 30, 1993 (Regulatory Planning and Review), and E.O. 13563 of January 18, 2011 (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). E.O. 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In conducting these analyses, TSA provides the following conclusions and summary information:

- The Office of Management and Budget (OMB) has determined that this rulemaking is not a “significant regulatory action” as defined in E.O. 12866; and
- TSA has certified that this rulemaking would not have a significant impact on a substantial number of small entities.

The basis for these conclusions is set forth below.

This proposed rule would reduce regulatory costs by reducing the frequency that IACs must renew their security program certifications. This rule would reduce the frequency of annual IAC security program certifications to once every three years. This rule does not impose any incremental costs because regulated entities are already performing all actions required to obtain the certification in question. The expected outcome will be a minimal impact with positive net benefits.

**2. Estimated Cost Savings to Affected Entities**

The cost savings from this rule arise from extending the duration of IAC security programs approved by TSA from one year to three years. This change aligns the duration of the IAC security program with the Certified Cargo Screening Program.<sup>14</sup> Table 1 summarizes the change and impact from this action.

TABLE 1—COMPARISON OF CURRENT 49 CFR PART 1548 AND PROPOSED RULE

| Current                                      | Proposed rule                         | Impact  | Estimated cost savings   |
|--|---------------------------------------|---|--|
| Requires annual renewal of security program. | Revises to renewal every three years. | (1) Aligns part 1548 renewal period with that of the TSA-approved Certified Cargo Screening Program, part 1549.<br>(2) Provides cost savings to industry and TSA. | TSA estimates the annualized cost saving to industry and Federal government to be \$800,000 annualized at a 7 percent discount rate. Cost savings arise from time saved due to a less frequent security program renewal cycle. |

To estimate cost savings, TSA calculates the number of instances an IAC would resubmit a security program under the current annual requirement, and the number of instances that would be avoided under the proposed rule’s three-year requirement. TSA uses the

difference in the number of resubmission instances between the current requirement and the proposed rule as the basis for the cost savings.

TSA uses historical data on the number of existing IACs to forecast the number of security programs submitted

for certification over the ten-year period of analysis. TSA assumes that the regulatory change for less frequent recertification does not impact the annual number of forecasted active IAC certifications. Based on historical program data, TSA assumes the

<sup>11</sup> See 49 CFR 1548.7(b).

<sup>12</sup> See 49 CFR 1548.7(f) and (g), citing 49 CFR 1540.301.

<sup>13</sup> See, *e.g.*, *supra* n. 10.

<sup>14</sup> See *supra* n. 8 and accompanying text.

aggregate population of active and approved IACs under the baseline and the proposed rule decreases each year with more dropping out than entering. TSA calculates that the aggregate active population decreases at an annual rate of 1.61 percent<sup>15</sup> and compounds this rate to estimate the aggregate active IAC population for the next ten years, as displayed in column *a* of Table 2. The aggregate active population of IACs (column *a*) also represents the number of security program submissions and resubmissions under the baseline annual renewal requirement.

TSA postulates that the number of newly approved IAC applications represents a proportion of the number of aggregate active IACs in the same year. This proportion has stabilized over the last five years at 5.41 percent. TSA applied this percentage to the forecasted aggregate number of active IACs during a year to estimate the number of newly approved IAC applications during the same year<sup>16</sup> as displayed in column *c* of Table 2.

The aggregate active population of IACs during a year is composed of IAC renewals and newly approved IAC applications. Since TSA calculates the number of newly approved IAC applications by assuming they are a constant proportion of the number of aggregate active IACs, then the number of renewals must be estimated applying the complementary proportion to the number of aggregate active IACs, as shown in column *b* of Table 2.<sup>17</sup>

<sup>15</sup> Based on TSA data, there were 4,576 IACs in 2008 and 3,768 in 2020. TSA calculates a negative compound annual growth rate of  $1.61\% = (3,768 \div 4,576)^{1/12} - 1$ .

<sup>16</sup> The number of aggregate active IACs is estimated using the previous year aggregate value and the negative growth rate. For instance, the year 0 (2022) aggregate number of active IACs of 3,648 is estimated applying the negative growth rate to the year -1 (2021) aggregate number of 3,707:  $3,648 = 3,707 \times (1 - 1.61\%)$ . The number of new IAC applications in year 0 is estimated at 197 by multiplying the estimated number of aggregate IACs in year 0 (3,648) by the average proportion of new IAC applications:  $197 = 3,648 \times 5.41\%$ .

<sup>17</sup> The number of IAC renewals is estimated applying the percentage complementary to the proportion of new IAC applications (1-5.41%) into the aggregate number of active IACs. For instance, the year 0 (2022) number of renewals is estimated multiplying the number of aggregate active IACs, or 3,648, by the complementary percentage of 94.59% to obtain 3,451 ( $3,648 \times 94.59\%$ ). The number of IAC renewals can also be estimated subtracting the number of newly approved IAC applications from the number of aggregate active IACs.

The exit rate of IAC in a given year is based on the subtraction of the given year's active IAC population from the preceding year's active IAC population, and the removal of the given year's newly approved IACs,<sup>18</sup> as displayed in column *d* of Table 2. Since the number of IAC exits is estimated based on the number of active IACs during the year and the number of newly approved IAC applications, an exit rate is derived from these two estimates for the purposes of compounding the number of exits over time. TSA calculates an IAC exit rate of 6.92 percent<sup>19</sup> (*i.e.*, do not resubmit or are not approved) from year to year. The exit rate in a specific year is the percentage of IACs that do not request their security program renewed<sup>20</sup> out of the total number of IACs that had a security program in place prior to this year.

TSA estimates the total number of submissions in two blocks: the first block includes submissions associated with the current IAC population in each year, and the second block includes submissions from new applicants. This proposed rule is expected to be implemented in 2023 (year 1) and the relevant 2022 active IAC population will have, by then, a valid security plan; which will have to be renewed following the new three-year cycle.<sup>21</sup>

<sup>18</sup> For example, calculations of Year 0, Year 1 and Year 2 IAC Exits are as follows:

- 257 (Year 0 Exits) = 3,648 (Year 0 Active IACs) - 3,707 (Year -1 Active IACs) - 197 (Year 0 Newly Approved IACs);

- 253 (Year 1 Exits) = 3,589 (Year 1 Active IACs) - 3,648 (Year 0 Active IACs) - 194 (Year 1 Newly Approved IACs);

- 249 (Year 2 Exits) = 3,532 (Year 2 Active IACs) - 3,395 (Year 1 Active IACs) - 191 (Year 2 Newly Approved IACs).

<sup>19</sup> The exit rate is estimated by dividing the number of IAC exits by the aggregate number of active IACs in the previous year. For example, TSA estimates there would be 257 exits in year 0 (197 exits that were replaced by new entrants plus the 60 exits that decreased the aggregate population). TSA calculates a 6.92% exit rate in year 0 ( $257 \text{ exits} \div 3,707 \text{ aggregate active IACs in year } -1$ ). This exit rate is the same throughout the ten-year period of analysis. The exit rate for future years can also be derived mathematically as follows:  $(\text{Newly Approved IAC Proportion}) \times (1 + \text{Active IAC Growth Rate}) - (\text{Active IAC Growth Rate})$ , which numerically is equal to:  $6.92\% = 5.41\% (1 - 1.61\%) - (-1.61\%)$ .

<sup>20</sup> Firms do not get renewals either because a submission was not filed or was not approved.

<sup>21</sup> It is assumed that the validity of security plans will be extended until year 1 once this action is executed. If an IAC firm in the year 0 population

New applicants would also have to follow this three-year renewal cycle. In both blocks, there is a share of IAC firms that will not renew their security plans during the next renewal event, and a share of IAC firms that will renew. The number of IACs resubmitting in a given year is estimated by multiplying the number of program submissions from three years prior by a factor that results from compounding the annual exit rate over three years; this retention factor, estimated to be 80.6 percent,<sup>22</sup> is multiplied by the number of program submissions from three years prior to estimate the number of renewals in the corresponding year.

Table 2 staggers recertifications under the final rule's three-year cycle<sup>23</sup> in four separate columns for submissions one to four in the 10-year projection span. For example, TSA estimates that 2,738 of the 3,395 IAC recertifications in year 1 would resubmit their security programs in year 4,<sup>24</sup> and that 159 of the 197 new entrants in year 1 would resubmit for the first time in year 4 (see columns *e* and *f* regarding first and second submissions). In Table 2, TSA takes into account four recertification cycles<sup>25</sup> within the ten-year framework (columns *e* through *h*) and sums all the recertifications under the proposed rule in column *i*. Finally, TSA calculates the number of eliminated recertifications (column *j*) by subtracting the proposed rule recertifications (column *i*) from the baseline annual recertifications (column *b*).

wants to remain active over the 10 years of analysis it will have to obtain four renewals during this period, in years 1, 4, 7, and 10.

<sup>22</sup>  $80.6\% = (100\% - 6.92\% \text{ exit rate})^{(3 \text{ year cycle})}$ .

<sup>23</sup> A cycle is the period in between renewals (or between the first renewal and the initial approval). The three-year cycle means that submissions have to be renewed every three years. The current submission cycle is annual, one submission every year.

<sup>24</sup> Note IACs that were approved by TSA in year -1 (two years prior to the start date of this rule) and partially in year 0 (one year prior to the publication of this proposed rule) would need to resubmit 36 months from their last approval. IACs that were approved prior to the publication of the proposed rule (-1 & 0) are included in year -1, for the purpose of this analysis. For example:  $(\text{Year 4 Second Cycle Resubmissions}) = (\text{Year 1 Renewals}) \times 80.6\%$

<sup>25</sup> The frequency in which an IAC must resubmit their security program for review.

TABLE 2— NUMBER OF PROPOSED RULE ELIMINATED SECURITY PROGRAM RECERTIFICATIONS

| Year | Active IACs <sup>26</sup><br><br>a(n-1) = initial pop a = a(n-1) × (1-1.61%) | Baseline recerts <sup>27</sup><br><br>b1 = first year renewals bn = an × (1-5.41%) | New IACs<br><br>c = an × (5.41%) | IAC exits<br><br>dn = (an - a(n-1)) - cn | Recertification cycle <sup>28</sup>      |                                  |                                  |                                  | Proposed rule recerts<br><br>i = e + f + g + h | Eliminated recerts<br><br>j = b - i |
|------|--|--|----------------------------------|--|--|----------------------------------|----------------------------------|----------------------------------|--|-------------------------------------|
|      |  |  |                                  |  | 1st<br><br>e1 = b1 en = c(n-3) × (0.806) | 2nd<br><br>fn = e(n-3) × (0.806) | 3rd<br><br>gn = f(n-3) × (0.806) | 4th<br><br>hn = g(n-3) × (0.806) |  |                                     |
| 1    | 3,589  | 3,395  | 194                              | -253                                     | 3,395                                    | 0                                | 0                                | 0                                | 3,395  | 0                                   |
| 2    | 3,532  | 3,341  | 191                              | -249                                     | 162                                      | 0                                | 0                                | 0                                | 162  | 3,179                               |
| 3    | 3,475  | 3,287  | 188                              | -245                                     | 159                                      | 0                                | 0                                | 0                                | 159  | 3,128                               |
| 4    | 3,419  | 3,234  | 185                              | -241                                     | 156                                      | 2,738                            | 0                                | 0                                | 2,894  | 340                                 |
| 5    | 3,364  | 3,182  | 182                              | -237                                     | 154                                      | 130                              | 0                                | 0                                | 284  | 2,898                               |
| 6    | 3,310  | 3,131  | 179                              | -233                                     | 151                                      | 128                              | 0                                | 0                                | 280  | 2,852                               |
| 7    | 3,257  | 3,081  | 176                              | -229                                     | 149                                      | 126                              | 2,207                            | 0                                | 2,483  | 598                                 |
| 8    | 3,205  | 3,032  | 173                              | -226                                     | 147                                      | 124                              | 105                              | 0                                | 376  | 2,656                               |
| 9    | 3,153  | 2,983  | 170                              | -222                                     | 144                                      | 122                              | 103                              | 0                                | 370  | 2,613                               |
| 10   | 3,103  | 2,935  | 168                              | -218                                     | 142                                      | 120                              | 102                              | 1,780                            | 2,144  | 791                                 |

Note: Calculations may not be exact due to rounding in the table.

TSA estimates a time burden of four hours for an IAC manager to review and resubmit a security program. To calculate the hourly savings to industry, TSA multiplies the four-hour burden by the fully loaded hourly wage rate for an

IAC manager. TSA calculates the wage rate by estimating a weighted wage rate for two occupations across two industry subgroups.<sup>29</sup> To calculate the weighted wage rate, TSA multiplies each labor category wage rate by its respective

number of employees, sums the product of these calculations, and then divides the result by the total number of employees across all four wage rates. Table 3 illustrates the weighted average wage calculation.

TABLE 3—CALCULATION OF WEIGHTED AVERAGE INDUSTRY WAGE RATE

| Industry NAICS   | Occupations   | Wage rate | Number of employees |
|--|---|-----------|---------------------|
|  |   | a         | b                   |
| Freight Transportation Arrangement (488510)                              | First-Line Supervisors of Transportation and Material Moving Workers (53-1040). | \$28.72   | 3,460               |
|  | Transportation, Storage, and Distribution Managers (11-3071).                   | 46.41     | 4,920               |
| Management, Scientific, and Technical Consulting Services (541611).      | First-Line Supervisors of Transportation and Material Moving Workers (53-1040). | 27.52     | 3,190               |
|  | Transportation, Storage, and Distribution Managers (11-3071).                   | 50.65     | 2,680               |
| Industry Weighted Average Wage Rate = $\Sigma(a \times b) \div \Sigma b$ |   |           | \$38.68             |

Note: Calculations may not be exact due to rounding in the table.

Next, TSA adjusts this wage rate to account for employer benefits,<sup>30</sup> which results in an industry compensation rate

of \$57.90 per hour. Table 4 illustrates the calculation of the hourly industry

compensation rate based on these adjustments.

<sup>26</sup> The active IAC population in subsequent years was estimated by applying the negative growth rate of 1.61% to the active IAC population. The negative growth rate represents the net change in the active IAC population accounting for IAC exits and entries. Year 1's value accounts for three years of negative growth derived from 3,768 IACs as of the end of fiscal year 2020 based on TSA records.

<sup>27</sup> Baseline renewals represent Active IACs minus New IACs.

<sup>28</sup> A retention factor of 0.806 is calculated as the exit rate of 6.92 percent compounded over three years to account for the number of IACs still operating who submitted a security program three years prior.

<sup>29</sup> Bureau of Labor Statistics (BLS), U.S. Department of Labor, May 2020 National Industry Specific Occupation Employment and Wage Estimates, First-Line Supervisors of Transportation and Material Moving Workers (SOC 53-1040) in Freight Transportation Arrangement (NAICS 488510) and Administrative Management and General Management Consulting Services (NAICS 541611), and to Transportation, Storage, and Distribution Managers (SOC 11-3071) in (NAICS 488510) and (NAICS 541611). (Accessed May 19, 2021 at [https://www.bls.gov/oes/2020/may/naics4\\_541600.htm](https://www.bls.gov/oes/2020/may/naics4_541600.htm) and [https://www.bls.gov/oes/2020/may/naics4\\_488500.htm](https://www.bls.gov/oes/2020/may/naics4_488500.htm)).

<sup>30</sup> The average compensation factor is 1.4968. 1.4968 = (((\$31.76 + \$30.89 + \$30.99 + \$30.40) ÷ 4) + ((\$21.35 + \$20.62 + \$20.61 + \$20.29) ÷ 4). The compensation factor is calculated based on the average of the quarterly total compensation divided by the average of the quarterly total wages. Source: BLS, News Releases, 2020 Employer Costs for Employee Compensation, Table 4: Employer Costs for Employee Compensation for private industry workers by occupational and industry group (Transportation and Material Moving Occupational Group), as published in June 2020, September 2020, December 2020, and March 2021. (Accessed May 19, 2021 at <https://www.bls.gov/news-release/ecec.htm>).

TABLE 4—CALCULATION OF INDUSTRY COMPENSATION RATE

| Weighted wage rate<br>(a) | Benefits Factor<br>(b) | Compensation Rate<br>(c = a × b) |
|---------------------------|------------------------|----------------------------------|
| \$38.68                   | 1.4968                 | \$57.90                          |

TSA multiplies four hours per resubmission by the \$57.90 for an IAC manager to calculate a unit cost savings of \$232 per recertification.<sup>31</sup>

TSA estimates a duration of 2.25 hours for TSA staff to review a resubmission. The TSA review staff is composed of two “I” pay band

members<sup>32</sup> and four “J” pay band members. Each submission could be reviewed by any one of these staff members. TSA calculates a staff compensation rate based on the weighted average of two different TSA pay-bands that conduct reviews. To calculate the TSA weighted

compensation rate, TSA multiplies the respective pay band compensation<sup>33</sup> by the respective number of employees, sums the product of these calculations, and then divides by the total number of employees. Table 5 displays this weighted average calculation.

TABLE 5—CALCULATION OF WEIGHTED AVERAGE TSA COMPENSATION RATE

| TSA pay band  | Compensation rate * | Number of employees |
|---|---------------------|---------------------|
|   | a                   | b                   |
| TSA I Band .....  | \$70.62             | 2                   |
| TSA J Band .....  | 83.17               | 4                   |
| Weighted Average TSA Compensation Rate = $\Sigma(a \times b) \div \Sigma b$ |                     |                     |
|   | \$78.99             |                     |

\* Compensation Rate includes employer benefits.

TSA multiplies 2.25 hours by the TSA compensation rate of \$78.99 per hour to obtain a unit cost savings per recertification of \$178.<sup>34</sup>

To calculate savings, TSA multiplies the number of eliminated resubmissions from column j of Table 2, by the

respective unit cost savings for industry (\$232) and TSA (\$178). Table 6 displays the industry, TSA, and total savings from modifying the security program resubmission frequency from one to three years. TSA estimates that over ten years cost savings aggregate to \$7.8

million undiscounted, \$6.6 million discounted at 3 percent, and \$5.4 million discounted at 7 percent. The proposed rule would realize an annualized \$0.8 million cost savings discounted at 7 percent over 10 years.

TABLE 6—TOTAL COST SAVINGS FROM THE PROPOSED RULE  
[\$Thousands]

| Year             | Eliminated resubmissions | Industry savings         | TSA savings              | (Cost savings)<br>d = $\Sigma b, c$ |                  |                  |
|------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|------------------|------------------|
|                  | a                        | b = a × \$231.61 + 1,000 | c = a × \$177.73 + 1,000 | Undiscounted                        | Discounted at 3% | Discounted at 7% |
| 1 .....          |                          | \$0                      | \$0                      | \$0                                 | \$0              | \$0              |
| 2 .....          | 3,179                    | 736                      | 565                      | 1,301                               | 1,227            | 1,137            |
| 3 .....          | 3,128                    | 725                      | 556                      | 1,280                               | 1,172            | 1,045            |
| 4 .....          | 340                      | 79                       | 60                       | 139                                 | 124              | 106              |
| 5 .....          | 2,898                    | 671                      | 515                      | 1,186                               | 1,023            | 846              |
| 6 .....          | 2,852                    | 660                      | 507                      | 1,167                               | 978              | 778              |
| 7 .....          | 598                      | 139                      | 106                      | 245                                 | 199              | 153              |
| 8 .....          | 2,656                    | 615                      | 472                      | 1,087                               | 858              | 633              |
| 9 .....          | 2,613                    | 605                      | 464                      | 1,070                               | 820              | 582              |
| 10 .....         | 791                      | 183                      | 141                      | 324                                 | 241              | 165              |
| Total .....      | 19,056                   | 4,413                    | 3,387                    | 7,800                               | 6,641            | 5,443            |
| Annualized ..... |                          |                          |                          |                                     | 775              | 779              |

Note: Calculation may not be exact in table due to rounding.

<sup>31</sup> \$231.61 Renewal Unit Cost to Industry = 4-Hour Renewal Time Burden × \$57.90 Compensation Rate for IAC Managers.

<sup>32</sup> TSA uses an SV pay grading system, which is a discrete salary system with pay ranges, incorporated into pay bands.

<sup>33</sup> TSA, DHS Modular Cost Standards, Washington DC Metropolitan Area Locality Pay, I-Band \$70.62 = \$147,382 annual compensation + 2,087 hours and J-Band \$83.17 = \$173,585 annual compensation + 2,087 hours (Office Personnel Management changed the 2,080 work hours for Federal employees to 2,087 by amending 5 U.S.C.

5504(b). Source: Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, 100 Stat. 82 (April 7, 1986).

<sup>34</sup> \$177.73 Renewal Unit Cost to TSA = \$78.99 I/ J Band TSA Weighted Compensation Rate × 2.25 Hour Burden for Renewal Review.

The Regulatory Flexibility Act<sup>35</sup> requires agencies to consider whether some rules would have a significant economic impact on a substantial number of small entities, including small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not place any new requirements on the regulated industry or small businesses.

*C. Collection of Information*

The Paperwork Reduction Act of 1995 (PRA)<sup>36</sup> requires Federal agencies to consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the OMB for each collection of information it conducts, sponsors, or requires through regulations. As provided by the PRA, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The collection of information covered by this proposed

rule is covered by OMB control number 1652–0040.

This proposed rule impacts the collection of information by reducing the frequency that information must be submitted. This reduction would decrease the current number of security program recertifications submitted from an estimated annual average of 3,700 to 1,239 responses (a reduction of 2,461). The corresponding burden is also reduced from an annual average of 14,800 hours to 4,956 hours (a reduction of 9,844 hours). Table 7 displays the annual number of responses and burden hour estimates associated with the proposed rule.

TABLE 7—PRA INFORMATION COLLECTION RESPONSES AND BURDEN HOURS

| Collection activity         | Responses |        |        |                 |                          |                                  | Total hours | Average annual hours |
|-----------------------------|-----------|--------|--------|-----------------|--------------------------|----------------------------------|-------------|----------------------|
|                             | Year 1    | Year 2 | Year 3 | Total responses | Average annual responses | Time burden per response (hours) |             |                      |
| Proposed Rule Recerts ..... | 3,395     | 162    | 159    | 3,716           | 1,239                    | .....                            | 4,956       | 1,652                |

As required by the PRA (44 U.S.C. 3507(d)), TSA has submitted a copy of the proposed rule to the OMB for its review of the collection of information.

*D. International Trade Impact Assessment*

The Trade Agreements Act of 1979<sup>37</sup> prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these requirements, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 the proposed rule and determined that it does not impose any new requirements. Therefore, the rule will not create any unnecessary obstacles to foreign commerce of the United States.

*E. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995<sup>38</sup> requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed agency rule, or final rule for which a proposed rule was published, that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The proposed rule does not contain such a mandate. Therefore, the written statement requirements of the Act do not apply.

*F. Environment*

TSA reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them, and if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (categorical exclusions) which

experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement.<sup>39</sup> For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.<sup>40</sup>

This rulemaking has no anticipated environmental effects. Specifically, this proposed rule extends the duration of TSA approval of IAC security programs for up to three years without modifying standards or imposing an additional burden on regulated entities. It fits within categorical exclusion A3(d), “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.”<sup>41</sup> Furthermore, the proposed rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. As such, the amendment is categorically excluded from further NEPA review.

<sup>35</sup> See Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) as codified at 5 U.S.C. 601 *et seq.*

<sup>36</sup> See 44 U.S.C. 3501 *et seq.*

<sup>37</sup> See Public Law 96–39, 93 Stat. 144 (July 26, 1979) as amended by the Uruguay Round

Agreements Act, Public Law 103–465, 108 Stat 4809 (Dec. 8, 1994), codified at 19 U.S.C. 2531–2533.

<sup>38</sup> See Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), codified at 2 U.S.C. 1501–1538.

<sup>39</sup> 40 CFR 1507.3(b)(2)(ii), 1508.4.

<sup>40</sup> See Instruction Manual, section V.B(2)(a)–(c).

<sup>41</sup> See *id.* at Appendix A, Table 1.



### G. *International Compatibility and Cooperation*

E.O. 13609 of May 1, 2012 (*Promoting International Regulatory Cooperation*),<sup>42</sup> promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. TSA analyzed this action under the policies and agency responsibilities of E.O. 13609, and has determined that this action would have no effect on international regulatory cooperation. In keeping with U.S. obligations under the Convention on International Civil Aviation (also known as the “Chicago Convention”), it is TSA policy to comply with International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. TSA has determined that this regulation has no direct relationship to the Chicago Convention.

### H. *Executive Order 13132, Federalism*

TSA has analyzed this rulemaking under the principles and criteria of E.O. 13132 of August 4, 1999 (*Federalism*).<sup>43</sup> TSA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal 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.

### I. *Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

TSA analyzed this rulemaking under E.O. 13211 of May 18, 2001 (*Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use*).<sup>44</sup> TSA has determined that it is not a “significant energy action” under the Executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### List of Subjects in 49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

### The Amendment

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend chapter XII of title 49, Code of Federal Regulations, as follows:

#### SUBCHAPTER C—CIVIL AVIATION SECURITY

#### PART 1548—INDIRECT AIR CARRIER SECURITY

■ 1. The authority citation for part 1548 continues to read as follows:

**Authority:** 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

#### § 1548.7 [Amended]

■ 2. Amend § 1548.7 by:

■ a. In paragraph (a)(4), removing the words “one year after the month it was approved” and adding in their place “three years after the month it was approved, or until the program has been surrendered or withdrawn, whichever is earlier”.

■ b. In paragraph (a)(5) introductory text, adding the words “or renewal” after the words “submitted during its initial”.

■ c. In paragraph (b)(1), removing the words “at least 30 calendar days prior to the first day of the anniversary month of initial approval” and adding in their place “at least 30 calendar days prior to the 36th month after the initial approval”.

■ d. In paragraph (b)(4), removing the words “one year after the month it was renewed” and adding in their place “three years after the month it was renewed, or until the program has been surrendered or withdrawn, whichever is earlier”.

Dated: December 16, 2022.

**David P. Pekoske,**  
*Administrator.*

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<sup>42</sup> Published at 77 FR 26413 (May 4, 2012).

<sup>43</sup> Published at 64 FR 43255 (Aug. 10, 1999).

<sup>44</sup> Published at 66 FR 28355 (May 22, 2001).