DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

Air Cargo Security Threat Assessments; Technical Amendment

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Transportation Security Administration (TSA) is issuing this technical amendment to the air cargo security threat assessment procedures to correct a technical oversight that limited the type of immigration information noncitizens may submit as part of the immigration vetting process.

DATES: This rule is effective as of August 15, 2024.

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SUPPLEMENTARY INFORMATION: You can find an electronic copy of this rule using the internet by accessing the Government Publishing Office's web page at *https://www.govinfo.gov/app/collection/FR* to view the daily published **Federal Register** edition or by accessing the Office of the Federal Register's web page at *https://www.federalregister.gov.* Copies are also available by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within 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://advocacy.sba.gov/resources/reference-library/sbrefa/.*

I. Discussion of the Rule

This technical amendment revises 49 CFR 1540.203(c)(8) to correct a technical oversight that limited the type of information prospective noncitizen [1] air cargo workers and other individuals with access to cargo could submit when applying for a security threat assessment (STA). As described in the Air Cargo Screening Interim Final Rule, 74 FR 47672 (Sept. 16, 2009), the procedures for the STA are codified in 49 CFR part 1540, subpart C. Section 1540.203 requires all applicants to submit certain biographic information to TSA to conduct the STA.[2]

Paragraph 1540.203(c)(8) requires noncitizens to submit an Alien Registration Number (ARN) that TSA uses to access the pertinent immigration databases. TSA must have this information, or other appropriate identifying documents and information, to complete the immigration portion of the STA. Because there are other documents and information in addition to an ARN that noncitizens may possess that TSA can use to complete the vetting process, it is unnecessary to limit the acceptable documents to the ARN.

For example, applicants may use the Form I–551, Permanent Resident Card; a foreign passport containing a Form I–551 stamp; and certain categories of Form I–766, Employment Authorization Document. Also, applicants may have Customs and Border Protection (CBP) Form I–94 Arrival/Departure Record information that TSA can use to access the database. Note that noncitizens in the U.S. no longer need to complete a paper CBP Form I–94, but can access their Form I–94 online and provide it to employers, schools/universities, or government agencies as needed. (CBP encourages travelers to retrieve their arrival/departure information automatically from the CBP I–94 website, available at *https://i94.cbp.dhs.gov/I94/#/home.*)

Limiting the information noncitizens may submit to only an ARN prevents individuals who possess other appropriate documents and information from applying for the STA. This was an oversight in the rule drafting phase that TSA now corrects through this technical amendment.

This technical amendment does not alter the immigration standard established under part 1540.203, but rather allows eligible individuals to submit other official and legitimate documents and information to complete the STA. TSA is amending the application form to clarify the documents and information that an applicant may submit to TSA to complete the immigration portion of the STA. TSA will maintain a list of documents on its website that noncitizen applicants may submit as part of the vetting process to facilitate an immigration check.

II. Good Cause and Procedural Rule Exceptions From Notice and Comment and Delayed Effective Date

TSA is issuing this final rule change as a technical amendment without a notice of proposed rulemaking or delayed effective date. The Administrative Procedure Act (APA) authorizes agencies to forgo the notice and comment requirements if it ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B); *see also* 5 U.S.C. 553(d)(3) (allowing agency to forgo a delayed effective date for a substantive rule upon a finding of good cause).

TSA believes notice and comment concerning the submission of additional immigration documents is unnecessary as it is a limited, insubstantial amendment meant to correct a drafting oversight. It is unnecessary to seek notice and comment on the rule changes because the new language imposes no new substantive burden and corrects an oversight in drafting. Further, it is unnecessary for the rule to have a delayed effective date as the amendment merely expands the types of documents and information an applicant may provide when applying for an STA and is not a substantive change to the rule. For these reasons, TSA believes that bypassing the ordinary notice and comment procedure and the delayed effected date requirement is justified in the totality of the circumstances.

In addition, 5 U.S.C. 553(b)(A) permits agencies to forgo notice and comment when issuing ''rules of agency organization, procedure, or practice,'' *i.e.,* a procedural rule. ''A useful articulation of the exemption's critical feature is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' [3] The exemption ''preserve[s] agency flexibility when dealing with limited situations where substantive

[1] For purposes of this discussion, TSA uses the term ''noncitizen'' to be synonymous with the term ''alien'' as it is used in the Immigration and Nationality Act (''INA'' or ''Act''). *See* INA 101(a)(3), 8 U.S.C. 1101(a)(3); *Barton* v. *Barr,* 140 S. Ct. 1442, 1446 n.2 (2020).

[2] This information is used to conduct multiple checks as part of the STA process, including intelligence-related checks and confirming an applicant's identity. *See* 49 CFR 1540.205.

[3] *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980).

rights are not at stake.'' [4] Here, TSA is correcting an oversight in drafting that relates solely to forms of evidence before the agency. As a matter of agency procedure and practice, TSA is allowing noncitizens to submit additional available and acceptable records in their possession that TSA can use in the vetting process to facilitate an immigration check. In addition, the delayed effective date requirements under 5 U.S.C. 553(d) do not apply to procedural rules.

III. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public, and under the provisions of 44 U.S.C. 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995.

B. Executive Orders 12866 and 13563 Assessment

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory 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 costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this technical amendment a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action. This technical amendment reduces the regulatory burden on noncitizens by revising 49 CFR 1540.203(c)(8) to consider additional information and documents that STA applicants can submit to TSA to conduct its immigration check. This technical amendment does not create or change any substantive requirements.

C. Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (RFA) [5] requires that agencies consider the impacts of their rules on small entities. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The RFA's regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). As discussed previously, DHS did not issue a notice of proposed rulemaking for this action as exempted by 5 U.S.C. 553(b). Therefore, a regulatory flexibility analysis is not required for this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–38, UMRA) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule or final rule for which the agency published a proposed rule, which includes any Federal mandate 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.

Regulations are only reviewable under UMRA when an agency has published a notice of proposed rulemaking as defined by 5 U.S.C. 553(b).[6] This rule is exempted from notice and comment under 5 U.S.C. 553(b). TSA did not publish a notice of proposed rulemaking; thus, this rule is exempt from UMRA's requirements pertaining to the preparation of a written statement.

E. Executive Order 13132

Under Executive Order 13132 (Federalism), agencies must consider whether a rule has federalism implications. TSA has determined that this rule does not have federalism implications because it does not create a substantial direct effect on states, on the relationship between the national government and states, or the distribution of power and responsibilities among the various levels of government.

F. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Trade Agreement Act does not consider legitimate domestic objectives, such as essential security, as unnecessary obstacles. The statute also requires that international standards be considered, and where appropriate, that they be the basis for U.S. standards. This technical amendment will not have an adverse impact on international trade.

G. Energy Impact Analysis

TSA assessed the energy impact of this action in accordance with the Energy Policy and Conservation Act (EPCA), [7] and determined that this technical amendment is not a major regulatory action under the provisions of the EPCA.

H. Environmental Analysis

TSA has reviewed this technical amendment for purposes of the National Environmental Policy Act of 1969 (NEPA) [8] and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion numbers A3(a) (for actions of a strictly administrative or procedural nature) and (b) (that implement, without substantive change, statutory or regulatory requirements) in DHS Management Directive 023–01 (formerly Management Directive 5100.1), Environmental Planning Program, and Instruction Manual 023–01–001–01, Rev. 1, which guides TSA compliance with NEPA.

I. The Congressional Review Act

Before a rule can take effect, 5 U.S.C. 801, the Congressional Review Act, requires agencies to submit the rule and a report indicating whether it is a major rule to Congress and the Comptroller General. Under 5 U.S.C. 804(3)(C), rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties are not considered to be a rule for the purposes of the Congressional Review Act. This technical amendment is a rule of agency organization, procedure, or practice that will not substantially affect the rights or obligations of non-agency parties, thus is not required to be submitted for review under the CRA.

[4] *American Hospital Ass'n* v. *Bowen,* 834 F.2d 1037, 1045 (D.C. Cir. 1987).

[5] Public Law 96–354 (94 Stat. 1164, Sept. 19, 1980), codified at 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[6] *See* 2 U.S.C. 658(10); 5 U.S.C. 601(2).

[7] As codified at 42 U.S.C. 6362.

[8] As codified at 42 U.S.C. 4321–4347.

List of Subjects in 49 CFR Part 1540

Air carriers, Airports, Aviation safety, Security measures.

For the reasons stated in the preamble, the Transportation Security Administration amends 49 CFR part 1540 as follows:

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 1. The general authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44925, 44935–44936, 44942, 46105.

■ 2. Amend § 1540.203 by revising paragraph (c)(8) to read as follows:

§ 1540.203 Security threat assessment.

* * * * *

(c) * * *

(8) If the applicant is not a U.S. citizen, the applicant's Alien Registration Number; a Form I–94 Arrival and Departure record containing an I–94 number; or other document as authorized by TSA and listed on the TSA website as permissible for this purpose.

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Dated: August 8, 2024.

David P. Pekoske,

Administrator.

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