

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**49 CFR Parts 1515, 1520, 1522, 1540, 1544, 1546, 1548, and 1549**

[Docket No. TSA–2009–0018; Amendment Nos. 1515–2, 1520–9, 1522–1, 1540–11, 1544–10, 1546–6, 1548–6, 1549–1]

RIN 1652–AA64

### Air Cargo Screening

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This rule amends two provisions of the Air Cargo Screening Interim Final Rule (IFR) issued on September 16, 2009, and responds to public comments on the IFR. The IFR codified a statutory requirement of the Implementing Recommendations of the 9/11 Commission Act of 2007 that the Transportation Security Administration (TSA) establish a system to screen 100 percent of cargo transported on passenger aircraft not later than August 3, 2010. It established the Certified Cargo Screening Program, in which TSA certifies shippers, indirect air carriers, and other entities as Certified Cargo Screening Facilities (CCSFs) to screen cargo prior to transport on passenger aircraft. Under the IFR, each CCSF applicant had to successfully undergo an assessment of their facility by a TSA-approved validation firm or by TSA. In response to public comment, this Final Rule removes all validation firm and validator provisions, so that TSA will continue to conduct assessments of the applicant's facility to determine if certification is appropriate.

The IFR also required that if an aircraft operator or foreign air carrier screens cargo off an airport, it must do so as a CCSF. The Final Rule deletes this requirement, as aircraft operators are already screening cargo on airport under a TSA-approved security program, and do not need a separate certification to screen cargo off airport.

This rule also proposes a fee range for the processing of Security Threat Assessments, and seeks comment on the proposed fee range and the methodology used to develop the fee. TSA will announce the final fee in a future **Federal Register** notice.

**DATES:** Effective September 19, 2011.

**Comment Date:** Comments must be received by September 19, 2011.

**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:** *For questions related to air cargo screening program:* Tamika McCree, Manager, Air Cargo Stakeholder Relations, Air Cargo Security, TSA–28, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone (571) 227–2632; facsimile (571) 227–1947; e-mail [AirCargoScreeningCommentsIFR@dhs.gov](mailto:AirCargoScreeningCommentsIFR@dhs.gov).

*For legal questions:* Alice Crowe, Senior Counsel, Office of Chief Counsel, TSA–22, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone (571) 227–2652; facsimile (571) 227–1379; e-mail [alice.crowe@dhs.gov](mailto:alice.crowe@dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

In this final rule, TSA seeks prior public comment on our proposed fee to cover the cost of the STAs. To the maximum extent possible, DHS provides an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views on the proposed fee for the STA. 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 in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).<sup>1</sup> TSA will consider all comments received 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.

Upon receipt of such comments, TSA will not place the comments 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 that TSA has received such materials from the commenter. If TSA determines, however, that portions of these comments may be made publicly available, TSA may include a redacted version of the comment in the public docket. If TSA receives a request to examine or copy information that is not

<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.

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 FOIA regulation of the Department of Homeland Security 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 received into any of our dockets by the name of the individual who submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, etc.). 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. to 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 can get an electronic copy 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.gpoaccess.gov/fr/index.html>; or

(3) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

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 (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 **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](http://www.sba.gov/advo/laws/law_lib.html).

### Abbreviations and Terms Used in This Document

ACDMS	Air Cargo Data Management System
CBP	U.S. Customs and Border Protection
CCSF	Certified Cargo Screening Facility
CCSP	Certified Cargo Screening Program
CFR	Code of Federal Regulations
CHRC	Criminal History Records Check
DHS	Department of Homeland Security
DOE	Department of Energy
FSD	Federal Security Director
IAC	Indirect Air Carrier
IED	Improvised Explosive Device
SIDA	Security Identification Display Area
SSI	Sensitive Security Information
STA	Security Threat Assessment
S&T	DHS Directorate of Science & Technology
STP	Screening Technology Pilot
TSA	Transportation Security Administration

### Outline of Final Rule

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### I. Background

Sec. 1602 of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, Aug. 3, 2007) (9/11 Act), which amended 49 U.S.C. 44901(g)(1), provides, in pertinent part:

Not later than 3 years after the date of enactment of the [9/11 Act], the Secretary of Homeland Security shall establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

As amended by the 9/11 Act, 49 U.S.C. 44901(g)(2) provides that the system used to screen cargo on passenger aircraft shall provide a level of security "commensurate with the level of security for the screening of passenger checked baggage," and directs that one hundred percent of such cargo must be screened not later than August 3, 2010.

### Summary of Interim Final Rule

Section 44901(g)(3)(B) explicitly authorizes TSA to issue an interim final rule to implement the requirements. On September 16, 2009, TSA issued the Air

Cargo Screening IFR implementing these 9/11 Act requirements, and sought comments on the provisions contained in the IFR.<sup>2</sup> Section 44901(g)(3)(B)(i) of the 9/11 Act requires TSA to issue a final rule not later than one year after the effective date of the IFR, or by November, 16, 2010. TSA was unable to meet the November 16, 2010, deadline due to changes that had to be made to the Final Rule. Data from industry indicates that industry met the August 3, 2010, deadline for domestically up lifted cargo only. Neither the IFR nor the Final Rule apply to international inbound cargo.

### Requirements of the IFR

The IFR established the Certified Cargo Screening Program (CCSP), a program to certify shippers, indirect air carriers (IAC), and other entities located in the United States to screen cargo prior to tendering it to aircraft operators for transport on passenger aircraft.<sup>3</sup> The CCSP requires certified cargo screening facility (CCSF) personnel to successfully undergo a TSA conducted security threat assessment (STA)<sup>4</sup> and submit to an evaluation of its facility by a TSA-approved validator or TSA.<sup>5</sup> Once certified, the CCSF must, among other responsibilities:

- Implement a TSA-approved standard security program.<sup>6</sup>
- Ensure that key personnel with unescorted access to screened cargo undergo an STA<sup>7</sup> including (1) Each employee and authorized representative who screens cargo or has unescorted access to screened cargo, and (2) each security coordinator and alternate, senior manager of the facility, and other individual who implements the cargo screening program.
- Adhere to strict physical and access control measures for the storage, handling, and screening of cargo.
- Screen cargo using TSA-approved methods.
- Initiate chain of custody measures to ensure the security of the cargo from the time the CCSF screens the cargo until it is loaded on passenger aircraft.<sup>8</sup>
- Appoint security coordinators at the corporate and facility levels and alternates to be available 24 hours per day, 7 days per week.

<sup>2</sup> 74 FR 47672. The IFR provides detailed information on TSA's reasoning behind the regulatory provisions for the CCSP. For further information refer to the IFR.

<sup>3</sup> 74 FR 47686 and 47706.

<sup>4</sup> 49 CFR 1549.111.

<sup>5</sup> 49 CFR 1549.7.

<sup>6</sup> 49 CFR 1549.5.

<sup>7</sup> 49 CFR 1540.203.

<sup>8</sup> 49 CFR 1549.101(d).

• Apply for recertification, including a new examination by TSA or a TSA-approved validator, every 36 months.

The IFR further stated that aircraft operators that wish to screen cargo off-airport must become a CCSF, and adopt and implement a CCSF security program for that purpose.<sup>9</sup> Additionally, the IFR established procedures under which firms may apply for TSA's approval to conduct validation assessments of CCSF facilities.<sup>10</sup> TSA believed these procedures would help quickly process many applications for CCSPs in a short amount of time.

The IFR also amended the threat assessment provisions that currently exist in 49 CFR part 1540, subpart C, for individuals who work in the air cargo sector to enhance TSA's ability to effectively conduct STAs.

Finally, the IFR explained the methodology by which TSA would calculate a fee that TSA would charge for conducting STAs and presented an expected fee range for these STAs. TSA invited comment on the amount of the fee and the methodology used to calculate the fee but did not establish a fee. The IFR explained that TSA would specify the final fee amount in a separate notice in the **Federal Register**.<sup>11</sup>

## II. Summary of the Final Rule

In response to comments on the IFR, TSA decided to remove two major requirements, explained below, concerning validation firms and certification of aircraft operators. This final rule also makes a few clarifications and other minor revisions such as typographical errors. Further explanations of these changes can be found in section IV of this rule, in the Section-by-Section Analysis of Changes.

TSA deleted part 1522 regarding validation firms and validators as we do not believe they are needed. TSA will continue to conduct all assessments of the facilities applying to become CCSFs because TSA has the capacity to review and certify all CCSF applicants itself.

In addition, this final rule deletes the IFR requirement that an aircraft operator must become certified as a CCSF in order to screen air cargo off-airport. As explained in Section III. (Disposition of Comments) of this preamble, TSA will continue to update the security programs through the security program amendment process as described in 49 CFR 1544.105(c) and 156.105(c) for aircraft operators and foreign air carriers to ensure that the same level of security

applies to cargo that those entities and CCSFs screen. Because aircraft operators will need to meet the same substantive requirements as CSSFs, they do not need to be certified under the CCSP to screen cargo off airport.

## III. Disposition of Comments

TSA received approximately 40 comments from trade associations, aircraft operators, including a few from individuals. The issues raised in these comments are discussed below.

### *TSA Screening at Airports*

*Comment:* Several commenters stated that TSA, not private industry through the CCSP, should conduct screening of cargo to be transported on passenger aircraft. These commenters stated that TSA should use existing statutory authority to establish TSA-operated screening operations at airports. One commenter stated that TSA should screen all cargo transported on passenger aircraft because Congress created TSA to replace screening by third parties. These commenters believe that TSA screening is the only way to screen 100 percent of cargo on passenger aircraft without impeding the flow of commerce. Some commenters suggested that the CCSP must be a complement to, but not a substitute for, a Federal air cargo screening program operated by TSA at all domestic airports.

Other commenters favored the CCSP. The International Air Cargo Association (TIACA) commented that either federalization or airline-only screening would unduly crowd screening onto airport grounds, potentially creating significant bottlenecks by imposing a one-size-fits-all approach to air cargo screening. TIACA commented that the flexibility allowed under the CCSP is a better fit with the diverse needs of the air cargo supply chain.

*TSA Response:* The 9/11 Act required the Secretary of Homeland Security to establish a system to screen 100 percent of cargo loaded in the United States on passenger aircraft. TSA has determined the most appropriate model to accomplish this mandate is for TSA to establish screening standards that allows airlines, shippers, and IACs and other entities to perform the necessary screening. The CCSP program satisfies the statutory directive. The 9/11 Act, 49 U.S.C. 44901(g)(1), requires TSA to “\* \* \* establish a system \* \* \*” for screening 100 percent of air cargo, and does not require TSA to conduct the screening. The 9/11 Act provides that screening includes “\* \* \* a program to certify the security methods used by shippers \* \* \*” and therefore,

anticipates that an entity other than TSA may conduct the screening to TSA standards. 49 U.S.C. 44901(g)(5).

TSA believes that if TSA screened cargo at airports, the screening process would very likely impede the flow of commerce as described in the TIACA comment above. It would create many of the same problems that would occur if aircraft operators screened 100 percent of cargo. There is insufficient space at airports to screen the 7.6 million pounds of cargo transported on passenger aircraft daily. TSA believes airport screening would be time-consuming. A high volume of cargo reaches the airports on skids or loaded into unit load devices, which TSA would have to break down and screen, a process that could lead to congestion at the cargo screening locations.

A fundamental principle of the CCSP is to provide stakeholders with additional options for screening air cargo. Participation in the CCSP allows shippers to move screening away from the airport to avoid the bottlenecks that TSA expects would occur if all cargo were screened there. The CCSP also allows industry participants to conduct screening at stages earlier within the cargo supply chain and off-airport. Thus, the CCSP gives industry control to schedule screening of the cargo at the most financially sensible point in their business process while still meeting all security requirements. Screening conducted by the industry permits IACs and shippers to tender screened cargo to aircraft operators so that it can be transported immediately on passenger aircraft, thereby avoiding the backlog that would result from screening solely by TSA or aircraft operators on-airport. TSA is confident that the CCSP will achieve the security benefits that Congress sought in the statutory mandate without causing unnecessary delays.

TSA believes the CCSP, supplemented by TSA screening at Category II–IV airports<sup>12</sup> and other measures TSA has already taken (such as requiring 100 percent screening of cargo transported on narrow-body aircraft), combined with cargo screened directly by aircraft operators, has achieved the 100 percent screening requirement. TSA believes that the CCSP concept provides the greatest

<sup>12</sup> TSA classifies the over 400 commercial airports in the United States into one of five airport security categories (I, II, III, IV, and X) based on various factors, such as the total number of take-offs and landings annually, the extent to which passengers are screened at the airport, and other special security considerations. In general, Category X airports have the largest number of passenger boardings and Category IV airports have the smallest.

<sup>9</sup> 49 CFR 1549.5.

<sup>10</sup> 49 CFR part 1522.

<sup>11</sup> 74 FR 47683 and 47684.

degree of flexibility and efficiency and should be the centerpiece of the current air cargo screening program. TSA will continue to screen almost all cargo received at Category II–IV airports.<sup>13</sup> Cargo screened at these locations involves relatively lower volumes and smaller pieces, which are conducive to screening by existing baggage equipment. TSA will also continue to screen any cargo delivered to the ticket counter for shipment, known as a counter-to-counter express shipment.

*Comment:* The U.S. Chamber of Commerce recommended that TSA expand the use of TSA-certified explosive-detection canines to screen large air cargo consolidations.

*TSA Response:* TSA will continue to evaluate the need for additional canine teams. In the future, TSA is also considering the use of TSA-approved canine teams owned by regulated parties to screen air cargo.

#### *Impact of the CCSP on Small and Mid-Sized Companies*

*Comment:* Some commenters expressed the view that small and mid-sized freight forwarders do not have the financial resources to participate in the CCSP, and that the CCSP will put them out of business, or impose significant economic burdens. One commenter cited the costs that a CCSF would incur for maintaining a compliant facility and ensuring adequate employee training as placing a burden on the companies.

*TSA Response:* TSA designed the CCSP to give small- and medium-sized companies several options to avoid unnecessary costs while achieving the security benefits of the program. The CCSP is a voluntary program intended to give industry the flexibility to respond to new security requirements in the 9/11 Act. Participation in CCSP does not require a business to purchase any costly screening equipment, because TSA provides multiple options to participants. For example, entities that wish to join the CCSP may choose to screen by conducting a physical search of the cargo as they pack it for shipment. Physical search may be more cost effective for companies that would have to screen smaller volumes of cargo and for any company that is conducting the screening as they pack the cargo for shipment, as many CCSFs do. A physical search is likely to satisfy the

screening requirement of the 9/11 Act at a much lower cost for such companies than purchasing screening equipment.

Moreover, a small- or mid-sized freight forwarder has several options for getting its cargo screened that do not require participation in the CCSP. They may choose to have their cargo screened by a CCSF IAC, a CCSF independent cargo screening facility (ICSF), or an aircraft operator, if that is more cost effective than participating in the CCSP.

We believe that the most viable option for many small to medium shippers and IACs who do not wish to join the CCSP may be to have their cargo screened by ICSFs located away from the airport. This fee-based solution provides the benefit of screening away from the potential congestion and delay at the airport, without necessitating an investment in facilities, training, or screening equipment. TSA has published a list of all CCSFs IACs and ICSFs, as well as other IACs authorized to transport screened cargo for CCSF shippers. See the “Certified Cargo Screening Locations” section at [http://www.tsa.gov/what\\_we\\_do/layers/aircargo/certified\\_screening.shtm](http://www.tsa.gov/what_we_do/layers/aircargo/certified_screening.shtm).

*Comment:* The House Committee on Homeland Security requested that TSA consider expanding Screening Technology Pilot (STP) locations and on-airport screening options to provide stakeholders, particularly small businesses, with screening options that do not involve the purchase of costly screening equipment.

The Committee also recommended that TSA find a way to incorporate grants, tax incentives, low-interest loans, or innovative financing measures into the CCSP.

*TSA Response:* TSA has attempted to mitigate the impacts of the new air cargo program on small businesses by offering options, described in the TSA Response immediately above, that allow small businesses to choose how best to get their cargo screened.

The STP, a Congressionally-funded pilot program designed to test screening technology, was a useful program that authorized TSA to reimburse participants for a portion of the cost of acquiring screening technology. At this time, the funding has been exhausted through reimbursement to companies that participate in the CCSP. The reimbursement did not include the cost of labor, training, consumables, maintenance, facility security, or any other costs associated with the CCSP. Therefore, it may not be the best option for small businesses. At this time, TSA has no other program to provide financial assistance for air cargo screening technology.

#### *Validations by Independent Validation Firms*

*Comment:* TSA received several significant comments on the validation firm and validator requirements of the IFR. Some commenters stated that TSA, not private entities, should perform the validations because they view the function as “inherently governmental.” Other commenters believed that TSA should bear the cost of the validation or set a fee for the service. Several commenters were concerned that there is an inherent conflict of interest between the facility and the validator, because the facility would pay the validator to conduct the assessment.

*TSA Response:* While TSA disagrees that the validation process set forth in this rule requires industry to perform “inherently governmental” functions, TSA has decided that it does not need independent validators to perform assessments of CCSF applicants. TSA is removing the validation firms and validators process in part 1522 because there were fewer CCSF applicants than TSA expected, and TSA is capable of processing the applications itself. The IFR, published in November 2009, included this feature based on a similar validation program successful in the United Kingdom and a concern that TSA lacked the capacity to quickly evaluate and certify the 15,000 applications TSA estimated it would receive. The actual number of CCSF applications, however, is much lower than the estimate. To date, TSA has certified over 1,000 CCSFs, and is able to process the new applications without the support of validation firms. These certified locations are already screening a large volume of cargo destined for transport on passenger aircraft. Further, we believe that the industry has achieved 100 percent air cargo screening for domestic uplift as of the beginning of August 2010. While we may see additional CCSF applicants as shippers decide they want to screen their own cargo rather than risking the cargo being opened during screening downstream, TSA has determined that it can handle the future facility assessment workload without undue delay.

Under the final rule, applicants for the CCSP will not have to pay a fee to independent validators, thereby reducing the cost of the CCSP. Approximately \$65.9 million in costs, discounted at 7 percent, over the 10-year period of the rulemaking were removed from the IFR to the FR as a result of the elimination of the requirement for TSA-approved validation firms (TAVFs). Discounted at seven percent, the following are the

<sup>13</sup> A Category I airport is an airport where screening is performed pursuant to TSA regulations and the number of annual enplanements are 1 million or more. A Category X airport is an airport where screening is performed pursuant to TSA regulations, the number of annual enplanements is 5 million or more, and the number of international enplanements is 1 million or more.

specific cost reductions to the respective impacted entities: \$11.7 million for TAVFs, \$54.0 million for CCSFs, and \$0.2 million for TSA. This reduction in the cost of CCSP participation should be particularly helpful to the small- and mid-sized companies concerned that the cost of joining the CCSP is too high.

*Security Level of Cargo Screening Relative to the Security Level of Checked Baggage Screening*

*Comment:* One commenter argued that the CCSP does not provide a level of security that is commensurate with the level of security for passenger checked baggage, as required by the 9/11 Act. This commenter stated that “commensurate” means “equal” and that such a standard limits the discretion of TSA. According to this commenter, it would be much easier for a third party to compromise the chain of custody under the CCSP and tamper with screened cargo than it would be to infiltrate the chain of custody for passenger-checked baggage. For example, this commenter believes that tamper evident tape, which may be used as a chain of custody procedure under the CCSP, is inexpensive, and could easily be acquired or manufactured by a terrorist. This commenter also believes that even if CCSFs use more technologically advanced methods to protect the chain of custody, the length of time an item of cargo is stored after it is screened and prior to its delivery to an airport could provide third parties with time to break the chain of custody.

*TSA Response:* Section 44901(g)(2) of the 9/11 Act establishes the parameters for meeting the 100 percent screening requirement—the system must provide a level of security for cargo commensurate with the level of security for checked baggage. “Commensurate” is not a statutorily defined term and must be understood to have its ordinary meaning of “similar” or “analogous.” “Commensurate” does not mean “identical.” Notably, it is not the “method of screening” that must be commensurate with that of checked baggage, but the resulting “level of security” that must be commensurate. Physical examination is but one of many layers of security in place to protect air transportation. Therefore, it is the entire system that must ultimately produce security of cargo commensurate with that in place for checked baggage.

Section 44901(g)(5) defines “screening” of air cargo placed on a passenger aircraft, and enumerates specific types of authorized screening, including x-ray systems, explosives detection systems (EDS), explosives trace detection, and explosives

detection canine teams certified by TSA. In addition to the particular screening technologies and techniques listed, paragraph (g)(5) expressly provides that “the Administrator may approve additional methods to ensure that the cargo does not pose a threat to transportation and to assist in meeting the requirements of this subsection.” A system of screening that utilizes a combination of the screening methods planned for use in the CCSP will provide a level of security commensurate with that in place for checked baggage.

The methods of screening, in some cases, may be the same used for checked baggage. By statute, however, checked baggage must be screened using EDS. 49 U.S.C. 44901(d). There is no parallel requirement for cargo in 49 U.S.C. 44901(g); rather, any one or more of a number of methods, including EDS, may be used. Also, like checked baggage security, the overall system will rely on layers of security to protect cargo from terrorist threats. Those layers will include STAs of individuals with unescorted access to cargo, physical protection of cargo once it is screened, and chain of custody practices to protect cargo from the time it is screened until it is tendered for transport on passenger aircraft.

TSA believes that the chain of custody measures the CCSP requires will provide a high degree of security for air cargo throughout the supply chain. TSA has established multiple layers of security for cargo as it travels through the supply chain. For example, the CCSP security programs, which are sensitive security information (SSI), contain requirements, such as the use of tamper-evident tape on cargo that has been screened, and security measures for the trucks and other conveyances that transport screened cargo to the airport. The transport and handling measures established in the security programs for the CCSP are similar to those already in place for the ground transport of screened cargo that is in the custody of air carriers. Screened cargo in the supply chain is handled by secure facilities and modes of transport. Air cargo is not typically stored for any significant period once it has been tendered for transport, as the very nature of air cargo is to move materials as quickly as possible from shipper to consignee.

*TSA’s Funding for Implementing the CCSP*

*Comment:* The House Committee on Homeland Security expressed concerns regarding the level of TSA’s investment in the CCSP and stressed the importance

of TSA having appropriate resources to support its regulatory oversight role. Specifically, the Committee noted that TSA would need appropriate staffing levels for inspectors to be able to certify TSA-approved validation firms, and process STAs for workers at such firms and for CCSFs. The Committee suggested that TSA seek multiple means of additional funding to ensure that the 100 percent screening mandate is met, including seeking funds through the American Recovery and Reinvestment Act (ARRA). The Committee was also concerned that TSA would not have enough resources to certify enough CCSFs by the August 3, 2010, deadline.

*TSA Response:* TSA has requested, and Congress has provided, sufficient resources to attain the 100 percent screening requirements set forth in the mandate. In addition, the FY 2010 Homeland Security Appropriations Act provided nearly \$15 million above the Administration’s request, including \$3.45 million for additional air cargo inspectors and \$9 million for technology development. TSA considered requesting ARRA funds, however, they are not available for TSA staffing for the CCSP; Congress restricted ARRA funds to the procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment.

TSA concurs that it is important to have the resources to certify CCSFs quickly so as not to disrupt commerce. In the months before the requirement to screen 100 percent of air cargo became effective, TSA coordinated with the different applicants to ensure that facilities desiring to be CCSFs received an assessment as soon as the facility declared that it was ready.

At the current pace of applications and certifications, TSA remains confident that it will be able to certify all current (and a significant number of additional) applicants that remain engaged and interested in proceeding. TSA believes it also has the capability to manage any short-term surges in activity. TSA will continue to monitor and evaluate resource and funding levels, and will request increases that may be required by the circumstances to carry out its oversight responsibilities. After evaluating the flow of applications and the certification process, TSA has determined that the usage of TSA-approved validation firms is no longer required. Not having to certify validation firms, as well as no longer needing to process STA’s for their workers, will provide TSA inspectors with some additional time for oversight and compliance activities related to CCSFs.

### Outreach to Stakeholders

*Comment:* The House Committee on Homeland Security urged TSA to conduct additional industry outreach to encourage participation in the CCSP. Suggestions for increasing CCSP participation through outreach included: Utilizing existing federal supply chain programs, such as the Customs-Trade Partnership Against Terrorism (C-TPAT) program to conduct industry outreach and training on a larger scale; obtaining statistical data on shippers from the U.S. Department of Commerce in order to perform targeted outreach; providing low-cost training and information sessions to small businesses; and increasing CCSP visibility to industry trade publications.

*TSA Response:* To ensure the cargo and shipping industry are aware of the impact and requirements of the 100 percent screening requirement, TSA conducted outreach through multiple organizations, and we continue our longstanding relationships with associations whose members are impacted by the 9/11 Act. These organizations include members of airports, airlines, and freight forwarders. TSA continues its contact with associations such as the Air and Expedited Motor Carriers Association, Air Forwarders Association, Air Transport Association, American Association of Exporters and Importers, Cargo Airline Association, Council of Supply Chain Management Professionals, Express Delivery and Logistics Association, International Air Transport Association, Meridian One Consulting, National Association of Manufacturers, National Association of Wholesalers-Distributors, National Customs Brokers and Forwarders Association of America, and National Industrial Transportation League.

In addition, TSA representatives speak at trade association conferences and participate in webinars and other public forums to share vital information regarding the CCSP. This on-going effort will continue throughout implementation of the CCSP.

In coordinating outreach efforts, TSA estimates that approximately 20 of the largest airports within the United States disproportionately account for most of the air cargo transported on passenger aircraft, and these locations are primarily the largest (Category I and Category X) airports. TSA continues its outreach efforts to these airports to ensure widespread understanding of the CCSP.

### Applicability of CCSP to Cargo Loaded Outside the United States

*Comment:* One association commended TSA for clarifying that the IFR does not apply to cargo that is loaded on passenger aircraft outside the United States. This commenter supports TSA's two-pronged approach of working with the International Civil Aviation Organization (ICAO) standards, and applying risk assessments for air cargo. The commenter suggested that TSA should leverage other Government programs, such as pertinent U.S. Customs and Border Protection (CBP) programs, and adopt best security practices currently in use in other countries for international inbound cargo.

*TSA Response:* TSA is working closely with its foreign government counterparts to leverage existing air cargo security practices and to work towards compatibility across systems to the greatest extent possible. TSA has been working in both bilateral and multilateral forums to better understand the air cargo security regimes currently in place in other countries in order to promote best practices while also enhancing air cargo security systems, where necessary, in order to ensure commensurate levels of security from system to system. This is an ongoing effort and will take considerable time to review and analyze the information, and to coordinate and collaborate with our partners and industry stakeholders in the development of mutually recognizable systems. TSA is hopeful that with the continued cooperation of our international partners, this work will promote uniformity and recognition among countries. In addition, TSA has aligned its CCSP as closely as possible with CBP's C-TPAT program and continues to seek opportunities to create efficiencies where possible.

### Aircraft Operators or Foreign Air Carriers as CCSFs

*Comment:* The IFR required any air cargo screening facility that is off-airport, including one operated by an aircraft operator, to become a CCSF in order to screen cargo. Several commenters objected to this requirement, stating that this requires aircraft operators to comply with two separate security programs. They claimed that this was unnecessary. However, another commenter argued that exempting aircraft operators from the certification requirements would be inappropriate; it would produce an economic disadvantage for non-air carriers that currently operate as CCSFs. A trade association argued that this

portion of the rule (§ 1544.205(g)(3)) should be removed only if there is: (1) No difference in security requirements between existing air carrier rules and CCSP requirements, and (2) there is no economic benefit favoring air carriers over non-air carriers.

*TSA Response:* TSA has evaluated the issue of aircraft operators and foreign air carriers operating off-airport screening facilities, and is amending the IFR to eliminate the requirement for aircraft operators and foreign air carriers to become CCSFs in order to screen off-airport. The security programs for aircraft operators have been and will continue to be amended to ensure that the same level of security involving screened cargo are equivalent to that for CCSFs. Because aircraft operators will need to meet the same substantive requirements as other CCSFs and CCSFs will no longer need to be validated by a third party, TSA does not believe that non-aircraft operators will be at a disadvantage.

### Comparable Programs

*Comment:* One commenter commended TSA for using some of the same chain of custody requirements for the CCSP as for the IAC Standard Security Program.

*TSA Response:* In developing the CCSP, TSA tried to leverage the existing IAC program to the extent possible. Using the IAC program as a base, TSA strengthened those requirements for handling screened cargo in the CCSP.

*Comments:* Several commenters expressed the view that compliance with other cargo security programs should substitute for compliance with TSA's regulation. Commenters listed a number of programs that they believed provide comparable security. A trade association expressed concern that many of its members have to comply with security provisions in other government programs, including DOD's National Industrial Security Program Operating Manual (NISPOM), International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), and C-TPAT. The commenter urged TSA and other agencies to consider recognizing security requirements in each other's programs as being commensurate with one another.

Another association also recommended aligning C-TPAT and CCSP security requirements.

*TSA Response:* TSA structured the CCSP to incorporate secure practices recommended by industry representatives, including many of the security measures and processes already used in programs such as C-TPAT and

Transported Asset Protection Association, to the extent that these programs were compatible with the security and other requirements of the CCSP. Initially, TSA structured the CCSP to basically align with CBP's C-TPAT program following its structure in areas such as: Facility security, background checks, and basic chain of custody. However; there are key differences that should be noted: (1) The CCSP requires individuals to have a TSA security threat assessment, (2) individuals must be trained and implement screening procedures, (3) individuals must complete training specified by TSA, and (4) each entity is identified by site-specific methods rather than company-wide methods. Additionally, TSA structured the CCSP to incorporate industry security "best practice" procedures recommended by industry representatives, including many of the security measures and processes already used in programs such as C-TPAT and Transported Asset Protection Association, (TAPA).

The CCSP was established to enable a flexible solution for achieving the U.S. domestic 100 percent screening requirements. The air cargo security environment will continue to change and therefore the security practices, both established by TSA and practiced by industry or other government agencies will continue to change. TSA will maintain its close working relationship with key stakeholders and evaluate ongoing security measures and processes as the threat and risk to air cargo change. This may include incorporating additional measures and practices into the CCSP.

#### *Certification for CCSPs*

*Comment:* One commenter recommended that TSA should allow companies to participate in the CCSP on a corporate basis, rather than have to enroll on a facility-by-facility basis. Under this scenario, TSA would certify a company as being CCSP-compliant through random inspections of a sampling of facilities per corporate entity.

*TSA Response:* TSA is retaining the CCSP as a facility-based program. In order to achieve the level of security that is the goal of the CCSP, every participating facility must be considered individually because of its unique design and security configuration. While a corporation may direct the types and level of security at its facilities, the CCSP must account for the security of cargo at each location where cargo is screened, packed, or consolidated before the cargo is transferred to an aircraft operator. TSA

must be confident that each location will meet TSA's CCSF standards.

*Comment:* Several commenters feared that there may be a backlog of CCSF applications, and that it could take TSA over six months to certify a facility to become a CCSF. Commenters urged TSA to take measures to avoid disruptions and dislocations to the cargo shipping industry.

*TSA Response:* To keep up with the CCSF applicant pool, TSA prioritizes, coordinates, and assesses any CCSF facility based on the readiness of the CCSF facility to meet the requirements of the security program. Some applicants can be certified sooner than others can. TSA has found that IACs applying for the program are often ready to implement the regulatory security requirements of the CCSP, and TSA can certify them quickly. TSA does not expect future delays in certifying CCSFs.

#### *Security Threat Assessments*

*Comment:* One commenter stated that the CCSP's use of name-based STAs provides less security than criminal history records checks (CHRCs), which are required for individuals with access to passenger baggage. This commenter believed that STAs by themselves are not a robust enough vetting tool for the CCSP, and that all individuals who maintain unescorted access to air cargo should be vetted according to the same standard—a fingerprint-based CHRC, accompanied by an STA.

*TSA Response:* TSA agrees that fingerprint-based CHRCs provide a greater degree of security than the STA requirement in this final rule, and that there should be congruency among the STA requirements for workers in functions that present similar security concerns, such as checked baggage screeners and cargo screeners. TSA is considering proposing a rulemaking that would provide for more consistent application of the CHRC requirement in STAs, including STAs for air cargo workers. Rather than addressing a CHRC requirement for air cargo workers on a program-specific basis in this final rule, TSA intends to address the CHRC requirement in the broader context of all TSA programs. TSA believes this approach will result in a more consistent, efficient, and equitable outcome on this issue.

*Comment:* Several commenters objected to the five-year renewal requirement for STAs, stating their belief that it is overly burdensome to industry. Commenters believed that this is a particular issue for express consignment operators, who may find it difficult to segregate their employees

who handle air cargo, and therefore would have to issue hundreds of thousands of STAs across their industry. These commenters stated that only a name change should trigger a new STA requirement. These commenters maintain that TSA tools, such as the IAC Management System (IACMS), provide the means necessary to continually check applicant names against watch lists, and should obviate the need for a reapplication process, except for cases where a person's name changes.

*TSA Response:* The five-year renewal requirement is consistent with the duration of renewal requirements in other similar programs, such as national security clearances administered by the Office of Personnel Management, the CBP Free and Secure Trade Credential, the CBP Nexus credential, and TSA's Transportation Worker Identification Credential (TWIC). It is important for TSA to have current biographic information, such as address, to identify the individual and to administer the program effectively. For example, even after an individual successfully completes the initial STA, he or she is continually re-checked against various databases and watch lists; in the event of a subsequent match, TSA needs accurate information regarding the individual to distinguish similar names and to contact the individual with information about redress rights if subsequent vetting produces a match. If TSA renews the STA only as often as the individual's name changes, the other important biographic data may become stale. A system that only tracks the names of individuals, such as the IACMS, is therefore not an adequate substitute for periodic renewals.

*Comment:* Several commenters expressed their belief that requiring an STA for certain individuals is duplicative and unnecessary. These parties submitted that individuals who have already completed an STA for airport credentialing purposes should not have to reapply for another STA under the CCSP. A third commenter approved of TSA's decision to accept Hazardous Materials Endorsements, TWICs, or Free and Secure Trade cards in lieu of redundant background checks for air cargo screening operations.

*TSA Response:* TSA attempts to avoid unnecessary redundancy in STA requirements. Therefore, TSA regulations provide for the possibility of comparable STAs. If TSA determines that another STA conducted by TSA or by another government agency is comparable to the STA required by part 1540, subpart C, individuals who have successfully completed such a

comparable STA are not required to undergo another STA under part 1540, subpart C. 49 CFR 1540.203(f).

TSA has already determined that an STA conducted for purposes of security identification display area (SIDA) access at airports, that is, a CHRC conducted in accordance with 49 CFR 1542.209, 1544.229, or 1544.230 that includes a name-based check conducted by TSA, is comparable to the check required under part 1540, subpart C. 49 CFR 1540.203(h). For other security threat assessments conducted by a governmental agency, the commenter may request a determination that the other governmental STA is comparable to the STA required under part 1540, subpart C. 49 CFR 1540.203(f), (g). If TSA grants the determination of comparability, the individuals who have successfully completed such a comparable STA are not required to undergo another STA under part 1540, subpart C. A background check or investigation conducted by a non-governmental agency would not qualify as a "comparable" STA. Non-governmental agencies are not necessarily focused on the factors underlying a governmental STA, and are unlikely to have access to the depth and breadth of information available to a governmental agency. Therefore, TSA does not consider the STA required by part 1540, subpart C, to be duplicative with such non-governmental checks.

#### Screening of Animals

*Comment:* The Association of Zoos and Aquariums expressed concern with screening procedures for live animals, and warned that opening containers with live animals inside could create potential hazards for the animals, handlers, and cargo personnel.

*TSA Response:* TSA agrees that screening live animals provides special challenges. Aircraft operator and CCSF security programs, as required under 49 CFR parts 1544, 1546, and 1549, already provide procedures for screening live animals to ensure the safety of both the screeners and the animals.

#### Use of Non-Citizens To Perform Screening

*Comment:* One commenter expressed concern that the air carriers' and freight forwarders' use of non-U.S. citizens to screen cargo violates International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) for cargo that is designated as sensitive military technology.

*TSA Response:* Section 1549.103(d) requires, in part, that each certified cargo screening facility must ensure that each individual who screens cargo or

who supervises cargo screening is a citizen or national of the United States or an alien lawfully admitted for permanent residence. TSA sets minimum standards for the screening of cargo to be transported on passenger aircraft, which the CCSF must meet. However, if there are additional standards that apply, for example, for sensitive military technology, the CCSF must meet those additional requirements as well.

#### Time Concerns

*Comment:* Several commenters expressed concern about the time it takes a CCSF to break down palletized shipments for screening.

*TSA Response:* TSA agrees that having to break down and screen cargo consolidations at the airport could lead to significant delays. The CCSP allows entities to screen cargo before it is consolidated. TSA will continue to evaluate technologies that allow for bulk screening of some types of consolidated cargo. As such technologies become available, TSA may authorize their use.

#### Reporting Burden; Estimated Number of CCSFs

*Comment:* Several commenters stated that TSA's estimate of 7,514 entities seeking CCSP membership annually was an overestimate, but that TSA's estimate of annual cargo reporting burden of 293,037 hours was an underestimate. Furthermore, one air carrier argued that TSA's estimate that CCSFs will complete monthly cargo reports at an estimated time of one hour per week is an underestimate of the time required. The air carrier maintained that dealing with thousands of shipments and hundreds of thousands of pieces in a reporting period produces a data collection burden that will far surpass TSA's estimate.

*TSA Response:* With respect to the estimate of 7,514 entities applying to the CCSP annually, TSA agrees that this was an overestimate and has revised the population estimate in the regulatory evaluation and fee model so that this final rule better reflects where the CCSP is today. The new estimate also takes into account recent information from shippers and IACs as to the types and sizes of entities that will most likely join the CCSP in the future.

TSA's original estimate that it takes CCSFs one hour per week to report monthly cargo statistics was based on how long it might take a CCSF to record the data by hand on the form provided by TSA, resolve any identified discrepancies in that data, and transmit that information to TSA.

Subsequently, TSA created the Cargo Reporting Tool (CRT) as a convenience for CCSFs, IACs, and aircraft operators, to allow these entities to more easily submit cargo screening data to TSA. A small group of air carriers, freight forwarders, and shippers was asked to beta test the CRT for approximately one year and the users indicated it took approximately one hour to enter information into the system. Accordingly, TSA believes that the one-hour time limit is a reasonable estimate, and is retaining this estimate for the final rule.

In addition, TSA is developing an Air Cargo Data Management System (ACDMS) to facilitate compliance with this requirement and minimize the reporting burden on industry. The ACDMS will allow industry to submit certain information to a single point of entry online, which then will provide industry access to several systems and services.

*Comment:* The House Committee on Homeland Security asked TSA to review the recordkeeping provisions to ascertain how to streamline these requirements while maintaining the appropriate regulatory oversight.

*TSA Response:* TSA reviewed the recordkeeping requirements<sup>14</sup> and has decided to maintain these recordkeeping requirements. These requirements are consistent with those required by other regulated entities within the air cargo supply chain (for example, air carriers, aircraft operators, and indirect air carriers). These requirements are necessary to ensure that regulated parties are in compliance with CCSF regulations. Additionally, TSA is developing ACDMS to assist industry in complying with this requirement. TSA expects the ACDMS to reduce the time required to comply with the recordkeeping requirements.

#### Issuance of IFR

*Comment:* One commenter expressed the view that TSA's issuance of an IFR was inappropriate, and that TSA should have provided prior opportunity for public comment.

*TSA Response:* The 9/11 Act required TSA to put in place an air cargo screening program within a short time period. Accordingly, 49 U.S.C. 44901(g)(3)(A) provides that "the Secretary of Homeland Security may issue an interim final rule \* \* \* to implement this subsection without regard to the provision of chapter 5 of title 5." Thus, Congress concluded that the significant benefits of strengthening air cargo security within the statutory

<sup>14</sup> Section 1549.105.



time period warranted implementing the program through an IFR. TSA could not have had the CCSP operational by the August deadline without being able to issue an IFR.

TSA conducted outreach to a wide range of stakeholders before issuing the IFR. In addition, TSA provided a 60-day notice and an opportunity to submit written comments on the IFR. TSA considered these comments in developing this final rule and before establishing the final STA fee.

#### *Screening Technology*

*Comment:* One commenter expressed the view that most of the approved screening methods and equipment are appropriate for the passenger screening environment, but are ill-suited to the air cargo environment where palletized or other consolidated shipments are the norm. The commenter stated that CCSFs are currently technologically incapable of effectively screening large pallets of cargo without breaking down shipments and urged TSA to use the \$4 million Congress appropriated to TSA for FY2010 to develop and deploy technologies capable of screening skids and pallets, including vapor and metal detection technologies. Another commenter also urged TSA to test and approve effective screening technology equipment that could be used to screen palletized shipments.

*TSA Response:* TSA is exploring newer technologies for screening cargo, especially those technologies that screen palletized and consolidated cargo. In order to effectively evaluate and qualify technologies for screening cargo, TSA is working closely with the DHS Science and Technology Directorate (S&T), and the Department of Energy (DOE) National Laboratories and Technology Centers to continue to evaluate new and emerging technologies. TSA has qualified three technologies for screening some skid-level cargo configurations and commodities on the Air Cargo Screening Technology List (ACSTL), and is currently in the process of evaluating additional large aperture technologies for screening cargo. A non-SSI version of the ACSTL may be found at [http://www.tsa.gov/assets/pdf/non\\_ssi\\_acstl.pdf](http://www.tsa.gov/assets/pdf/non_ssi_acstl.pdf). In addition to these efforts, screening protocols in security programs have also been refined for use in a cargo environment.

Congress appropriated \$18 million for TSA to specifically evaluate and deploy screening technologies. TSA added to the Congressional appropriation to fund a \$40 million Screening Technology Pilot (STP) for IACs. This pilot is evaluating the effectiveness of screening technologies for screening cargo at the

piece level, as well as for cargo consolidations, such as TSA Advanced Technology X-Ray (AT X-Ray) and Explosives Trace Detection (ETD), by commodity class, at each participant's consolidation facility. TSA provided some distributed funding to 47 participants at 111 different locations among 17 airports nationwide that handle large volumes of cargo, and that build cargo pallets for transport on passenger wide-body aircraft. TSA's objectives for the pilot program include determining the effectiveness of screening technology on various commodity classes of cargo, including palletized shipments. The pilot is evaluating 11 different X-ray models and 4 different ETD models, totaling 226 systems.

TSA was also appropriated \$4M in FY2010 for the evaluation and qualification of other technologies for air cargo screening including metal detectors and vapor detection systems with the intent to focus on perishable commodities and screening skids and pallets. These types of systems are currently undergoing the qualification process and results of these evaluations will be complete by the fourth quarter 2010.

*Comment:* A commenter requested that TSA ensure transparency in its review procedures and expedite its evaluation of new technologies. In addition, the House Committee on Homeland Security also expressed concerns about TSA's approval of new technologies, adding their view that the lack of a Qualified Product List (QPL) for cargo screening technology makes industry stakeholders hesitant to purchase expensive equipment on the Approved List of Technology without the assurances that this equipment will be certified in future years. The Committee urged TSA to work with S&T to strengthen their processes in order to give timely attention to the development and certification of technology for cargo screening.

*TSA Response:* DHS has expedited the evaluation process for new technologies by instituting simultaneous field and laboratory testing, and is working to qualify dozens of technologies. TSA is working closely with DHS S&T and the DOE National Laboratories to determine new and emerging technologies that exhibit proficiency in detecting improvised explosive devices and other prohibited items. Additionally, TSA's implementation of the CCSP is also mitigating the impact of screening consolidations on the air cargo supply chain, as CCSFs may tender screened cargo that does not need to be broken

down to the piece level for additional screening.

TSA has expedited the evaluation of these new technologies and is working to encourage industry to invest in new technology research and development by releasing Requests for Information (RFIs), holding industry forums with potential developers, and conducting other ongoing outreach. All of these efforts support the development and qualification of additional cargo screening technologies providing more technologies to meet industry's needs. As part of these activities, TSA must be confident that new technologies will meet the CCSP's security objectives before approving them. TSA has posted a Qualified Technology List.<sup>15</sup> TSA will continually update this list with additional qualified technologies as those qualifications are completed.

#### **IV. Section-by-Section Analysis of Changes**

##### *Part 1515—Appeal and Waiver Procedures for Security Threat Assessments for Individuals*

In part 1515 TSA removed references to part 1522, validation firms, and validators because that part is being removed from the CFR, as discussed below.

##### *Part 1522—TSA-Approved Validation Firms and Validators*

As explained in Section III., TSA decided it does not need independent validators to perform assessments of CCSF applicants because TSA has the capacity to review and certify all CCSF applicants itself. Thus, TSA has deleted part 1522 in its entirety.

##### *Part 1540—Civil Aviation Security: General Rules*

TSA is amending § 1540.201(a), Applicability and terms used in this subpart, to correct an incorrect citation. The IFR reference to 49 CFR 1549.113 was incorrect and is changed in this final rule to 49 CFR 1549.111.

##### *Part 1544—Aircraft Operator Security: Air Carriers and Commercial Operations; and Part 1546—Foreign Air Carrier Security*

Under the IFR, § 1544.105(a) provided that each aircraft operator must submit a security program to TSA at least 90 days before the intended date of passenger operations. In this final rule, TSA deleted the term "passenger" from the provision, because the requirement

<sup>15</sup> See [http://www.tsa.gov/what\\_we\\_do/layers/aircargo/certified\\_screening.shtm#approved](http://www.tsa.gov/what_we_do/layers/aircargo/certified_screening.shtm#approved) for information about the CCSP, including links to qualified vendor lists.

applies to both passenger and all-cargo operations.

Paragraphs (g)(3) of §§ 1544.205 and 1546.205, Acceptance and Screening of Cargo, Subpart C, of the IFR provided that an aircraft operator that screens cargo off-airport must become a certified cargo screening facility in accordance with part 1549. In response to comments, TSA is deleting this requirement for both aircraft operators and foreign air carriers for the reasons stated in Section III. of this preamble.

*Part 1548—Indirect Air Carrier Security*

Sections 1548.15(a) and § 1548.15(a)(2) incorrectly referred to the “aircraft operator.” TSA corrected these sections by inserting the word “indirect air carrier” in place of “aircraft operator.”

*Part 1549—Certified Cargo Screening Program*

TSA clarified the language in § 1549.7(b)(1) to make it clear that a CCSF must apply for renewal of its security program and its certification every 36 months.

**V. Proposed Fee for Security Threat Assessments**

TSA is authorized to collect fees to offset the cost of conducting security threat assessments (STAs). 6 U.S.C. 469.

TSA issued the Air Cargo Security Requirements final rule on May 26, 2006 (2006 rulemaking),<sup>16</sup> which, in part, required certain cargo workers of aircraft operators, foreign air carriers, and indirect air carriers (IACs) to obtain a security threat assessment. That final rule established a fee for STAs of \$28, and incorporated the fee amount in 49

CFR 1540.209. TSA published the Air Cargo Screening IFR on September 16, 2009,<sup>17</sup> that establishes requirements for certain additional individuals to successfully complete security threat assessments conducted by TSA. These individuals are CCSF employees and authorized representatives that screen cargo, have unescorted access to screened cargo or carry out certain other cargo security duties. The IFR amended § 1540.209 to remove the specific fee amount. In the preamble to the IFR, we described how TSA would calculate the fee for STAs, and stated that the fee would be between \$13 and \$21, depending on the size of the population and whether costs involved in the calculation may change. We invited comment on the proposed fee, and the methodology and population estimates we used to arrive at the proposed fee. We stated that TSA would publish specific fee amounts and changes to fee amounts as a notice in the **Federal Register**.

However, since the IFR, TSA has further reviewed costs and population data. Due to significant decreases in the population estimate, the fee necessary to recover our costs of conducting threat assessments would need to be increased. In this final rule, we propose that the user fee for the security threat assessments under 49 CFR 1540.209 will be between \$31 and \$51. As stated above, we will announce the final fee in a notice in the **Federal Register**.

**Discussion**

TSA proposes a fee range of \$31 to \$51 for STAs for aircraft operators, foreign air carriers, and IAC personnel

who have unescorted access to screened cargo to be transported on passenger aircraft, screen cargo, supervise the screening of cargo, or perform certain other security functions as provided for in § 1540.201.<sup>18</sup> Applicants who have previously completed a TSA STA under the Air Cargo Security Requirements final rule, 71 FR 30478 (May 26, 2006) (2006 rulemaking), were subject to the security fee in effect at that time and will not be subject to this fee until their existing STA reaches its five year expiration mark. At the time of expiration, applicants re-applying for an STA will be asked to pay a new air cargo screening fee that will be between \$31 and \$51.

To ensure consistency and equity across the entire air cargo community, TSA combined the costs and populations of individuals, or applicants, who would need STAs under both the 2006 IAC Air Cargo Security Requirements Final Rule and the 2009 IFR to create one harmonious fee. TSA calculated the fee based on historical counts of IAC applications and an estimate of the number of CCSF applicants (population), the cost of processing the applications, the cost of performing the STAs, and the cost of maintaining the information systems to support the process. Table 1, below in the Costs section, presents the calculations supporting the estimated fee.

*Costs*

TSA proposes that individuals required to undergo an STA would be required to pay a fee to cover the following costs:

TABLE 1—AIR CARGO COST ESTIMATES

Operational year	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
Cost Components:						
Name Check .....	\$445,705	\$659,710	\$874,730	\$721,160	\$557,350	\$3,258,656
Platforms/Systems .....	3,240,521	1,890,265	1,718,315	1,781,956	1,845,597	10,476,654
Personnel .....	2,538,286	2,489,620	2,663,626	2,685,010	2,706,329	13,082,872
Grand Totals .....	6,224,512	5,039,595	5,256,671	5,188,126	5,109,276	26,818,182

For the TSA STA, each applicant’s information will be name-checked against multiple databases and other information sources. The threat assessment process includes an appeals process for individuals who believe the records upon which TSA bases its determination are incorrect. TSA would

also need to implement and maintain the appropriate systems, resources, and personnel to process applicant information and to allow TSA to receive, and act on, the results of the STA.

TSA’s fee methodology begins with estimating the unit cost for each name-

check, and then builds on costs for threat assessment investments used by all applicants. These investments are estimated as fixed costs over a five-year period and then equally distributed to all applicants over that same five-year period. In doing so, TSA has established a constant fee that will be imposed

<sup>16</sup> 71 FR 30478.

<sup>17</sup> 74 FR 47672.

<sup>18</sup> Section 1540.209 of the 2006 rule stated that a fee of \$28 is required for TSA to conduct an STA. The 2009 IFR, however, revised § 1540.209 so that the regulation no longer contains a specific fee

amount. Section 1540.209 now states that TSA will publish fee amounts and any revisions to the fee amounts as a notice in the **Federal Register**.

equitably across the population that is receiving and benefiting from this unique service.

TSA estimates that the cost, net of appropriations,<sup>19</sup> of STA services for both the IAC and CCSF populations will

be \$26,818,182 over five years. The estimate for STA services includes \$3,258,656 for TSA name-based checks, \$10,476,654 for platforms/systems costs, and \$13,082,872 for fully-loaded personnel costs necessary to facilitate

the STA processing. TSA arrived at these cost estimates using information gathered from subject matter experts in the program office. Please see Table 2 below for detailed breakout of the Air Cargo fee:

TABLE 2—AIR CARGO FEE BREAKOUT

Cost category	Total cost	Fee (%)
Security Threat Assessment .....	\$3,258,656	12
Equipment/Systems .....	10,476,654	39
Personnel .....	13,082,872	49
<b>Total .....</b>	<b>26,818,182</b>	<b>100</b>

*Population*

TSA estimates that approximately 651,713 applicants would be required to

complete a STA during the next five years of the program. This estimate is derived from the following population

figures that have been gathered for specific segments of the regulated population.

TABLE 3—AIR CARGO POPULATION ESTIMATES

Operational year	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
CCSP:						
Applicants .....	30,165	67,598	53,878	50,852	55,370	257,863
IAC:						
Applicants .....	58,976	64,344	121,068	93,380	56,100	393,868
<b>Grand Totals .....</b>	<b>89,141</b>	<b>131,942</b>	<b>174,946</b>	<b>144,232</b>	<b>111,470</b>	<b>651,731</b>

The CCSP population segment includes an estimated number of STAs to be performed for CCSP enrolled shippers and independent cargo screening facilities from 2010 to 2014. The number of STAs is based on a projected 1,745 entities and an average 131 STAs per entity over five years. The number of projected entity enrollments and average number of STAs per entity were based on information known about currently enrolled CCSFs and the types of entities that may enroll in the future. The turnover estimate is based on the 2009 BLS JOLT transportation, warehousing, and utilities worker hires rate. The turnover rate is also used to estimate the number of employees that received an STA in 2009, which would still be employed in 2014 when they are required to renew their STA. For the IAC population segment, TSA utilized historical actual enrollments over the past four years to develop an estimate for the next five years.

When the IFR was published, TSA anticipated as many as 15,000 applicants would apply to participate in the CCSP. This was based on the assumption that the CCSP would be comprised of a high number of individual shippers. TSA surmised that

individual shippers would participate in the program to screen their own cargo to minimize additional handling and the potential for delay or damage to the cargo if it were screened at a later point in the supply chain. Instead, the indirect air carrier industry (i.e., freight forwarders) led enrollment in CCSP and has taken on a significant percentage of the screening performed under the program. This has resulted in significantly fewer applicants and participants in the program than originally estimated, as a single indirect air carrier has the capacity to screen cargo for multiple shippers. This redistribution of screening led to a significant reduction in the number of STAs required by personnel who have access to screened cargo.

TSA will continue to work to minimize all costs and will finalize the proposed fee in a notice in the **Federal Register**. Additionally, pursuant to the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 104 Stat. 2838, Nov. 15, 1990), DHS/TSA is required to review fees no less than every two years (31 U.S.C. 3512). Upon review, if TSA finds that the fees are either too high (that is, total fees exceed the total cost to provide the services) or too low (total

fees do not cover the total costs to provide the services) TSA would adjust the fee. Finally, TSA would be able to adjust the fees for inflation following publication of the final rule. If TSA were to adjust the fees for this reason, TSA would publish a notice in the **Federal Register** notifying the public of the change.

*Fee Range*

The fee TSA establishes for the STA should cover all the costs related to the STA process. TSA estimates that the final fee to the applicant will be between \$31 and \$51 per applicant based on the total estimated cost of services provided (\$26,818,182). This cost will be equally apportioned to the estimated population (651,731) receiving the threat assessment service. The resulting fee will be sufficient to fully recover the remaining STA costs.

TSA invites comment on the proposed fee range of \$31 to \$51 and the methodology and population estimates we used to arrive at this amount. Additional detailed information regarding the fee determination has been provided in the “Air Cargo Screening Security Threat Assessment Fee Development Report.” This report

<sup>19</sup> TSA utilized appropriations to fund certain start-up systems costs. These appropriations have

not been included in the fee model and therefore,

will not be recovered through the imposition of security fees.

has been placed in the public docket established for this rulemaking. After reviewing all comments received, TSA will issue a notice in the **Federal Register** that summarizes and addresses the comments we receive, and establishes the final fee amount, after which the fee will be charged to applicants.

Revised § 1540.209 provides that TSA will calculate fees for STAs based on widely accepted accounting principles and practices and in accordance with the provisions of 31 U.S.C. 9701 and other Federal law as applicable.

#### Comments on the Fee Calculation

TSA received two comments on the IFR relating to the STA fee. The comments raised several points, discussed below.

*Comment:* Two commenters stated that the proposed fee range in the IFR indicated that TSA has been overcharging by applying an STA fee of \$28 for IACs since the 2006 rulemaking.

*TSA Response:* TSA based the fee of \$28, established in 2006, on the population and costs of conducting STAs only on cargo workers covered under the 2006 rulemaking. TSA set that fee to cover TSA's cost of conducting STAs for that population. Further, as we established the CCSP in the 2009 IFR, both the overall estimated costs of processing the STAs and the overall number of estimated individuals that would be required to undergo the STA increased. Because the IFR population estimate had increased in greater proportion to the costs, TSA estimated a fee range of \$13 to \$21. Ultimately, in this final rule, TSA utilized the most robust cost and population estimates to determine the STA fee range. Compared to IFR estimates, both cost and population estimates have decreased. But because the population estimate decreased in greater proportion to the cost estimate, TSA must increase the fee to a range between \$31 and \$51 to recover the full cost of the STA services from the estimated population regulated under this rulemaking.

*Comment:* A commenter stated that TSA's failure to impose fees for processing the STAs for CCSF applicants prior to this notice amounted to discrimination against the regulated entities that have been paying the fee of \$28 under the 2006 rulemaking. The commenter believes that TSA should have waited to process STAs for the CCSFs until we had the rulemaking authority in place to charge fees.

*TSA Response:* TSA considered it necessary to initiate the CCSP in order to meet the mandatory screening requirements imposed by the

Implementing the Recommendations of the 9/11 Act. To protect the public from explosives on passenger aircraft, Congress required that 50 percent of cargo transported on passenger aircraft be screened by February 3, 2009, and that 100 percent of such cargo be screened by August 3, 2010. TSA commenced a screening pilot to build the CCSP so that industry could meet the deadlines of the 9/11 Act. STAs were needed to implement the pilot program to ensure that key personnel with unescorted access to screened cargo, and thus, the opportunity to compromise security, were checked against the relevant domestic and international watch lists.

#### VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (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 PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. OMB has approved information collection requirements associated with this rule and has assigned OMB Control Number 1652-0053 to these collections. However, TSA has adjusted its burden estimates to reflect information actually collected following the publication of the IFR, as well as the elimination of TAVF requirements from the IFR to the final rule, and has submitted the following information requirements to OMB for its review.

*Title:* Certified Cargo Screening Program Final Rule.

*Summary:* Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, Aug. 3, 2007) requires the development of a system to screen 100 percent of the cargo transported on a passenger aircraft operating within the United States by August 2010 and to screen 50 percent of all air cargo by February 2009. This rule amends several parts of title 49 of the Code of Federal Regulations (CFR), as described in prior sections of this preamble. The rule involves several information collections already approved by OMB.

This final rule includes the following information collections, which were included in the IFR:

First, an entity that seeks to become a CCSF under 49 CFR part 1549 must submit an application to TSA.

Second, TSA must conduct STAs for key personnel of CCSFs. These key

personnel must submit personal data to TSA for the STAs. This STA portion is a previously approved collection under OMB control number 1652-0040. This FR under OMB control number 1652-0053 expands the population from which the information is collected.

Third, CCSFs (49 CFR 1549.7) must accept the TSA-approved security program or submit amendments to the TSA-approved security program. CCSFs must accept a standard security program provided by TSA or submit a proposed modified security program to the designated TSA official for approval initially and periodically thereafter as required.

Fourth, CCSP participants must maintain records of compliance with the final rule and make them available for TSA inspection (see 49 CFR 1549.105 and 1522.129).

Finally, CCSFs must submit TSA-determined monthly cargo screening metrics to TSA in accordance with their security programs.

*Use of:* TSA uses the applications of entities seeking to become CCSFs to approve the entity as a CCSF. TSA collects personally identifiable information from CCSFs about their key personnel in order to conduct STAs on these individuals. STAs are required for individuals who screen cargo, those who have unescorted access to screened cargo, and other key individuals who support those functions. CCSF security programs are necessary because they contain specific measures to deter incidents that may jeopardize transportation security. CCSFs must maintain records and provide TSA Inspectors and Principal Cargo Security Analysts (PCSAs) access to their records, equipment, and facilities necessary to conduct inspections and assessments. Finally, TSA requires CCSFs to provide information on the amount of cargo screened on an approved facility in order to evaluate the compliance and performance of the CCSFs and to provide information needed for congressional reporting and future rulemaking relating to air cargo security.

*Respondents (including number of):* Over a three-year period, the likely respondents to this proposed information requirement are the 2,902 entities that seek to become CCSFs under 49 CFR part 1549.

*Frequency:* CCSFs will submit an application for recertification every three years. CCSFs will submit personally identifiable information of their key personnel so that TSA can conduct STAs every five years. The rule requires CCSFs to accept the TSA-approved security program or submit

amendments to the TSA-approved security program once. TSA estimates CCSFs will submit updates to their security program on average once annually. The recordkeeping requirements must be continuous in accordance with their security program. The requirement for CCSFs to provide information on the amount of cargo screened and other screening data at an approved facility will be a monthly collection.

*Annual Burden Estimate:* TSA estimates that the 967 entities who seek to become CCSFs annually will spend approximately 2 hours each to complete the applications for an annual burden of 1,934 hours. TSA estimates 51,172 annual responses from CCSFs

submitting applications to TSA for processing STAs. TSA estimates an average of 15 minutes per application for an annual burden of 12,793 hours. TSA has estimated that a total of 1,778 CCSFs will adopt their security programs over the three years for an average of 593 security programs annually. Each CCSF will devote approximately 42 hours to their initial security program, resulting in an annual burden of 24,906 hours. TSA has estimated that a total 3,701 CCSFs will be required to maintain and update their security programs over the three years for an average of 1,234 security programs updated annually. Each CCSF will devote approximately four hours annually, beginning in the second year,

updating their security programs for an annual hour burden of 4,936. TSA estimates all CCSFs over the three years will be required to maintain records of compliance with the final rule. This includes a time burden of approximately 5 minutes (0.083 hours) for every CCSF employee required to have an STA as well as other records of compliance. This recordkeeping requirement results in 51,172 annual record updates for an annual burden of approximately 4,247 hours. TSA estimates that 1,826 CCSFs, the estimated annual average in the program, will complete monthly cargo reports at an estimated time of one hour per week for an annual burden of approximately 94,952 hours.

Function	Average annual respondents	Average annual responses	Time per response	Annual hours	TSA form No.	FR cite
CCSF Applications	Collected every 36 months after initial application.					
One Year .....	967	967	2 hours .....	1,934	419E .....	§ 1549.7
Three Years .....	2,902	2,902	2 hours .....	5,804		
STA Applications	Collected every five years after initial application.					
One Year .....	51,172	51,172	.25 hours .....	12,793	419F .....	§ 1549.11
Three Years .....	153,516	153,516	.25 hours .....	38,379		§ 1549.103
Security Programs	One time collection.					
One Year .....	593	593	42 hours .....	24,906	N/A .....	§ 1549.5
Three Years .....	1,778	1,778	42 hours .....	74,676		
Updates	Once annually					
One Year .....	1,234	1,234	4 hours .....	4,936	N/A .....	§ 1549.5
Three Years .....	3,701	3,701	4 hours .....	14,804		
Recordkeeping	Continuous as needed.					
One Year .....	51,172	51,172	.083 hours .....	4,247	N/A .....	§ 1549.105
Three Years .....	153,516	153,516	.083 hours .....	12,742		
Cargo Reporting	Monthly collection.					
One Year .....	1,826	21,912	52 hours/yr .....	94,952	N/A .....	§ 1549.105
Three Years .....	5,479	65,748	52 hours/yr .....	284,908		
Total for One Year .....	106,964	127,050		143,768		
Total for Three Years .....	320,892	381,161		431,313		

**Note:** One year burdens may not multiply to three year burdens due to rounding.

As a protection provided by the Paperwork Reduction Act, 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.

**VII. Economic Impact Analyses**

*A. Regulatory Evaluation Summary*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (EO) 12866, Regulatory Planning and Review, as supplemented by EO 13563, Improving Regulation and Regulatory Review, directs each Federal agency to propose or adopt a regulation only if the agency

makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to consider the economic impact of regulatory changes on small entities when an agency is required to issue a notice of proposed rulemaking. Third,

the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

TSA has prepared a Regulatory Evaluation, with detailed analyses, which is available to the public in this docket. With respect to these analyses, TSA provides the following conclusions and summary information:

- This rule is considered an economically significant rule within the

definition of EO 12866, as supplemented by EO 13563, as estimated annual costs or benefits exceed \$100 million in any year. TSA has included the mandatory OMB Circular A–4 Accounting Statement in the Regulatory Evaluation and thus has not repeated it here.

- Under the Regulatory Flexibility Act of 1980, TSA is not required to perform a Regulatory Flexibility Analysis because we did not publish a proposed rule.

- The Regulatory Evaluation provides the required assessment of the Trade Agreement Act of 1979.

- The Regulatory Evaluation provides the required written assessment of Unfunded Mandates. This final rule is not likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, of \$100 million or more annually (adjusted for inflation). This rule, however, does impose an

unfunded mandate of greater than \$100 million or more annually (adjusted for inflation) on the private sector. The separate analysis of the costs and benefits of the rule in the Regulatory Evaluation, found in the public docket, satisfies the analysis requirements of the Unfunded Mandates Reform Act.

*B. Executive Order 12866 and Executive Order 13563 Assessments*

The following summary highlights the costs and benefits of the rule. The following table presents the annualized, monetized costs of the rule, discounted at both seven and three percent, along with a discussion of the qualitative benefits, which have not changed from the IFR to this final rule. This information is also found in the OMB Circular A–4 in the Regulatory Evaluation Summary of the regulatory evaluation.

Category	Estimates			Units	
	Primary	Low	High	Year dollar	Discount rate
<b>Costs</b>					
Annualized .....	\$178.1	\$146.1	\$210.9	2009	7%
Monetized (\$millions/year) .....	\$180.1	\$147.7	\$213.1	2009	3%
<b>Benefits</b>					
Qualitative .....	Increased protection of passengers and cargo from acts of terrorism. Prevent the introduction of unauthorized persons, explosives, incendiaries, and other destructive substances or items into the air cargo supply chain. Protect citizens on the ground, in buildings, and elsewhere in our society from acts of terrorism involving the use of aircraft.				

*Costs*

TSA issued an IFR implementing the CCSP on September 16, 2009 (74 FR 47672). This final rule makes only two changes to the program TSA established in the IFR—the elimination of the requirement for aircraft operators to be certified as a CCSF in order to screen cargo off-airport and the elimination of TSA-approved validation firms (TAVFs) in favor of TSA assessments because of the reduction in the expected number of CCSF participants. In response to public comments and changes in the expected CCSF population, TSA has adjusted the estimated costs for the CCSP. The effect of eliminating the TAVF requirement will be to lower the cost of the rulemaking by \$65.9 million, discounted at 7 percent, over the 10-year period of the rulemaking. However, TSA is unable to quantify any potential impacts on cargo volumes or shipping/screening prices that may stem from changes in requirements which removed

the TAVFs. The TAVF concept was never implemented by TSA, consequently there is no data that can be used as a baseline. The Regulatory Evaluation accompanying this rule contains a further qualitative discussion of these potential impacts.

The Regulatory Evaluation accompanying this rule summarizes the revised cost estimates of the CCSP, which would be borne by four relevant parties: aircraft operators (including, in this context, both U.S. aircraft operators and foreign air carriers), CCSFs, non-CCSF entities that receive screened cargo from CCSFs, and TSA.

*Total*

In summary, over the 10-year period of the analysis, TSA estimates the aggregate costs of the CCSP to total approximately \$1.5 billion discounted at three percent and approximately \$1.3 billion discounted at seven percent. The Regulatory Evaluation, available in the

public docket, provides detailed estimates of these costs.

TSA estimates costs of this Regulatory Evaluation using two methods: a top-down approach and a bottom-up approach. TSA’s bottom-up cost approach is based primarily on the projected participation of IACs, ICSFs, and shippers in the CCSP. TSA uses these estimates in conjunction with estimated costs of program compliance to estimate a total cost for the rule from the bottom up.

TSA expects IACs and ICSFs choosing to become CCSFs to charge a service fee for screening cargo. TSA believes that this fee, similar to that charged by United Kingdom Known Consignors, would include all costs and profit associated with screening of cargo and is therefore a useful proxy in determining the cost to firms of screening cargo. TSA’s top-down method estimates the cost of CCSP using a range of fees seen in the United

Kingdom Known Consignor program as the basis for costs incurred by industry.

TSA considers the top-down cost approach more accurate considering the level of uncertainty in TSA's estimate of the number of firms choosing to become CCSFs. Also, the top-down approach is more likely to reflect the efficiencies captured by allowing the market to allocate screening measures. Thus, the top-down cost estimate is TSA's preferred approach.

Both the bottom-up and the top-down cost estimates decreased from the IFR to the final rule due to changes in assumptions, based on having better data available for the final rule. For example, TSA used Bureau of Transportation Statistics data in the IFR to estimate cargo volume, but in the final rule, actual cargo volume data

were available from the air carriers. The only change in rule requirements that impacted the cost estimates was the elimination of the TSA-approved validation firms. In the top-down approach, only the TSA costs were reduced by the elimination of TAVFs. In the bottom-up approach, costs were reduced for CCSFs, TSA, and the potential TAVFs.

The following table presents the annual costs of the rule over the 10-year analysis period. The total is broken out by costs to TSA, cost to industry (using the preferred approach), and the estimated delay costs due to screening. The TSA total represents the estimated costs TSA will incur to implement the CCSP and enforce compliance.

The industry cost is estimated using a range of fees observed in the United

Kingdom Known Consignor Program as the basis, and accounts for the 57 percent of cargo shipped on passenger planes expected to be screened at CCSFs as well as the additional 28 percent that aircraft operators are expected to screen. The remaining 15 percent is assumed to have been screened by the air carriers prior to the rulemaking. The delay cost assumes the 43 percent of cargo (15 percent screened prior to the CCSP and an additional 28 percent under the CCSP) expected to be screened by the aircraft operators will be the only cargo subject to delay. The high and low estimates represent variance around TSA's primary estimate to allow for uncertainties with the inputs used to estimate the total cost of the rule.

TABLE 1—10-YEAR TOTAL COST SUMMARY OF CCSP  
[\$ millions]

Year	TSA cost	Industry cost	Delay cost	Total cost	Discounted (3 percent)	Discounted (7 percent)
1	\$32.7	\$109.7	\$30.1	\$172.5	\$167.5	\$161.2
2	5.4	115.0	31.6	152.0	143.3	132.7
3	4.9	120.5	33.1	158.5	145.1	129.4
4	4.1	126.3	34.7	165.1	146.7	126.0
5	4.1	132.3	36.4	172.9	149.1	123.3
6	4.5	138.7	38.2	181.4	151.9	120.9
7	4.3	145.3	40.1	189.7	154.3	118.2
8	4.3	152.3	42.0	198.6	156.8	115.6
9	4.6	159.6	44.0	208.2	159.6	113.3
10	4.4	167.3	46.2	217.9	162.1	110.8
Total	73.4	1,367.0	376.5	1,816.8	1,536.3	1,251.2
Low	55.0	1,139.2	296.5	1,490.7	1,260.2	1,026.1
High	91.7	1,594.8	463.3	2,149.9	1,818.2	1,481.1

*Changes in Cost Estimates From Interim Final Rule*

The CCSP final rule cost estimates differ from the IFR in large part to reflect actual data gathered since the implementation of the program. TSA

uses the current state of the program, technology purchased, screening distribution, and numerous other sources of information to better estimate population projections and program costs. The tables below identify these cost differences for the CCSP top-down

approach (which is TSA's preferred approach), CCSP bottom-up approach, and the 100 percent Air Carrier Alternative at the undiscounted, three percent, and seven percent discounted rate.

TABLE 2—CHANGES TO COST ESTIMATES FROM IFR  
[\$ millions]

Estimate	Undiscounted 10-year total costs		
	IFR	Final rule	Difference
CCSP Top-down	\$2,836.4	\$1,816.8	(\$1,019.6)
CCSP Bottom-up	5,199.5	2,300.0	(2,899.5)
Air Carrier Alternative	11,141.6	3,513.7	(7,627.9)

TABLE 2a—CHANGES TO COST ESTIMATES FROM IFR  
[\$ millions]

Estimate	3% Discount 10-year total costs		
	IFR	Final rule	Difference
CCSP Top-down .....	\$2,394.0	\$1,536.3	(\$857.7)
CCSP Bottom-up .....	4,403.9	1,946.1	(2,457.7)
Air Carrier Alternative .....	9,427.0	2,966.4	(6,460.6)

TABLE 2b—CHANGES TO COST ESTIMATES FROM IFR  
[\$ millions]

Estimate	7% Discount 10-year total costs		
	IFR	Final rule	Difference
CCSP Top-down .....	\$1,945.0	\$1,251.2	(\$693.8)
CCSP Bottom-up .....	3,597.0	1,585.4	(2,011.5)
Air Carrier Alternative .....	7,683.0	2,410.4	(5,272.6)

The tables below identify the major driving forces behind the changes for the CCSP Bottom-up approach. The

Regulatory Evaluation explains in detail the reasons for the changes.

TABLE 3—CHANGES TO AIR CARRIER AND NON-CCSF IAC COSTS  
[\$ millions]

Cost component	10-year total costs			Major cost driving changes
	IFR	Final rule	Difference	
Personnel .....	\$709.9	\$564.1	(\$145.8)	TSA increased the percentage of cargo screened by air carriers and updated tendering percentage configuration assumptions based on current screening data. TSA updated with a more industry-specific wage.
Equipment .....	57.3	34.8	(22.5)	
Screener Training .....	6.4	3.7	(2.7)	
Chain of Custody Training .....	75.5	55.2	(20.3)	
Undiscounted Total .....	849.1	657.8	(191.3)	
3% Discounted Total .....	717.7	556.3	(161.4)	
7% Discounted Total .....	584.3	453.0	(131.2)	

TABLE 4—CHANGES TO TSA APPROVED VALIDATION FIRM (TAVF) COSTS  
[\$ millions]

Cost component	10-year total costs			Major cost driving changes
	IFR	Final rule	Difference	
Enrollment .....	\$0.002	\$0.00	(\$0.002)	TSA will perform assessments on CCSFs and has eliminated the need for TAVFs.
Validator Training .....	14.10	0.00	(14.10)	
STA Cost .....	0.10	0.00	(0.10)	
Undiscounted Total .....	14.20	0.00	(14.20)	
3% Discounted Total .....	14.0	0.0	(14.0)	
7% Discounted Total .....	11.7	0.0	(11.7)	



TABLE 5—CHANGES TO CCSF COSTS  
[\$ millions]

Cost component	10-year total costs			Major cost driving changes
	IFR	Final rule	Difference	
Validations .....	\$75.4	\$0.0	(\$75.4)	TSA will now perform assessments at no charge to CCSFs and eliminated the need for TAVFs.
Facility Security .....	172.3	19.1	(153.2)	
Training .....	902.2	107.0	(795.2)	TSA updated the CCSF population projection based on current participation and the types of entities expected to enroll in the future.
Security Coordinators .....	593.8	53.2	(540.6)	
Enrollment .....	119.0	17.0	(102.0)	
Screening Equipment .....	914.8	309.6	(605.2)	TSA updated CCSF population projection and equipment expected to be purchased based on technology purchased by currently enrolled CCSFs. Also revised purchase prices to reflect industry experience.
Chain of Custody .....	58.8	24.5	(34.3)	TSA updated assumptions based on current practice.
STA Cost .....	31.0	20.7	(10.3)	TSA updated CCSF population projection and STA fee. In addition, estimated firms will pay STA fee in years 3–10. Previously, TSA was assumed responsible for the duration of the analysis.
Personnel .....	785.5	641.4	(144.1)	TSA updated tendering percentage assumptions based on current screening data.
Undiscounted Total .....	3,652.8	1,192.4	(2,460.4)	
3% Discounted Total .....	3,094.8	1,006.4	(2,088.4)	
7% Discounted Total .....	2,529.1	816.6	(1,712.6)	

TABLE 6—CHANGES TO TSA COSTS  
[\$ millions]

Cost component	10-year total costs			Major cost driving changes
	IFR	Final rule	Difference	
Inspections .....	\$200.2	\$9.5	(\$190.7)	TSA updated the CCSF population projections based on current participation and the types of entities expected to enroll in the future.
Training .....	10.0	5.1	(4.9)	TSA updated with more industry-specific wages.
Security Plan Review .....	30.0	4.3	(25.7)	TSA updated CCSF population projection.
Assessments .....	0.0	9.6	9.6	TSA will be performing assessments and eliminated the need for TAVFs.
Assessment Review .....	42.3	1.0	(41.3)	TSA updated CCSF population projection.
Validation Firm Enrollment .....	0.3	0.0	(0.3)	TSA will be performing assessments and has eliminated the need for TAVFs.
ACDMS .....	9.0	14.0	5.0	TSA updated costs based on current ACDMS development.
STAs .....	71.4	1.5	(69.9)	TSA updated CCSF population projections. TSA estimates industry will pay an STA fee in years 3–10. Previously, TSA was assumed responsible for the duration of the analysis.
Equipment for Screening Technology Pilot (STP) .....	23.6	28.4	4.8	TSA updated cost to reflect actual cost incurred for pilot.
Undiscounted Total .....	386.8	73.4	(313.4)	
3% Discounted Total .....	326.8	66.0	(260.8)	

TABLE 6—CHANGES TO TSA COSTS—Continued  
[\$millions]

Cost component	10-year total costs			Major cost driving changes
	IFR	Final rule	Difference	
7% Discounted Total .....	268.7	58.3	(210.4)	

TABLE 7—CHANGES TO CCSP DELAY COST  
[\$millions]

Cost component	10-year total costs			Major cost driving changes
	IFR	Final rule	Difference	
Undiscounted Total Delay Cost .....	\$297.1	\$376.5	\$79.4	TSA updated the percentage of cargo screened by CCSFs and tendering percentage configuration assumptions based on current screening data. In addition, TSA corrected errors in the delay model.
3% Discounted Total .....	250.3	317.4	67.2	
7% Discounted Total .....	202.9	257.5	54.6	

### Benefits

The CCSP allows for more standardized governance in cargo screening and provides fourfold benefits in terms of increased security of commercial passenger aviation. First, by screening 100 percent of cargo shipped on passenger aircraft, the passenger airline industry will have more protection against an act of terrorism or other malicious behavior. Second, allowing the screening process to occur throughout the supply chain via the CCSP reduces potential bottlenecks and delays at the airports. Third, the CCSP allows the market to identify the most efficient venue for screening along the supply chain thereby permitting any entity in the supply chain to apply for TSA certification to screen the cargo and apply chain-of-custody procedures. Finally, the CCSP enables members to screen valuable cargo earlier in the supply chain and avoid any potentially invasive screening that may occur at the aircraft operator level.

The main benefit of this regulation, decreased terrorism risk, cannot be quantified given current data limitations. When it is not possible to quantify or monetize the important incremental benefits of a regulation, OMB recommends conducting a threshold, or “break-even” analysis. According to OMB, such an analysis answers the question, “How small could the value of the non-quantified benefits be (or how large would the value of the non-quantified costs need to be) before the rule would yield zero net

benefits?”<sup>20</sup> Consequently, to better inform the comparison of the costs of implementing the rule with the benefits to homeland security of the CCSP, TSA performed a series of break-even analyses. In these break-even analyses, TSA compared the annualized costs of the rule’s requirements to the expected benefits of preventing certain potential terrorist attacks. To evaluate the potential range of attacks, TSA considers four relevant attack scenarios.

For example, TSA considered the direct costs of a scenario where an explosive device placed in cargo shipped on a passenger plane destroys a standard narrow body aircraft (from the fleets used by major U.S. aircraft operators) during flight. This incident is assumed to result in the loss of the lives of all passengers and crewmembers on board, along with the total destruction of the aircraft. Based on data reported in the FAA Critical Values Guidance,<sup>21</sup> TSA used an average capacity of 142 passengers with a load factor of 80 percent<sup>22</sup> and an average crew size of five to estimate 119 (142 passengers × 80 percent + 5 crewmembers) total people to be on board. TSA estimates the value of these statistical lives is approximately \$714.0 million, based on the Department of Transportation’s Value of a Statistical Life (VSL) estimation of

\$6.0 million per person.<sup>23</sup> The VSL represents an individuals’ willingness to pay to avoid a fatality, based on economic studies of the value individuals place on small changes in risk and is not meant to represent the actual value of a specific life. TSA notes the VSL used in the final rule has increased to \$6.0 million from the \$5.8 million used in the IFR. This increase was done to remain in alignment with the VSL used by DOT, which was raised from \$5.8 million to \$6.0 million.<sup>24</sup> A further discussion of VSL is included in the Break Even Analysis section of the Regulatory Evaluation.

The estimated aircraft cost is \$18.5 million. The aircraft replacement costs are from an FAA guide on economic values in regulatory analysis.<sup>25</sup> The values in the FAA guidance are in 2003 dollars. In the IFR, TSA inflated these 2003 prices to 2006 price levels using the BLS Producer Price Index (PPI) Commodity Data for Civilian Aircraft. The final rule inflated them to 2009 dollars using the PPI Industry Data for Aircraft Manufacturing of Civilian Aircraft.<sup>26</sup> The eight percent increase from the IFR shows the PPI increase for this industry from 2006 to 2009, and is

<sup>20</sup> U.S. Office of Management and Budget, Circular A–4, September 17, 2003, p.2.

<sup>21</sup> “Economic Values for FAA Investment and Regulatory Decisions, a Guide” (updated Oct 2007).

<sup>22</sup> FAA Aerospace Forecast 2008–2025 (load factor across all aircraft). The FAA Aerospace Forecast is updated annually and provides the best available data on load factors.

<sup>23</sup> U.S. Department of Transportation memorandum, “Treatment of the Economic Value of a Statistical Life in Departmental Analyses—2009 Annual Revision.” Office of the Secretary of Transportation, March 18, 2009. [http://gov.rosenet.org/uploads/254/treatment\\_of\\_a\\_statistical\\_life\\_dot.pdf](http://gov.rosenet.org/uploads/254/treatment_of_a_statistical_life_dot.pdf).

<sup>24</sup> *Ibid.*

<sup>25</sup> [http://www.faa.gov/regulations\\_policies/policy\\_guidance/benefit\\_cost/media/050404%20Critical%20Values%20Dec%2031%20Report%2007Jan05.pdf](http://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/media/050404%20Critical%20Values%20Dec%2031%20Report%2007Jan05.pdf).

<sup>26</sup> <http://bls.gov/ppi/>.

consistent across all aircraft types used in the Regulatory Evaluation.

Assuming that the aircraft is destroyed and minimal impact damage is done, TSA estimates the total direct monetary consequence of the attack, the value of the lives on board and the aircraft, at \$732.5 million. Dividing the \$732.5 million in estimated direct consequences, by the \$178.1 (the annualized cost of the rule discounted at seven percent), shows that in order for the rule to break even, it will need to reduce the existing or baseline frequency of terror attack by one attack every 4.1 years ( $\$732.5/\$178.1 = 4.1$ ).

The estimate of the economic impacts of the attack scenarios used in these break-even analyses is limited to direct costs only (value of casualties and loss of aircraft). This analysis does not consider any indirect or macroeconomic consequences these terrorist attacks might cause. Consequently, the economic impacts of the terrorist attacks estimated for this series of break-even analyses is a lower-bound estimate of the economic impact of these attacks. A full discussion of the break-even analysis including an analysis of each of the four scenarios analyzed is presented in Chapter 4 of the Regulatory Evaluation accompanying this rule.

#### C. Regulatory Flexibility Act Assessment

Section 604(a) of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule "after being required \* \* \* to publish a general notice of proposed rulemaking," the agency must determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities and, if so, must prepare a regulatory flexibility analysis as described in the Act. Because TSA did not issue a proposed rule prior to this final rule, we are not required to perform a Regulatory Flexibility Analysis. Although a Regulatory Flexibility Analysis was not prepared, TSA analyzed the impact of costs of the program on all CCSFs currently enrolled. This analysis is presented in Appendix A of the Regulatory Evaluation accompanying this rule.

#### D. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires

consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this final rule and has determined that the same measures must apply to both U.S. aircraft operators and foreign air carriers loading cargo on passenger aircraft.

#### E. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (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 agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector, such a mandate is deemed to be a "significant regulatory action". This final rule does not exceed this threshold with respect to State, local, and Tribal governments, because it does not require them to take any action. The impact on the private sector, however, does exceed the threshold, resulting in an unfunded mandate on the private sector; the regulatory evaluation documents the costs and alternatives associated with this regulatory action.

#### VIII. Executive Order 13132, Federalism

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

#### IX. Environmental Analysis

We have analyzed this final rule under DHS Management Directive 5100.1 "Environmental Planning Program" (see also 71 FR 16790, Apr. 4, 2006), which guides DHS in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have concluded that this rule is part of a category of actions described in items A3, A4, A7, B3, H1 and H2 of Table 1 in Appendix A of the Management Directive. This final rule would not have individually or cumulatively a significant effect on the human environment and, therefore, neither an environmental assessment

nor an environmental impact statement is necessary.

#### X. Energy Impact Analysis

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

#### List of Subjects

##### 49 CFR Part 1515

Appeals, Commercial driver's license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

##### 49 CFR Part 1520

Air transportation, Law enforcement officers, Maritime carriers, Reporting and recordkeeping requirements, Security measures.

##### 49 CFR Part 1522

Accounting, Aircraft operators, Aviation safety, Reporting and recordkeeping requirements, Security measures.

##### 49 CFR Part 1540

Air carriers, Aircraft, Airports, Civil aviation security, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, Screening.

##### 49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

##### 49 CFR Part 1546

Aircraft, Aviation safety, foreign air carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

##### 49 CFR Part 1548

Air transportation, Aviation safety, Reporting and recordkeeping requirements, Security measures.

##### 49 CFR Part 1549

Air transportation, Reporting and recordkeeping requirements, Security measures.

#### The Amendments

Under 49 U.S.C. 114(l) and as discussed in the preamble, the Transportation Security Administration

amends Chapter XII, of Title 49, Code of Federal Regulations as follows:

**SUBCHAPTER A—ADMINISTRATIVE AND PROCEDURAL RULES**

**PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS**

■ 1. The authority citation for part 1515 continues to read as follows:

**Authority:** 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

■ 2. Revise § 1515.1(a)(2) to read as follows:

**§ 1515.1 Scope.**

(a) \* \* \*

(2) 49 CFR part 1540, subpart C, which includes individuals engaged in air cargo operations who work for certain aircraft operators, foreign air carriers, indirect air carriers (IACs), or certified cargo screening facilities.

\* \* \* \* \*

■ 3. In § 1515.9 remove paragraph (c)(1)(v), and revise paragraphs (a)(3) and (f)(3) to read as follows:

**§ 1515.9 Appeal of security threat assessment based on other analyses.**

(a) \* \* \*

(3) TSA had determined that an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, or certified cargo screening facilities, poses a security threat as provided in 49 CFR 1549.109.

\* \* \* \* \*

(f) \* \* \*

(3) If TSA withdraws a Determination of No Security Threat for an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, or certified cargo screening facilities.

■ 4. Revise § 1515.11(a)(3) to read as follows:

**§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.**

(a) \* \* \*

(3) An individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, or certified cargo screening facilities who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.9.

\* \* \* \* \*

**SUBCHAPTER B—SECURITY RULES FOR ALL MODES OF TRANSPORTATION**

**PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION**

■ 5. The authority citation for part 1520 continues to read as follows:

**Authority:** 46 U.S.C. 70102–70106, 70117; 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 6. Revise § 1520.7(b) to read as follows:

**§ 1520.7 Covered persons.**

\* \* \* \* \*

(b) Each indirect air carrier (IAC), as described in 49 CFR part 1548; and each certified cargo screening facility and its personnel, as described in 49 CFR part 1549.

\* \* \* \* \*

**PART 1522—[REMOVED]**

■ 7. Remove part 1522.

**SUBCHAPTER C—CIVIL AVIATION AUTHORITY**

**PART 1540—CIVIL AVIATION AUTHORITY: GENERAL RULES**

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

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

**Subpart C—Security Threat Assessments**

■ 9. In § 1540.201 remove paragraphs (a)(10), (11), and (12), and revise paragraph (a) introductory text and paragraph (b) definition of “Operator” to read as follows:

**§ 1540.201 Applicability and terms used in this subpart.**

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, indirect air carriers, and certified cargo screening facilities must use to have security threat assessments performed on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, 1548.16 and 1549.111. This subpart applies to the following:

\* \* \* \* \*

(b) \* \* \*

*Operator* means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section, and a certified cargo screening facility described in paragraph (a)(6) of this section.

\* \* \* \* \*

**§ 1540.203 [Amended]**

■ 10. In § 1540.203 remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (a)(6) as paragraphs (a)(1) through (a)(5).

■ 11. Revise § 1540.209 introductory text and paragraph (c)(1) to read as follows:

**§ 1540.209 Fees for security threat assessment.**

This section describes the payment process for completion of the security threat assessments required under this subpart.

\* \* \* \* \*

(c) \* \* \*

(1) The fees required under this subpart must be remitted to TSA in a form and manner acceptable to TSA each time the applicant or an aircraft operator, foreign air carrier, indirect air carrier, or certified cargo screening facility submits the information required under § 1540.203 or § 1540.207 to TSA.

\* \* \* \* \*

**PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS**

■ 12. The authority citation for part 1544 continues to read as follows:

**Authority:** 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

**Subpart C—Operations**

■ 13. Revise § 1544.105(a) introductory text to read as follows:

**§ 1544.105 Approval and amendments.**

(a) *Initial approval of security program.* Unless otherwise authorized by TSA, each aircraft operator required to have a security program under this part must submit its proposed security program to the designated official for approval at least 90 days before the intended date of operations. The proposed security program must meet the requirements applicable to its operation as described in § 1544.101. Such requests will be processed as follows:

\* \* \* \* \*

■ 14. Revise § 1544.205(g)(3) to read as follows:

**§ 1544.205 Acceptance and screening of cargo.**

\* \* \* \* \*

(g) \* \* \*

(3) *Limitation on who may conduct screening.* Screening must be conducted by the foreign air carrier on an airport, by another aircraft operator or foreign

air carrier operating under a security program under this chapter with a comparable cargo security program on an airport with a complete program under 49 CFR part 1542, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA.

\* \* \* \* \*

**PART 1546—FOREIGN AIR CARRIER SECURITY**

■ 15. The authority citation for part 1546 continues to read as follows:

**Authority:** 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

**Subpart C—Operations**

■ 16. Revise § 1546.205(g)(3) to read as follows:

**§ 1546.205 Acceptance and screening of cargo.**

\* \* \* \* \*

(g) \* \* \*

(3) *Limitation on who may conduct screening.* Screening must be conducted by the foreign air carrier on an airport, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program on an airport with a complete program under 49 CFR part 1542, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA.

\* \* \* \* \*

**PART 1548—INDIRECT AIR CARRIER SECURITY**

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

**Authority:** 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–17, 44932, 44935–44936, 46105.

■ 18. Revise § 1548.15(a) to read as follows:

**§ 1548.15 Access to cargo: Security threat assessments for individuals having unescorted access to cargo.**

(a) Before an indirect air carrier authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each indirect air carrier must complete the requirements in part 1540 subpart C.

\* \* \* \* \*

**PART 1549—CERTIFIED CARGO SCREENING PROGRAM**

■ 19. The authority citation for 1549 continues to read as follows:

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

**Subpart A—General**

■ 20. In § 1549.7 revise paragraphs (a)(2)(ii), (a)(3)(ii), (a)(5), and (b)(2) to read as follows:

**§ 1549.7 Approval, amendment, renewal of the security program and certification of a certified cargo screening facility.**

(a) \* \* \*

(2) \* \* \*

(ii) An applicant must successfully undergo an assessment by TSA.

(3) \* \* \*

(ii) The applicant has successfully undergone an assessment by TSA;

(5) *Commencement of operations.* The certified cargo screening facility may operate under a security program when it meets all TSA requirements, including but not limited to an assessment by TSA, successful completion of training, and Security Threat Assessments by relevant personnel.

\* \* \* \* \*

(b) \* \* \*

(2) The certified cargo screening facility must demonstrate that it has successfully undergone a revalidation of its operations by TSA prior to the first day of the 36th anniversary month of initial approval of its security program.

\* \* \* \* \*

**Subpart B—Operations**

■ 21. Revise § 1549.105(a)(2) to read as follows:

**§ 1549.105 Recordkeeping.**

(a) \* \* \*

(2) Copies of all documents related to applications for, or renewals of, TSA certification to operate under part 1549.

\* \* \* \* \*

Issued in Arlington, Virginia, on August 10, 2011.

**John S. Pistole,**  
*Administrator.*

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