



## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 3

#### Petitions for Rulemaking, Amendment, or Repeal; Technical Amendment

**AGENCY:** Office of the Secretary, Department of Homeland Security (DHS).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This final rule amends the affected regulation by correcting a cross-reference error and updating the mailing address interested persons should use when submitting a petition for rulemaking to the Transportation Security Administration (TSA). This action does not create or change any substantive requirement or right.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** David F. Graham, Attorney-Advisor, U.S. Department of Homeland Security, Office of the General Counsel, 245 Murray Lane SW., Mail Stop 0485 Washington, DC 20528-0485, telephone (202) 814-0416.

#### SUPPLEMENTARY INFORMATION:

##### I. Discussion of the Rule

The Administrative Procedure Act (APA) requires that each agency give interested persons the right to petition the agency for the issuance, amendment, or repeal of a rule.<sup>1</sup> Such a petition is known as a “rulemaking petition.” On November 28, 2016, the DHS published a final rule describing its procedures for receiving and responding to rulemaking petitions.<sup>2</sup> Among other provisions, the 2016 final rule identified the mailing address for rulemaking petitions directed towards the Transportation Security

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<sup>1</sup> 5 U.S.C. 553(e).

<sup>2</sup> 81 FR 85401; *see also* 81 FR 47285 (July 21, 2016) (interim final rule).

Administration as Transportation Security Administration, Office of the Chief Counsel, TSA-2, Attn: Regulations and Security Standards Division, 601 South 12th Street, Arlington, VA 20598-6002. The 2016 final rule also advised that rulemaking petitions directed towards the Federal Emergency Management Agency (FEMA) were governed by 44 CFR 1.18.

The mailing address for the TSA Office of Chief Counsel has changed from 601 South 12th Street, Arlington, VA 20598-6002, to 6595 Springfield Center Drive, Springfield, VA 20598-6002. This action amends 6 CFR 3.5(b)(2) to reflect the TSA's current and correct mailing address for receiving rulemaking petitions.

In addition, the cross-reference to 44 CFR 1.18 is no longer current. Specifically, rulemaking petitions directed towards FEMA are now governed by 44 CFR 1.8. This action amends 6 CFR 3.3(b)(2) to reflect the correct citation.

## **II. Regulatory Analyses**

DHS considered numerous statutes and executive orders related to rulemaking when developing this technical amendment. Below are summarized analyses based on those statutes and executive orders.

### **A. Administrative Procedure Act**

DHS has determined that this rule is exempt from notice-and-comment rulemaking requirements under 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(b)(B). The amendments in this rule provide non-substantive technical, organizational, and conforming updates to a rule that itself constitutes a "rule of agency organization, procedure, or practice" not subject to the Administrative Procedure Act's (APA) notice and comment requirements under 5 U.S.C. 553(b)(A). In addition, these amendments are technical or editorial non-substantive changes, which are intended to update and correct two provisions within the CFR. These amendments are necessary to ensure the accuracy and clarity of the CFR. Neither of the amendments included in this action will have a substantive impact on the

public, nor will they alter any substantive regulatory requirements. Accordingly, DHS finds for good cause that this final rule is exempt from public notice-and-comment rulemaking procedures under 5 U.S.C. 553(b)(B) because such procedures are unnecessary.

Because this rule is procedural in nature, DHS finds that the 30-day delayed effective date requirement for substantive rules does not apply, *see* 5 U.S.C. 553(d). In addition, because affected parties will not need time to adjust to the revisions made through this action, DHS finds that even if a 30-day delayed effective date requirement did apply to this action, good cause exists to make this technical amendment effective upon publication in the *Federal Register* under 5 U.S.C. 553(d)(3).

#### **B. Regulatory Flexibility Act and Executive Order 12866**

Because DHS has determined that this final rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply to this action. Furthermore, this final rule does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

#### **C. Paperwork Reduction Act**

There is no new or amended collection of information required by this action. Therefore, the provisions of the Paperwork Reduction Act of 1995 are inapplicable.

#### **D. National Environmental Policy Act (NEPA)**

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01 (Directive) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply

with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)-(c).

This final rule is a technical amendment that provides non-substantive technical and organizational updates. Therefore, it clearly fits within categorical exclusion A3(a) “Promulgation of rules ... of a strictly administrative or procedural nature.” Instruction Manual, Appendix A, Table 1. Furthermore, this final rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the amendment is categorically excluded from further NEPA review.

#### **E. Federalism**

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

#### **F. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-38, requires agencies to consider whether a rule will result in the expenditure of \$100,000,000 or more (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. This technical amendment will not result in such an expenditure.

### **G. The Congressional Review Act**

Before a rule can take effect, 5 U.S.C. 801, the Congressional Review Act requires agencies to submit the rule and a report indicating whether it is a major rule to Congress and the Comptroller General. Under 5 U.S.C. 804(3)(C), rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties are not considered to be a rule for the purposes of the Congressional Review Act. This citation correction, as well as the updated mailing address constitute a rule of agency organization, procedure, or practice that will have no substantive effect on the public. Thus, DHS is not required to submit this technical amendment to Congress and the Comptroller General under the Congressional Review Act.

### **List of Subjects in 6 CFR Part 3**

Administrative practice and procedure, Petitions for rulemaking.

For the reasons stated in the preamble, the Department of Homeland Security amends 6 CFR part 3 as follows:

### **PART 3—PETITIONS FOR RULEMAKING**

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301, 553(e); 6 U.S.C. 112.

#### **§ 3.3 [Amended]**

2. In § 3.3(b)(2), remove the text “44 CFR 1.18” and add, in its place, the text “44 CFR 1.8”.

**§ 3.5 [Amended]**

3. In § 3.5(b)(2), remove the text “601 South 12th Street, Arlington, VA 20598-6002” and add, in its place, the text “6595 Springfield Center Drive, Springfield, VA 20598-6002”.

**Alejandro N. Mayorkas,**  
*Secretary,*  
*U.S. Department of Homeland Security,*

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