

[9110-05-P]

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**49 CFR Parts 1544, 1546, and 1548**

**[Docket No. TSA-2004-19515; Amendment Nos. 1544-7, 1546-4, and 1548-4]**

**RIN 1652-AA52**

**Air Cargo Security Requirements; Compliance Dates; Amendment**

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule (IFR) amends the Air Cargo Security Requirements final rule (Air Cargo Final Rule) by extending the compliance dates by which aircraft operators, foreign air carriers, and indirect air carriers (IACs) must ensure that their employees and agents with unescorted access to cargo, and IAC proprietors, general partners, officers, directors, and certain owners of the entity successfully complete a Security Threat Assessment (STA). This extension is based on technology problems that TSA is experiencing with the processing of STA applications.

**DATES:**

Effective Date: This rule is effective [insert date of publication in the Federal Register].

Comment Date: Comments must be received by [insert date 60 days after publication in the Federal Register].

Compliance Dates: Compliance date for STAs for employees under §§ 1544.228, 1546.213, 1548.15, and for IAC proprietors, general partners, officers, directors and

certain owners of the entity under § 1548.16: Changed from March 15, 2007, to a requirement that the operators submit names and other identifying information to TSA by May 15, 2007. The date that all covered individuals must have successfully completed the STAs is extended to a date that TSA will specify in a future notice in the Federal Register.

Compliance dates for STAs for agents under §§ 1544.228, 1546.213, and 1548.15: Changed from June 15, 2007, to a requirement that the operators submit names and other identifying information to TSA by July 15, 2007. The date that all covered individuals must have successfully completed the STAs is extended to a date that TSA will specify in a future notice in the Federal Register.

**ADDRESSES:** You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket web site at <http://dms.dot.gov>. You also may submit comments through the Federal Rulemaking portal at <http://www.regulations.gov>.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001; Fax: 202-493-2251.

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

**FOR FURTHER INFORMATION CONTACT:** Tamika McCree, Office of Transportation Security Network Management (TSA-28), Transportation Security

Administration, 601 South 12th Street, Arlington, VA 22202; (571-227-2632);  
tamika.mccree@dhs.gov.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This interim final rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, TSA will provide 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. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. See ADDRESSES above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. 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 two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want 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 them 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 receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS's) FOIA regulation found in 6 CFR part 5.

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<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.

### 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 submitting the comment (or signing 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), or you may visit <http://dms.dot.gov>.

You may review the comments in the public docket by visiting the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under ADDRESSES. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

### **Availability of Rulemaking Document**

You can get an electronic copy using the Internet by--

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (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).

### **Background**

On May 26, 2006, TSA published a final rule in the Federal Register (the Air Cargo Final Rule).<sup>2</sup> Certain compliance dates were changed by interim final rule on October 25, 2006.<sup>3</sup> The Air Cargo Final Rule, in part, as amended, requires that aircraft operators, foreign air carriers, and indirect air carriers (IACs) ensure that security threat assessments (STAs) are completed on their employees and agents with unescorted access to cargo under §§ 1544.228, 1546.213, and 1548.15; and on proprietors, general partners, officers, directors, and certain owners of an IAC entity under § 1548.16. Under the final rule, the compliance date for these sections is March 15, 2007. The compliance date for STAs to be completed for agents of these entities is June 15, 2007.

Since the publication of the interim rule in October 2006 extending the compliance dates for completion of STAs, TSA has encountered technical problems that will delay TSA's ability to process the large number of STA applications for air cargo employees, agents, and IAC proprietors, general partners, officers, directors, and certain

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<sup>2</sup> 71 FR 30478. Certain compliance dates were corrected on June 2, 2006 (71 FR 31964).

<sup>3</sup> 71 FR 62546.

owners of the entity (IAC proprietors). TSA is working diligently on these problems and expects to resolve them within the next few months. Accordingly, TSA is extending the compliance dates for STAs for employees and agents of aircraft operators, foreign air carriers, and IACs under §§ 1544.228, 1546.213, 1548.15; and for IAC proprietors under § 1548.16. Because TSA is not certain when it will be possible to assure expeditious vetting of the individuals required to complete STAs, TSA has decided not to establish specific dates for when all covered individuals must have completed the STA before having unescorted access to air cargo or performing another covered function. Instead, TSA now is setting the dates by which the operators must submit the names and other identifying information of these individuals for whom TSA requires STAs. This information must be submitted to TSA by May 15, 2007, for employees and by July 15, 2007, for agents. After those dates, the operators may not allow unescorted access to air cargo for any individual, or allow an individual to perform another function for which a STA is required under these sections, unless the operator has submitted the information for that individual to TSA. In the future, TSA will issue a notice in the Federal Register establishing dates after which employees and agents must have successfully completed their STAs in order to hold positions for which STAs are required.

#### **Good Cause for Immediate Adoption and Immediate Effective Date**

TSA finds that good cause exists to issue this interim rule without providing the public prior notice and the opportunity for comment. Under 5 U.S.C. 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that it would be, “impracticable, unnecessary, or contrary to the public interest” to delay implementation of a rule to allow for prior notice and comment. As

detailed above, TSA believes that: (a) regulated parties will be largely unable to comply with the regulations in the time specified because the TSA IT systems are not ready; (b) no party will be adversely affected by the extensions; and (c) the lack of notice will not cause any hardship. Further, because the current compliance deadlines begin on March 15, 2007, it would be impracticable to delay the extension of this deadline to allow for prior notice and comments. Accordingly, TSA finds that good cause exists under 5 U.S.C. 553(b) to implement this interim rule without prior notice and public comment on the extensions of the compliance dates in the provisions of the Air Cargo Final Rule.

For the same reasons, TSA also finds that good cause exists under 5 U.S.C. 553(d) to make this interim rule effective immediately upon publication in the Federal Register. TSA nevertheless invites written comments on this interim rule.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. et seq.) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA § 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. TSA has determined that there are no current or new information collection requirements associated with this rule.

### **Regulatory Analyses**

#### Executive Order 12866 Assessment

In conducting these analyses, TSA has determined that this rulemaking is not a "significant regulatory action" as defined in the Executive Order.



### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities when the Administrative Procedure Act (APA) requires notice and comment rulemaking. Consistent with the APA and for the reasons provided under “Good Cause for Immediate Adoption,” TSA is issuing this rule as an IFR. Accordingly, the regulatory flexibility analysis as described in the RFA is not required.

TSA notes, however, that we have analyzed the small business impacts of the air cargo rulemaking that this IFR amends. A Final Regulatory Flexibility Analysis (FRFA) was placed on the public docket in the Regulatory Impact Analysis document for the Air Cargo Final Rule issued on May 26, 2006. The extension of the compliance dates in this IFR provides more flexibility than the final rule.

### International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. 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 rulemaking and has determined that it will not create any unnecessary obstacles to foreign commerce.

### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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 a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

### **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.

### **Environmental Analysis**

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

### **Energy Impact Analysis**

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 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 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, Reporting and recordkeeping requirements, Security measures.

### **The Amendment**

For the reasons set forth above, the Transportation Security Administration amends Title 49 of the Code of Federal Regulations, parts 1544, 1546, and 1548, as follows:

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

1. 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.

2. Amend § 1544.228 to revise paragraph (d) and to add § new paragraph (e) to read as follows:

**§ 1544.228 Access to cargo: Security threat assessments for cargo personnel in the United States.**

\* \* \* \* \*

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the Federal Register.

**PART 1546—FOREIGN AIR CARRIER SECURITY**

3. 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.

4. Amend § 1546.213 by revising paragraph (d) and add new paragraph (e) to read as follows:

**§ 1546.213 Access to cargo: Security threat assessments for cargo personnel in the United States.**

\* \* \* \* \*

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under

paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the Federal Register.

**PART 1548—INDIRECT AIR CARRIER SECURITY**

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

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

6. Amend § 1548.15 by revising paragraph (d) and add new paragraph (e) to read as follows:

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

\* \* \* \* \*

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the Federal Register.

7. Amend § 1548.16 by revising paragraph (a) and add new paragraph (d) to read as follows:

**§ 1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.**

(a) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that the names and other identifying information required by TSA of each proprietor, general partner, officer, director, and owner of the entity have been submitted to TSA for a Security Threat Assessment under part 1540, subpart C, of this chapter not later than May 15, 2007. After those dates, the operators may not allow an individual to perform this function unless the operator has submitted the information for that individual to TSA.

(d) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that each proprietor, general partner, officer, director and owner of the entity has successfully completed a Security Threat Assessment under part 1540, subpart C, of this chapter not later than a date to be specified by TSA in a future rule in the Federal Register.

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Issued in Arlington, Virginia, on .

Kip Hawley,

Assistant Secretary.