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Department of Homeland Security

Transportation Security Administration

**49 CFR Parts 1544, 1546, and 1548
Air Cargo Security Requirements;
Compliance Dates; Amendment; Interim
Final Rule**

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration****49 CFR Parts 1544, 1546, and 1548**

[Docket No. TSA-2004-19515; Amendment Nos. 1544-6, 1546-3, and 1548-3]

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) (published May 26, 2006, and corrected in June 2006) by extending the compliance dates by which certain requirements must be completed. TSA has concluded that the regulated community will be unable to meet some deadlines in the Air Cargo Final Rule because of the large number of employees and agents subject to the requirements. TSA is, therefore, extending dates for the following requirements: That aircraft operators, foreign air carriers, and indirect air carriers (IACs) ensure that their employees and agents with unescorted access to cargo successfully complete a Security Threat Assessment (STA); that IACs ensure that their employees and agents performing security-related duties are trained in the IAC's security program; and that airport operators ensure that individuals with unescorted access to expanded Security Identification Display Areas (SIDA) are subjected to a criminal history records check (CHRC) and a name-based security threat assessment (STA), receive proper security training, and hold appropriate personnel identification.

DATES: *Effective Date:* This rule is effective October 23, 2006.

Comment Date: Comments must be received by December 26, 2006.

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 December 1, 2006 to March 15, 2007.

Compliance date for STAs for agents under §§ 1544.228, 1546.213 and 1548.15: Changed from December 1, 2006 to June 15, 2007.

Compliance date for training of IAC employees under §§ 1548.11: Remains November 22, 2006.

Compliance date for training of IAC agents §§ 1548.11: Changed from November 22, 2006 to June 15, 2007.

Compliance date for submission and approval of extension of Secure Identification Display Area (SIDA) boundaries to cargo areas under § 1542.205(a)(2) and (3): Remains October 23, 2006.

Compliance date for full compliance with requirements for individuals with unescorted access to expanded SIDA under §§ 1542.205(b)(2), 1542.209, 1542.211, 1542.213, and Security Directives: Changed from October 23, 2006 to January 22, 2007.

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).¹ 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

¹ "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.

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.

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 a.m. and 5 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/law_lib.html.

Background

On May 26, 2006, TSA published a final rule in the **Federal Register** (71 FR 30478) on air cargo security requirements (Air Cargo Final Rule) to enhance and improve the security of air cargo transportation. Sections 1544.228, 1546.213, 1548.15, and 1548.16 of the final rule incorrectly stated that the deadline for completion of the security threat assessments (STAs) required by those sections was November 22, 2006 (71 FR 30478, 30511–12 and 30516). This conflicted with the **DATES** section of the rule, which listed the compliance date for STAs as December 1, 2006. On June 2, 2006, TSA issued a notice correcting the deadline for STAs in the pertinent regulatory text to December 1, 2006 (71 FR 31964). Also, on June 8, 2006 (71 FR 33254), TSA published an additional correction notice that added an amendatory instruction in § 1548.1 to remove the word "passenger" that had inadvertently been included in the Air Cargo Final Rule.

Requirements of the Air Cargo Final Rule

The Air Cargo Final Rule, in part, 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. The compliance date for these sections (following the June 2, 2006 correction) is December 1, 2006. In addition, § 1548.11 requires that by November 22, 2006, IACs must ensure that no employee or agent may perform any security-related duties under the IAC's security program unless that employee or agent is properly trained.

Another requirement of the Air Cargo Final Rule provides that each part of the air operations area in an airport that is regularly used to load or unload cargo from an aircraft, and areas where cargo is present after a carrier or IAC accepts it, must be a security identification display area (SIDA) (See §§ 1542.205(a)(2) and (3)). Under requirements in effect before publication of the Air Cargo Final Rule, airport operators must ensure that each individual with unescorted access to the SIDA is subject to a criminal history records check (CHRC), holds an appropriate identification, successfully completes training in accordance with the TSA-approved curriculum, and undergoes a name-based STA by TSA

(See §§ 1542.209, 1542.211 and 1542.213(b); and Security Directives).² The current deadline for all of the above SIDA requirements is October 23, 2006.

On June 1, 2006, TSA issued proposed revised and new security programs for aircraft operators, foreign air carriers (FACs), and IACs that would implement the requirements of the Air Cargo Final Rule.³ TSA received extensive comments to the proposed revised and new security programs.

STAs and Training for Employees and Agents of Aircraft Operators, Foreign Air Carriers, and IACs

Some commenters were very concerned about their ability to comply with the deadlines for completion of STAs and training for the employees and numerous agents of the regulated parties. Under the final rule, the deadline for completion of training is November 22, 2006.

Agents are not direct employees of the air carriers, nor are they directly regulated by TSA. Rather, "agents" are entities under contract with the air carriers to perform a security responsibility. For example, an IAC may contract with a cartage agent to move cargo from a warehouse to an airport. An IAC may use the services of many agents for cartage and warehousing, and each of those cartage and warehousing agents may serve multiple IACs. IACs are responsible for ensuring that their agents are properly trained to perform security responsibilities, and actually carry out the IAC's security program.

Commenters raised concerns as to how these agents will determine whether or not the driver picking up, or delivering cargo, actually has undergone an STA and has been trained in the IAC security program. TSA is enhancing the IAC Management System (IACMS) to process STA applications and results, and is providing online training for employees and agents. However, only IACs will have access to the IACMS data base to determine if a driver has an STA. Commenters stated that it would be helpful to have a system that will allow them to identify and verify those individuals with the requisite STAs and training. Otherwise, in order for an IAC to ensure compliance with the Air Cargo Final Rule and their security program, the IAC would have to conduct an STA

² Security Directives constitute sensitive security information (SSI) that can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520.

³ Security programs constitute SSI that can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520. Therefore, the security programs could only be distributed to affected aircraft operators, foreign air carriers, and IACs for comment.

and train a driver who may already have undergone an STA and had the training. This would be unnecessary and duplicative.

This is an important issue that bears both on the regulated parties' compliance and on aviation security. In recognition of this complex issue, and to facilitate a high level of compliance with the requirements of the Air Cargo Final Rule, TSA is extending the deadlines for STAs and training, as discussed below. TSA has provided more time for the STAs and training of the agents of airport operators, FACs and IACs than for employees because there are fewer employees than agents, and airport operators and air carriers have more control over their own direct employees, than agents.

CHRCs, STAs, and Identification Media for SIDA Access; Training

TSA has also received comments indicating that there will be hundreds, if not thousands, of airport employees who will be affected by the expansion

of SIDA to include air operation areas regularly used to load cargo on, or unload cargo from, an aircraft that is operated under a full program or a full all-cargo program as specified in § 1542.205. These comments indicate that it will not be possible to subject each of these individuals to a CHRC, a name-based STA, SIDA training, or the appropriate personnel identification requirements by October 23, 2006.

Extension of Compliance Dates

For the above stated reasons, TSA has determined that the compliance date for STAs for employees of aircraft operators, FACs, and IACs under §§ 1544.228, 1546.213, 1548.15, and 1548.16 will be extended to March 15, 2007. STAs for agents of these entities will be extended to June 15, 2007.

The compliance date of November 22, 2006 for training is still applicable to employees of aircraft operators, foreign air carriers and IACs under § 1548.11. Because of the high volume of agents and the complications associated with

carriers trying to determine which agents need STAs and training, however, TSA is extending the deadline for the training of IAC agents from November 22, 2006 to June 15, 2007.

Based on comments received, TSA is also extending the deadlines for subjecting each individual with unescorted access to a SIDA to a CHRC, to a name-based STA, to SIDA training, or to personnel identification requirements from October 23, 2006 to January 22, 2007. TSA is not changing the compliance date for submission and approval of the new SIDA boundaries, as there is no need to do so. Airport operators will already know where cargo is present and being loaded and unloaded; therefore, they will be able to comply with the October 23, 2006 compliance date.

Summary of Compliance Date Changes

TSA has made the following amendments to the Air Cargo Final Rule text: ⁴

STAs/training and other requirements	Air Cargo Final Rule (May 26, 2006), as amended (June 2, 2006), compliance dates	Amended compliance dates
STAs for employees of aircraft operators, foreign air carriers and indirect air carriers (IACs) under §§ 1544.228, 1546.213, 1548.15.	December 1, 2006 ..	March 15, 2007.
STAs for agents of aircraft operators, foreign air carriers and IACs under §§ 1544.228, 1546.213, 1548.15.	December 1, 2006 ..	June 15, 2007.
STAs for IAC proprietors, general partners, officers, directors and certain owners under § 1548.16	December 1, 2006 ..	March 15, 2007.
Training of IAC employees under § 1548.11	November 22, 2006	Same.
Training of IAC agents under § 1548.11	November 22, 2006	June 15, 2007.
Establishing the boundaries of SIDA for air cargo areas under § 1542.205(a)(2)	October 23, 2006	Same.
CHRC, training, name-based STAs, and ID requirements for individuals with unescorted access to expanded SIDA under §§ 1542.205, 1542.209, 1542.211, 1542.213, and SDs.	October 23, 2006	January 22, 2007.

Good Cause for Immediate Adoption and Immediate Effective Date

TSA is issuing this amendment without providing the public prior notice and the opportunity for comment, and it has an effective date less than 30 days after publication in the **Federal Register**.

Sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorize agencies to dispense with certain notice procedures for rules when they find good cause to do so. Under section 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) allows an agency, upon finding good cause, to

make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

TSA finds that providing an opportunity for prior notice and public comment on the extensions of the compliance dates in the provisions of the Air Cargo Final Rule identified in the IFR is unnecessary and contrary to the public interest. As detailed above, TSA believes that: (a) Regulated parties will have significant difficulty in complying with the regulations in the time specified; (b) no party will be adversely affected by the extensions; (c) the lack of notice will not cause any hardship; and (d) it would be impracticable to provide timely notice and opportunity to comment prior to the

implementation dates currently set forth in the regulations.

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 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. TSA has determined that there are no current or new information collection requirements associated with this rule.

⁴ All of the compliance dates were stated in the Air Cargo Final Rule text, except the requirement

that airport operators extend the boundaries of the SIDA to cargo operations. The compliance date for

this requirement is the effective date of the Air Cargo Final Rule: October 23, 2006.

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 interim final rule. 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), 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 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. Revise § 1544.228(d) to read as follows:

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

* * * * *

(d) Operators must comply with the requirements of this section not later than March 15, 2007, for direct employees and not later than June 15, 2007, for agents.

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. Revise § 1546.213(d) to read as follows:

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

* * * * *

(d) Operators must comply with the requirements of this section not later than March 15, 2007, for direct employees and not later than June 15, 2007, for agents.

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. Revise § 1548.11(d) to read as follows:

§ 1548.11 Training and knowledge for individuals with security-related duties.

* * * * *

(d) Operators must comply with the requirements of this section not later than November 22, 2006, for direct employees and not later than June 15, 2007, for agents.

■ 7. Revise § 1548.15(d) to read as follows:

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

* * * * *

(d) Operators must comply with the requirements of this section not later than March 15, 2007, for direct employees and not later than June 15, 2007, for agents.

■ 8. Revise § 1548.16(a) 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 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. Each indirect air carrier must

comply with the requirements of this section not later than March 15, 2007.

* * * * *

Issued in Arlington, Virginia, on October 20, 2006.

Robert D. Jamison,

Deputy Administrator.

[FR Doc. 06-8904 Filed 10-23-06; 2:47 pm]

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