

Report on TSA Rulemakings (July 2021)

<p>Security Training for Surface Transportation Employees</p>
<p>RIN: 1652-AA55</p>
<p>Stage: COMPLETED.</p>
<p>Previous Stage: Notice; Request for Comments published 06/14/2013 (78 FR 35945); NPRM published 12/16/2016 (81 FR 91336).</p>
<p>Abstract: The Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53; Aug. 3, 2007) (9/11 Act) requires security training for employees of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus (OTRB) companies. This final rule implements the regulatory mandate. Owner/operators of these higher-risk railroads, systems, and companies will be required to train employees performing security-sensitive functions, using a curriculum addressing preparedness and how to observe, assess, and respond to terrorist-related threats and/or incidents. As part of this rulemaking, TSA is expanding its current requirements for rail security coordinators and reporting of significant security concerns (currently limited to freight railroads, passenger railroads, and the rail operations of public transportation systems) to include the bus components of higher-risk public transportation systems and higher-risk OTRB companies. TSA is also adding a definition for Transportation Security-Sensitive Materials (TSSM). Other provisions are being amended or added, as necessary, to implement these additional requirements.</p>
<p>Prompting Action: Sections 1408, 1517, and 1534 of the 9/11 Act, mandate TSA to issue regulations requiring security training for public transportation systems, railroads, and OTRB operations. Section 1501 of the 9/11 Act requires TSA to identify transportation security-sensitive materials through notice-and-comment rulemaking. Sections 1512 and 1531 require higher-risk railroads and OTRB operations to have identified security coordinators. Employee training is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who may target surface transportation and plan or perpetrate actions that may cause significant injuries, loss of life, or economic disruption.</p>
<p>Anticipated Costs and Benefits: Owner/operators will incur costs for training their employees, developing a training plan, maintaining training records, and participating in inspections for compliance. Some owner/operators will also incur additional costs associated with assigning security coordinators and reporting significant security incidents to TSA. TSA will incur costs associated with reviewing owner/operators' training plans, registering owner/operators' security coordinators, responding to owner/operators' reported significant security incidents, and conducting inspections for compliance with this rule. For the final rule, TSA estimated the annualized cost from this regulation to be approximately \$5.28 million, discounted at 7 percent. As part of TSA's risk-based security, benefits include mitigating potential attacks by heightening a awareness of employees on the frontline. In addition, by designating security coordinators and reporting significant security concerns to TSA, TSA has a direct line for communicating threats and receiving information necessary to analyze trends and potential threats across all modes of transportation.</p>
<p>Summary of Data Collection or Research: In 2013, TSA published a notice requesting comments on security training programs. See 78 FR 35945 (June 14, 2013). TSA specifically requested information on programs currently implemented – whether as a result of regulatory requirements, grant requirements, in anticipation of a rule, voluntary, or otherwise – and the costs associated with these training programs. In addition, TSA's economists use a variety of data sources in developing their regulatory impact analysis, consistent with requirements of the Office of Management and Budget and the Department of Homeland Security. An example of the sources of data and how it is used can be found in Section 2 of the "Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis for the Security Training Programs for Surface Transportation Employees Notice of Proposed Rulemaking" (Oct. 31, 2016), available at www.Regulations.gov under TSA-2015-0001. See also Section 2 of the "Final Regulatory Impact Analysis and Final Regulatory Flexibility Analysis" (Feb. 25, 2020), available at the same location.</p>
<p>Engagement with security experts, advisory committees, and other stakeholders: For the Security Training rulemaking, in September and October of 2009, TSA reached out to representatives of the constituencies mandated by Sections 1408(b), 1517(b), and 1534(b) of the 9/11 Act. These stakeholders included representatives of State, local, and tribal governmental authorities; first responders; security and terrorism experts; appropriate labor organizations; and organizations representing the elderly and disabled. On September 14, 2009, TSA reached out to representatives of the following stakeholder groups by transmitting a</p>

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letter and summary document outlining the key statutory requirements of the NPRM and requesting their comments: TSA/Office of Civil Rights and Liberties; Homeland Security Institute; Mineta Transportation Institute; FEMA/United States Fire Administration/National Fire Programs; International Association of Chiefs of Police; National Sheriffs Association; National Emergency Medical Services Association; Commercial Vehicle Safety Alliance; State, Local, Tribal, and Territorial Government Coordinating Council (GCC); and DHS/National Protection and Programs Directorate Intergovernmental Programs. A summary of issues raised during these discussions is included in the NPRM. See [81 FR 91336](#), 91368 *et seq.* (Dec. 16, 2016). Since publication of the final rule, TSA has engaged in additional outreach to stakeholders in response to concerns raised regarding the impact of COVID-19 on the ability of the industry to meet the requirements. A copy of letters from the industry to TSA are available at [regulations.gov](https://www.regulations.gov) under [TSA-2015-0001-0045](#).

Staff Allocations: There are approximately 24 employees who dedicate a portion of their time to the surface training rulemaking from the following offices: Policy, Plans, and Engagement (PPE), Security Operations (SO), and Chief Counsel (CC). The specific allocation and hours varies based upon the issues being addressed at any given time. These numbers do not include staff involved in TSA clearance of rulemakings, legislative affairs, public affairs, and within the Department of Homeland Security's Office of General Counsel with responsibility for regulatory review and clearance.

Docket Number: [TSA-2015-0001](#).

Publication: Final Rule published 3/23/2020.

Federal Register citation for Final Rule: [85 FR 16456](#), as modified by [85 FR 25315](#) (May 1, 2020); [86 FR 67681](#) (Oct. 26, 2020); and [86 FR 23629](#) (May 4, 2021).

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Vetting of Certain Surface Transportation Employees
RIN: 1652-AA69
Stage: Notice of Proposed Rulemaking
Previous Stage: N/A
Abstract: The 9/11 Act requires vetting of certain railroad, public transportation, and over-the-road bus employees. Through this rulemaking, the Transportation Security Administration (TSA) intends to propose the mechanisms and procedures to conduct the required vetting. This regulation is related to 1652-AA55, Security Training for Surface Transportation Employees.
Prompting Action: Sections 1411 and 1520 of the 9/11 Act require vetting of frontline public transportation and railroad employees. Sections 1512 and 1531 require the vetting of security coordinators designated by higher-risk railroads and over-the-road bus owner/operators. Employee vetting is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who may target surface transportation and plan or perpetrate actions that may cause significant injuries, loss of life, or economic disruption.
Anticipated Costs and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.
Summary of Data Collection or Research: In addition, TSA's economists use a variety of data sources in developing their regulatory impact analysis, consistent with requirements of the Office of Management and Budget and the Department of Homeland Security.
Engagement with security experts, advisory committees, and other stakeholders: TSA has met formally and informally with its surface stakeholders on a variety of vetting issues. There have been updates of the status of the rulemaking process with monthly telephone calls with the Peer Advisory Group for public transportation agencies.
Staff Allocations: There are approximately 24 employees who dedicate a portion of their time to the surface vetting rulemaking from the following offices: Policy, Plans, and Engagement (PPE), Security Operations (SO), Intelligence and Analysis (I&A), Financial Administration (FA), and Chief Counsel (CC). The specific allocation and hours vary based upon the issues being addressed at any given time. These numbers do not include staff involved in TSA clearance of rulemakings, legislative affairs, public affairs, and within the Department of Homeland Security's Office of General Counsel with responsibility for regulatory review and clearance.
Docket Number: N/A
Target Dates for Next Stage: NPRM Publication 10/2021.
Federal Register citation for Final Rule: N/A

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Surface Transportation Vulnerability Assessments and Security Plans (VASP)
RIN: 1652-AA56
Stage: Notice of Proposed Rulemaking
Previous Stage: Advance Notice of Proposed Rulemaking (ANPRM) published 12/16/2016 (81 FR 91401); ANPRM; Comment Period Reopened published 03/14/2017 (82 FR 13575)
Abstract: The Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53; Aug. 3, 2007) (9/11 Act) requires TSA to issue regulations for vulnerability assessments and security planning to be conducted by high-risk surface transportation operations. TSA will propose a new regulation to address the security of higher-risk freight railroads, public transportation agencies, passenger railroads, and over-the-road buses in accordance with these requirements. The proposed rule will consider comments received on the advance notice of proposed rulemaking (ANPRM) published in December 2016.
Prompting Action: Sections 1405, 1512, and 1531 of the 9/11 Act, mandate TSA to issue regulations requiring public transportation agencies, railroads, and over-the-road buses to conduct vulnerability assessments and develop security plans, to be approved by TSA, to address any identified vulnerabilities as well as additional security requirements specified in the statute.
Anticipated Costs and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.
Summary of Data Collection or Research: TSA published an advance notice of proposed rulemaking (ANPRM) in March 2017. See 82 FR 13575 (03/14/2017). The ANPRM requested comments on several topics relevant to the development of this rulemaking. Based on its regular interaction with stakeholders, TSA assumes many higher-risk railroads (freight and passenger), public transportation agencies, and over-the-road buses (OTRBs) have implemented security programs with security measures similar to those identified by the 9/11 Act's regulatory requirements. In general, TSA requested information on three types of issues: 1) Existing practices, standards, tools, or other resources used or available for conducting vulnerability assessments and developing security plans; 2) Information on existing security measures, including whether implemented voluntarily or in response to other regulatory requirements and the potential impact of additional requirements on operations; and 3) Information on the scope/cost of current security systems and other measures used to provide security and mitigate vulnerabilities. This information is necessary for TSA to establish the current baseline, estimate the cost of implementing the statutory mandate, and develop appropriate performance standards. TSA reopened the comment period for an additional 60 days (until May 15, 2017) due to several requests by commenters in the rulemaking docket. In addition, TSA's economists use a variety of data sources in developing their regulatory impact analysis, consistent with requirements of the Office of Management and Budget and the Department of Homeland Security.
Engagement with security experts, advisory committees, and other stakeholders: In February 2019, TSA convened a workshop, hosted by the American Public Transportation Association, to engage with its stakeholders on developing guidance that incorporates all of the requirements for vulnerability assessments and security planning mandated by the 9/11 Act. While the purpose of the workshop was to obtain feedback on guidance to be voluntarily implemented, the feedback provided on certain measures, including the potential impact on operations, costs, and security benefits also informs development of this rulemaking.
Staff Allocations: There are approximately 24 employees who dedicate a portion of their time to the VASP rulemaking from the following offices: Policy, Plans, and Engagement (PPE), Security Operations (SO), and Chief Counsel (CC). As the expertise needed for this rulemaking is the mostly the same as that needed for the surface security training final rule, with some overlap for the surface vetting notice of proposed rulemaking, resources will become more focused on the VASP requirements as those rules are finalized. These numbers do not include staff involved in TSA clearance of rulemakings, legislative affairs, public affairs, and within the Department of Homeland Security's Office of General Counsel with responsibility for regulatory review and clearance.
Docket Number: TSA-2016-0002 .
Target Dates for Next Stage: NPRM Publication 00/00/0000 (Long Term Action).
Federal Register citation for Final Rule: N/A

Report on TSA Rulemakings (July 2021)

Flight Schools
RIN: 1652-AA35
Stage: Final Rule
Previous Stage: Interim Final Rule; Request for Comments published 09/20/2004 (69 FR 56323); Notice; Alien Flight Student Program Recurrent Training Fees published 04/13/2009 (74 FR 16880); Interim Final Rule; Comment Period Reopened published 05/18/2018 (83 FR 23238).
Abstract: The Interim Final Rule (IFR) was published and effective on September 20, 2004. The IFR created a new part 1552, Flight Schools, in Title 49 of the Code of Federal Regulations (CFR). This IFR applies to flight schools and individuals who apply for or receive flight training. This regulation requires flight schools to notify TSA when noncitizens and other individuals designated by TSA apply for flight training or recurrent training. TSA subsequently issued exemptions and interpretations in response to comments on the IFR, questions raised during operation of the program since 2004, and a notice extending the comment period on May 18, 2018. TSA is finalizing the rule with modifications that address these questions and comments and is also considering modifications that would change the frequency of security threat assessments from a high-frequency event-based interval to a time-based interval, clarify the definitions and other provisions of the rule, and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule.
Prompting Action: Section 612(a) of Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108-176; Dec. 12, 2003), required TSA to establish a process to vet alien flight students, including fee provisions. This deregulatory action is also prompted by recommendations from the Aviation Security Advisory Committee.
Anticipated Costs and Benefits: TSA is considering revising the requirements of the Alien Flight Student Program (AFSP) to reduce costs and industry burden. Possible actions include an electronic recordkeeping platform where all flight providers would upload certain information to a TSA-managed website. Also at industry's request, TSA is considering changing the interval for a security threat assessment of each alien flight student, eliminating the requirement for a security threat assessment for each separate training event. This change would result in annual savings, although there may be additional start-up and record retention costs for the agency as a result of these revisions. The benefits of these deregulatory actions would be immediate cost savings to flight schools and alien students without compromising the security profile.
Summary of Data Collection or Research: TSA reopened the comment period for the IFR in May 2018. See 83 FR 23238 (05/18/2018). TSA reopened the comment period to request comments related to modifications that would improve the efficiency and efficacy of this program consistent with regulatory reform requirements of Executive Orders (E.O.) 13771 (Jan. 30, 2017) and 13777 (Feb. 24, 2017). In particular, TSA requested comments on three types of issues: Scope of security threat assessments (STAs), including who should receive them and the frequency of such assessments; options for reducing the burden of recordkeeping requirements, including the use of electronic records; and sources of data on costs and other programmatic impacts of the rule. In addition, TSA's economists use a variety of data sources in developing their regulatory impact analysis, consistent with requirements of the Office of Management and Budget and the Department of Homeland Security.
Engagement with security experts, advisory committees, and other stakeholders: TSA received input on options for improving this regulatory program from members of the aviation industry, the public, and Federal oversight organizations, including specific recommendations from the Aviation Security Advisory Committee regarding this regulation.
Docket Number: TSA-2004-19147 .
Target Dates for Next Stage: Final Rule Publication 03/2022.
Federal Register citation for Final Rule: N/A

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Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA)
RIN: 1652-AA70
Stage: Notice of Proposed Rulemaking (NPRM).
Previous Stage: N/A
Abstract: As required by the FAA Extension, Safety, and Security Act of 2016 (FESSA), TSA will propose a rule to revise its regulations, reflecting current knowledge of insider threat and intelligence, to enhance the eligibility requirements and disqualifying criminal offenses for individuals seeking or having unescorted access to any SIDA of an airport. Consistent with the statutory mandate, TSA will consider adding to the list of disqualifying criminal offenses and criteria, develop a waiver process for approving the issuance of credentials for unescorted access, and propose an extension of the look back period for disqualifying crimes. As part of TSA's reevaluation of the eligibility and redress standards for aviation workers required by the Act, TSA is also reevaluating the current vetting process to minimize any security risks that may exist.
Prompting Action: Section 3405 of FESSA (Pub. L. 114-190; July 15, 2016) requires TSA to conduct notice-and-comment rulemaking to revise the current regulations on criminal history records checks that were promulgated nearly two decades ago pursuant to 49 U.S.C. 44936. Employee vetting is an important and effective tool to minimize insider threats and potential attacks by those with malicious intent who wish to target aviation. Enhancing eligibility standards for airport workers will improve transportation and national security.
Anticipated Costs and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.
Summary of Data Collection or Research: TSA's economists use a variety of data sources in developing their regulatory impact analysis, consistent with requirements of the Office of Management and Budget and the Department of Homeland Security.
Engagement with security experts, advisory committees, and other stakeholders: TSA is working collaboratively with industry representatives and stakeholders on addressing the insider threat. As part of this effort, the Aviation Security Advisory Committee's Working Group on Airport Access Control, led by TSA, collected views on how to improve the current standards used for criminal vetting of aviation workers, compared the SIDA standards to other credential criteria across the government, and discussed studies on criminal activity as precursors to terrorist activity.
Docket Number: N/A
Target Dates for Next Stage: NPRM Publication 03/2022.
Federal Register citation for Final Rule: N/A

Report on TSA Rulemakings (July 2021)

Indirect Air Carrier Security
RIN: 1652-AA72
Stage: Notice of Proposed Rulemaking (NPRM).
Previous Stage: N/A
Abstract: TSA is proposing to reduce the frequency of renewal applications for indirect air carriers (IACs). Currently, these entities must submit an application to renew their security program each year. Following a review of TSA's regulatory requirements seeking to reduce the cost of compliance, TSA determined that the duration of the security program for these entities can be increased from one year to three years without having a negative impact on transportation security.
Prompting Action: Removing unnecessary burden on industry.
Anticipated Costs and Benefits: TSA is in the process of determining the costs and benefits of this rulemaking.
Summary of Data Collection or Research: TSA's economists use a variety of data sources in developing their regulatory impact analysis, consistent with requirements of the Office of Management and Budget and the Department of Homeland Security.
Engagement with security experts, advisory committees, and other stakeholders: TSA consults with its stakeholders through a variety of mechanisms, including the Aviation Security Advisory Committee, as well as applicable associations, such as the Air Forwarders Association. In addition, TSA conducted a risk analysis of the policy that would be implemented through this proposed rule before determining it would be appropriate to modify the requirement.
Docket Number: N/A
Dates for Next Stage: NPRM Publication 01/2022.
Federal Register citation for Final Rule: N/A