



9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1570

[Docket No. TSA-2015-0001]

RIN 1652-AA55

Security Training for Surface Transportation Employees

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule, delay of effective date.

SUMMARY: This rule delays the effective date of the final rule entitled, “Security Training for Surface Transportation Employees” from June 22, 2020, until September 21, 2020. TSA has concluded that many owner/operators within the regulated community may be unable to meet deadlines in the rule because of actions taken at various levels of government to address the COVID-19 crisis. TSA is, therefore, extending the effective date of the rule and related compliance deadlines.

DATES: The effective date of the Security Training for Surface Transportation Employees final rule published at 85 FR 16456 is delayed until September 21, 2020. The revisions to part 1570 in this rule are effective September 21, 2020.

FOR FURTHER INFORMATION CONTACT: Harry Schultz (TSA; Policy, Plans, and Engagement, Surface Division) or David Kasminoff (TSA, Senior Counsel; Regulations and Security Standards; Office of Chief Counsel) by telephone at (571) 227-5563 or email to SecurityTrainingPolicy@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 2020, TSA published the final rule, “Security Training for Surface Transportation Employees.”¹ The regulation requires owner/operators of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus companies, to provide TSA-approved security training to employees performing security-sensitive functions. As originally published, that final rule was scheduled to take effect on June 22, 2020, with the first compliance deadline set for July 22, 2020.²

II. Delayed Effective Date

Before and since publication, TSA has observed the growing nationwide impact of the spread of the novel coronavirus that causes COVID-19, including the impact of actions taken at various levels of government to slow its spread.³ Some of these actions have affected the operations and staffing of many of the owner/operators affected by the final rule. In recognition of the potential impact of COVID-19 measures and related strain on resources, TSA is delaying the effective date for requirements in the rule.

¹ 85 FR 16456.

² *See, e.g.*, 85 FR at 16469.

³ On January 31, 2020, the Secretary of the Department of Health and Human Services declared a nationwide “public health emergency” under section 319 of the Public Health Service Act, 42 U.S.C. 274d, as a result of confirmed cases of COVID-19. *See* HHS, “Determination that a Public Health Emergency Exists,” <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic. On March 13, 2020, the President determined that the ongoing COVID-19 pandemic is of sufficient severity and magnitude to warrant an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207. In addition, on March 13, 2020, the President declared a national emergency under sections 201 and 301 of the National Emergencies Act, 50 U.S.C. 1601 et seq. *See* Proclamation 9994 of Mar. 13, 2020 on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020). State and local jurisdictions throughout the United States are engaged in various social distancing practices, which frequently entail closing non-essential business and government services and avoiding crowds.

The following table identifies the revised effective date and the impact of this change on compliance dates tied to the effective date.

SUMMARY OF EXTENDED DEADLINES FOR COMPLIANCE
(IN ORDER OF DEADLINE)

	Final Rule	Extension
Effective date of rule.....	June 22, 2020	September 21, 2020
Deadline for notifying TSA of applicability determination (1570.105).....	July 22, 2020	October 21, 2020
Deadline for providing security coordinator information (49 CFR 1570.201).....	July 29, 2020	October 28, 2020
Deadline for submission of security training program to TSA for approval (1570.109(b)).....	September 20, 2020	December 21, 2020

In addition to extending the effective date, this document also makes corresponding amendments to the final rule. Finally, this rule corrects paragraph (g) of 49 CFR 1570.109 to be paragraph (d).

III. Regulatory Analysis

A. Administrative Procedure Act

TSA takes this action without prior notice and public comment. Sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553) authorize agencies to dispense with certain rulemaking procedures when they find good cause to do so. Under section 553(b), the requirements of notice and opportunity to comment do not apply when the agency for good cause finds that these 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.

This final rule recognizes the need to extend the effective date of the Security Training for Surface Transportation Employees final rule in light of the significant

disruption and uncertainty in both private and government operations caused by the COVID-19 pandemic. The compliance dates for this rule require action in the near term by owner/operators at a time when they are shifting resources or eliminating operations to respond to exigent circumstances created by the COVID-19 pandemic. The owner/operators subject to the requirements of the final rule need immediate certainty regarding the effective date of the rule so that they may focus on other issues affecting their operations.

TSA has good cause to delay the rule’s effective date without advance notice and comment.⁴ To delay taking this action while waiting for public comment would be impracticable and contrary to the public interest.

B. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

C. Executive Orders 12,866 and 13,563 Assessment

This rule does not constitute a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563, and therefore has not been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action

⁴ See 5 U.S.C. 553(b)(B).

taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

D. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), requires Federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis.⁵

E. Executive Order 12132 (Federalism)

A rule has federalism implications under Executive Order 13132 if it has a substantial direct effect on State governments, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this rule under that Order and has determined that although this rule affects the states, it does not impose substantial direct compliance costs or preempt State law.⁶ The rule relieves burdens on States.

⁵ See 5 U.S.C. 603, 604.

⁶ See E.O. 13132, sec. 6.

F. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

G. Environment

TSA has reviewed this rulemaking 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. This action is covered by categorical exclusion (CATEX) number A3(e) in DHS Management Directive 023-01 (formerly Management Directive 5100.1), Environmental Planning Program, which guides TSA compliance with NEPA.

List of Subjects in 49 CFR Part 1570

Commuter bus systems, Crime, Fraud, Hazardous materials transportation, Motor carriers, Over-the-Road bus safety, Over-the-Road buses, Public transportation, Public transportation safety, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation facility, Transportation Security-Sensitive Materials.

The Amendments

For the reasons stated in the preamble, the Transportation Security Administration is amending 1570 of chapter XII, title 49, Code of Federal Regulations as follows:

PART 1570—GENERAL RULES

1. The authority citation for part 1570 continues to read as follows:

Authority: 18 U.S.C. 842, 845; 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; Pub. L. 108-90 (117 Stat. 1156, Oct. 1, 2003), sec. 520 (6 U.S.C. 469), as amended by Pub. L. 110-329 (122 Stat. 3689, Sept. 30, 2008) sec. 543 (6 U.S.C. 469); Pub. L. 110-53 (121 Stat. 266, Aug. 3, 2007) secs. 1402 (6 U.S.C. 1131), 1405 (6 U.S.C. 1134), 1408 (6 U.S.C. 1137), 1413 (6 U.S.C. 1142), 1414 (6 U.S.C. 1143), 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162), 1517 (6 U.S.C. 1167), 1522 (6 U.S.C. 1170), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

2. Revise § 1570.105 to read as follows:

§ 1570.105 Responsibility for determinations.

(a) *Higher-risk operations.* While TSA has determined the criteria for applicability of the requirements in subpart B to 49 CFR parts 1580, 1582, and 1584 based on risk-assessments for freight railroad, public transportation system, passenger railroad, or over-the-road (OTRB) owner/operators are required to determine if the applicability criteria identified in subpart B to parts 1580, 1582, and 1584 apply to their operations. Owner/operators are required to notify TSA of applicability by October 21, 2020.

(b) *New or modified operations.* If an owner/operator commences new operations or modifies existing operations after September 21, 2020, that person is responsible for

determining whether the new or modified operations would meet the applicability criteria in subpart B to 49 CFR parts 1580, 1582, or 1584, and must notify TSA no later than 90 calendar days before commencing operations or implementing modifications.

3. Amend § 1570.109 by:

- a. Revising paragraphs (b)(1) and (2);
- b. Redesignating paragraph (g) as paragraph (d); and
- c. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 1570.109 Submission and approval.

* * * * *

(b) * * *

(1) Submit its program to TSA for approval no later than December 21, 2020.

(2) If commencing or modifying operations so as to be subject to the requirements of subpart B to 49 CFR parts 1580, 1582, or 1584 after September 21, 2020, submit a training program to TSA no later than 90 calendar days before commencing new or modified operations.

* * * * *

(d) *Petition for Reconsideration.* Within 30 days of receiving the notice to modify, the owner/operator may file a petition for reconsideration under § 1570.119 of this part.

5. Amend § 1570.201, by revising paragraph (e) to read as follows:

§ 1570.201 Security Coordinator.

* * * * *

(e) Each owner/operator required to have a Security Coordinator must provide in writing to TSA the names, U.S. citizenship status, titles, phone number(s), and e-mail address(es) of the Security Coordinator and alternate Security Coordinator(s) by October 28, 2020, commencement of operations, or change in any of the information required by this section.

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Date: April 17, 2020

David P. Pecoske,
Administrator.

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