



**Transportation  
Security  
Administration**

October 19, 2004

John S. Yodice  
General Counsel  
Aircraft Owners and Pilots Association  
421 Aviation Way  
Frederick, MD 21701-4798

Dear Mr. Yodice:

This is in response to your letter of September 29, 2004, in which you request clarification of several provisions in the Interim Final Rule (IFR) titled "Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees" (Docket No. TSA-2004-19147), issued by the Transportation Security Administration (TSA) on September 20, 2004 (69 FR 56324). Each of your questions is discussed below. This letter also responds to several questions that were posed by other industry stakeholders and that may concern you.

1. Application of the IFR to "Other Individuals Designated by TSA"

You ask whether a flight school or individual flight instructor must query TSA each time a U.S. citizen applies for flight training to determine if he/she has been "designated by TSA."

Flight schools<sup>1</sup> are not required to query TSA each time a U.S. citizen applies for flight training to determine whether he/she has been "designated by TSA." Under the IFR, only a "candidate" is subject to the security threat assessment requirements. The IFR defines a "candidate" as "an alien or other individual designated by TSA who applies for flight training or recurrent training."

The law that transferred responsibility for this program from the Department of Justice (DOJ) to TSA (Section 612 of Pub. L. 108-176) provides that a flight school "may provide training in the operation of an aircraft . . . to an alien . . . or to any other individual specified by the Secretary of Homeland Security only if" the flight school has notified the Secretary that the individual has requested such training and furnished the Secretary with the individual's identifying information (emphasis added). The Secretary delegated this responsibility to the Assistant Secretary of Homeland Security for TSA. Section 612 did not provide a definition of the phrase "any other individual specified by the Secretary of Homeland Security," and the IFR also does not define it. TSA interprets the phrase to mean any individual (other than an alien) who may pose a threat to aviation or national security. The law gives TSA the authority to designate such an individual as requiring the TSA threat assessment prior to receiving flight training.

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<sup>1</sup> For purposes of this letter, we use the term "flight school" to include pilot schools, flight training centers, air carrier flight training facilities, individual flight instructors, and other persons who provide flight training that is subject to the IFR.

However, TSA has not designated any such individuals under the IFR. Thus, flight schools are not required to query TSA each time a U.S. citizen applies for flight training to determine whether he/she has been "designated by TSA."

You also ask whether U.S. citizens or nationals who intend to take flight training must determine whether they have been designated by TSA.

As discussed above, TSA has not designated any other individuals under the IFR. Thus, U.S. citizens or nationals who intend to take flight training are not required to determine whether they have been designated by TSA.

## 2. Flight School Registration with TSA

You ask whether every flight school that offers flight training must register with TSA, and be assigned a password to access a TSA system, to determine whether an individual has been designated by TSA.

A flight school that offers flight training only to U.S. citizens or nationals does not have to register with TSA to determine whether an individual has been designated by TSA. However, if the flight school offers flight training to aliens, the school or instructor must register with TSA and be assigned a password to provide training information to TSA and receive threat assessment information from TSA.

## 3. Determination of U.S. Citizenship/Nationality

You ask whether every flight school must be able to determine the citizenship or other nationality status of every flight student who presents himself/herself by determining the authenticity and interpreting legal documents.

The IFR requires flight schools to determine whether an individual is a U.S. citizen or national by collecting any of several documents, such as a U.S. passport, from an individual who claims to be a U.S. citizen or national. However, it does not require flight schools to verify the authenticity of these documents.

You also ask whether every individual who intends to take flight training must present proof of citizenship or nationality to the flight school.

The IFR requires a U.S. citizen or national who intends to take flight training to present proof of U.S. citizenship or nationality to the flight school. (49 CFR 1552.3(h)(1)). The IFR does not require a U.S. citizen or national to submit proof of U.S. citizenship or nationality to TSA. As discussed in greater detail in the response to your next questions, U.S. resident aliens are considered aliens, not U.S. citizens or nationals, under the IFR.

## 4. Applicability to Resident Aliens

You ask whether resident aliens (that is, persons lawfully admitted for permanent residence in the U.S.) are considered aliens or U.S. nationals under the IFR.

Section 612 of Public Law 108-176 refers to the definition of the term "alien" used in 8 U.S.C. 1101(a)(3), which defines an alien as "any person not a citizen or national of the United States." Paragraph (a)(22) of 8 U.S.C. 1101 defines the term "national of the United States" as "a citizen of

the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” Our research into the immigration laws indicates that U.S. nationals include citizens of American Samoa and Swains Island, but does not include U.S. resident aliens. Thus, under the IFR U.S. resident aliens are considered aliens and must comply with the requirements applicable to aliens.

5. Applicability to Flight Schools That Are Located in the U.S. but Provide Flight Training for Foreign Airman Certificates

The following question was not raised in your letter. However, we received it from several other industry stakeholders, who asked whether the IFR applies to flight schools that are located in the U.S. but provide flight training that would enable a student to obtain a foreign airmen certificate (that is, a certificate other than an FAA certificate).

Section 612 of Public Law 108-176 applies to a “person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part . . . .” The IFR applies to “flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators . . . .” The IFR defines the term “flight school” as “any pilot school, flight training center, air carrier flight training facility, or flight instructor certificated under 14 CFR part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of any aircraft or aircraft simulator.”

TSA interprets these provisions to include flight schools that are located in the U.S., but do not provide training that would lead to an FAA certificate, because such flight schools are certificated under FAA regulations or are otherwise regulated by the FAA under 49 U.S.C. Subtitle VII, Part A. In addition, an alien with a foreign airman certificate that is recognized by FAA may receive authorization from the FAA to operate aircraft in the U.S., and an alien who is training in the U.S. necessarily will be flying aircraft in U.S. airspace while he/she is training. Thus, we believe the intent of Section 612 is to require such aliens to be cleared in accordance with the IFR.

We note that the IFR does not apply to flight schools that are located outside the U.S. and provide training that would not lead to an FAA certificate or type rating.

6. Recurrent Training

You state that you are confused by the definition of “recurrent training” in the IFR because it includes periodic training required under 14 CFR part 61. TSA has clarified the definitions of “*recurrent training*” and “*flight training*” in a separate docket notice dated October 19, 2004.

The following question related to recurrent training was not raised in your letter. However, we received it from several other industry stakeholders, who noted that the definition of “recurrent training” in the IFR is limited to periodic training required under FAA regulations. These stakeholders asked whether it was the intent of the IFR to treat aliens who apply for similar periodic training for a foreign airman certificate as Category 4 (recurrent training) or Category 2 (expedited processing) candidates. In addition, several industry stakeholders noted that they employ alien pilots as instructor pilots under 14 CFR part 142, and that they receive recurrent training in conjunction with a required annual proficiency check to remain current and qualified. These stakeholders asked whether it was the intent of the IFR to include the periodic training required under 14 CFR part 142.

The IFR defines the term “recurrent training” as “periodic training required under 14 CFR part 61, 121, 125, 135, or Subpart K of part 91. Recurrent training does not include training that would

enable a candidate who has a certificate or type rating for a particular aircraft to receive a certificate or type rating for another aircraft.” TSA interprets this definition to include periodic training required by a foreign national authority that is recognized by the FAA (such as the Joint Aviation Authorities). TSA notes that the IFR requires a recurrent training candidate to submit a copy of his/her current U.S. pilot certificate, certificate number, and type rating(s). (49 CFR 1552.3(d)(1)(iv)). TSA interprets this provision to allow a recurrent training candidate who holds an airman certificate from a foreign country that is recognized by the FAA to submit that certificate and type rating(s) in lieu of a U.S. pilot certificate.

TSA also notes that the periodic training required under 14 CFR part 142 would not enable a candidate to receive a new certificate or type rating. Thus, TSA considers periodic training required under 14 CFR part 142 to be recurrent training.

#### 7. Preliminary Approval

The following question was not raised in your letter. However, we received it from several other industry stakeholders, who asked whether the IFR restricts the type of form that a flight school may issue to a candidate for purposes of the preliminary approval in 49 CFR 1552.23(g)(2) to an I-20 form.

Paragraph (g)(2) reads, in part: “For purposes of facilitating a candidate’s visa process with the U.S. Department of State, TSA may inform a flight school and a candidate that the candidate has received preliminary approval for flight training based on information submitted by the flight school or the candidate under this section. A flight school may then issue an I-20 form to the candidate to present with the candidate’s visa application.” (emphasis added)

We interpret this provision to permit a flight school to issue any form required by and acceptable to the Department of State for a candidate’s visa application, not just the I-20 form, after TSA has informed the flight school that the candidate has received preliminary approval.

#### 8. Security Awareness Training

You note that Section 612 of Public Law 108-176 generally imposes requirements on any “person operating as a flight instructor, pilot school, or aviation training center,” which clearly applies to individual flight instructors. You state that the one exception is paragraph (i), which mandates that the Secretary of Homeland Security require “flight schools” to conduct security awareness training. You state that the use of the term “flight school” rather than “person operating as a flight instructor, pilot school, or aviation training center” in this paragraph demonstrates an intent to exclude individual flight instructors from the security awareness training requirements.

We note that Section 612 does not define the term “flight schools.” The IFR defines the term “flight school” as “any pilot school, flight training center, air carrier flight training facility, or flight instructor certificated under 14 CFR part 61, 121, 135, 141, 142; or any other person or entity that provides instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of any aircraft or aircraft simulator.” TSA defined “flight school” to include individual flight instructors because the agency believes that individual flight instructors are just as likely to experience suspicious circumstances and activities of individuals applying for flight training as large flight schools. Thus, TSA believes that requiring individual flight instructors to receive security awareness training will benefit the flight instructors and help improve flight school security in general.

Under the IFR, individual flight instructors are required to conduct security awareness training for any of their employees, including themselves, who meet the definition of the term "flight school employee" in the IFR. The IFR provides the option of using a security awareness training program developed by TSA, which will be available at no cost to flight schools by contacting TSA or visiting the TSA General Aviation website at (<http://www.tsa.gov/public/display?theme=180>).

I hope you find this information helpful. If you need any further assistance with the IFR, please contact Dion Casey, Attorney-Adviser in the Office of Chief Counsel, at (571) 227-2663.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chad Wolf". The signature is written in a cursive style with a large, stylized "C" and "W".

Chad Wolf  
Assistant Administrator for Transportation Security Policy