



**Transportation
Security
Administration**

[January 5, 2004]

Docket No. TSA-2004-19147

Flight Schools and Individuals Subject to 49 CFR part 1552

RE: Interpretation of "Flight Training" for Aircraft with an MTOW of 12,500 Pounds or Less and Exemption from Certain "Recurrent Training" Information Submission Requirements Contained in 49 CFR part 1552

SUMMARY:

This submission is in response to comments received from flight schools subject to 49 Code of Federal Regulations (CFR) part 1552, and associations representing such flight schools. The Transportation Security Administration (TSA) is further clarifying the definition of flight training in aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or less to include only training that a candidate could use toward his or her initial airman's certificate of any type, multi-engine rating, or instrument rating. TSA is also exempting flight schools from certain information submission requirements for recurrent training contained in 49 CFR 1552.3(d)(2).

BACKGROUND:

On September 20, 2004, TSA published an interim final rule (IFR) that, in part, prohibits a flight school from providing flight training in the operation of an aircraft with an MTOW of 12,500 pounds or less to an alien unless the flight school notifies TSA that the alien has requested flight training, and the alien provides certain information to TSA. (69 FR 56324). The IFR implements statutory mandates under Section 612 of Vision 100 – Century of Aviation Reauthorization Act (Public Law 108-176, December 12, 2003, 117 Stat. 2490), which transferred responsibility for this program from the Department of Justice (DOJ) to TSA. The DOJ program applied only to flight training on aircraft with an MTOW of 12,500 pounds or more. It did not apply to flight training on aircraft with an MTOW of less than 12,500 pounds.

TSA requested and received comments from flight schools and trade associations representing flight schools, general aviation, and air carriers. In addition, TSA has held several meetings with major stakeholder groups who represent the flight training industry to discuss stakeholder concerns and requests for clarifications of the IFR. Based on the comments received and meetings with the stakeholders, TSA has decided to take the actions detailed below.

INTERPRETATION:

Flight Training in Aircraft with an MTOW of 12,500 Pounds or Less

As noted above, the IFR prohibits a flight school from providing flight training in the operation of an aircraft with an MTOW of 12,500 pounds or less to an alien unless the flight school notifies TSA that the alien has requested flight training, and the alien provides certain information to TSA.¹ TSA uses that information to perform a threat assessment of each alien, and an alien is required to submit a fee for each threat assessment. The IFR defines “flight training” as “instruction received from a flight school in an aircraft or aircraft simulator.”² TSA has interpreted this definition to include only that training that a candidate could use toward a new airman’s certificate or type rating.³

Flight schools and flight school associations have expressed concern over the number of threat assessments many alien flight students may be required to undergo in a short period of time. They note that many new students train for new type ratings in rapid succession. Under the IFR, alien students who do so are required to apply to TSA, and submit a fee, for each new certificate or rating. They argue that such repeated threat assessments are unnecessary from a security perspective and overly burdensome on alien flight students. They recommend that TSA limit the threat assessment requirement to training that a candidate could use toward an initial private airman’s certificate (or other entry-level certificate, such as a recreational or sport pilot certificate) and toward a multi-engine rating because these two types of training substantially enhance piloting skills.

After further consideration, TSA has determined that three types of training substantially enhance piloting skills, and thus should be subject to the threat assessment requirements in the IFR. The first is training that a candidate could use toward an initial private pilot certificate (or other entry-level certificate, including a recreational or sport pilot certificate) because such training provides a pilot with basic piloting skills. The second is training that a candidate could use toward a multi-engine rating because such training provides a pilot with access to larger, faster aircraft. The third is training that a candidate could use toward an instrument rating because such training enhances a pilot’s abilities to pilot an aircraft in bad weather and enables a pilot to better understand the instruments and physiological experiences of flying without reference to visual cues outside the aircraft. Because these three types of training substantially enhance a pilot’s skills, TSA has determined that the agency’s threat assessment efforts are best focused on alien pilots who apply for such training.

1. Accordingly, TSA is further clarifying the definition of flight training in aircraft with an MTOW of 12,500 pounds or less to include only training that a candidate could use toward the following certificates and ratings:
 - (a) The candidate’s initial pilot certificate, including a private, recreational, or sport pilot certificate.
 - (b) The multi-engine rating.
 - (c) The candidate’s instrument rating.

¹ 49 CFR 1552.3(c).

² 49 CFR 1552.1(b).

³ See “Interpretation of Certain Definitions and Exemption from Certain Requirements Contained in 49 CFR part 1552,” issued to Docket No. TSA-2004-19147 on October 19, 2004.

2. This clarification applies only to training in aircraft with an MTOW of 12,500 pounds or less. It does not affect training in aircraft with an MTOW greater than 12,500 pounds. TSA considers any training in aircraft with an MTOW greater than 12,500 pounds that a candidate could use toward a new pilot certificate or rating to be “flight training” subject to the requirements of the IFR.

EXEMPTION:

Under 49 U.S.C. 114(r), TSA may grant an exemption from a regulation prescribed in carrying out the agency’s duties if the agency determines that the exemption is in the public interest.

Recurrent Training Information Submission Requirements

The IFR requires flight schools to submit to TSA certain information regarding aliens who apply for recurrent training prior to providing such training.⁴ This information includes a photograph of the candidate, a copy of the candidate’s current passport and visa and current airman’s certificate, and other identifying and training information. Flight schools are able to submit most of this information via the Alien Flight Student Program (AFSP) website at <https://www.flightschoolcandidates.gov>. TSA does not perform a threat assessment on aliens who apply for recurrent training. Rather, TSA uses the information to determine whether the candidate is in fact applying for training that would be considered “recurrent training” under the IFR.

Flight schools and flight school associations have expressed concern over these information submission requirements. They contend that requiring flight schools to fax or email a photograph of the candidate as well as a copy of the candidate’s passport and visa is unnecessary from a security perspective because recurrent training does not enhance a pilot’s skills. Rather, it is designed to refresh skills that a pilot already possesses. They also argue that submitting such information is overly burdensome and time-consuming because they have to wait for a TSA response verifying that all of the submitted information is legible before they can provide the recurrent training.

After further consideration, TSA has determined that some of the information submission requirements for recurrent training may be redundant. TSA has determined that only the following information is necessary for that purpose: (1) the candidate’s full name and any aliases; (2) the candidate’s date of birth; (3) the candidate’s passport number and the issuing country of the passport; (4) the candidate’s airman’s certificate number, the type of certificate, any type ratings on the certificate, and the issuing country of the certificate; and (5) the type and dates of the candidate’s recurrent training. This will ease the information submission process by eliminating the requirement that flight schools fax or email a photograph of the candidate as well as a copy of the candidate’s passport, visa, and airman’s certificate. Flight schools will be able to submit all of this information over the AFSP website.

Accordingly, TSA is granting an exemption from 49 CFR 1552.3(d)(2) to all flight schools. This exemption is subject to the following conditions and limitations:

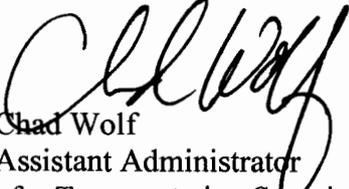
1. A flight school must submit the following information to TSA prior to beginning recurrent training for a “candidate,” as defined at 49 CFR 1552.1(b):

⁴ 49 CFR 1552.3(d)(2). Nothing in this notice affects the definition of “recurrent training” contained in the docket notice “Interpretation of Certain Definitions and Exemption from Certain Requirements Contained in 49 CFR part 1552” that was issued to Docket No. TSA-2004-19147 on October 19, 2004.

- (a) The candidate's full name and any aliases;
 - (b) The candidate's date of birth;
 - (c) The candidate's passport number and the issuing country of the candidate's passport
 - (d) The candidate's airman's certificate number, the type of airman's certificate, any type ratings on the certificate, and the issuing country of the certificate;
 - (e) The type and dates of training the candidate is applying for.
2. A flight school must certify under 18 U.S.C. 1001 that the candidate is applying for "recurrent training," as defined at 49 CFR 1552.1(b).
 3. A flight school must notify TSA that a candidate is applying for recurrent training at least 48 hours in advance of the recurrent training.
 4. This exemption will become effective January 4, 2005.
 5. This exemption will remain in effect until superseded.

If you have any questions regarding this notice, please contact Mike Derrick, Office of Aviation Security Policy, Transportation Security Administration Headquarters, East Building TSA-9, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-1198; e-mail Michael.Derrick@dhs.gov.

Sincerely,



Chad Wolf
Assistant Administrator
for Transportation Security Policy