



# Federal Register

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**Monday,  
September 20, 2004**

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**Part V**

## **Department of Homeland Security**

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**Transportation Security Administration**

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**49 CFR Part 1552**

**Flight Training for Aliens and Other  
Designated Individuals; Security  
Awareness Training for Flight School  
Employees; Interim Rule**

**DEPARTMENT OF HOMELAND SECURITY****Transportation Security Administration****49 CFR Part 1552**

[Docket No. TSA-2004-19147]

RIN 1652-AA35

**Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees**

**AGENCY:** Transportation Security Administration (TSA), Department of Homeland Security (DHS).

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** In response to recent statutory requirements, the Transportation Security Administration is requiring flight schools to notify TSA when aliens and other individuals designated by TSA apply for flight training. TSA is establishing standards relating to the security threat assessment process that TSA will conduct to determine whether such individuals are a threat to aviation or national security, and thus prohibited from receiving flight training. In addition, TSA is establishing a fee to cover a portion of the costs of the security threat assessments that TSA will perform under this rule. Finally, TSA is establishing standards relating to security awareness training for certain flight school employees. These requirements will help ensure that individuals who intend to use aircraft to perform terrorist attacks in the U.S. do not obtain flight training that would enable them to do so. These requirements also will improve security at flight schools.

**DATES:** *Effective Date:* This rule is effective September 20, 2004.

*Compliance Dates:* Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds must comply with the requirements of this rule regarding such training beginning October 5, 2004. Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less must comply with the requirements of this rule regarding such training beginning October 20, 2004.

*Comment Date:* Comments must be received by October 20, 2004.

**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>. 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 also may submit comments through the Federal eRulemaking 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.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual(s) listed in **FOR FURTHER INFORMATION CONTACT**.

*Reviewing Comments in the Docket:* You may review the public docket containing comments in person in 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 above. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:** *For questions related to flight training for aliens:* Timothy Upham, Credentialing Program Office, Transportation Security Administration Headquarters, East Building, Floor 8, TSA-19, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227-3940; e-mail: [Timothy.Upham@dhs.gov](mailto:Timothy.Upham@dhs.gov).

*For questions related to fees:* Randall Fiertz, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 12,

TSA-14, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227-2323; e-mail: [TSA-Fees@dhs.gov](mailto:TSA-Fees@dhs.gov).

*For questions related to security awareness training:* Michael Derrick, Office of Aviation Initiatives, Transportation Security Administration Headquarters, West Building, Floor 11, TSA-9, 601 South 12th Street, Arlington, VA 22202-4220; telephone: (571) 227-1198; e-mail: [Michael.Derrick@dhs.gov](mailto:Michael.Derrick@dhs.gov).

*For legal questions:* Dion Casey, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227-2663; e-mail: [Dion.Casey@dhs.gov](mailto:Dion.Casey@dhs.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

As required by Section 612 of Vision 100—Century of Aviation Reauthorization Act,<sup>1</sup> this final rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, operating administrations within DHS 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 this rulemaking. See **ADDRESSES** above for information on where to submit comments.

Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked and submitted to the address specified in the **ADDRESSES** 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 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

<sup>1</sup> Pub. L. 108-176, December 12, 2003, 117 Stat. 2490.

Homeland Security's FOIA regulation found in 6 CFR part 5.

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 rule, 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 the TSA to acknowledge receipt of your comments on this rulemaking, 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.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable. We may change this rulemaking in light of the comments we receive.

#### Availability of Rulemaking Document

You may obtain 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.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html); or

(3) Visiting the TSA's Law and Policy Web page at <http://www.tsa.dot.gov/public/index.jsp>.

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 or advice about compliance with statutes and

regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You may obtain further information regarding SBREFA on the Small Business Administration's Web page at <http://www.sba.gov/advo/laws/lib.html>.

#### Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and public comment. Section 612 requires TSA to promulgate an interim final rule (IFR) implementing the requirements of Section 612, including the fee provisions, not later than 60 days after the enactment of Vision 100. See the Background section below for a more detailed description of the Section 612 requirements.

TSA also believes there is good cause under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553) for issuing an interim final rule. Section 553(b) of the APA authorizes agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. 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 612 of Vision 100—Century of Aviation Reauthorization Act prohibits a flight school from providing flight training to aliens or other individuals designated by the Secretary of Homeland Security (referred to hereinafter as "candidates"), unless the candidate has first provided the Secretary with certain identifying information, and the Secretary has not determined that the candidate is a threat to aviation or national security. The Department of Justice (DOJ) currently performs this function. However, Section 612 transfers the responsibility for determining whether a candidate poses a threat to aviation or national security from the DOJ to TSA. To ensure that flight schools may continue to provide flight training only to candidates who do not pose a threat to aviation security, TSA must issue this rulemaking as quickly as possible. Although this regulation would prohibit flight schools from training aliens until the TSA security threat assessment program takes effect, this prohibition will not be known until this rule is issued.

TSA notes that the DOJ final rule, requiring candidates who apply for flight training at U.S. flight schools to be

screened, was issued on February 13, 2003. Thus, DOJ has performed this screening function for over a year. In developing this rule, TSA consulted with DOJ to address stakeholder concerns with the DOJ screening program. TSA also met with flight training providers, aircraft manufacturers, and other stakeholders to identify their areas of concern. As a result, TSA's issuance of this interim final rule is not likely to have significant adverse impacts on the regulated community.

For these reasons, TSA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. However, TSA is requesting public comments on all aspects of the rule. If, based upon information provided in public comments, TSA determines that changes to the rule are necessary to address transportation security more effectively, or in a less burdensome but equally effective manner, the agency will not hesitate to make such changes.

This IFR will take effect upon publication in the **Federal Register**. Section 553(d) of the APA mandates that a substantive rule may take effect no less than 30 days after the date it is published in the **Federal Register**, unless as otherwise provided by the agency for "good cause."

The DOJ will stop accepting completed applications from candidates under its rule on September 28, 2004, and thereafter will not accept any further training applications. Section 612 prohibits a flight school from providing flight training to candidates, unless the candidate first provides TSA with certain identifying information, and TSA does not determine that the person is a threat to aviation or national security. Thus, flight schools will be barred from providing flight training to candidates until the IFR establishing the TSA security threat assessment program takes effect. This could have a significant adverse economic impact on flight schools.

Moreover, as noted above, TSA consulted extensively with DOJ to address stakeholder concerns with the DOJ program and met with flight training providers, aircraft manufacturers, and other stakeholders to identify their areas of concern. TSA also is using an application process similar to the DOJ process, including the use of the same Web site for submission of information. Thus, the agency believes that both candidates and flight schools will be able to comply with the requirements of the IFR fairly easily.

In addition, the security benefits of the rule also justify making the rule

effective upon publication. Doing so will eliminate any gap between the DOJ program and implementation of the TSA program. In the event that information on flight school candidates is submitted to TSA after the DOJ program has ended, TSA will be in a position to identify individuals who pose a risk and should not be trained. An additional security benefit of implementing this regulation as soon as possible is that the TSA program applies to candidates for training on aircraft whose maximum takeoff weight is below 12,500 pounds; the DOJ program does not apply to these candidates. It is important that these candidates be evaluated as soon as practicable because training in the operation of these smaller aircraft can be sufficient to allow a candidate to operate a larger aircraft.

Finally, the IFR provides two compliance dates, one for flight training in the operation of aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds and another for flight training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less. Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds must comply with the requirements of this rule regarding such training beginning October 5, 2004. Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less must comply with the requirements of this rule regarding such training beginning October 20, 2004. TSA believes that flight schools and individuals who train in smaller aircraft will need additional time to comply with the IFR because they currently are not subject to the DOJ rule, as are flight schools and individuals who train in larger aircraft.

For these reasons, TSA finds good cause for this IFR taking effect upon publication in the **Federal Register**.

#### Abbreviations and Terms Used in This Document

Administrator—Administrator of the Transportation Security Administration  
 ATSA—Aviation and Transportation Security Act  
 DHS—Department of Homeland Security  
 DOD—Department of Defense  
 DOJ—Department of Justice  
 FAA—Federal Aviation Administration  
 FBI—Federal Bureau of Investigation  
 FTCCP—Flight Training Candidate Checks Program  
 GA—General Aviation  
 IFR—Interim Final Rule  
 INS—Immigration and Naturalization Service

MTOW—Maximum Certificated Takeoff Weight  
 Secretary—Secretary of Homeland Security  
 TSA—Transportation Security Administration  
 USCIS—United States Citizenship and Immigration Services  
 Vision 100—Vision 100—Century of Aviation Reauthorization Act

### I. Background

#### A. Aviation and Transportation Security Act

On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA).<sup>2</sup> Under Section 113 of ATSA (49 U.S.C. 44939), certain aviation training providers were prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless the aviation training provider notified the Attorney General of the identity of the candidate seeking training, and the Attorney General did not notify the aviation training provider within 45 days that the candidate presented a threat to aviation or national security. If the Attorney General determined that a candidate presented a threat to aviation or national security more than 45 days after receiving notification from the training provider, the Attorney General was required to notify the training provider, and the training provider was required to terminate the training immediately.

For purposes of Section 113, flight training included in-flight training, training in a simulator, and any other form or aspect of training.

Also, under Section 113 the training provider was required to furnish the Attorney General with the candidate's identification in a form required by the Attorney General. Thus, the Attorney General had the discretion to request a wide variety of information from a candidate in order to determine whether the candidate presented a threat to aviation or national security.

#### B. Department of Justice Rule

On February 13, 2003, the Department of Justice (DOJ) issued a final rule implementing Section 113 of ATSA.<sup>3</sup> The DOJ rule applies to individual training providers, training centers, certificated carriers, and flight schools, including those located in countries other than the United States if they provided training leading to a U.S. license, certification, or rating (referred to as "providers" in the DOJ rule). The

DOJ rule does not apply to any military training provided by the Department of Defense (DOD), the U.S. Coast Guard, or an entity under contract with the DOD or Coast Guard because such training is not subject to FAA regulations. Under the DOJ rule, "training" includes any instruction in the operation of an aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or more, including ground school, flight simulator, and in-flight training, but not the provision of training manuals or other materials or mechanical training that would not enable the trainee to operate such an aircraft in flight.

The DOJ rule requires a provider to submit to DOJ certain identifying information (including fingerprints and financial information) for each alien and other individual designated by the Administrator of TSA<sup>4</sup> (referred to as "candidates" in the DOJ rule) before the provider may provide training to the candidate. A provider is not required to submit such information for U.S. citizens or nationals, unless they have been designated by the Administrator of TSA. An individual seeking training may establish U.S. citizenship or nationality by showing the provider certain documentation, such as a valid, unexpired U.S. passport or birth certificate or a selection of U.S. Citizenship and Immigration Services (USCIS) or Immigration and Naturalization Service (INS) forms documenting naturalization.

The DOJ rule provides for two types of processing, expedited and non-expedited. Expedited processing is typically completed within 5 to 15 days of receiving all of a candidate's identifying information, while non-expedited processing is typically completed within 45 days of receiving all of a candidate's identifying information (including fingerprints). A candidate is eligible for expedited processing if he or she is part of any of several categories of pilots whom the Attorney General has determined present a minimal additional risk to aviation or national security, including foreign nationals who are current and qualified as a pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA for aircraft with an MTOW of over 12,500 pounds. If a candidate does not fall into any of these categories, he or she must undergo the non-expedited processing.

Either a provider or a candidate must submit the candidate's identifying

<sup>2</sup> Pub. L. 107-71, 115 Stat. 597, November 19, 2001.

<sup>3</sup> 68 FR 7313, February 13, 2003.

<sup>4</sup> The Administrator is now known as the Assistant Secretary of Homeland Security for TSA.

information to DOJ via the Internet at <https://www.flightschoolcandidates.gov>. A candidate's fingerprints must be taken by, or under the supervision of, a Federal, State, or local law enforcement agency, by another entity approved by DOJ, or, where available, by U.S. Government personnel at a U.S. embassy or consulate. A candidate is required to pay for all costs associated with taking and processing his or her fingerprints.

DOJ performs a risk assessment based on the information submitted by the candidate and the provider. If DOJ determines that a candidate does not present a risk to aviation or national security, DOJ notifies the candidate and/or the provider electronically that the provider may initiate the candidate's training. If DOJ determines that a candidate does present some risk to aviation or national security, DOJ notifies the provider electronically that training is prohibited or must be terminated.

If DOJ does not complete a candidate's risk assessment within the appropriate time period, the provider may initiate the candidate's training. However, if DOJ subsequently determines that the candidate presents a risk to aviation or national security, DOJ notifies the provider, and the provider is required to cease the candidate's training.

### C. Section 612 of Vision 100—Century of Aviation Reauthorization Act

On December 12, 2003, Congress enacted Vision 100—Century of Aviation Reauthorization Act. Section 612 of Vision 100 makes several changes to 49 U.S.C. 44939. First, it transfers the threat assessment requirements from the Attorney General to the Secretary of Homeland Security, and requires the Secretary to issue an interim final rule (IFR) implementing Section 612. Second, its applicability is clarified to cover "a person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part."

Third, Section 612 specifies various categories of identifying information the Secretary can require providers to submit for candidates for training in the operation of aircraft with an MTOW of greater than 12,500 pounds. Section 113 of ATSA required a candidate's identifying information to be submitted "in such form as the Attorney General may require." (49 U.S.C. 44939 (a)(1)). However, Section 612 provides that the Secretary may require the following information to be submitted: the candidate's full name, including any aliases or variations in spelling;

passport and visa information; country of citizenship; date of birth; dates of training; and fingerprints.

Fourth, Section 612 reduces the time a provider must wait after submission of a candidate's information before initiating training for a candidate, and thus the time the Secretary has to conduct a threat assessment, from 45 days to 30 days. It also requires the Secretary to establish a process to ensure that the waiting period for certain classes of pilots, such as pilots who are employed by a foreign air carrier that is certified under 14 CFR part 129 and that has a security program approved under 49 CFR part 1546, does not exceed 5 days.

Fifth, Section 612 adds a notification requirement for training in the operation of aircraft with an MTOW of 12,500 pounds or less. It prohibits a flight training provider from providing training in the operation of an aircraft having an MTOW of 12,500 pounds or less to an alien or any other individual specified by the Secretary unless the provider has notified the Secretary that the individual has requested such training and furnished the Secretary with the individual's identification in a form required by the Secretary. It requires a provider to submit a candidate's identifying information "in such form as the Secretary may require." (49 U.S.C. 44939 (c)).

Sixth, Section 612 authorizes the Secretary to assess a fee for the threat assessment. The fee may not exceed \$100 (exclusive of the cost of collecting and transmitting fingerprints from overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Secretary may adjust the fee to reflect the costs of the threat assessment.

Seventh, Section 612 specifies that the threat assessment requirements do not apply to foreign military pilots who are endorsed by the DOD for flight training in the U.S.

Eighth, Section 612 clarifies the definition of training that was in place under Section 113 of ATSA. Section 113 defined "covered training" as "in-flight training, training in a simulator, and any other form or aspect of training." (49 U.S.C. 44939(c)). Under Section 612, "training" means "training received from an instructor in an aircraft or aircraft simulator and does not include recurrent training, ground training, or demonstration flights for marketing purposes."

Finally, Section 612 mandates that the Secretary require flight schools to conduct a security awareness program for flight schools to increase their awareness of suspicious circumstances

and activities of individuals enrolling in or attending flight school.<sup>5</sup> This mandate was put in effect under Section 113 of ATSA and was repeated in Section 612.

## II. Summary of the Interim Final Rule (IFR)

This IFR prohibits a flight school from providing flight training to aliens and other individuals designated by TSA (candidates) unless the flight school or the candidate submits certain information to TSA, the candidate remits the specified fee to TSA, and TSA determines that the candidate is not a threat to aviation or national security. Under the IFR, there are four categories of candidates. Category 1 is for candidates who are not eligible for expedited processing for flight training in the operation of aircraft weighing greater than 12,500 pounds. Category 2 is for candidates who are eligible for expedited processing for flight training in the operation of aircraft weighing greater than 12,500 pounds. Category 3 is for candidates applying for flight training in the operation of aircraft weighing 12,500 pounds or less. Category 4 is for candidates applying for recurrent training. Candidates in Categories 1–3 are required to submit training information, such as the type of training the candidate is requesting, and identifying information, including fingerprints. Flight schools are required to submit similar training and identifying information for candidates in Category 4, but are not required to submit the candidates' fingerprints.<sup>6</sup> TSA intends to use a process for submitting information similar to the current DOJ process, including the use of the same Web site for applying and submitting information to TSA.

The IFR sets the time periods a flight school must wait for TSA approval before the school may initiate a candidate's training, and thus the time period TSA has to conduct a candidate's threat assessment. For Category 1 candidates (regular processing), a flight school must wait 30 days after TSA receives all the required information, including the specified fee and the candidate's fingerprints. For Category 2 candidates (expedited processing), a flight school must wait 5 days after TSA receives all the required information.

<sup>5</sup> The Secretary delegated his responsibilities under Section 612 to TSA.

<sup>6</sup> As explained further below, Category 4 candidates are not required to submit fingerprints because TSA is not conducting a security threat assessment for them. The agency is only verifying that Category 4 candidates are applying for recurrent training. Thus, TSA does not require Category 4 candidates' fingerprints.

For candidates in Categories 3 (training for aircraft 12,500 pounds or less) and 4 (recurrent training), a candidate (or a flight school for Category 4 candidates) must submit the specified information to TSA before the flight school may initiate the candidate's training, but the flight school is not required to wait for TSA approval. However, if TSA determines that any candidate, including candidates in Categories 3 and 4, is a threat to aviation or national security, or that the candidate is not receiving recurrent training, after the flight school has initiated the candidate's training, the IFR requires the flight school immediately to cancel or otherwise terminate the candidate's training.

The IFR also establishes a fee for the security threat assessments that TSA will perform and procedures for candidates to remit the fee to TSA. Candidates in Categories 1–3 are required to pay the same \$130 fee per application. Candidates in Category 4 are not required to pay a fee.

Finally, the IFR requires flight schools to provide security awareness training for certain flight school employees and establishes standards and criteria such security awareness training programs must meet.

### III. Discussion of the IFR

#### A. Flight Training for Aliens and Other Designated Individuals

##### 1. Scope and Definitions

This IFR creates a new part 1552 in title 49 of the Code of Federal Regulations (CFR). Subpart A applies to flight schools, as defined below, and to individuals who apply to obtain flight training. As noted above, Section 612 of Vision 100 specifies that the threat assessment requirements apply only to aliens and other individuals designated by the Secretary, and do not apply to U.S. citizens or nationals or foreign military pilots who are endorsed by the DOD for flight training in the U.S. However, Subpart A requires U.S. citizens and nationals and foreign military pilots endorsed by the DOD to submit certain information that will enable TSA to verify their status as U.S. citizens or nationals or DOD endorsees.

“Alien” is defined as any person not a citizen or national of the United States, as mandated at 8 U.S.C. 1101(a)(3) and in Section 612 of Vision 100.

“National of the United States” is defined as a person who, though not a citizen of the United States, owes permanent allegiance to the United States. This is the definition of the term at 8 U.S.C. 1101.

“Candidate” is defined as an alien or other individual designated by TSA who applies for flight training. It does not include an individual endorsed by the Department of Defense for flight training.

“Day” is defined two different ways, depending on the time period specified in the IFR. If the IFR specifies a time period of less than 11 days, such as the 5-day waiting period for expedited processing candidates, the term “day” means a day from Monday through Friday. This excludes Saturdays and Sundays and Federal holidays, but includes State and local holidays. If the IFR specifies a time period of greater than 11 days, such as the 30-day waiting period for regular processing candidates, the term “day” means a calendar day.

This definition of the term “day” is consistent with the computation of time periods under the Federal Rules of Civil Procedure (FRCP). Rule 6 of the FRCP provides that when a period of time prescribed or allowed under the FRCP is less than 11 days, weekends and legal holidays are excluded from the computation. The legal holidays specified in Rule 6 include New Year's Day, Birthday of Martin Luther King Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. These are the Federal holidays referred to in the definition of “day” in this IFR.

In addition, in light of the extremely short time periods TSA has to conduct the security threat assessment required under Section 612, TSA believes that days must be limited to business days. Otherwise there could be situations in which the agency would have little time to perform a threat assessment. For example, if a candidate who is eligible for expedited processing under this part (a 5-day waiting period) submits his or her information to TSA on the Friday before a Federal holiday weekend, such as Labor Day or Christmas, TSA essentially would have only 2 days to perform that candidate's security threat assessment because of the weekend and the holiday. TSA believes that Congress, in enacting Section 612, intended TSA to conduct a thorough threat assessment on each alien and other individual designated by TSA who applies for flight training in the U.S. TSA believes that excluding weekends and Federal holidays from the waiting period under this part, which gives the agency sufficient time to conduct a thorough

threat assessment, is in accordance with that intent.

“Flight school” is defined 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 is defining this term broadly to include any individual, as well as any entity, that provides such instruction. This definition also includes any individual or entity located outside of the U.S. that provides such instruction. For example, a flight school located in Canada that provides instruction in the operation of an aircraft or aircraft simulator under 49 U.S.C. Subtitle VII, Part A, that would enable an individual to receive a U.S. Airman's Certificate is subject to this rule.

“Flight training” is defined as instruction received from a flight school in an aircraft, or aircraft simulator. As specified in Section 612 of Vision 100, the term does not include recurrent training, ground training, or demonstration flights for marketing purposes. Section 612 of Vision 100 also provides that the requirements of the TSA program do not apply to a foreign military pilot endorsed by the Department of Defense (DOD). The DOJ rule excludes military flight training provided by DOD, the U.S. Coast Guard, or any entity under contract with DOD or the U.S. Coast Guard, and TSA has retained the exclusion in this IFR.

“Aircraft simulator” is defined as a flight simulator or flight training device, as those terms are defined at 14 CFR 61.1.

“Recurrent training” is defined as periodic training required for employees of certificated aircraft operators under 14 CFR part 61, 121, 125, 135, or Subpart K of part 91. Recurrent training programs are established by these operators and approved by the FAA for flight crewmembers to remain proficient in the performance of their duties during common carriage in an aircraft for compensation or hire. For the purposes of this IFR, recurrent training shall pertain only to those candidates who are current and qualified as a pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA; who are employed by a carrier approved under 14 CFR parts 121, 125, 135, or Subpart K of part 91; and who are applying for training while still current and prior to the end of their grace month as established by their previously documented recurrent

training course. For example, a candidate who was approved for flight training in a particular type of aircraft, and who has a unique student identification number in the TSA database that indicates he or she was approved by TSA for flight training in that type of aircraft, will be considered applying for recurrent training if he or she applies for training in the same type of aircraft as previously approved.<sup>7</sup>

TSA notes that there is no definition of the term "recurrent training" in 14 CFR part 61. Recurrent training is a term specific to flight crewmember training requirements in 14 CFR parts 121, 125 and 135 aircraft operators, and more recently of Fractional Ownership programs regulated under 14 CFR part 91, Subpart K. TSA notes that this definition of "recurrent training" is applicable to both training in aircraft with an MTOW greater than 12,500 pounds and in aircraft with an MTOW of 12,500 pounds or less.

"Ground training" is defined as classroom or computer-based instruction in the operation of aircraft, aircraft systems, or cockpit procedures. This ground training includes the provision of written materials, such as manuals, but does not include instruction in a computer-based aircraft simulator.

"Demonstration flight for marketing purposes" is defined as a flight for the purpose of demonstrating an aircraft's or aircraft simulator's capabilities or characteristics to a potential purchaser, or to an agent of a potential purchaser, of the aircraft or simulator. For example, when an aircraft manufacturer delivers an aircraft to a purchaser, the purchaser typically takes the aircraft for what is known as an acceptance flight so that the purchaser can check for any potential discrepancies. During an acceptance flight, the purchaser may ask the aircraft manufacturer pilot about the operation of some aircraft equipment. Such an acceptance flight is a demonstration flight for marketing purposes, not flight training, under the IFR.

## 2. General Requirements

For candidates in Categories 1–3, the IFR generally prohibits a flight school from providing flight training to a candidate unless: (i) the flight school notifies TSA that the candidate has requested such flight training; (ii) the

candidate has submitted certain information to TSA; (iii) the flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training; and (iv) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security. The information submitted by the candidate must be in a form and manner acceptable to TSA. To the extent possible, TSA intends to use the DOJ process for submitting the required information to TSA. TSA intends to continue using the DOJ Web site, with modifications, at <https://www.flightschoolcandidates.gov>. The candidate is required to submit information to TSA electronically via the Web site in accordance with the procedures described below.<sup>8</sup> The candidate is required to electronically sign a form that is submitted with the required information.

For candidates in Category 4, the flight school must submit certain identifying and training information electronically via the Web site. The flight school also must submit to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives for flight training. TSA is requiring flight schools to submit a photograph of the candidate when the candidate arrives at the flight school for flight training to help ensure that the person who was cleared by TSA is the person who receives the flight training. TSA will check the photograph submitted by the flight school against the photograph of the candidate that is taken when he or she enters the U.S. TSA intends to accept photographs either electronically (digital or scanned photo sent by e-mail) or via fax. The email address and fax numbers where the photographs may be sent will be available on the Web site. TSA requests comment on this requirement.

In addition, for all categories of candidates a flight school will be required to verify that a candidate has applied for training at that school. To ensure that only FAA-certificated flight schools verify this information, flight schools are required to register for initial access to the TSA system through the FAA. Flight schools should register through their local FAA Flight Standards District Office (FSDO). Upon registration, flight schools will be sent (via e-mail) a password to access the

system. TSA notes that flight schools that have registered under the DOJ's program will not be required to register again under the TSA program. TSA intends to transfer the information from the DOJ database to the TSA database.

If a flight school makes a willful false statement, or omits a material fact, when submitting the information required under this part, the flight school may be subject to enforcement action. For example, the flight school may be subject to civil penalties under 49 U.S.C. 46301 and 49 CFR 1503. If a candidate makes a knowing and willful false statement, or omits a material fact, when submitting the information required under this part, the candidate may be subject to fine or imprisonment or both under 18 U.S.C. 1001; will be denied approval for flight training under this part; and may be subject to other enforcement action, as appropriate.<sup>9</sup>

TSA considers the flight school's or candidate's electronic signature a sufficient certification that the information provided is truthful and accurate. TSA also considers the electronic signature a sufficient certification for civil penalties under 49 U.S.C. 46301 and 49 CFR 1503, punishment under 18 U.S.C. 1001, and denial of training under this part if the information provided is not truthful and accurate.

TSA notes that the U.S. Department of State requires issuance of an I–20 form by the flight school before issuing the candidate a student visa. Thus, for purposes of expediting a candidate's visa process with the U.S. Department of State, TSA may give a flight school preliminary approval of a candidate so that the school may issue an I–20 form and the candidate may receive his or her visa and begin classroom instruction or other training not subject to the IFR. Preliminary approval from TSA will not impact the Department of State's normal visa procedures. A candidate who receives preliminary approval for flight training from TSA may still be denied a visa by the Department of State.

The preliminary approval will be based on all information required to be submitted for the online application, which is, in turn, based on information required to be submitted under the IFR. Typically, this information will not include the candidate's fingerprints since the fingerprinting process may be time-consuming or logistically impossible for some candidates. Thus, TSA may provide preliminary approval of a candidate to the candidate and the flight school, if the candidate has

<sup>7</sup> To ease the application process, as well as TSA's determination as to whether a candidate is applying for recurrent training, TSA intends to track candidates using their unique student identification number. This will make it easier to track candidates who apply for training at different flight schools.

<sup>8</sup> Candidates will be required to complete a TSA form, located on the Web site, and submit the form to TSA electronically.

<sup>9</sup> For example, a candidate may be subject to civil penalties under 49 CFR 1540.103.

submitted all the required information, except for his or her fingerprints.<sup>10</sup> For all categories of candidates, both the candidate and the flight school will receive notification of preliminary approval from TSA. The flight school then may issue the I-20 form and, if the candidate is issued a visa, may initiate the candidate's classroom instruction or other training not subject to the IFR. However, if TSA, based on the candidate's fingerprint or other information subsequently disclosed, determines that a candidate poses a threat to aviation or national security, TSA will inform the flight school, and the flight school must immediately terminate or cancel the candidate's training.

### 3. Requirements for Different Categories of Candidates

#### *a. Category 1—Regular Processing for Flight Training on Aircraft More Than 12,500 Pounds*

Candidates who are not eligible for expedited processing under the IFR (Category 1 candidates) must complete an electronic form, similar to the DOJ's Flight Training Candidate Checks Program (FTCCP) form, that will be available on the Web site at <https://www.flightschoolcandidates.gov>. Candidates must sign the form electronically, and submit it electronically to TSA. TSA will not accept any paper submissions of this form.

To confirm that a candidate has applied for flight training at the flight school specified in the candidate's form, TSA will forward the candidate's information to the flight school and ask for verification that the candidate has applied for training at that flight school. The flight school must verify that the candidate has applied for training at that flight school via the Web site <https://www.flightschoolcandidates.gov>.

Category 1 candidates must submit the following information: (1) The candidate's full name, including any aliases used, or variations in the spelling of his or her name; (2) a unique student identification number as a means of identifying records concerning the candidate;<sup>11</sup> (3) a legible copy of the candidate's current, unexpired passport and visa;<sup>12</sup> (4) the candidate's passport

and visa information, including all current and previous passports and visas held by the candidate and all the information necessary to obtain a passport or visa;<sup>13</sup> (5) the candidate's country of birth, current country or countries of citizenship, and each previous country of citizenship, if any; (6) the candidate's actual date of birth or, if the candidate does not know his or her date of birth, the approximate date of birth used consistently by the candidate for his or her passport or visa; (7) the dates and location of the candidate's requested training; (8) the type of training for which the candidate is applying, including the aircraft type rating the candidate would be eligible to obtain upon completion of the training; (9) the candidate's current U.S. pilot certificate, certificate number, and type rating, if any; (10) the candidate's fingerprints; (11) the candidate's current address and telephone number, as well as each address for the 5 years prior to the date of the candidate's application; and (12) the candidate's gender. Candidates also are required to submit the fee specified under this part. The fee requirements are discussed in further detail below.

This information is either specified under Section 612 of Vision 100, is necessary for TSA to determine the identity of the candidate, or is necessary for TSA to determine what type of training a candidate is applying to receive. TSA believes that the information that is required under the IFR but not specified under Section 612 will aid the agency in performing the threat assessment more quickly and accurately, and thus will result in shorter waiting times and fewer false positives. For example, a candidate's country of birth is not specified under Section 612 but is required under the IFR. In consulting with the DOJ on the assessment it performs, TSA learned that knowledge of a candidate's country of birth greatly aided the DOJ in narrowing its searches of the necessary databases. Because the waiting times under Section 612 are significantly shorter, TSA believes that information that will significantly aid the agency in performing the threat assessment quickly and accurately is necessary. Moreover, TSA believes that the usefulness of this information (*i.e.*, faster and more accurate threat assessments) will substantially outweigh the burden of providing it.

electronically, or copy his or her complete passport and fax it to TSA using the fax number provided on the Web site.

<sup>13</sup> More details on the type of visa and passport information required will be available on the Web site.

Thus, TSA adopted several of the information requirements that were not specified in Section 612 but were in the DOJ rule, including the country of birth requirement.

A candidate is required to submit his or her fingerprints to TSA as part of the identification process. A candidate must complete the TSA form and submit it to TSA electronically before the candidate submits his or her fingerprints so that TSA can match the candidate's information with his or her fingerprints.

During the first six months after this IFR takes effect, the candidate's fingerprints must be collected either: (1) By, or under the supervision of, a U.S. Federal, State, or local law enforcement agency; (2) by U.S. Government personnel at a U.S. embassy or consulate that possesses appropriate fingerprint collection equipment and personnel certified to capture fingerprints; or (3) by another entity approved by the Federal Bureau of Investigation (FBI) or TSA, including airports that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints.<sup>14</sup> A TSA contractor, the Association of American Airport Executives (AAAE), will provide flight schools with a fingerprinting package. Candidates will be able to obtain the fingerprinting package from the flight school where they are applying for flight training or directly from AAAE. The candidate will be required to take the fingerprinting package to the entity that captures the candidate's fingerprints. That entity will capture the candidate's fingerprints and forward them to AAAE. AAAE will convert them to electronic form and then forward the electronic fingerprints to TSA for use in the security threat assessment.

After the first six months, TSA is planning for implementation of a new fingerprint capture process. TSA is working with the U.S. Citizenship and Immigration Services (CIS) to allow candidates to have their fingerprints captured at CIS Application Support Centers (ASC). At least one ASC is located in each State, as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. TSA is also working with the Department of State to allow candidates to have their fingerprints captured overseas at U.S. embassies and consulates. TSA will inform candidates via the Web site of any changes in the fingerprint capture requirements, including the locations of any ASCs, embassies, or consulates that

<sup>14</sup> TSA will provide a list of airports with fingerprint capture capabilities on the Web site.

<sup>10</sup> TSA notes that the waiting period does not begin until TSA receives all the information required under the IFR, including the candidate's fingerprints.

<sup>11</sup> When a candidate or flight school completes the TSA form on the Web site and submits it to TSA, the Web site generates a unique identification number for that candidate.

<sup>12</sup> A candidate may either scan his or her complete passport and submit it to TSA

are capable of capturing candidate fingerprints.

The candidate is required to confirm his or her identity to the entity taking his or her fingerprints by showing the entity his or her passport (if a non-resident alien), or resident alien card or U.S. driver's license (if a resident alien). The candidate also must pay for the cost of collecting and transmitting his or her fingerprints to TSA. Those costs are not part of the TSA fee.

Under the IFR, a flight school is prohibited from providing flight training to a Category 1 candidate until TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or the appropriate waiting period has expired. For Category 1 candidates, the waiting period is 30 days. The waiting period does not begin until TSA has received all the information required under the IFR, including a candidate's fingerprints and the fee required under this part.

Under the IFR, a flight school may initiate a Category 1 candidate's flight training if TSA has not informed the flight school whether the candidate poses a threat to aviation or national security within 30 days. However, if TSA notifies the flight school that a candidate poses a threat to aviation or national security at any time, the flight school must immediately terminate or cancel the candidate's flight training.

Once TSA informs a flight school that a candidate is not a threat to aviation or national security, or the 30-day waiting period has expired, the flight school must initiate the candidate's flight training within 180 days. If the flight school does not initiate the candidate's flight training within 180 days, the flight school or the candidate must resubmit to TSA the information required in the TSA form, including the required fee, but not the candidate's fingerprints. The flight school then must wait until TSA informs the flight school that a candidate is not a threat to aviation or national security or until the appropriate waiting period expires (for Category 1 candidates, 30 days after TSA receives all the required information, including the candidate's fingerprints and the required fee) before initiating the candidate's flight training. As discussed in the section on fees, a candidate is required to submit the required fee each time he or she is required to apply for a TSA security threat assessment.

*b. Category 2—Expedited Processing for Flight Training on Aircraft More Than 12,500 Pounds*

Section 612 of Vision 100 mandates that certain types of candidates be

eligible for expedited processing. These are candidates who: (1) Hold an airman's certificate from a foreign country that is recognized by the FAA or a U.S. military agency, and that permits the candidate to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds; (2) are employed by a foreign air carrier that operates under 14 CFR part 129 and that has a security program approved under 49 CFR part 1546; (3) have unescorted access authority to a secured area of an airport under 49 U.S.C. 44936(a)(1)(A)(ii), 49 CFR 1542.209, or 49 CFR 1544.229; (4) are a flightcrew member who has successfully completed a criminal history records check in accordance with 49 CFR 1544.230; or (5) are part of a class of individuals to which TSA has determined that providing flight training poses a minimal threat to aviation or national security because of the flight training already possessed by that class of individuals.<sup>15</sup>

Under the IFR, candidates who meet any of these criteria are eligible for expedited processing (Category 2 candidates). Category 2 candidates are required to submit the same information required of Category 1 candidates, including their fingerprints. They also are required to submit information that establishes that they are eligible for expedited processing, such as a copy of their security identification display area (SIDA) badge. TSA will specify the information that establishes that a candidate is eligible for expedited processing on the TSA Web site.

TSA believes that it is necessary to require Category 2 candidates to submit their fingerprints to ensure a thorough security threat assessment. The threat assessment consists, in part, of checks of databases that may be searched only through fingerprint information.

Under the IFR, a flight school is prohibited from providing flight training to a candidate until TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or the appropriate waiting period has expired. For Category 2 candidates, the waiting period is 5 days. The waiting period does not begin until TSA has received all the information required under the IFR, including the candidate's fingerprints and the required fee.

Under the IFR, a flight school may initiate a Category 2 candidate's flight training if TSA has not informed the

flight school whether the candidate poses a threat to aviation or national security within 5 days. However, if TSA notifies a flight school that a candidate poses a threat to aviation or national security at any time, the flight school must immediately terminate or cancel the candidate's flight training.

Once TSA informs a flight school that a Category 2 candidate is not a threat to aviation or national security, a flight school must initiate the candidate's flight training within 180 days. If the flight school does not initiate the candidate's flight training within 180 days, the flight school or candidate must resubmit to TSA the information required in the TSA form, including the required fee, but not the candidate's fingerprints. The flight school then must wait until TSA informs the flight school that a candidate is not a threat to aviation or national security, or until 5 days after TSA receives all the required information before initiating the candidate's flight training. As discussed in the section on fees, a candidate is required to submit the required fee each time he or she is required to submit information for a TSA security threat assessment.

*c. Category 3—Flight Training on Aircraft 12,500 Pounds or Less*

The IFR prohibits a flight school from providing flight training in the operation of any aircraft having an MTOW of 12,500 pounds or less to an alien or any other individual specified by TSA unless the flight school notifies TSA that the candidate has requested such flight training, and the candidate submits to TSA certain identifying and training information. The information submitted by the candidate must be in a form and manner acceptable to TSA. TSA intends to use the same form and process for submitting the required information to TSA that the agency will use for flight training for aircraft with an MTOW greater than 12,500 pounds. Thus, the candidate must complete the same TSA form on the TSA Web site and submit the form electronically to TSA. The candidate is required to submit the same information as a candidate for flight training for aircraft with an MTOW greater than 12,500 pounds, including the candidate's fingerprints.

TSA is requiring candidates for this type of flight training to submit the same information, including fingerprints, because an individual who receives flight training on aircraft with an MTOW of 12,500 pounds or less may be familiar enough with aircraft operations to operate an aircraft with an MTOW greater than 12,500 pounds.

<sup>15</sup> Currently, TSA has not designated any such class of individuals. However, if TSA does designate such a class of individuals in the future, the agency will do so through a rulemaking process.

TSA notes that nine of the nineteen September 11 hijackers received flight training on aircraft with an MTOW of less than 12,500 pounds. The agency also believes that requiring candidates for flight training on aircraft with an MTOW of 12,500 pounds or less will not be overly burdensome because a flight school is not required to wait until TSA approves the candidate before initiating the candidate's training. A flight school may initiate the candidate's training as soon as the candidate provides all the information required under this section, including the candidate's fingerprints and the required fee.<sup>16</sup> For these reasons, TSA believes that candidates for flight training on aircraft with an MTOW of 12,500 pounds or less should undergo the same security threat assessment as candidates for flight training on aircraft with an MTOW greater than 12,500 pounds.

Section 612 of Vision 100 only requires flight schools to notify TSA when a candidate applies for flight training for aircraft with an MTOW of 12,500 pounds or less, and to provide TSA with the candidate's identification in such form and manner as TSA may require. Section 612 does not require flight schools to wait for TSA approval before initiating such training for candidates.<sup>17</sup> Thus, the IFR does not require flight schools to wait for TSA approval before initiating such training for Category 3 candidates.

However, the IFR does require a flight school to terminate or cancel a Category 3 candidate's flight training immediately if TSA notifies the flight school that the candidate poses a threat to aviation or national security at any time. Although Section 612 does not specifically mandate this, TSA believes such a requirement is necessary to carry out the intent of the statute—preventing individuals who pose a threat to aviation or national security from obtaining flight training, and thus preventing them from conducting terrorist attacks using aircraft.

#### *d. Additional or Missed Flight Training*

Under the IFR, a Category 1, 2, or 3 candidate who has received TSA approval for flight training and completes the flight training may take additional flight training without

resubmitting his or her fingerprints if he or she submits all the other required information, including the fee. Before beginning the additional training, the candidate must resubmit to TSA the information required in the TSA form,<sup>18</sup> along with the required fee,<sup>19</sup> and wait for TSA approval or until the applicable waiting period expires. In addition, a Category 1, 2, or 3 candidate who is approved for flight training by TSA, but does not initiate that flight training within 180 days, may reapply for flight training without resubmitting fingerprints if he or she resubmits all other information required in paragraph (a)(2) of this section, including the fee. The candidate must wait for TSA approval or until the applicable waiting period expires before initiating training.

#### *e. Category 4—Recurrent Training on All Aircraft*

As mandated by Section 612 of Vision 100, the IFR exempts candidates who apply for recurrent training from the security threat assessment requirements. However, TSA must be able to determine whether a candidate is eligible for recurrent training and thus not subject to the threat assessment requirements. To do that, TSA is requiring a flight school, prior to beginning a Category 4 candidate's recurrent training, to notify TSA that the candidate has requested such recurrent training and submit to TSA the following information: (1) The candidate's full name, including any aliases used by the candidate or variation in the spelling of the candidate's name; (2) any unique student identification number issued by the DOJ or TSA that would help establish a candidate's eligibility for the recurrent training exemption; (3) a copy of the candidate's current, unexpired passport and visa; (4) the candidate's current U.S. pilot certificate, certificate number, and type rating(s); (5) the type of training for which the candidate is

<sup>16</sup> At this time, the candidate must complete the application and submit it to TSA. However, TSA is working on the application program to allow the candidate to update any information that has changed or is new since the last time the candidate submitted the application, rather than completing the entire application again. TSA will notify candidates of this feature via the Web site as soon as it is completed.

<sup>19</sup> A candidate will be required to submit the fee each time he or she resubmits an application for flight training because TSA will conduct the security threat assessment each time a candidate applies for flight training, and thus TSA will incur the costs of the security threat assessment. TSA will maintain candidates' fingerprints on file and use them to conduct the fingerprint-based checks and will use the information submitted by candidates, including any new or changed information, to conduct the name-based and other checks that make up the security threat assessment.

applying; (6) the date of the candidate's prior recurrent training, if any, and a copy of the training form documenting that recurrent training; and (7) the dates and location of the candidate's requested training. This information is necessary to establish a candidate's identity and determine whether he or she is applying for recurrent training and thus exempt from the security threat assessment requirements.

As discussed above, "recurrent training" is defined as periodic training required for employees of certificated aircraft operators under 14 CFR parts 121, 125, 135, or Subpart K of part 91. Only candidates who apply for such training are exempt from the fingerprinting and security threat assessment requirements under the IFR.

The IFR requires a flight school to submit to TSA the required information before initiating a Category 4 candidate's recurrent training. TSA will notify the flight school via e-mail when the agency has received the required information for a candidate. Once the flight school has received the TSA e-mail, it may initiate the candidate's recurrent training. To ease the application process, as well as TSA's determination as to whether a candidate is applying for recurrent training, TSA intends to monitor candidates using their unique student identification number to make it easier to track candidates who apply for training at different flight schools.

The requirements for Category 4 candidates are applicable both to candidates who apply for recurrent training for aircraft with an MTOW greater than 12,500 pounds and to candidates who apply for recurrent training for aircraft with an MTOW of 12,500 pounds or less.

#### 4. U.S. Citizens and Nationals and Department of Defense Endorsees

The threat assessment requirements in the IFR apply to aliens and other individuals designated by TSA. They do not apply to U.S. citizens and nationals or individuals who have been endorsed by the DOD, unless they have been designated by TSA. To ensure that individuals who are not U.S. citizens or nationals or DOD endorsees do not evade the security threat assessment requirements, the IFR requires flight schools to determine whether an individual is a U.S. citizen or national or DOD endorsee.

To establish U.S. citizenship or nationality, an individual must present to the flight school one of the following: (1) A copy of the individual's valid, unexpired U.S. passport; (2) the individual's original or government-

<sup>16</sup> TSA will notify a flight school by e-mail when the agency has received all the required information for a Category 3 candidate. The flight school then may initiate the candidate's flight training.

<sup>17</sup> TSA is conducting the security threat assessment for these candidates under its authority to assess threats to transportation and to enforce security-related regulations and requirements. 49 U.S.C. 114(f)(2) and (7).

issued certified U.S., American Samoa, or Swains Island birth certificate, together with a government-issued picture identification of the individual; (3) the individual's original U.S. naturalization certificate with raised seal, U.S. Citizenship and Immigration Services (USCIS) or Immigration and Naturalization Service (INS) Form N-550, or Form N-570 (Certificate of Naturalization),<sup>20</sup> together with a government-issued picture identification of the individual; (4) the individual's original certification of birth abroad with raised seal, U.S. Department of State Form FS-545, or U.S. Department of State Form DS-1350, together with a government-issued picture identification of the individual; (5) the individual's original certificate of U.S. citizenship with raised seal, USCIS or INS Form N-560, Form N-561 (Certificate of United States Citizenship), or a USCIS or INS Form N-581 (Certificate of Repatriation), together with a government-issued picture identification of the individual; or (6) in the case of flight training provided to a Federal employee (including military personnel) pursuant to a contract between a Federal agency and a flight school, the agency's written certification as to its employee's U.S. citizenship or nationality, together with the employee's government-issued credentials or other Federally-issued picture identification.

To establish that an individual has been endorsed by the DOD for flight training, the individual must present to the flight school a written statement acceptable to TSA from the DOD attaché in the individual's country of residence, together with a government-issued picture identification of the individual.

These identification requirements are currently contained in the DOJ rule or required under DOJ procedures. TSA is maintaining these requirements to ensure that individuals who are subject to the IFR do not circumvent the security threat assessment process.

These requirements are applicable both to individuals who apply for flight training for aircraft with an MTOW greater than 12,500 pounds and to individuals who apply for flight training for aircraft with an MTOW of 12,500 pounds or less.

##### 5. Recordkeeping Requirements

The IFR requires a flight school to maintain the following information for a minimum of 5 years: (1) In the case of

an individual who is a U.S. citizen or national, a copy of the candidate's proof of U.S. citizenship or nationality; (2) in the case of an individual who has been endorsed by the DOD for flight training, a copy of the DOD letter and the candidate's identifying information; (3) for all candidates, a copy of all the information required under the IFR for each category of candidate, except for the candidate's fingerprints; (4) a photograph of each candidate taken within one year before the candidate receives flight training subject to this section; (5) a copy of the approval sent by TSA confirming the candidate's eligibility for flight training; and (6) a record of all fees paid to TSA in accordance with this IFR. A flight school must permit persons authorized by TSA or the FAA to inspect these records.

TSA believes that these records are necessary to ensure that flight schools are complying with the requirements of the IFR and for identification and investigative purposes in the event that an individual who receives flight training commits a criminal or terrorist act. In particular, TSA believes that a current photograph of each candidate subject to this IFR would be useful for identification and investigation purposes. TSA notes that a flight school is required to maintain a current photograph of all candidates for flight training, including candidates eligible for expedited processing under the IFR, as well as candidates for recurrent training. A flight school is not required to maintain a current photograph of U.S. citizens or nationals or DOD endorsees.

These requirements are applicable both to individuals who apply for flight training for aircraft with an MTOW greater than 12,500 pounds and to individuals who apply for flight training for aircraft with an MTOW of 12,500 pounds or less.

##### 6. Candidates Subject to the DOJ Rule

The IFR provides that a candidate who submits a completed Flight Training Candidate Checks Program (FTCCP) form and fingerprints to the DOJ in accordance with the DOJ rule (28 CFR Part 105) will be processed in accordance with the requirements of the DOJ rule. The requirements include the information submission requirements, risk assessment standards, and notification timelines in the DOJ rule. TSA believes this provision is necessary to ensure the smooth transition of the program from the DOJ to TSA and avoid confusion over to which requirements a candidate is subject and which agency is responsible for performing the threat assessment for a candidate. TSA notes

that, to facilitate the transition from the DOJ application process to the TSA application process in an orderly manner, the DOJ will accept completed FTCCP applications validated by a Flight Training Provider up to 5 p.m. Eastern Daylight Savings Time on September 28, 2004, or a later date specified by DOJ and TSA on the Web site at <https://www.flightschoolcandidates.gov>, and thereafter will not accept any further training applications. Furthermore, the DOJ will not accept expedited and non-expedited applications for training that is scheduled to start after December 28, 2004, or a later date specified by the two agencies. Candidates who submit a completed FTCCP form to the DOJ by the specified deadlines will be processed by the DOJ in accordance with the DOJ rule. Thereafter, candidates will be required to comply with the TSA IFR. TSA intends to begin accepting applications from candidates for flight training in the operation of aircraft with an MTOW of greater than 12,500 pounds on October 5, 2004. Thus, if there is a gap between the date on which DOJ ceases accepting applications and that date, the Federal Government will not accept any flight training applications. During this time period, flight schools may not initiate flight training for any candidate who has not been approved under the DOJ rule.

TSA notes that if TSA and the DOJ specify a date for DOJ later than the compliance dates identified in this rule, individuals and flight schools who comply with 28 CFR part 105 up to that date will be considered to be in compliance with the requirements of this part.

##### B. Fees

The IFR requires candidates in Categories 1-3 to remit to TSA a fee when they are required under section 1552.3 to submit to TSA the required information for a security threat assessment.<sup>21</sup> TSA will not conduct a security threat assessment for a candidate until the agency has received the candidate's fee. The fee must be

<sup>21</sup> As discussed above, a Category 1, 2, or 3 candidate who receives TSA approval for flight training (or who did not have his or her flight training interrupted) and then completes that flight training may take additional flight training without resubmitting his or her fingerprints if he or she submits all the other required information, including the fee. The candidate will be required to submit the fee each time he or she resubmits an application for flight training because TSA will be conducting the security threat assessment each time a candidate applies for flight training, and thus TSA will incur the costs of the security threat assessment.

<sup>20</sup> The USCIS formerly was the INS. Thus, the rule permits the use of these same forms if they were issued by the INS.

remitted to TSA in a form and manner acceptable to TSA. A candidate must submit the fee through the Internet at <https://www.flightschoolcandidates.gov>. Instructions for payment and acceptable payment forms will be available on that Web site. Essentially, TSA will accept the same payment mechanisms as accepted by <https://www.pay.gov>, the U.S. Government's electronic fee payment portal.

TSA will begin conducting a candidate's security threat assessment when the agency receives all of the information required under the IFR, including the candidate's fingerprints (when required) and the fee. Thus, TSA will incur costs associated with performing the threat assessment immediately. For this reason, TSA will not issue any fee refunds, unless a fee was paid in error, that is, a fee was paid when it was not required.

A candidate must submit the fee each time he or she is required to undergo a security threat assessment under the IFR. For example, if TSA approves a candidate for flight training, but the flight school does not initiate the candidate's training within 180 days of receiving the TSA approval, the IFR requires the candidate to resubmit his or her information to the flight school and TSA. That candidate would be required to submit an additional fee for TSA to conduct another security threat assessment.

The fee is required of candidates in Categories 1–3. TSA notes that Section 612 of Vision 100 authorizes TSA to assess a fee for any investigation under Section 612. As discussed above, Section 612 does not mandate a security threat assessment for candidates for flight training for aircraft weighing 12,500 pounds or less. However, as discussed above, TSA believes such candidates must be subject to the security threat assessment requirements in order to carry out the intent of the statute—preventing individuals who pose a threat to aviation or national security from obtaining flight training, and thus preventing them from conducting terrorist attacks using aircraft. Thus, TSA will perform a security threat assessment on those individuals, and will assess a fee for the threat assessment under Section 612.

Section 612 authorizes TSA to set the fee to reflect the costs of the security threat assessment. As explained in greater detail below, the fee is \$130 to reflect the full recurring costs to TSA for performing the security threat assessment.

1. Candidate Population

TSA estimates that there will be 70,000 annual candidate applications for flight training at FAA-approved flight schools. This estimate is comprised of the following:

(a) The number of candidate applications for training on aircraft with an MTOW greater than 12,500 pounds is estimated to be 32,000 annually, which is equivalent to 160,000 for the first five years of the program. This estimate is based on data from the DOJ that indicates the total annual candidate applications for training under the FTCCP for calendar year 2003. While the DOJ did not track the actual number of flight training candidates submitting multiple applications, TSA believes that, on average, candidates will submit two applications per year. This could be due to a candidate applying for subsequent flight training on a different type of aircraft in the same fiscal year or if the flight school does not initiate the candidate's training within 180 days of receiving the TSA approval (both scenarios require re-application under the requirements of the IFR.) Thus, TSA estimates that each year approximately 16,000 candidates will submit an average of two applications each, resulting in 32,000 annual applications for training on aircraft with an MTOW greater than 12,500 pounds.

(b) The number of candidate applications for training on aircraft with an MTOW of 12,500 pounds or less is estimated to be 38,000 annually, which is equivalent to 190,000 for the first five years of the program. This estimate is based on FAA Airman Registry data. However, the FAA does not record the number of certificates issued to foreign nationals. Instead, the FAA records the overall number of certificates issued annually to all persons and the percentage of active non-U.S. citizens holding FAA certificates. The FAA estimates that the annual average of certificates issued to all persons over the

last 6 years is 106,000 certificates. The FAA estimates that 18% of these certificates were issued to non-U.S. citizens, which is equivalent to 19,000 certificates. Therefore, TSA estimates that approximately 19,000 candidates will submit requests for this type of flight training each year. TSA believes that each candidate within this population will also submit an average of two requests each year for various reasons, such as a candidate who applies for subsequent flight training in a different type of aircraft in the same fiscal year or a flight school that does not initiate the candidate's training within 180 days of receiving the TSA approval. Thus, TSA estimates the total annual number of applications for flight training on aircraft with an MTOW of 12,500 pounds or less to be 38,000 (19,000 candidates × 2 applications per year).

2. Program Costs

This section summarizes TSA's estimated costs of completing security threat assessments on candidates who apply for flight training in the U.S. The costs are divided into two main categories: Start-up costs and recurring annual costs. Start-up costs represent the cost of all resources necessary for TSA to establish the program. Recurring costs represent the resources necessary for TSA to perform ongoing security threat assessments on candidates. Recurring operations will begin during fiscal year 2005.

TSA estimates that the total start-up costs will be \$3.0 million. The start-up costs include all expenses related to the transition of the program from the DOJ to DHS (specifically TSA). This includes \$1.5 million for hardware and software; \$471,000 for contract personnel; and \$1.0 million for facilities build out. Fees will not recover the start-up costs. See the Costs Estimates table below for additional details.

TSA estimates that the total annual recurring costs will be \$9.1 million. The annual recurring cost includes \$375,000 for hardware and software; \$4.0 million for contract and other personnel; \$30,000 Federal employee travel; \$250,000 for fee payment processing and \$4.4 million for terrorist threat assessment costs.

COST ESTIMATES

[In dollars]

Category description	Start-up	Recurring
Hardware/Software:		
Transfer and modify Flight Training Candidate Checks Program (FTCCP) designed "front-end" Web site application system .....	\$376,000	\$0

## COST ESTIMATES—Continued

[In dollars]

Category description	Start-up	Recurring
Transfer and modify FTCCP designed applicant assessment system .....	1,054,000	0
Transfer and modify FTCCP designed helpdesk system .....	70,000	
Develop automated access to the Interpol system .....	0	0
Maintain and refresh "front-end" Web site application system .....	0	94,000
Maintain and refresh applicant assessment system .....	0	263,500
Maintain and refresh helpdesk system .....	0	17,500
<b>Total .....</b>	<b>1,500,000</b>	<b>375,000</b>
<b>Contract and Other Employees:</b>		
Contract personnel to support transfer and modification of "front-end" Web site application system .....	241,800	0
Contract personnel to support transfer and modification of applicant assessment system .....	229,000	0
Contract personnel to maintain "front-end" Web site application system .....	0	336,000
Contract and other personnel to maintain applicant assessment system .....	0	1,900,800
Contract personnel for helpdesk .....	0	403,200
Contract security assessment personnel .....	0	1,382,400
<b>Total .....</b>	<b>470,800</b>	<b>4,022,400</b>
<b>Federal Employee:</b>		
Travel .....	0	30,000
<b>Total .....</b>	<b>0</b>	<b>30,000</b>
<b>Rent/Build out:</b>		
Facilities (build out) .....	1,000,000	0
Facilities (rent, utilities, * * *) .....	0	0
<b>Total .....</b>	<b>1,000,000</b>	<b>0</b>
<b>Other Costs:</b>		
Terrorist threat analysis .....	0	4,410,000
Fee payment processing .....	70,000	250,000
<b>Total .....</b>	<b>70,000</b>	<b>4,660,000</b>
<b>Total Costs .....</b>	<b>3,040,800</b>	<b>9,087,400</b>

Based on its population and cost assumptions, TSA has determined that total startup phase costs will be approximately \$3.0 million and recurring phase costs will be approximately \$9.1 million annually. As TSA will perform the same threat assessments for Category 1–3 candidates, the costs to TSA for each category of candidate are the same.

### 3. Fee

Section 612 authorizes TSA to adjust the fee to reflect the costs of the security threat assessment. The fee is based on the recurring cost per applicant that TSA incurs to perform the security threat assessment and does not include start-up costs. To calculate this fee, TSA uses the following equation: Annual recurring cost/estimated number of annual threat assessments = annual cost per applicant. The estimated cost per applicant is \$130 (\$9,087,400/70,000). As the costs for each applicant are the same, the fee will also be the same for each applicant category.

Pursuant to the Chief Financial Officers Act of 1990 and Office of Management and Budget Circular A–25, DHS/TSA will review this fee at least every two years. Upon review, if it is found that the fee is either too high or too low, the amount of the fee will be adjusted accordingly. Since this IFR newly regulates a very dynamic segment of the aviation population (foreign candidates for flight training), and TSA has no prior operating history in performing threat assessments for this population, TSA may need to review program costs earlier than the minimum two-year review period.

### 4. Fingerprinting Costs

There are a variety of options for fingerprint collection and transmission available to candidates. The costs and method of payment for these options will vary per location and will be separate from, and in addition to, the TSA fee. Candidates or flight schools will be required to pay this cost directly to the fingerprint collector, not to TSA. TSA estimates that the maximum cost of

collecting a candidate's fingerprints will be \$100.

### C. Flight School Security Awareness Training

#### 1. Scope and Definitions

This subpart applies to flight schools, as defined in this part, that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and to certain employees of such flight schools.

"Flight school employee" is defined as a flight instructor or ground instructor certificated under 14 CFR part 61, 141, or 142; a chief instructor certificated under 14 CFR part 141; a director of training certificated under 14 CFR part 142; or any other person employed by a flight school, including an independent contractor, who has direct contact with a flight school student. This definition includes an independent or solo flight instructor certificated under 14 CFR part 61. Thus, an independent or solo flight instructor, who would be considered a "flight school" under the definition of that

term in § 1552.1(b), must receive security awareness training in accordance with this subpart.

Section 612 does not provide a definition of flight school employee. However, TSA believes that Section 612 should apply only to those employees who have direct or substantial contact with students, and thus are more likely to observe suspicious behavior, rather than those employees, such as grounds maintenance staff, who may spend little time at a flight school or have no contact with students. TSA also believes that requiring security awareness training for such employees would impose a substantial burden on flight schools while providing little added security. Thus, TSA has limited the definition to employees who have direct contact with a flight school student. This definition includes administrative personnel who accept payment from a flight school student or process a student's paperwork. TSA believes that such personnel are well situated to observe any suspicious behavior or circumstances in a student's payment or identification information.

## 2. Security Awareness Training Programs

The IFR requires a flight school to ensure that each of its flight school employees receives both initial and recurrent security awareness training. Current flight school employees, that is those individuals who are flight school employees on September 20, 2004, must receive initial security awareness training within 90 days of the effective date of this rule. Flight school employees hired after September 20, 2004 must receive initial security awareness training within 60 days of being hired. TSA believes that these time periods provide ample time for flight schools to train both current and newly hired employees.

### a. Initial Security Awareness Training

A flight school may use either the initial security awareness training program offered by TSA or an alternative initial training program offered by a third party or designed by the flight school itself. The TSA initial training program will be available electronically on the TSA General Aviation (GA) Web site at <http://www.tsa.gov/public/display?theme=180> or by contacting one of the individuals in the **FOR FURTHER INFORMATION CONTACT** section above.

If a flight school decides to use an alternative initial training program, the program must, at a minimum, meet the following criteria. First, it must require active participation by the flight school

employee receiving the training. Studies have shown that individuals retain information better when they receive the information in an interactive format than when they receive the information passively (for example, by merely listening to a lecture).<sup>22</sup> Thus, the TSA initial training program is interactive, and TSA believes that any alternative initial training program must be as well.

Second, any alternative initial training program must provide situational scenarios that require the employee to assess specific situations and determine appropriate courses of action. For example, the program could give an employee a specific situation or set of circumstances involving behavior by a flight school student and ask the employee if the behavior is suspicious and, if so, what the employee should do in response, such as inform a supervisor, contact the TSA General Aviation Hotline (1-866-GA-SECURE),<sup>23</sup> or notify local law enforcement.

Third, any alternative initial training program must enable an employee to identify the proper uniforms and other identification (if any are required at the flight school) for employees at that flight school or other persons authorized to be on the grounds of that flight school. The training also must enable an employee to identify suspicious behavior.

Suspicious behavior may include: excessive or unusual interest in restricted airspace or restricted ground structures, such as repeated requests to fly over nuclear power plants; unusual questions or interest regarding aircraft capabilities; aeronautical knowledge inconsistent with the student's existing airman credentialing; sudden termination of the student's instruction; loitering on the flight school grounds for extended periods of time; and entering "authorized access only" areas without permission.

An alternative program also must enable an employee to identify suspicious circumstances regarding aircraft, including unusual modifications to aircraft, such as the

strengthening of landing gear, changes to tail number, stripping the aircraft of seating or equipment; damage to propeller locks or other parts of an aircraft that is inconsistent with the pilot training or aircraft flight log; and dangerous or hazardous cargo loaded into an aircraft.

Fourth, an alternative program must provide an employee with appropriate responses for the employee to make in specific situations. Appropriate responses include: taking no action, if a situation does not warrant action; questioning an individual, if his or her behavior may be considered suspicious; informing a supervisor, if a situation or an individual's behavior warrants further investigation; calling the TSA General Aviation Hotline; or calling local law enforcement, if a situation or an individual's behavior could pose an immediate threat. Thus, an alternative program, in complying with these requirements and the interactive requirement discussed above, could give an employee a specific situation, ask the employee to respond, and then provide the appropriate response (or responses, if more than one response could be appropriate) and some discussion of why that response is appropriate.

Finally, an alternative training program must contain any other information relevant to security measures or procedures at the flight school, including applicable information in the TSA Information Publication "Security Guidelines for General Aviation Airports."<sup>24</sup> For example, if a flight school requires aircraft to have propeller locks after a certain time or has access codes for certain areas of the flight school grounds, that information must be included in the alternative training program.

TSA notes that many flight schools currently conduct some form of security awareness training for their employees. If the training used by a flight school meets the criteria for an alternative initial security awareness training program in this IFR, and the flight school has documentation that meets the recordkeeping requirements in this IFR for each employee who has received such training, TSA may consider the flight school to be in compliance with the initial security awareness training requirements of the IFR. However, the flight school still must comply with the recurrent training requirements in the

<sup>22</sup> See, e.g., John Tagg, *The Learning Paradigm* College (2003); European Commission, *Green Paper, Living and Working in the Information Society: People First* (1996).

<sup>23</sup> TSA, in partnership with the National Response Center, launched the toll-free General Aviation (GA) Hotline on December 2, 2002. The GA Hotline serves as a centralized reporting system for GA pilots, airport operators, and maintenance technicians wishing to report suspicious activity at their airfield. The GA Hotline was developed in coordination with the Aircraft Owners and Pilots Association (AOPA) to complement the AOPA Airport Watch Program. This program will enlist the support of some 550,000 GA pilots to watch for and report suspicious activities that might have security implications.

<sup>24</sup> These guidelines are intended to provide GA airport owners, operators and users with a set of federally endorsed security enhancements and methods for implementation. TSA issued the guidelines on May 17, 2004, and they are available on the TSA Web site at [www.tsa.gov](http://www.tsa.gov).

IFR. A flight school is not required to submit its alternative initial security awareness training program to TSA for approval before the flight school uses the program to comply with the rule. Rather, TSA officials may audit a flight school's alternative training program when inspecting the flight school.

TSA notes that a flight school may have its employees receive computer-based security awareness training on an individual basis or may use an instructor to conduct the training to a group of employees. If a flight school elects to use an instructor to conduct the training for its employees, the flight school must first ensure that the instructor has successfully completed the initial flight school security awareness training program offered by TSA or an alternative initial training program that meets the criteria discussed above.

#### *b. Recurrent Security Awareness Training*

The IFR requires a flight school to ensure that each flight school employee receives recurrent security awareness training each year in the same month as the month in which the flight school employee received initial security awareness training. For example, if a flight school employee received initial security awareness training in April 2004, he or she must receive recurrent security awareness training in April 2005.

TSA will not provide a recurrent security awareness training program.<sup>25</sup> Thus, a flight school will be required either to design its own recurrent security awareness training program or use a program designed by a third party. At a minimum, a recurrent training program must contain information regarding any new security measures or procedures implemented by the flight school, such as the installation of fencing, new uniforms or identification for employees, or the implementation of new entry procedures. A recurrent training program also must contain information regarding any security incidents at the flight school, and any lessons learned as a result of such incidents. For example, if any of the flight school's aircraft was broken into or stolen, the recurrent training program must discuss the incident and any measures the flight school has taken to address the incident or prevent such incidents in the future.

<sup>25</sup> TSA will provide information concerning any unclassified security events or issues at flight schools or GA facilities over the previous year. Flight schools should use that information as part of their recurrent training program.

A recurrent training program also must contain any new threats posed by or incidents involving general aviation (GA) aircraft. TSA will post information regarding general threats posed by GA aircraft and major incidents involving GA aircraft on the TSA GA Web site at <http://www.tsa.gov/public/display?theme=180>. A flight school must use that information in its recurrent training program. Finally, a recurrent training program must contain any new TSA guidelines or recommendations concerning the security of GA aircraft, airports, or flight schools. This information also will be available on the TSA GA Web site.

#### 3. Documentation, Recordkeeping, and Inspection

The IFR requires a flight school to issue a document to each flight school employee when the employee receives initial security awareness training and each time the employee receives recurrent security awareness training. This requirement will enable TSA inspectors to verify that each flight school employee has received the required security awareness training each year.

The document issued to the employee must contain the employee's name and a distinct identification number for the employee to enable both the flight school and TSA inspectors to track each employee's security awareness training. The document also must indicate the date on which the flight school employee received the security awareness training; the name of the instructor who conducted the training, if an instructor conducted the training; a statement certifying that the flight school employee received the security awareness training; the type of training received, whether initial or recurrent; and if the flight school uses an alternative initial training program, a statement certifying that the program meets the criteria in 49 CFR 1552.23 (c). Finally, the flight school employee and an authorized official of the flight school must sign the document.

The IFR also requires a flight school to establish and maintain the following records for one year after an individual no longer is a flight school employee: (1) a copy of the document issued to the employee when he or she received initial training and each time he or she received recurrent training; (2) a copy of the alternative initial security awareness training program, if the flight school used in the past or currently uses an alternative program instead of the TSA program.

Finally, the IFR requires a flight school to allow officials authorized by

TSA and the FAA to inspect the records required under this section. TSA officials will be conducting inspections of flight schools to ensure that they are complying with this rule. Flight schools that are not in compliance may be subject to civil penalties under 49 U.S.C. 46301 and 49 CFR part 1503.

#### IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This interim final rule contains information collection activities subject to the PRA. Accordingly, the following information requirements are being submitted to OMB for its review.

*Title:* Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees.

*Summary:* In response to recent statutory requirements, TSA is requiring certain flight schools to notify TSA when aliens or other individuals designated by TSA apply for flight training. TSA also is establishing standards relating to the security threat assessments TSA will conduct to determine whether such individuals are a threat to aviation or national security, and thus prohibited from receiving flight training. Finally, TSA is establishing standards relating to security awareness training for certain flight school employees, to include keeping records of all such training.

*Use of:* Flight schools will be required to provide TSA with identifying information and fingerprints on aliens and other designated individuals when such persons apply for flight training and then keep this information on file for the required amount of time. TSA will use this information to perform background checks in order to assess if the flight training applicant poses a security risk. In addition, flight schools will be required to provide TSA with a photograph of the applicant when the applicant arrives at the flight school for training. TSA will use the photograph to help ensure that the person who is cleared for training by TSA is the person who receives the training. Flight schools will also be required to keep applicant records as well as records of security awareness training provided to employees so that TSA may inspect those records when necessary.

*Respondents (including number of):* The likely respondents to this information requirement are aliens and other designated individuals who apply

for pilot training and the flight schools they attend, which is estimated to be approximately 35,000 applicants every year and 3,000 flight schools nationwide for a total of 38,000 respondents.

*Frequency:* The respondents are required to provide the subject information every time an alien or other designated individual applies for pilot training as described in this rule, which is estimated to be an average of 2 times per year for a total of 70,000 responses. Records are required to be kept from the time they are created.

*Annual Burden Estimate:* It is estimated that it will take 45 minutes per application to provide TSA with all the information required by this rule, for a total burden of 52,500 hours per year. Records must be retained from the time they are created, and it is estimated that each of the 3,000 flight schools will carry an annual recordkeeping burden of 104 hours, for a total of 312,000 hours. Thus, the combined hour burden associated with this collection is estimated to be 364,500 hours annually. In regard to costs, it is estimated that there will be an annual cost burden of \$205 per application, which includes the TSA fee of \$130 and an estimated average cost of collecting, transmitting, and processing fingerprints of \$75, for a total annual burden of \$14.35 million. The yearly record keeping costs for each of the estimated 3,000 flight schools for retaining records on both pilot applicants and employee security training is estimated to be \$1,500, for a total annual burden of \$4.5 million. Thus the combined cost burden associated with this collection is estimated to be \$18.85 million annually.

The agency is soliciting comments to—

(1) Evaluate whether the information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by November 19, 2004, and should direct them via fax to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395-5806. Comments to OMB are most useful if received within 30 days of publication.

As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection is 1652-0021.

### Rulemaking Analyses and Notices

#### *Economic Analyses*

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. This rulemaking is not an economically significant regulatory action as defined by Executive Order 12866. The rulemaking does not meet the threshold of the \$100 million effect on the economy annually. However, the action may be considered significant because there is significant public interest in security since the events of September 11, 2001.

This rulemaking does not constitute a barrier to international trade, and does not impose an unfunded mandate on state, local, or tribal governments, or the private sector. These analyses, which are summarized below, are discussed in greater detail in the regulatory evaluation, which will be placed in the docket of this rulemaking. TSA welcomes comments on the costs analyzed or any additional costs that could be considered.

#### Costs

The IFR will impose costs on flight training providers for collecting and

transmitting identifying information for flight training candidates, providing security awareness training for employees, and retaining and maintaining information on flight training candidates and records on security awareness training. The IFR also will impose a fee on flight training candidates to defray the costs of security threat assessments that TSA will perform. In addition, flight school candidates will incur the cost of fingerprinting and opportunity costs in providing the required information. TSA will incur costs for transferring and modifying the DOJ's FTCCP system, and for conducting security threat assessments.

The IFR does not impose any new costs for requirements that already exist under the DOJ rule. Because candidates for flight training in the operation of aircraft with MTOW of 12,500 pounds or greater were subject to the DOJ rule, the IFR will only impose costs (other than the cost of the TSA fee) on candidates who were not subject to the DOJ rule, that is candidates for flight training in the operation of aircraft with an MTOW of less than 12,500 pounds.

TSA does not expect a significant impact on the overall demand for U.S. flight school training as a result of the IFR. The IFR only impacts alien candidates for U.S. flight training, and the population of alien candidates is small relative to the total number of U.S. flight students. Costs will increase for alien flight school candidates. However, TSA assumes that the impact on demand will not be significant because U.S. flight training is considered to be the global standard, and it is comparatively less expensive to obtain a pilot's certificate in the U.S. than in most foreign countries. This assumption is discussed further in the full regulatory evaluation.

TSA estimates the total quantified costs at \$180.2 million undiscounted over a 10-year period and an average of \$18.0 million annually. When discounted at 7 percent, the total quantified cost impact is \$134.0 million over a 10-year period, and \$13.4 million annually. The total costs of compliance are summarized in the table below.

## TOTAL COSTS OF COMPLIANCE

[In thousands of dollars]

Year	Collection & transmission of information	Finger-printing	Opportunity costs	Photo transmission	Data retention	Security awareness training	Government	Total annual costs	7% Discount factor	Present value
2005 .....	\$388.2	\$2,850	\$769.5	\$370	\$4,500.0	\$900	\$3,040.8	\$ 9,855.0	1.0000	\$12,800.0
2006 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.9346	17,400.0
2007 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.8734	16,200.0
2008 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.8163	15,200.0
2009 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.7629	14,200.0
2010 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.7130	13,300.0
2011 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.6663	12,400.0
2012 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.6227	11,600.0
2013 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.5820	10,800.0
2014 .....	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.5439	10,100.0
Total .....	3,882.0	28,500	7,695.0	1,270	45,000.0	9,000	84,827.4	180,170.0	.....	134,000.0

**Benefits**

The primary benefit of the IFR will be increased protection of U.S. citizens and property from acts of terrorism. The requirements of this IFR decrease the chance that a flight school student who poses a security threat will be able to receive flight training from a U.S. flight school in the operation of aircraft that could be used in an act of terrorism. The IFR will provide greater security benefits than the DOJ rule because it applies to aliens seeking training on smaller aircraft, and it also improves security at flight schools through the requirement for security awareness training.

It is difficult to predict the probability of a terrorist attack. Even when the probability is low, the impact of such an attack can be devastating. As illustrated by the September 11, 2001 terrorist attacks, loss of life and property damage could be tremendous. Another possible impact of a terrorist attack could be an economic shock or slowdown. Although not quantified, the avoidance of such impacts is a major benefit of the enhanced security of the IFR.

**Comparison of Costs and Benefits**

The IFR will provide the American people with added protection from terrorist attempts to become proficient in the operation of aircraft for the purpose of attacking American persons and property. The costs to achieve the level of security protection have been measured and are estimated at \$134 million over the next 10 years when discounted at 7 percent. While it is impossible to quantify the benefits of the increased security that is expected to be achieved by the requirements established in this IFR, TSA believes that the actions that this IFR prescribes

will achieve the goals anticipated by the legislation that established the requirement. TSA believes reducing opportunities for terrorists to attain the ability to use aircraft as weapons against America and its allies justifies the investment that this IFR requires. Moreover, this IFR strives to achieve these goals in the least costly manner possible.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act (RFA) of 1980, as amended, was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." However, Section 603(a) of the Regulatory Flexibility Act requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking. Section 612 of Vision 100—Century of Aviation Reauthorization Act requires TSA to promulgate an interim final rule implementing the requirements of Section 612. Accordingly, TSA has not prepared an initial regulatory flexibility analysis for this rule.

**Unfunded Mandates Assessment**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by

State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of the reasons that alternative was not adopted.

The UMRA does not apply to a regulatory action in which no notice of proposed rulemaking is published, as is the case in this rulemaking action. Accordingly, TSA has not prepared a statement under the UMRA.

**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 effects of this rule and has determined that the rule will impose the same costs on domestic and

international entities, and thus has a neutral trade impact.

#### *Executive Order 13132 (Federalism)*

Executive Order 13132 requires TSA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

We have analyzed this rule under the principles and criteria of Executive Order 13132. We have determined that this action will not have a substantial direct effect on the States, on 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 will not have federalism implications.

#### *Environmental Analysis*

TSA has reviewed this rule for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action would not have a significant effect on the human environment.

#### *Energy Impact*

TSA has assessed the energy impact of this rule 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 in 49 CFR Part 1552**

Aircraft, Aliens, Alien pilots, Aviation safety, Education facilities, Fees, Flight schools, Flight school employees, Flight training, Reporting and recordkeeping requirements, Security awareness training, Security measures, Security threat assessment.

#### **The Amendments**

■ For the reasons set forth in the preamble, the Transportation Security Administration amends chapter XII, subchapter C, of title 49, Code of Federal Regulations, by adding a new part 1552 to read as follows:

### **PART 1552—FLIGHT SCHOOLS**

#### **Subpart A—Flight Training for Aliens and Other Designated Individuals**

Sec.

1552.1 Scope and definitions.

1552.3 Flight training.

1552.5 Fees.

#### **Subpart B—Flight School Security Awareness Training**

1552.21 Scope and definitions.

1552.23 Security awareness training programs.

1552.25 Documentation, recordkeeping, and inspection.

**Authority:** 49 U.S.C. 114, 44939.

#### **Subpart A—Flight Training for Aliens and Other Designated Individuals**

##### **§ 1552.1 Scope and definitions.**

(a) *Scope.* This subpart applies to flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and individuals who apply to obtain such instruction or who receive such instruction.

(b) *Definitions.* As used in this part: *Aircraft simulator* means a flight simulator or flight training device, as those terms are defined at 14 CFR 61.1. *Alien* means any person not a citizen or national of the United States.

*Candidate* means an alien or other individual designated by TSA who applies for flight training or recurrent training. It does not include an individual endorsed by the Department of Defense for flight training.

*Day* means a day from Monday through Friday, including State and local holidays but not Federal holidays, for any time period less than 11 days specified in this part. For any time period greater than 11 days, day means calendar day.

*Demonstration flight for marketing purposes* means a flight for the purpose of demonstrating an aircraft’s or aircraft simulator’s capabilities or characteristics to a potential purchaser, or to an agent of a potential purchaser, of the aircraft or simulator, including an acceptance flight after an aircraft manufacturer delivers an aircraft to a purchaser.

*Flight school* means 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.

*Flight training* means instruction received from a flight school in an aircraft or aircraft simulator. Flight

training does not include recurrent training, ground training, a demonstration flight for marketing purposes, or any military training provided by the Department of Defense, the U.S. Coast Guard, or an entity under contract with the Department of Defense or U.S. Coast Guard.

*Ground training* means classroom or computer-based instruction in the operation of aircraft, aircraft systems, or cockpit procedures. Ground training does not include instruction in an aircraft simulator.

*National of the United States* means a person who, though not a citizen of the United States, owes permanent allegiance to the United States, and includes a citizen of American Samoa or Swains Island.

*Recurrent training* means 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.

##### **§ 1552.3 Flight training.**

This section describes the procedures a flight school must follow before providing flight training.

(a) *Category 1—Regular processing for flight training on aircraft more than 12,500 pounds.* A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to a candidate, except for a candidate who receives expedited processing under paragraph (b) of this section, unless—

(1) The flight school has first notified TSA that the candidate has requested such flight training.

(2) The candidate has submitted to TSA, in a form and manner acceptable to TSA, the following:

(i) The candidate’s full name, including any aliases used by the candidate or variations in the spelling of the candidate’s name;

(ii) A unique candidate identification number created by TSA;

(iii) A copy of the candidate’s current, unexpired passport and visa;

(iv) The candidate’s passport and visa information, including all current and previous passports and visas held by the candidate and all the information necessary to obtain a passport and visa;

(v) The candidate’s country of birth, current country or countries of citizenship, and each previous country of citizenship, if any;

(vi) The candidate’s actual date of birth or, if the candidate does not know

his or her date of birth, the approximate date of birth used consistently by the candidate for his or her passport or visa;

(vii) The candidate's requested dates of training and the location of the training;

(viii) The type of training for which the candidate is applying, including the aircraft type rating the candidate would be eligible to obtain upon completion of the training;

(ix) The candidate's current U.S. pilot certificate, certificate number, and type rating, if any;

(x) Except as provided in paragraph (k) of this section, the candidate's fingerprints, in accordance with paragraph (f) of this section;

(xi) The candidate's current address and phone number and each address for the 5 years prior to the date of the candidate's application;

(xii) The candidate's gender; and

(xiii) Any fee required under this part.

(3) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(4) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or more than 30 days have elapsed since TSA received all of the information specified in paragraph (a)(2) of this section.

(5) The flight school begins the candidate's flight training within 180 days of either event specified in paragraph (a)(4) of this section.

(b) *Category 2—Expedited processing for flight training on aircraft more than 12,500 pounds.* (1) A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to a candidate who meets any of the criteria of paragraph (b)(2) of this section unless—

(i) The flight school has first notified TSA that the candidate has requested such flight training.

(ii) The candidate has submitted to TSA, in a form and manner acceptable to TSA:

(A) The information and fee required under paragraph (a)(2) of this section; and

(B) The reason the candidate is eligible for expedited processing under paragraph (b)(2) of this section and information that establishes that the candidate is eligible for expedited processing.

(iii) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(iv) TSA has informed the flight school that the candidate does not pose

a threat to aviation or national security or more than 5 days have elapsed since TSA received all of the information specified in paragraph (a)(2) of this section.

(v) The flight school begins the candidate's flight training within 180 days of either event specified in paragraph (b)(1)(iv) of this section.

(2) A candidate is eligible for expedited processing if he or she—

(i) Holds an airman's certificate from a foreign country that is recognized by the Federal Aviation Administration or a military agency of the United States, and that permits the candidate to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds;

(ii) Is employed by a foreign air carrier that operates under 14 CFR part 129 and has a security program approved under 49 CFR part 1546;

(iii) Has unescorted access authority to a secured area of an airport under 49 U.S.C. 44936(a)(1)(A)(ii), 49 CFR 1542.209, or 49 CFR 1544.229;

(iv) Is a flightcrew member who has successfully completed a criminal history records check in accordance with 49 CFR 1544.230; or

(v) Is part of a class of individuals that TSA has determined poses a minimal threat to aviation or national security because of the flight training already possessed by that class of individuals.

(c) *Category 3—Flight training on aircraft 12,500 pounds or less.* A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of 12,500 pounds or less to a candidate unless—

(1) The flight school has first notified TSA that the candidate has requested such flight training.

(2) The candidate has submitted to TSA, in a form and manner acceptable to TSA:

(i) The information required under paragraph (a)(2) of this section; and

(ii) Any other information required by TSA.

(3) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(4) The flight school begins the candidate's flight training within 180 days of the date the candidate submitted the information required under paragraph (a)(2) of this section to TSA.

(d) *Category 4—Recurrent training for all aircraft.* Prior to beginning recurrent training for a candidate, a flight school must—

(1) Notify TSA that the candidate has requested such recurrent training; and

(2) Submit to TSA, in a form and manner acceptable to TSA:

(i) The candidate's full name, including any aliases used by the candidate or variations in the spelling of the candidate's name;

(ii) Any unique student identification number issued to the candidate by the Department of Justice or TSA;

(iii) A copy of the candidate's current, unexpired passport and visa;

(iv) The candidate's current U.S. pilot certificate, certificate number, and type rating(s);

(v) The type of training for which the candidate is applying;

(vi) The date of the candidate's prior recurrent training, if any, and a copy of the training form documenting that recurrent training;

(vii) The candidate's requested dates of training; and

(viii) A photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(e) *Interruption of flight training.* A flight school must immediately terminate or cancel a candidate's flight training if TSA notifies the flight school at any time that the candidate poses a threat to aviation or national security.

(f) *Fingerprints.* (1) Fingerprints submitted in accordance with this subpart must be collected—

(i) By United States Government personnel at a United States embassy or consulate; or

(ii) By another entity approved by TSA.

(2) A candidate must confirm his or her identity to the individual or agency collecting his or her fingerprints under paragraph (f)(1) of this section by providing the individual or agency his or her:

(i) Passport;

(ii) Resident alien card; or

(iii) U.S. driver's license.

(3) A candidate must pay any fee imposed by the agency taking his or her fingerprints.

(g) *General requirements.* (1) *False statements.* If a candidate makes a knowing and willful false statement, or omits a material fact, when submitting the information required under this part, the candidate may be—

(i) Subject to fine or imprisonment or both under 18 U.S.C. 1001;

(ii) Denied approval for flight training under this section; and

(iii) Subject to other enforcement action, as appropriate.

(2) *Preliminary approval.* 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. Preliminary approval does not initiate the waiting period under paragraph (a)(3) or (b)(1)(iii) of this section or the period in which a flight school must initiate a candidate's training after receiving TSA approval under paragraph (a)(4) or (b)(1)(iv) of this section.

(h) *U.S. citizens and nationals and Department of Defense endorsees.* A flight school must determine whether an individual is a citizen or national of the United States, or a Department of Defense endorsee, prior to providing flight training to the individual.

(1) *U.S. citizens and nationals.* To establish U.S. citizenship or nationality an individual must present to the flight school his or her:

(i) Valid, unexpired United States passport;

(ii) Original or government-issued certified birth certificate of the United States, American Samoa, or Swains Island, together with a government-issued picture identification of the individual;

(iii) Original United States naturalization certificate with raised seal, or a Certificate of Naturalization issued by the U.S. Citizenship and Immigration Services (USCIS) or the U.S. Immigration and Naturalization Service (INS) (Form N-550 or Form N-570), together with a government-issued picture identification of the individual;

(iv) Original certification of birth abroad with raised seal, U.S. Department of State Form FS-545, or U.S. Department of State Form DS-1350, together with a government-issued picture identification of the individual;

(v) Original certificate of United States citizenship with raised seal, a Certificate of United States Citizenship issued by the USCIS or INS (Form N-560 or Form N-561), or a Certificate of Repatriation issued by the USCIS or INS (Form N-581), together with a government-issued picture identification of the individual; or

(vi) In the case of flight training provided to a Federal employee (including military personnel) pursuant to a contract between a Federal agency and a flight school, the agency's written certification as to its employee's United States citizenship or nationality, together with the employee's government-issued credentials or other Federally-issued picture identification.

(2) *Department of Defense endorsees.* To establish that an individual has been endorsed by the U.S. Department of

Defense for flight training, the individual must present to the flight school a written statement acceptable to TSA from the U.S. Department of Defense attaché in the individual's country of residence together with a government-issued picture identification of the individual.

(i) *Recordkeeping requirements.* A flight school must—

(1) Maintain the following information for a minimum of 5 years:

(i) For each candidate:

(A) A copy of the photograph required under paragraph (a)(3), (b)(1)(iii), (c)(3), or (d)(2)(viii) of this section; and

(B) A copy of the approval sent by TSA confirming the candidate's eligibility for flight training.

(ii) For a Category 1, Category 2, or Category 3 candidate, a copy of the information required under paragraph (a)(2) of this section, except the information in paragraph (a)(2)(x).

(iii) For a Category 4 candidate, a copy of the information required under paragraph (d)(2) of this section.

(iv) For an individual who is a United States citizen or national, a copy of the information required under paragraph (h)(1) of this section.

(v) For an individual who has been endorsed by the U.S. Department of Defense for flight training, a copy of the information required under paragraph (h)(2) of this section.

(vi) A record of all fees paid to TSA in accordance with this part.

(2) Permit TSA and the Federal Aviation Administration to inspect the records required by paragraph (i)(1) of this section during reasonable business hours.

(j) *Candidates subject to the Department of Justice rule.* A candidate who submits a completed Flight Training Candidate Checks Program form and fingerprints to the Department of Justice in accordance with 28 CFR part 105 before September 28, 2004, or a later date specified by TSA, is processed in accordance with the requirements of that part. If TSA specifies a date later than the compliance dates identified in this part, individuals and flight schools who comply with 28 CFR part 105 up to that date will be considered to be in compliance with the requirements of this part.

(k) *Additional or missed flight training.* (1) A Category 1, 2, or 3 candidate who has been approved for flight training by TSA may take additional flight training without submitting fingerprints as specified in paragraph (a)(2)(x) of this section if the candidate:

(i) Submits all other information required in paragraph (a)(2) of this section, including the fee; and

(ii) Waits for TSA approval or until the applicable waiting period expires before initiating the additional flight training.

(2) A Category 1, 2, or 3 candidate who is approved for flight training by TSA, but does not initiate that flight training within 180 days, may reapply for flight training without submitting fingerprints as specified in paragraph (a)(2)(x) of this section if the candidate submits all other information required in paragraph (a)(2) of this section, including the fee.

#### § 1552.5 Fees.

(a) *Imposition of fees.* The following fee is required for TSA to conduct a security threat assessment for a candidate for flight training subject to the requirements of § 1552.3: \$130.

(b) *Remittance of fees.* (1) A candidate must remit the fee required under this subpart to TSA, in a form and manner acceptable to TSA, each time the candidate or the flight school is required to submit the information required under § 1552.3 to TSA.

(2) TSA will not issue any fee refunds, unless a fee was paid in error.

#### Subpart B—Flight School Security Awareness Training

##### § 1552.21 Scope and definitions.

(a) *Scope.* This subpart applies to flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and to employees of such flight schools.

(b) *Definitions:* As used in this subpart:

*Flight school employee* means a flight instructor or ground instructor certificated under 14 CFR part 61, 141, or 142; a chief instructor certificated under 14 CFR part 141; a director of training certificated under 14 CFR part 142; or any other person employed by a flight school, including an independent contractor, who has direct contact with a flight school student. This includes an independent or solo flight instructor certificated under 14 CFR part 61.

##### § 1552.23 Security awareness training programs.

(a) *General.* A flight school must ensure that—

(1) Each of its flight school employees receives initial and recurrent security awareness training in accordance with this subpart; and

(2) If an instructor is conducting the initial security awareness training

program, the instructor has first successfully completed the initial flight school security awareness training program offered by TSA or an alternative initial flight school security awareness training program that meets the criteria of paragraph (c) of this section.

(b) *Initial security awareness training program.* (1) A flight school must ensure that—

(i) Each flight school employee employed on January 18, 2005 receives initial security awareness training in accordance with this subpart by January 18, 2005; and

(ii) Each flight school employee hired after January 18, 2005 receives initial security awareness training within 60 days of being hired.

(2) In complying with paragraph (b)(2) of this section, a flight school may use either:

(i) The initial flight school security awareness training program offered by TSA; or

(ii) An alternative initial flight school security awareness training program that meets the criteria of paragraph (c) of this section.

(c) *Alternative initial security awareness training program.* At a minimum, an alternative initial security awareness training program must—

(1) Require active participation by the flight school employee receiving the training.

(2) Provide situational scenarios requiring the flight school employee receiving the training to assess specific situations and determine appropriate courses of action.

(3) Contain information that enables a flight school employee to identify—

(i) Uniforms and other identification, if any are required at the flight school, for flight school employees or other persons authorized to be on the flight school grounds.

(ii) Behavior by clients and customers that may be considered suspicious, including, but not limited to:

(A) Excessive or unusual interest in restricted airspace or restricted ground structures;

(B) Unusual questions or interest regarding aircraft capabilities;

(C) Aeronautical knowledge inconsistent with the client or customer's existing airman credentialing; and

(D) Sudden termination of the client or customer's instruction.

(iii) Behavior by other on-site persons that may be considered suspicious, including, but not limited to:

(A) Loitering on the flight school grounds for extended periods of time; and

(B) Entering "authorized access only" areas without permission.

(iv) Circumstances regarding aircraft that may be considered suspicious, including, but not limited to:

(A) Unusual modifications to aircraft, such as the strengthening of landing gear, changes to the tail number, or stripping of the aircraft of seating or equipment;

(B) Damage to propeller locks or other parts of an aircraft that is inconsistent with the pilot training or aircraft flight log; and

(C) Dangerous or hazardous cargo loaded into an aircraft.

(v) Appropriate responses for the employee to specific situations, including:

(A) Taking no action, if a situation does not warrant action;

(B) Questioning an individual, if his or her behavior may be considered suspicious;

(C) Informing a supervisor, if a situation or an individual's behavior warrants further investigation;

(D) Calling the TSA General Aviation Hotline; or

(E) Calling local law enforcement, if a situation or an individual's behavior could pose an immediate threat.

(vi) Any other information relevant to security measures or procedures at the flight school, including applicable information in the TSA Information Publication "Security Guidelines for General Aviation Airports".

(d) *Recurrent security awareness training program.* (1) A flight school must ensure that each flight school employee receives recurrent security awareness training each year in the same month as the month the flight school employee received initial security awareness training in accordance with this subpart.

(2) At a minimum, a recurrent security awareness training program must contain information regarding—

(i) Any new security measures or procedures implemented by the flight school;

(ii) Any security incidents at the flight school, and any lessons learned as a result of such incidents;

(iii) Any new threats posed by or incidents involving general aviation aircraft contained on the TSA Web site; and

(iv) Any new TSA guidelines or recommendations concerning the security of general aviation aircraft, airports, or flight schools.

**§ 1552.25 Documentation, recordkeeping, and inspection.**

(a) *Documentation.* A flight school must issue a document to each flight school employee each time the flight school employee receives initial or recurrent security awareness training in accordance with this subpart. The document must—

(1) Contain the flight school employee's name and a distinct identification number.

(2) Indicate the date on which the flight school employee received the security awareness training.

(3) Contain the name of the instructor who conducted the training, if any.

(4) Contain a statement certifying that the flight school employee received the security awareness training.

(5) Indicate the type of training received, initial or recurrent.

(6) Contain a statement certifying that the alternative training program used by the flight school meets the criteria in 49 CFR 1552.23(c), if the flight school uses an alternative training program to comply with this subpart.

(7) Be signed by the flight school employee and an authorized official of the flight school.

(b) *Recordkeeping requirements.* A flight school must establish and maintain the following records for one year after an individual no longer is a flight school employee:

(1) A copy of the document required by paragraph (a) of this section for the initial and each recurrent security awareness training conducted for each flight school employee in accordance with this subpart; and

(2) The alternative flight school security awareness training program used by the flight school, if the flight school uses such a program.

(c) *Inspection.* A flight school must permit TSA and the Federal Aviation Administration to inspect the records required under paragraph (b) of this section during reasonable business hours.

Issued in Arlington, Virginia, on September 16, 2004.

**David M. Stone,**

*Assistant Secretary.*

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