



[9110-05-P]

**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; Reopening of Comment Period**

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Interim final rule; reopening of comment period.

**SUMMARY:** The Transportation Security Administration (TSA) is reopening the comment period for the interim final rule (IFR) that established the Alien Flight Student Program (AFSP). TSA is in the process of finalizing the IFR with modifications to improve the efficiency and efficacy of this program consistent with regulatory reform requirements of Executive Orders (E.O.) 13771 (Jan. 30, 2017) and 13777 (Feb. 24, 2017). To ensure TSA has adequately considered relevant options, we are reopening the comment period on the IFR. In particular, TSA is requesting comments on three types of issues: scope of security threat assessments (STAs), including who should receive them and the frequency of such assessments; options for reducing the burden of recordkeeping requirements, including the use of electronic records; and sources of data on costs and other programmatic impacts of the rule. TSA is reopening the comment period for an additional 30 days.

**DATES:** The comment period for the interim final rule published at 69 FR 56324 (Sept. 20, 2004), is reopened. Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by the TSA docket number to this rulemaking, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Johannes Knudsen (TSA Alien Flight Student Program) at telephone (571) 227-2188, or David Ross (TSA Office of Chief Counsel) at telephone (571) 227-2465, or email to [afsp.help@tsa.dhs.gov](mailto:afsp.help@tsa.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Comments Invited**

TSA published an IFR, with request for comments, in 2004 to establish requirements for alien flight training and security awareness training for flight school employees.<sup>1</sup> TSA evaluated all public comments received on the IFR, whether received before or after the original comment period closed on October 20, 2004. It is not necessary for commenters to resubmit issues previously raised, but TSA believes reopening the comment period is advisable to obtain updated information and perspectives from regulated entities on the impact of the regulation.

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. *See ADDRESSES* above for information on where to submit comments. In general, TSA seeks comments on the broad areas outlined within this notice. TSA also seeks comments on how this rulemaking could be modified to

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<sup>1</sup> *See* docket for this rulemaking or 69 FR 56324 (Sept. 20, 2004).

maximize benefits while reducing excessive, unjustified, or unnecessary costs. We also invite comments relating to the current economic, environmental, energy, or federalism impacts of this regulation.

TSA asks that commenters provide as much information as possible. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, as well as any additional data which supports your comment. It is also helpful to explain the basis and reasoning underlying your comment.

TSA appreciates all information provided. While complete answers are preferable, we recognize providing detailed comments on every question could be burdensome and will consider all comments, regardless of whether the response is complete. TSA does not expect every commenter will be able to answer every question. Please respond to those questions you feel able to answer or that address your particular issue.

TSA encourages responses from all interested entities, not just flight schools and the applicants for flight training. If, however, you are not directly subject to this regulation or its requirements, please explain your interest in this rulemaking and how your comments may assist in TSA's development of the final rule.

#### *General Instructions for Submitting Comments*

All submissions must include the agency name and docket number for this notice. With the exception of items requiring special handling, all comments received will be posted without change to <http://www.regulations.gov>.

*Handling of Confidential or Proprietary Information and SSI Submitted in Public Comments*

Do not submit comments to the public regulatory docket that contain trade secrets, confidential commercial or financial information, or sensitive security information (SSI). Please contact [afsp.help@tsa.dhs.gov](mailto:afsp.help@tsa.dhs.gov) for instructions on how to submit information requiring special handling. TSA will not place such information in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. Requests to examine or copy information that is not in the public docket will be treated as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

*Reviewing Comments in the Docket*

For access to the docket to read background documents or comments, go to <http://www.regulations.gov>. The docket for this rulemaking currently includes the 2004 IFR and all comments received on that rulemaking.

## **II. Background**

TSA published the 2004 IFR to fulfill the requirement in Sec. 612(a) of the Vision 100-Century of Aviation Reauthorization Act.<sup>2</sup> The IFR created part 1552, Flight Schools, in title 49 of the Code of Federal Regulations (CFR). The regulation applies to flight schools and to individuals who apply for or receive flight training. TSA issued exemptions and clarifications in response to comments on the regulation and questions raised during operation of the program since 2004, most of them within the first year of its implementation.<sup>3</sup> In 2009, TSA published a notice to announce the imposition of fees for processing STAs for alien flight students.<sup>4</sup>

More recently, between 2012 and 2016, members of the aviation industry, the public, and Federal oversight organizations have identified areas where the program could be improved, including specific recommendations from the Aviation Security Advisory Committee regarding this regulation. TSA's internal procedures and processes for vetting applicants also have evolved and matured.

## **III. Efficiency and Efficacy Enhancements**

The primary benefit of this regulation results from the increased protection of U.S. citizens and property from acts of terrorism. The requirements of 49 CFR part 1552, implemented through the AFSP, decrease the chance a flight school student who poses a security threat will be able to receive flight training from a U.S. flight school in the

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<sup>2</sup>Pub. L. 108-176, 117 Stat. 2490, 2572 (Dec. 12, 2003). This provision required TSA to establish a process to implement the requirements of Sec. 612(a), including the fee provisions, not later than 60 days after the enactment of the Act.

<sup>3</sup> See, e.g., the following documents at Regulations.gov: "U.S. DHS/TSA HQ - Notice, Applicability of 49 CFR part 1552 to certain types of aircraft" (Oct. 29, 2004) (TSA-2004-19147-0324) and "U.S. DHS/TSA HQ - Response - Interpretation of "Flight Training" for Aircraft with an MTOW of 12,500 Pounds or Less and Exemption..." (January 5, 2005) (TSA-2004-19147-0337).

<sup>4</sup> See fee notice published in the *Federal Register* at 74 FR 16880 (April 13, 2009).

operation of aircraft that could be used in an act of terrorism. The regulation also improves security at flight schools through the requirement for security awareness training for flight school employees.

We recently reviewed all of our programs to identify options for reducing the regulatory burden, consistent with the requirements of E.O. 13771, Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017), and E.O. 13777, Enforcing the Regulatory Reform Agenda (Feb. 24, 2017). As part of this effort, TSA is considering several recommendations made by industry to modify the AFSP regulation. For example, TSA could revise reporting and recordkeeping requirements. *See* 49 CFR 1552.3(i) and 1552.25. These requirements currently require maintaining paper records on alien flight students, at an annual estimated cost of \$7.4 million, discounted at 7 percent. TSA could establish an electronic recordkeeping platform where all flight providers would upload required student information to a TSA-managed website, eliminating the need to maintain paper records. As TSA increases security by expanding use of recurrent vetting for individuals required to undergo STAs, TSA could also modify the interval for STAs of alien flight students to reduce the scope of information and fees required each time an individual applies for flight training.

As TSA considers available options for maximizing security benefits while minimizing costs, we are seeking comment on the following specific issues:

1. Costs and benefits of requiring flight training providers to undergo a STA. Currently, alien flight students must undergo a STA, but flight school employees responsible for compliance with TSA's requirements are not required to undergo a STA.

2. Impact of modifying STA requirements for alien flight training candidates from an event-based requirement to a time-based requirement. Currently, TSA requires individuals to be vetted before each training event. This requires payment of fees for each training event to complete the STA process. With the expansion of recurrent vetting programs, it may be possible to allow for a time-based STA requirement (such as once every three years) rather than an STA for each training event.

3. Appropriate compliance requirements for parties involved in leases of aircraft, aircraft simulators, and other flight training equipment. For example, TSA could add new regulatory terms and definitions regarding agreements between companies who lease aircraft, aircraft simulators, instructor services, and/or flight training equipment to Federal Aviation Administration (FAA)-certified and non-FAA-certified flight training providers who engage in training in the United States, to clarify which party to such transactions should comply with AFSP reporting and recordkeeping requirements.

4. Impact of allowing regulated parties to use electronic recordkeeping, in whole or in part, to establish compliance. As much of the information required under this program is currently submitted to TSA in electronic format, TSA could provide validation of information submitted and eliminate the need for all records to be maintained in paper copy by the flight school. To the extent available, please include data on the costs of maintaining paper records for flight schools and how much savings would occur if TSA allowed flight schools to only submit electronic records.

5. Implications of refining the scope of STAs for candidates who train with FAA-certified flight instructors operating outside the United States.

6. Sources of data on the number or percentage of flights schools that only train U.S. citizens. This information can be used to streamline program implementation and validate cost estimates for the program.

TSA encourages submission of any other data or information available we should consider in our review of the regulation. This information is necessary for TSA to identify areas for potential deregulation and cost savings, limit vulnerabilities from insider threats, and estimate the costs of implementing the final rule.

For more background on the regulation and its requirements, please see the IFR, which is available in the docket. As previously noted, TSA evaluated all 332 public comments received on the IFR, both before and after the comment period closed on October 20, 2004. It is not necessary for commenters to resubmit issues previously raised, but TSA believes our rulemaking would benefit from reopening the comment period to obtain updated information and perspectives from regulated entities on the impact of the regulation.

Dated: May 13, 2018.

David P. Pecoske,  
Administrator.

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