



**Transportation
Security
Administration**

October 19, 2004

Docket No. TSA-2004-19147

Flight Schools Subject to 49 CFR part 1552

RE: Interpretation of Certain Definitions and Exemption from Certain Requirements Contained in 49 CFR part 1552

SUMMARY:

This submission is in response to comments received from flight schools subject to 49 Code of Federal Regulations (CFR) part 1552, and associations representing such flight schools. The Transportation Security Administration (TSA) is clarifying the definitions of the terms "flight training" and "recurrent training" in 49 CFR 1552.1(b) and providing an exemption from the recordkeeping requirements in 49 CFR 1552.3(h).

What is flight training?

"Flight training" is defined in 49 CFR 1552.1(b) as "instruction received from a flight school in an aircraft or aircraft simulator." TSA interprets this definition to include only that training that a candidate could use toward a new airman's certificate or rating.

What is recurrent training?

"Recurrent training" is defined in 49 CFR 1552.1(b) as "periodic training required under 14 CFR part 61, 121, 125, 135, or Subpart K of part 91." TSA interprets this definition to not include any flight review, proficiency check, or other check whose purpose is to review rules, maneuvers, or procedures, or to demonstrate a pilot's existing skills on aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or less, such as the flight review required under 14 CFR 61.56 or the recent flight experience requirements in 14 CFR 61.57.

What records does a flight school have to maintain for U.S. citizens or nationals?

Under 49 CFR 1552.3(i)(iv), a flight school is required to maintain a copy of documentation establishing that a flight student is a U.S. citizen or national for five years. However, TSA is granting an exemption to that provision for flight schools that provide flight training on any size aircraft, provided that the flight school: (1) continues to determine whether a flight student is a U.S. citizen or national in accordance with 49 CFR 1552.3(h) prior to providing flight training to the student; and (2) makes the following endorsement in both the instructor's logbook, or other record

used by the instructor to record flight student endorsements, and the student's logbook: "I certify that [insert student's full name] has presented to me a [insert type of document presented, such as U.S. birth certificate or U.S. passport, and the relevant control or sequential number on the document, if any] establishing that [he or she] is a U.S. citizen or national in accordance with 49 CFR 1552.3(h). [Insert date and instructor's signature and CFI number.]"

When do aliens who apply for training on aircraft with an MTOW of 12,500 pounds or less have to comply with the rule?

Currently, all aliens who apply for training on aircraft with an MTOW of 12,500 pounds or less are required to comply with the information submission requirements in 49 CFR 1552.3(c) beginning October 20, 2004. However, TSA is granting a 60-day exemption, effective October 20, 2004, from that provision to aliens who currently hold an airman's certificate from the Federal Aviation Administration (FAA) or a foreign national authority that is recognized by the FAA (such as the Joint Aviation Authorities). These aliens are exempt from 49 CFR 1552.3(c) until December 19, 2004, when they will be required to begin complying with that provision. This exemption does not apply to aliens who do not hold an airman's certificate.

BACKGROUND:

On September 20, 2004, TSA published an interim final rule (IFR) that prohibits a flight school from providing flight training to an alien unless the flight school notifies TSA that the alien has requested flight training, and the alien provides certain information to TSA. (69 FR 56324, May 5, 2003). The IFR implements statutory mandates under Section 612 of Vision 100 – Century of Aviation Reauthorization Act (Pub. L. 108-176, December 12, 2003, 117 Stat. 2490), which transferred responsibility for this program from the Department of Justice (DOJ) to TSA.¹ The IFR also requires flight schools to notify TSA when an alien requests recurrent training, and submit to TSA certain identifying and training information for the alien, prior to beginning recurrent training for an alien.

The IFR contains two compliance dates. Aliens seeking flight training or recurrent training in aircraft with an MTOW of more than 12,500 pounds were required to comply with the IFR beginning October 5, 2004. Aliens seeking flight training in aircraft with an MTOW of 12,500 pounds or less are required to comply beginning October 20, 2004.

TSA requested and received comments from flight schools and trade associations representing flight schools, general aviation, and air carriers. In addition, TSA held a meeting with several major stakeholder groups who represent the flight training industry on September 30, 2004, to discuss stakeholder concerns and requests for clarifications of the rule. Based on the comments received and meetings with the stakeholders, TSA has decided to take the actions detailed below. Finally, the Aircraft Owners and Pilots Association (AOPA) submitted to TSA a petition for a 90-day extension of the deadline for compliance with the IFR for flight schools that provide flight training in aircraft with an MTOW of 12,500 pounds or less.

¹ The DOJ program applied only to flight training on aircraft with an MTOW of 12,500 pounds or more. It did not apply to flight training on aircraft with an MTOW of less than 12,500 pounds.

INTERPRETATIONS:

“Flight training” is defined in 49 CFR 1552.1(b) as “instruction received from a flight school in an aircraft or aircraft simulator.” “Recurrent training” is defined as “periodic training required under 14 CFR part 61, 121, 125, 135, or Subpart K of part 91.”

Several representatives of flight schools that provide training on aircraft with an MTOW of 12,500 pounds or less expressed concerns over these definitions. Specifically, these representatives were concerned that flight reviews or proficiency checks required under FAA regulations would fall within these definitions, which would require flight schools that provided such reviews or checks to comply with the IFR. They commented that this requirement would be overly burdensome, particularly on small flight schools and individual flight instructors. In addition, they were concerned that the definition of “flight training” was overly broad and could include training that would not enable a candidate to receive a new airman’s certificate or rating.

After further consideration, TSA is clarifying these definitions as follows. First, TSA interprets the definition of “flight training” to include only that training that a candidate could use toward a new airman’s certificate or rating. TSA believes that the requirements of the IFR should be limited to this type of training because it allows individuals without any training to learn how to operate an aircraft, and allows pilots who already have the skills to operate an aircraft to gain new operating skills, such as upgrading from a single-engine aircraft to a multi-engine aircraft.

Second, TSA interprets the definition of “recurrent training” to not include any flight review, proficiency check, or other check whose purpose is to review rules, maneuvers, or procedures, or to demonstrate a pilot’s existing skills on aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or less, such as the flight review required under 14 CFR 61.56 or the recent flight experience requirements in 14 CFR 61.57. TSA believes that these checks do not constitute either flight training or recurrent training within the meaning of the IFR because in practice, these checks are mainly used for pilots to demonstrate their skills to an instructor, rather than to gain new skills.

EXEMPTIONS:

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

As noted above, 49 CFR 1552.3(i)(v) requires flight schools to maintain a copy of documentation establishing that a flight student is a U.S. citizen or national for five years. After further considering the comments, TSA has determined that maintaining these records for five years may impose a substantial burden on flight schools, and thus TSA believes that an exemption from this requirement is warranted at this time.


Accordingly, TSA is granting an exemption to that provision, provided that the flight school: (1) continues to determine whether a flight student is a U.S. citizen or national in accordance with 49 CFR 1552.3(h) prior to providing flight training to the student; and (2) makes the following endorsement in both the instructor’s logbook, or other record used by the instructor to record flight student endorsements, and the student’s logbook: “I certify that [insert student’s full name] has presented to me a [insert type of document presented, such as U.S. birth certificate or U.S. passport, and the relevant control or sequential number on the document, if any] establishing that [he or she] is a U.S. citizen or national in accordance with 49 CFR 1552.3(h). [Insert date and instructor’s signature and CFI number.]”

This exemption applies to flight schools that provide training on any size aircraft, and will remain in effect until superseded. TSA continues to evaluate whether alternative procedures may be advisable.

In addition, 49 CFR 1552.3(c) prohibits flight schools from providing flight training in the operation of an aircraft with an MTOW of 12,500 pounds or less to an alien unless the flight school has first notified TSA that the alien has requested such training, and the alien has submitted to TSA certain information. After further considering the comments, TSA has determined that a 60-day exemption, effective October 20, 2004, from this provision for aliens who currently hold an airman's certificate from the FAA, or a foreign national authority that is recognized by the FAA, is warranted because it would give flight schools additional time to prepare to comply with the IFR by reducing the population subject to the IFR while immediately addressing aliens who currently do not have any piloting skills.² These aliens are exempt from 49 CFR 1552.3(c) until December 19, 2004, when they will be required to begin complying with this provision. This exemption does not apply to aliens who do not hold an airman's certificate.

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

Sincerely,



Chad Wolf
Assistant Administrator
for Transportation Security Policy

² TSA notes that flight schools that provide training on aircraft with an MTOW less than 12,500 pounds were not subject to the DOJ program, and thus may have been less prepared to comply with the IFR than flight schools that provide training on aircraft with an MTOW greater than 12,500 pounds.