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The Honorable David P. Pekoske  
Administrator  
Transportation Security Administration  
Department of Homeland Security  
601 12th St. South  
Arlington, VA 20598-4028

**RE: Docket No. TSA-2004-19147; Interim final rule; reopening of comment period  
Flight Training for Aliens and Other Designated Individuals; Security Awareness  
Training for Flight School Employees.**

Dear Administrator Pekoske,

The Aircraft Owners and Pilots Association (AOPA), a not-for-profit individual membership organization, is the world's largest aviation membership association, representing the general aviation interests of our members nationwide. AOPA's mission is to effectively serve the interests and needs of its members as aircraft owners and pilots and to establish, maintain, and articulate positions of leadership to promote the economy, safety, security, utility, and popularity of flight in general aviation aircraft.

Since its inception, AOPA has participated in the General Aviation Subcommittee under the Aviation Security Advisory Committee (ASAC) and has been intensely involved in the review of the Alien Flight Student Program (AFSP) regulations. The subcommittee identified multiple areas that the AFSP could be improved and submitted recommendations for important modifications to TSA through the ASAC. These recommendations included:

- TSA should amend 49 CFR 1552 based on risk-based security principles and shift the Security Threat Assessments (STA) of candidates from being based on a training event to being based on time since the last STA.
- TSA should work closely with other Department of Homeland Security (DHS) agencies and provide improved clarity regarding visas applicable to flight training candidates, including candidates in the United States for non-flight training purposes.
- TSA should clarify the applicability of the 49 CFR part 1552 record-keeping requirements where training is conducted under a leasing arrangement (wet lease or dry lease).
- TSA should require the use of the AFSP portal for Department of Defense (DOD) endorsed flight training candidates.
- TSA should publish a complete list of training events that would require notification, reflecting September 2010 policy interpretation of "Recurrent Training".

Through ASAC updates, AOPA is aware that implementation of several of these recommendations are already in progress by the Transportation Security Administration (TSA). We applaud the agency taking critical steps to address the aviation industry's concerns. This interim final rule (IFR) of Flight Training for Aliens and Other Designated Individuals, Security Awareness Training for Flight School Employees addresses some of the ASAC recommendations; we would like to reiterate our support for their realization and to encourage the TSA to expedite their implementation.

AOPA supports TSA's efforts to modify and improve AFSP. As TSA conducts a review of the IFR, AOPA appreciates the opportunity to submit comments for consideration and address the concerns of general aviation pilots and the flight training community.

### **AOPA's Recommendations on Specific Issues**

#### ***1. Costs and benefits of requiring flight training providers to undergo a Security Threat Assessment (STA).***

##### Definition of flight school employees

In this proposal, a flight school employee is not clearly defined as to whether it refers to management, administrative staff, and/or Certified Flight Instructor (CFI). 49 CFR 1552 Subpart B – Flight School Security Awareness Training defines flight school employee 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 includes an independent or solo flight instructor certificated under 14 CFR part 61.*

There has been confusion among flight training providers as to how flight school employees are defined. No clear guidance from TSA has been provided resulting in each individual flight school having their own interpretation. This ambiguity has caused inconsistencies between flight schools as some flight schools conduct security awareness training to the janitorial staff. This is clearly not the intent of the regulation and has led to imposing unnecessary economic burden on the industry. We believe it is important that TSA define flight school employees, which would provide further clarity to this proposal.

##### Cost of proposed STA on all flight school employees

If this proposed requirement was implemented, the adverse economic impact for the flight school industry would be significant. According to the Federal Aviation Administration (FAA), there are approximately 80,000 active CFIs with a current medical certificate. The TSA estimates 12,000 CFIs cater only to U.S. Citizens, which leaves 68,000 CFIs to undergo the STA process. The fees for the STA (\$130) and fingerprinting (\$15) for 68,000 CFIs would be \$9,860,000 to comply with the proposed requirements.

In addition, assuming the STA and fingerprinting process takes on average two hours, there is a loss of revenue during the two hours that the CFIs are spending on the STA instead of providing flight training. The economic costs to the flight training industry for this issue alone amount to

\$24.4 million for initial compliance. Just for CFIs to undergo STA, the proposed requirement would cost the industry more than \$34 million to comply with this proposal. If flight school employees include administrative staff and contracted staff, the cost for this requirement could be much higher. AOPA believes this STA requirement for all flight school employees to not be warranted.

#### Existing vetting process and security awareness training

Flight training providers usually conduct background checks on new employees as a part of the hiring process. FAA certificate holders are also vetted on a daily basis. Additionally, as required by other security regulations, such as requirements of airport media badge and criminal history records check, many flight school employees are already subject to existing vetting processes.

As previously mentioned, per 49 CFR 1552, flight school employees are required to receive initial and recurrent security awareness training. The contents of this training are detailed in the regulation and must include:

- situational scenarios to assess specific situations and determine appropriate courses of action
- information to identify uniforms, suspicious behaviors, unusual questions, appropriate response

AOPA provides an online training course that satisfies these requirements, including information about the AOPA Airport Watch program to which a suspicious activity can be reported. We believe that effective and efficient security measures currently exist to mitigate security threats in the flight training industry. We do not believe additional requirements are justified and their enactment would be onerous on small businesses to comply with.

**Recommendation:** TSA must first define flight school employees. However, regardless of the definition of flight school employees, AOPA believes that the economic impact on small businesses and individual operators of the proposed STA requirement would be significant without enhancing security. Therefore, AOPA recommends that TSA not implement this proposal, which requires flight training providers 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.***

##### Reduced administrative burden while maintaining security level

Shifting the STA requirement from an event-based to a time-based interval will reduce the administrative burden on flight schools significantly without negatively affecting the level of security measures. This modification of STA requirements will also help TSA best utilize its limited resources as it eliminates unnecessary STAs on the candidates who were vetted just one year ago. Once vetted and approved, the security threat level of the candidate is unlikely to change over a short period of time; therefore, the candidate should be allowed to continue his or her training regardless of the rating or certification being sought.

Moreover, the current system is rigid, and candidates must reapply to the AFSP if they need to change their flight training provider. Pilots regularly need to change flight schools, frequently

this is due to CFI availability and outside of the student's control. The proposed time-based STA should also allow candidates to change a flight training provider or make minor changes to the stored information such as address. We believe it is onerous and unnecessary for a pilot to reapply to change flight schools when this is a common occurrence today.

#### Positive economic impact of the proposed time-based requirement

Changing the STA requirement from event-based to time-based will have a positive economic impact on the aviation industry as it eliminates the need to reapply for the same STA every year. Additionally, candidates who completed their private pilot certificate training today might not bother to go through the process of reapplying to obtain their instrument rating. The burdens of the existing system result in a disincentive for students to pursue additional ratings. However, a time-based STA would allow candidates to take lessons toward their instrument rating, which could potentially result in an increase in business, while not affecting the security level.

**Recommendation:** AOPA supports TSA modifying STA requirements for alien flight training candidates from an event-based to a time-based requirement. AOPA also recommends that TSA implement a five-year STA. In some cases, the candidates are already in the U.S. on either an immigrant visa or non-immigrant visa, such as F1 student visa or H1B temporary worker visa. Although each visa type has different requirements, these visas are typically valid longer than three years. For example, international students studying at a university would usually take four years to graduate. A four-year STA would allow them to obtain their private pilot certificate and continue taking lessons toward their instrument rating while they are in college without re-applying for another STA. In the case of an immigrant visa, a non-U.S. citizen can stay in the U.S. permanently. Therefore, a five-year STA would be more practical and will not impact the security threat level.

### ***3. Appropriate compliance requirements for parties involved in leases of aircraft, aircraft simulators, and other flight training equipment.***

#### ASAC recommendation to clarify wet lease / dry lease compliance responsibilities

The existing regulation does not address who is responsible for AFSP compliance in facility, simulator, and aircraft leasing situations. Through ASAC, the aviation industry recommended that the TSA should clarify that the flight training provider is responsible for regulatory compliance with 49 CFR 1552. The ASAC report provided different types of lease agreements, such as wet lease and dry lease, involving 14 CFR Part 142 certified training schools and recommended detailed compliance processes for each lease type scenarios. The lack of clarity can result in flight training providers' non-compliance; therefore, the TSA must update the compliance requirement policy to reflect the wet and dry lease processes recommended by the industry.

#### Different lease agreement scenarios

AOPA is aware that many 14 CFR Part 141 and 14 CFR Part 61 schools lease their aircraft for liability purposes. For example, in a relatively small flight school of five aircraft and one flight simulator, the school could have six different leases. It is a common practice for private aircraft owners to lease their aircraft to a local flight school. These aircraft owners are otherwise entirely uninvolved in the day-to-day operations and are unlikely to want to expose themselves to additional requirements. If these aircraft owners choose to pull their aircraft from service, the

fleet options for many flight schools would become limited. This TSA proposal should remain focused on the types of leases discussed in the ASAC recommendations report: 14 CFR Part 142 and 14 CFR Part 121 certified flight training schools wet lease and dry lease. AOPA would disagree with any expansion of these requirements on 14 CFR Part 141, 14 CFR Part 61, and individual flight training providers; these providers should continue to be the party responsible for the AFSP regardless of their aircraft lease agreements.

**Recommendation:** AOPA supports the ASAC’s recommendations to clarify wet lease / dry lease compliance responsibilities. However, we do not support additional restrictions or requirements on lease agreements by 14 CFR Part 141, 14 CFR Part 61, and individual flight training providers.

***4. Impact of allowing regulated parties to use electronic recordkeeping, in whole or in part, to establish compliance.***

Although most of the information required under the AFSP is currently submitted to TSA in electronic format, TSA requires a paper record of each candidate be maintained for five years. If TSA could provide validation of information submitted and eliminate the need for all records to be maintained in paper copy by the flight school, recordkeeping processes will be improved significantly. It is an unnecessary cost and burden for flight schools to need to maintain physical records that contain personally identifiable information. Electronic recordkeeping could also streamline the compliance process and allow a candidate to change flight schools without reapplying for another STA.

**Recommendation:** AOPA supports TSA using electronic recordkeeping and eliminating the need for paper records to be maintained by flight schools. This would help both the agency and industry streamline compliance processes and reduce the cost for compliance for flight schools.

**AOPA’s Recommendations on Additional Areas**

***AFSP candidates with an immigrant visa***

AOPA submitted comments to the original 2004 proposed rule and raised concerns regarding AFSP candidates with an immigrant visa or resident aliens, also known as “green card” holders. In our comments, we stated “the federal government affords resident aliens all the rights and privileges of a US citizen, except for the right to vote. AOPA has heard from many of the 82,452 existing pilots who are resident aliens who state that the rule’s background check requirement is redundant and unnecessary, since resident aliens have already received extensive immigration and homeland security screening.”

Subsequently, AOPA had multiple discussions with TSA regarding this topic. TSA asserts that candidates with a non-immigrant visa and those with an immigrant visa pose the same level of threat to aviation. AOPA disagrees as green card holders undergo extensive background checks and should be considered far less of a risk given the process they must go through. According to the Privacy Impact Assessment for the Immigration Benefits Background Check Systems dated November 5, 2010, U.S. Citizenship and Immigration Services (USCIS) conducts background checks on petitioners and applicants who seek certain immigration benefits. These background

checks consist of four separate checks against systems within the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the DHS. The TSA should consider the background checks conducted by other federal agencies as a part of its STA, and recognize these individuals are low risk.

**Recommendation:** AOPA recommends that TSA exempt green card holders from the proposed requirements.

### **Conclusion**

While AOPA recognizes the importance of preventing terrorists from using aircraft to attack the U.S., a risk-based approach must be taken to improve the proposed rule. General aviation aircraft have never been involved in a terrorist act. The proposed IFR has already had substantial impacts on U.S. citizens, resident aliens, and the flight training community. AOPA supports TSA's efforts to modify this rule and minimize its further impacts. However, further steps/efforts are needed to expedite the implementation processes.

We appreciate the opportunity to provide our comments and raise our concerns. AOPA looks forward to working with the TSA on implementing these recommendations.

Sincerely,



Nobuyo A. K. Sakata  
Director of Government Affairs, Aviation Security  
Aircraft Owners and Pilots Association