AIRCRAFT OWNERS AND PILOTS ASSOCIATION
421 Aviation Way • Frederick, MD 21701-4798
Telephone (301) 695-2000 • FAX (301) 695-2375

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September 29, 2004

Office of the Chief Counsel
Attn: Dion Casey
Transportation Security Administration
West Building, Floor 8, TSA-2
601 South 12th Street
Arlington VA 22202

Re: Interim Final Rule, Flight Training for Aliens
Docket No. TSA-2004-19147

Dear Mr. Casey:

You are noted as the person to whom legal questions regarding the above rulemaking may be directed. I am general counsel of the Association named on the letterhead, which is an association of more than 400,000 individual aircraft owners and pilots comprising most of the active civil pilots and most of the certificated flight instructors in the United States. Subject to your interpretations, this rulemaking and its close-by effective dates will have a serious adverse impact on our members and the whole general aviation community of this Country. So, we look forward to your help in interpreting and mitigating this very complex and far-reaching rule.

For ease of addressing the following questions, at this time we restrict our questions to flight training in the operation of an aircraft having a maximum certificated takeoff weight of 12,500 pounds or less ("light aircraft"), which comprises the bulk of the training undertaken by our constituency and general aviation in the United States.

As an overriding comment and to give background to our questions, the rulemaking and the Congressional legislation authorizing it seem directed only at the flight training of aliens. And, consistent with that Congressional intent, the expressions we have received from TSA seemed to say that there is no intent in the rule to cover U.S. citizens. But, much to our surprise and concern, as we read the rule, it seems to substantially affect any and every individual, including United States citizens and resident aliens, who will seek flight training in the United States, and it will affect every flight school and individual flight instructor who undertakes to provide that flight training. As an overriding question, we ask whether TSA intended such an all-encompassing effect, and whether

TSA reads the authorizing legislation as intending such an effect. Especially with respect to training in light aircraft, we find only one provision in the enabling legislation that applies to flight training in the operation of an aircraft having a maximum certificated takeoff weight of 12,500 pounds or less, and that provision imposes only a requirement for "notification," and that requirement is imposed only on the trainers. Not the trainees. We find nothing in the enabling legislation to authorize any regulatory impositions on U.S. citizens taking flight training.

Now to the more specific questions on which we seek your help. As we read the Rule 1552.3, a flight school, including an individual flight instructor, may not provide flight training to a candidate, defined to include not only an alien but any individual designated by TSA, unless the flight school/individual flight instructor has done certain things and the candidate has done certain things, things not heretofore regulatorily required, as more fully set out below.

Regulatory Burdens on Flight Schools/Individual Flight Instructors

Is it a correct interpretation of the rule that in every instance of an individual presenting himself/herself to a flight school or individual flight instructor for flight training, that the school or instructor must make a query to TSA? Please help us confirm or distinguish the following analysis. In order to be able legally to provide flight training, a flight school or individual flight instructor must first notify TSA that a "candidate" has requested flight training. Necessarily then, the flight school or individual flight instructor must first determine whether the candidate is an alien, and then regardless of whether the candidate is an alien or a U.S. citizen or a U.S. national, the flight school or individual flight instructor must then determine that the "candidate" is or is not an individual designated by TSA. Presumably the flight school or individual flight instructor must query TSA concerning the designation. Only then will the flight school or individual flight instructor have the knowledge to determine whether notification must be given to TSA.

Is it the correct implication of the preamble, as distinguished from the rule, that every flight school and every freelance flight instructor that offers flight instruction must register with TSA, through the FAA, and be assigned a password to access a TSA system, presumably to determine whether an individual flight student has been designated by TSA? Please confirm that this requirement is not expressed in any of the rules promulgated in this rulemaking, i.e., published at 69 Federal Register 56324 on September 20, 2004. If not, is the requirement published in any other rule promulgated by TSA or FAA?

Is it a correct interpretation of the rule that every flight school and every freelance flight instructor must be able to determine the citizenship or other nationality status of every

flight student who presents himself/herself for flight instruction by determining the authenticity and interpreting legal documents such as birth certificates, original or government certified, passports, Citizenship and Immigration Services forms, Immigration and Naturalization Service forms, "raised seals," and the like?

Regulatory Burdens on Flight Students

Is it a correct interpretation of the rule that every individual who intends to take flight training must present proof of citizenship or other nationality status to the flight school or individual flight instructor before commencing flight instruction?

Is it a correct interpretation of the rule that every individual, regardless of whether the individual is a U.S. citizen or national, who intends to take flight instruction must determine whether he/she is an individual designated by TSA, in order to determine whether he/she must comply with the extensive requirements of Rule 1552.3 (c)(2) and (a)(2)? How does TSA intend that such individuals have access to TSA's determinations?

Incidentally, the preamble to the rulemaking says that the rule "requires U.S. citizens and nationals ... to submit certain information that will enable TSA to verify their status as U.S. citizens or nationals." We could not find this requirement for submission to TSA in the rule as promulgated, unless what is meant is the documentation that a student must show to the flight school or freelance flight instructor. Please clarify.

We would hope that at the very least, TSA would provide a definitive statement to the effect that this rule does not impose any regulatory requirements on U.S. citizens taking training in light aircraft except to provide proof of citizenship to the flight school at the initiation of flight training. We would also welcome a similar definitive statement with respect to resident aliens.

Recurrent Training

The rule exempts candidates who apply for recurrent training from the security threat assessment requirements. We are confused by the definition of recurrent training in TSA section 1552.1 as it includes periodic training required under 14 CFR part 61. Please consider that in 14 CFR section 61.56 the FAA imposes the requirement for a biennial flight review that "consists of a minimum of 1 hour of flight training and 1 hour of ground training" given by an authorized flight instructor. This FAA part 61 requirement applies to virtually all 650,000 active general aviation pilots. Language at one place in the preamble to the TSA rule would seem to limit recurrent training 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," not part 61. This preamble interpretation would apply the TSA exemption to a small number of the 650,000 active civil pilots, those engaged in essentially commercial operations, and would seem to exclude other FAA part 61 requirements such as the requirement for a biennial flight review. What is TSA intent with respect to this exemption and the large number of general aviation pilots who are required to take periodic training under FAA part 61?

Security Awareness Training

The scope of the requirements for flight school security awareness training in Subpart B of the TSA rule seems to go beyond the scope authorized by Section 612 of Vision 100-Century of Aviation Reauthorization Act. The TSA rule applies the requirements for security awareness training to a "flight school," which is regulatorily defined in section 1552.1 to include a person operating as a "flight instructor." The preamble to the rule seems to say that "an independent or solo flight instructor" must receive security awareness training in accordance with this subpart." On the other hand, the Reauthorization Act, in authorizing rulemaking requiring security awareness training, seems to exclude "a person operating as a flight instructor," i.e., the freelance flight instructor. Please notice that in Section 612 of the Reauthorization Act, where this rulemaking is authorized, every reference but one is to "a person operating as a flight instructor, pilot school, or aviation training center." Clearly applying those provisions to the individual flight instructor. The one reference that is different is the one authorizing rulemaking on security awareness training. In that provision, Congress referred only to "flight schools," suggesting that Congress did not intend that TSA impose the security training requirements on flight instructors who are not employed by flight schools. Is it TSA intent to apply the requirements for security awareness training to freelance flight instructors?

Applicability to Resident Aliens

The threat assessment requirements of the rule do not apply to U.S. citizens or nationals. For purposes of the rule, are resident aliens, that is, persons lawfully admitted for permanent residence in the United States, considered aliens or U.S. nationals? Under the TSA rule, a national of the United States is defined as a person who owes permanent allegiance to the United States. We could find no language in the immigrations laws or regulations requiring individuals who obtain the status of resident alien to renounce allegiance to their countries and instead owe permanent allegiance to the United States. See, 8 USC 1101 et seq.; 8 CFR 1245 et seq. Hence, our question.

The Training Population Affected

In considering these questions, it may be well to restate the probable population affected. It seems that TSA is drawing heavily from the experience with the Department of Justice program. That could be misleading. There are only a small number of training providers in the DOJ program, most likely because it applies only to training in large aircraft, i.e., with a maximum certificated takeoff weight of 12,500 pounds or more. The instant rulemaking applies to the approximately 3400 flight schools of varying sizes in this Country that provide flight training in light aircraft, less than 1,000 of which are certificated under Part 141 of the Federal Aviation Regulations, the balance, including most of the 141 schools, operating under Part 61 without the necessity for certification. There are some 88,000 flight instructors certificated under Part 61. There are 650,000 active certificated U.S. pilots, over 90,000 of whom are student pilots taking flight training, and 85,000 resident alien pilots. The certificated flight instructors are authorized to provide flight training unaffiliated with any flight school, and many, many do so. A very large number of the general aviation pilot population, beyond student pilots, is continually engaged in upgrade training. The scope of this rulemaking in terms of the number of individuals and entities affected is far beyond the number involved in the DOJ program.

As I am sure that you can appreciate, the early effective dates of this rulemaking (our Association has just yesterday requested a suspension of one of the compliance deadlines) make it imperative that we be able to promptly respond to the many inquiries we are receiving about this rulemaking. It is clear to us that many who are subject to this rulemaking need guidance in understanding it. From our questions you should be able to see that there are serious concerns regarding the interpretation of the rules. We expect that your answers to these questions may invite other questions. And, we have not attempted to cover all of our concerns about the rulemaking. If you feel that it would be worthwhile to have an early discussion of these questions and possible answers, we would be pleased to participate.

Cordially,

John S. Yodice

John S. Yodice
General Counsel