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[9110-05-P]

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

[Docket No. TSA-2004-19147]

RIN 1652-ZA16

**Alien Flight Student Program Recurrent Training Fees**

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

**ACTION:** Notice.

**SUMMARY:** The Transportation Security Administration (TSA) announces the imposition of fees for processing alien flight students who take recurrent training. These fees will cover the cost of the security threat assessments of these alien flight students.

Recent statutory amendments authorize TSA to establish these fees by notice.

**DATE:** This notice is effective 30 days from the date of publication in the Federal Register.

**ADDRESSES:** You may view published documents and comments concerning the Alien Flight Student Program, identified by the docket number of this notice, using any one of the following methods:

- (1) Searching the Federal Docket Management System (FDMS) Web page at

<http://www.regulations.gov>;

- (2) Accessing the Government Printing Office's Web page at

<http://www.gpoaccess.gov/fr/index.html>; or

- (3) Visiting TSA's Security Regulations web page at <http://www.tsa.gov> and

accessing the link for "Research Center" at the top of the page.

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**FOR FURTHER INFORMATION CONTACT:** Johannes M. Knudsen, Alien Flight Student Program, Transportation Threat Assessment and Credentialing (TTAC), TSA-19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6019. Telephone: (571) 227-2188; e-mail: Johannes.Knudsen@dhs.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Authority**

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Appropriations Act of 2009),<sup>1</sup> which amends 6 U.S.C. 469, requires the Secretary of the Department of Homeland Security to (1) establish a process to determine that an alien who takes recurrent flight training is properly identified and does not pose a threat to aviation or national security; and (2) impose reasonable fees to recoup the cost of checking recurrent training candidates.

TSA refers to recurrent training as Category 4 training. TSA defines recurrent training as periodic training required for certified pilots under 14 CFR parts 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. *See* 49 CFR 1552.1. Further, TSA has clarified that recurrent training includes training required by a foreign national authority that is recognized by the Federal Aviation Administration (FAA). *See* TSA Interpretation at Docket No. TSA-2004-19147-227. Finally, TSA has clarified that recurrent training does not include flight review, proficiency check, or any 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 take-off weight of 12,500 pounds or less, such as

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<sup>1</sup> Pub. L. No. 110-329, § 543, 122 Stat. 3574, 3689 (September 30, 2008).  
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flight review required under 14 CFR 61.56 or flight experience requirements in 14 CFR 61.57. See TSA Interpretation at Docket No. TSA-2004-19147-0226.

The Appropriations Act of 2009 provides:

[T]he Secretary shall establish a process to ensure that an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act) applying for recurrent training in the operation of any aircraft is properly identified and has not, since the time of any prior threat assessment conducted pursuant to section 44939(a) of such title, become a risk to aviation or national security.

The Secretary may charge reasonable fees under subsection (a) for providing credentialing and background investigations for aliens in connection with the process for recurrent training.... Such fees shall be promulgated by notice in the Federal Register.

~~Pub. L.~~ No. 110-329, § 543(2)(b)(1), (3) (6 U.S.C. 469(b)(1), (3)).  
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## **II. Recurrent Training under the Alien Flight Student Program**

### **A. Overview of Alien Flight Student Program**

TSA administers the Alien Flight Student Program (AFSP) and conducts security threat assessments of alien flight candidates to determine that they do not pose a threat to aviation or national security. TSA has codified the standards that govern this program at 49 CFR part 1552<sup>2</sup> and establish which alien flight candidates must undergo a security threat assessment, the information they must provide to TSA for the security threat assessment, and the fees the candidates must pay to cover the cost of the security threat assessment.

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<sup>2</sup> TSA published part 1552 pursuant to section 113 of the Aviation and Transportation Security Act (ATSA) and section 612 of Vision 100 – Century of Aviation Reauthorization Act (49 U.S.C. 44939).

Aliens seeking flight instruction fall into one of four categories of flight instruction, and aliens who take recurrent training fall under Category 4.<sup>3</sup> Part 1552, and the statutes authorizing the rule, require fees for candidates seeking flight training under Categories 1-3, and the Appropriations Act of 2009 authorizes TSA to establish fees for candidates seeking Category 4 recurrent training. In accordance with the Appropriations Act of 2009, TSA, through this notice, addresses recurrent flight training (Category 4) procedures and associated fees.

#### B. Security Threat Assessment Process

To conduct a security threat assessment on alien flight candidates, TSA needs certain biographic information to check the individual against terrorism-related databases and other governmental information sources, and verify identity. Section 1552.3(d) currently requires the following information from candidates for recurrent training requests: (1) full name (and any other names used previously); (2) any unique student identification number issued previously to the candidate by the Department of Justice or TSA (such as for other flight training); (3) a copy of the candidate's current, unexpired passport and visa, if any; (4) the candidate's current airman certificate, issuing country, certificate number, and type rating(s); (5) the type of training for which the candidate is applying; (6) the date of the candidate's prior recurrent training (if any), and a copy of the training form documenting that recurrent training; (7) the dates and location of the

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<sup>3</sup> The other three categories are: (1) Category 1— flight training candidates seeking training in the operation of aircraft weighing greater than 12,500 pounds; (2) Category 2 – flight training candidates seeking training in the operation of aircraft weighing greater than 12,500 pounds, but who qualify for expedited processing because of certain qualifications; and (3) Category 3 – flight training candidates seeking training in the operation of aircraft weighing 12,500 pounds or less and the training is an initial, multi-engine, or instrument-rating training. This notice does not affect Categories 1-3 procedures.

candidate's requested training; and (8) a photograph of the candidate taken when the candidate arrives at the flight school for recurrent training.

In addition to the information listed above, TSA will now request information gleaned from the candidate's passport, a copy of which is required under 49 CFR 1552.3(d)(2)(iii), including the candidate's date of birth, gender, birth country, nationality, height, weight, eye color, hair color, country of citizenship, type of citizenship (current, dual, or historical), whether citizenship is acquired through birth or naturalization, dates of citizenship, and passport information (issue and expiration date, status, city of issuance). Additionally, TSA will require contact information to facilitate communication between TSA and the candidate, such as address, dates at the address, phone number(s), and email address; and employment information, such as occupation, employer's name, phone number, and email address. A candidate may also voluntarily indicate whether his or her passport was issued outside the United States and whether it has been renewed. Note that TSA currently requires candidates who are seeking flight training under Categories 1-3 to submit this data. TSA has found that this contact information greatly reduces that amount of time it takes to complete a security threat assessment, which benefits the candidates and TSA. We require this information from individuals who work in the maritime industry, drivers who are applying for a hazardous materials endorsement, and air cargo employees. *See* 49 CFR parts 1548, 1572.

On January 5, 2005, TSA issued an exemption that reduced the amount of information that must be submitted for candidates seeking recurrent training to the following: (1) full name and any others used previously; (2) date of birth; (3) passport number and issuing country; (4) airman certificate number, the type of airman's

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certificate, type ratings on the certificate, and issuing country of the certificate; and (5) the type and dates of training the candidate requests. *See* Docket No. TSA-2004-19147-0337. At that time, TSA noted that the exemption would remain in effect until superseded. TSA now rescinds this exemption because the information required under the rule (49 CFR 1552.3(d)) and this notice is necessary to conduct threat assessments on Category 4 candidates.

Flight schools must submit all of the information required in section 1552.3(d) and this notice to TSA through the AFSP system. TSA will describe this process in greater detail on the AFSP website, including how candidates obtain a User ID.

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### **III. Fees**

#### **A. Standards and Guidelines Used by TSA in Developing These Fees**

The total fee will be \$70 for each Category 4 recurrent training request. TSA calculated the fee from a detailed analysis of historical data on the actual number of Category 4 recurrent training candidates (population), the actual cost of processing the Category 4 submissions, the actual cost of performing the candidate assessments, and the actual cost of maintaining the information systems to support the process over the past four years.

#### **B. Costs**

Candidates for recurrent training must pay a fee, through their respective flight training provider, to cover the following costs:

**Table 1: AFSP Category 4 Actual Costs**

<b>Operational Year</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>	<b>FY2008</b>	<b>Total</b>
<b>Cost Components</b>					
Threat Analysis	\$20,770	\$22,150	\$23,917	\$23,524	\$90,361
Enrollments	\$1,063,100	\$746,969	\$1,014,875	\$818,778	\$3,643,722
Program Management	\$243,940	\$402,850	\$525,634	\$353,148	\$1,525,572
Hardware / Software	\$264,806	\$110,392	\$119,408	\$95,301	\$589,907
Program Administration	\$48,579	\$42,194	\$40,969	\$38,138	\$169,880
<b>Grand Totals</b>	<b>\$1,641,195</b>	<b>\$1,324,555</b>	<b>\$1,724,803</b>	<b>\$1,328,889</b>	<b>\$6,019,442</b>

For the TSA security threat assessment, each Category 4 candidate's information will be checked against multiple databases and other information sources so that TSA can determine whether the candidate poses a security threat that warrants denial of approval of the training request. TSA must establish and maintain the appropriate systems, resources, and personnel to ensure that the candidate's information is appropriately linked, and that TSA will be able to receive and act on the results of the security threat assessment. TSA must have the necessary resources—including labor, equipment, database access, and overhead—to adjudicate the results of the security threat assessment and complete the security threat assessment process.

An analysis of historical costs necessary to conduct candidate assessments for this category of applicants indicates that \$6,019,442 has been expended by TSA in fiscal years 2005-2008. The historical costs include \$90,361 for threat analysis, \$3,643,722 for enrollment, \$1,525,572 for program management, \$589,907 for hardware and software, and \$169,880 for program administration costs necessary to facilitate the processing.

C. Population

An analysis of historical data on Category 4 candidates in fiscal years 2005-2008 indicates that 85,638 training requests have been processed under this category. The analysis indicates the following training requests for each fiscal year.

**Table 2: AFSP Category 4 Actual Population**

<b>Operational Year</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>	<b>FY2008</b>	<b>Total</b>
Annual Candidates for Category 4 recurrent training	16,417	17,248	29,373	22,600	85,638
<b>Grand Total</b>	16,417	17,248	29,373	22,600	85,638


D. Total Fee

The fee TSA charges will recover all costs related to the security threat assessment process. TSA has determined that the fee required to fully recover the candidate assessment costs will be \$70 per candidate. The \$70 fee was determined by dividing the actual number of historical training requests (85,638) into the actual historical cost (\$6,019,442) of services for this category.

TSA will continue work to minimize program costs. Additionally, in accordance with statutory financial management requirements, TSA is required to review fees no less than every two years. *See* 31 U.S.C. 902(a)(8). Upon review, if it is found that the fees are either too high (total fees exceed the total cost to provide the services) or too low (total fees do not cover the total costs to provide the services), TSA will adjust the fee. If TSA adjusts the fees for this reason, TSA will publish a notice in the Federal Register apprising the public of the change.

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Issued in Arlington, Virginia, on                      APR   8   2009

  
Gale Rossides,

Deputy Administrator,  
Transportation Security Administration.