

Comments on Docket No. TSA-2004-19147, Interim Final Rule (IFR)

I have been a resident alien in the USA for many years, and participate fully in American society. The US is my home. I hold a Private Pilot certificate with Instrument rating, and am in training for a Commercial certificate. I fly for personal satisfaction, although I have had thoughts of being an elderly flight instructor one day. I am a member of the Aircraft Owners and Pilots Association (AOPA). I make these comments mostly from my own perspective and, because I only operate aircraft under 12,500 pounds, I will primarily address the provisions under Category 3 and the arguments that lie behind them.

1. Application to Resident Aliens

Including Resident Aliens in the same class as alien visitors is divisive and stigmatizing. The cost to residents in time and money of entering each training engagement is high and will not measurably enhance security. I remind you that each Resident Alien has already undergone a detailed and lengthy examination with your own Department or its predecessors, and we are required to notify you of changes of address. The USCIS is clear that we have the same rights as American citizens with a few, enumerated exceptions. There can be no doubt that the requirements that are proposed will have a chilling effect: fewer Resident Aliens will begin flight training in the first case, and fewer of those who are certified pilots will continue with advanced or recurrent training, given the greater cost and clear implication of being unwelcome and under suspicion.

Furthermore, we have in most instances made a positive, informed choice to align ourselves with this country, and are subject to expulsion for various offenses. Thus there are selection mechanisms that, it may be argued, create a subgroup that has even fewer “unreliables” than the group of citizens by birth.

Presentation of the Resident Alien card to the flight school should be sufficient proof of identity and status. According to your summary of the Congressional mandate, Section 612 of Vision 100, the TSA can decide how much identifying information to require, and a simple notification to the Secretary of a candidate’s name and alien registration number will meet the mandate.

In short, inclusion of Resident Aliens in the general Alien class is unjust and unjustified. Contrary to your statement under “Good Cause for Immediate Adoption”, the rule with respect to Resident Aliens is unnecessary. Resident Aliens should be included in the same class as Citizens for the purpose of this IFR.

2. Aviation Safety

The IFR has a broad definition of training, and covers any engagement between a student and an instructor, for any purpose or indeed for none. Take into consideration that the FAA and General Aviation safety organizations, particularly AOPA’s Air Safety Foundation, leave no doubt that continuous recurrent training and skills-enhancing training are key to improving aviation safety. Each additional training exercise makes a better pilot and makes our skies safer.

Under the terms of the IFR, whether I decide to:

- take a week’s aerobatic course, or
- spend a weekend at a mountain flying clinic, or
- spend a day with a CFI friend in an high-performance airplane in pursuit of an endorsement under 14 CFR 61.31(f), or
- undergo a half-day flight review as required under 14 CFR 61.56, or
- fly for two hours with a freelance instructor as part of the FAA Wings program, or
- simply ask an instructor to fly with me and look for flaws

in each of these cases I must gather all the required paperwork and pay the fee, while the instructor must send yet another photograph to the TSA. The effect of this overhead should be clear. With the exception of the flight review, the examples are voluntary, and as a result of the IFR’s requirements a significant part of the pilot population will be discouraged from getting

additional training, and becoming safer pilots. Flight schools will be discouraged from accepting alien candidates because of the extra administrative burden.

In short, the IFR will have a significant negative effect on aviation safety. Contrary to your statement under “Good Cause for Immediate Adoption”, the rule with respect to pilots who regularly fly in the USA’s NAS is both impracticable and contrary to the public interest.

3. Aviation commerce

The arguments described under “Aviation Safety” apply equally to aviation commerce. If I purchase a new aircraft under 12,500 pounds, it is certain that the seller or any insurance company will require me to undergo initial training in the aircraft’s operation. Thus there is an indirect chilling effect on aviation commerce. Similar arguments may apply when a significant upgrade is made to an aircraft owned by an alien.

4. Flaws in the justification model

I have read the discussion justifying the IFR, and I find it faulty in various ways. The entire “Economic Analyses” section seems to be based on the model of foreign pilots visiting this country for a well-defined and substantial course of training, taking it, and finishing, far different from the “continuous lifetime training” of US-based pilots I described in my previous section. It is asserted that the increased cost, financial and otherwise, of the IFR will not have significant impact because of the lower cost and claimed higher quality of training in the US, but you provide no comparative, quantitative data to back the assertion up, so it is impossible to judge. In any case, the argument is irrelevant to the large US-based alien population. For them, it is not even a meaningful claim. The above comments also apply to persons holding visas for an extended stay in the US, issued for a purpose other than flight training, who take lessons for personal enrichment.

Furthermore, if the purpose is to reduce the world population of flight-trained terrorists, you surely know that excellent flight training is available in other countries, particularly in Europe and Australasia. The argument based on the US’s cost being lower seems weak, as the best organized terrorist groups are known to have plenty of money. The argument based on the US’s higher standards can be challenged, and in any case training standards overseas are certainly good enough for a terrorist’s purpose. There may remain some secondary benefits of the IFR. One is to detect potential threats as they enter the country by focusing on their flying activities, but all it will achieve will be to separate the two: they can learn to fly overseas and then enter the US to do damage. Our focus should be on identifying threats as they enter the country; we don’t need to restrict General Aviation to do that. Another benefit is that we would have the satisfaction of at least not having assisted our own attackers, but that seems a weak justification based purely on pride.

The Costs section does not account for the chilling effect described earlier. Each time I am discouraged from a training exercise, the trainer loses business. The statement that a significant impact is not expected implies that you believe the number of students in the alien candidate population is small, but elsewhere you use the figure of 18% of all certificated pilots. This is indeed a significant number when you see it as a metric of lost business.

In justifying the Category 3 requirements, you point out that a terrorist learning to fly a small General Aviation airplane could obtain enough familiarity with aircraft operations to operate a larger or more complex craft. This argument may well be true, but it can only be used to justify restrictions placed on *ab initio* training to a Private Pilot certificate. It is hard to imagine that a terrorist would use one of the training opportunities I list in “Aviation Safety” to enhance his skills towards the purposes we can all imagine. I can think of no way that proceeding to a Commercial certificate increases the threat from the putative terrorist, unless you find mastery of the coordinated lazy eight a threat to society. Hence no justification for embracing such post-Private training in Category 3 has been provided.

5. Error in Definitions

The definition of *Recurrent Training* given in the Definitions section of “Discussion of the IFR” differs significantly from the definition given in the IFR itself. There may have been an editorial oversight. The IFR’s definition centers on the phrase “periodic training required under 14 CFR part 61”, which encompasses the periodic flight review described in 14 CFR 61.56, since 61.56(a) does use the word “training”. The effect of the IFR, in its present form, is that when a pilot presents himself to a school or freelance flight instructor for the flight review (a common occurrence), it is Category 4 training and so it becomes the instructor’s responsibility to transmit the candidate’s data to the TSA. This contrasts with the requirement under Category 3 (it is the candidate’s responsibility) which covers all the other forms of training I have described earlier. This surely cannot have been intended.

6. Cost containment for individuals

The \$130 fee is based on a cost recovery model. After 2 years, it can increase without restraint, based on the actual costs of the program. There is no assurance that the costs will not increase dramatically after two years, further magnifying the harmful effects noted above.

Since, at present, there is no clear definition of the requirement for “all the information necessary to obtain a passport and visa”, the assumption must be that we should present our entire passport application (which may not be possible due to security concerns relating to our country of citizenship) and the entire contents of the status adjustment file, which in my case is an inch thick. Copying that file would be costly indeed!

7. Conclusion

I urge you to delay implementation of this Rule, until it can be adapted to meet the threat more precisely, and without the many harmful and unnecessary side-effects to the nation’s population of superb pilots. I believe appropriate adaptations are possible within the limits of the Congressional mandate.