

2005

## Federal Aviation Administration's New Sport Pilot License and the Transport Security Administration's New Flight School Threat Assessment Procedures: Do They Render the General Aviation Industry More Vulnerable to Terrorist Attacks

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### Recommended Citation

Jeff Gulbas, *Federal Aviation Administration's New Sport Pilot License and the Transport Security Administration's New Flight School Threat Assessment Procedures: Do They Render the General Aviation Industry More Vulnerable to Terrorist Attacks*, 70 J. AIR L. & COM. 501 (2005)  
<https://scholar.smu.edu/jalc/vol70/iss3/6>

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**THE FEDERAL AVIATION ADMINISTRATION'S NEW  
SPORT PILOT LICENSE AND THE TRANSPORTATION  
SECURITY ADMINISTRATION'S NEW FLIGHT  
SCHOOL THREAT ASSESSMENT PROCEDURES:  
DO THEY RENDER THE GENERAL AVIATION INDUSTRY  
MORE VULNERABLE TO TERRORIST ATTACKS?**

JEFF GULBAS

INTRODUCTION

**A**FTER CLEANING UP the rubble from the terrorist attacks of September 11, 2001, lawmakers undertook the daunting task of determining how the world's most devastating terrorist attacks were carried out on American soil, and how the world's most efficient intelligence agencies failed to prevent them. Among the intelligence memos and reports was evidence that the terrorists who piloted the four planes were trained in United States flight schools.<sup>1</sup> Despite a flood of warnings of possible terrorist attacks involving commercial airliners in the months prior to September 11, the United States Department of Transportation's Federal Aviation Administration ("FAA") failed to issue any real warnings because there was "no credible evidence of specific plans to attack U.S. civil aviation."<sup>2</sup> Although measures to scrutinize students at U.S. flight training schools have since been implemented,<sup>3</sup> the threat of aircraft hijackings is still very real. Now there is a new addition to the FAA's worries – the

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<sup>1</sup> NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 224-27 (2004) (hereinafter "9/11 COMMISSION REPORT").

<sup>2</sup> *Id.* at 259 (citing FAA, Information Circular, *Continued Middle Eastern Threats to Civil Aviation*, IC-2001-04A (2001)).

<sup>3</sup> See Press Release, Transportation Security Administration, TSA Takes Over Security Threat Assessments On Non-U.S. Citizens Seeking Flight School Training, (Oct. 22, 2004), available at [http://www.tsa.gov/public/interapp/press\\_release/press\\_release\\_0529.xml](http://www.tsa.gov/public/interapp/press_release/press_release_0529.xml) (last visited Oct. 22, 2004).

new sport pilot license, which relaxes the requirements for individuals to obtain basic flight training.<sup>4</sup>

On September 1, 2004, the FAA's new "sport pilot laws" took effect. The sport pilot license ("SPL") is a new category of pilot certification created by the FAA to make it easier for recreation aircraft enthusiasts to become licensed to fly.<sup>5</sup> The new rule allows aviation enthusiasts to earn their SPL with less training, due to the relaxed requirements, as compared to other aircraft licenses.<sup>6</sup> The FAA states that its two important objectives in creating the new flight standards are the "safety of recreational flying" and "introducing new enthusiasts to the sport."<sup>7</sup> Though the new license will increase flight school enrollment, as well as the number of licensed pilots, the FAA has not described terrorism as a concern with the new license. In fact, the SPL has been hailed as a major milestone in making recreational flying more affordable and readily available.<sup>8</sup> There may be latent problems, however, in the new requirements for sport pilot certification. Only time will tell whether terrorists will take advantage of the relaxed requirements and use the SPL to carry out attacks involving aircraft.

One of the more troubling discoveries about the 9/11 attacks was that the attackers who piloted the commercial airliners learned to fly in U.S. flight training schools in Florida, Arizona, and Minnesota.<sup>9</sup> Some flight schools even alerted the FAA about suspicious students – who later turned out to be responsible for the attacks.<sup>10</sup> Some of these students (including Hani Hanjour, who piloted the airliner that crashed into the Pentagon) raised eyebrows because they struggled with English – "the

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<sup>4</sup> Leslie Miller, Sport Pilot's License will make it easier to fly slow and low, THE BATTALION ONLINE, July 20, 2004, available at <http://www.thebatt.com/news/2004/07/20/News/Sport.Pilots.License.Will.Make.It.Easier.To.Fly.Low.And.Slow-694470.html>; see also About the Sport Pilot Certificate, <http://www.sportpilot.org/becoming> (last visited Nov. 28, 2005).

<sup>5</sup> Experimental Aircraft Association, Inc. ("EAA") *About the Sport Pilot certificate*, <http://www.sportpilot.org/becoming> (last visited Sept. 15, 2005).

<sup>6</sup> Miller, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 9/11 COMMISSION REPORT, *supra* note 1, at 152-69; Arnold Beichman, *Who Trained the Terrorists?*, HOOVER DIGEST, Sept. 18, 2001, <http://www.hooverdigest.org/014/beichman.html>.

<sup>10</sup> Greg Gordon, *Flight School Warned FBI in August*, STAR TRIBUNE, Dec. 21, 2001, available at [http://www.blythe.org/nytransfer-subs/Covert\\_Actions/Flight\\_School\\_Warned\\_FBI\\_FAA\\_\(again\\_and\\_again\)](http://www.blythe.org/nytransfer-subs/Covert_Actions/Flight_School_Warned_FBI_FAA_(again_and_again)).

universal language of aviation.”<sup>11</sup> Further, some of the 9/11 attackers were allowed to continue their training despite expressing only an interest in learning to takeoff and land a 747 commercial airliner.<sup>12</sup> These revelations prompted Washington to scrutinize U.S. flight training schools as well as students who apply to train at flight schools.

The discovery that the 9/11 hijackers were trained in U.S. flight schools induced Congress to enact the Aviation and Transportation Security Act,<sup>13</sup> which mandated that the U.S. Department of Justice investigate students enrolled at U.S. flight schools and assess any security threats posed by non-U.S. citizens.<sup>14</sup> The Transportation Security Administration (“TSA”) assumed responsibility for these checks in October 2004.<sup>15</sup> Although the policies behind these threat assessments are obvious and important, the security protocols have been received with significant discord from civil aviation enthusiasts.

Flight schools criticize the rule for its negative effects on the civil aviation industry.<sup>16</sup> In addition to increasing costs for flight school applicants, the security protocols have already proven that they discourage foreign students from seeking training altogether. Non-U.S. citizens who seek training for the SPL will now be subject to the threat assessments. Flight instructors argue that this will increase the number of screenings performed by the TSA and increase the hurdles for sport pilot enthusiasts. The screenings will undoubtedly increase red tape for the TSA, the agency responsible for investigating non-U.S. citizen flight students.<sup>17</sup>

This commentary analyzes the implications of the new SPL and the new flight school security threat assessments and asks whether they make general aviation more vulnerable to terrorist attacks. Although general recreational aviation is crucial to the entire aviation industry, it is recently becoming more attractive to terrorists because the vulnerabilities of commercial aviation

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<sup>11</sup> *Id.*

<sup>12</sup> 9/11 COMMISSION REPORT, *supra* note 1, at 273.

<sup>13</sup> Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001).

<sup>14</sup> TSA Press Release, *supra* note 3.

<sup>15</sup> *Id.*

<sup>16</sup> Andrew Tutino, *New Rules Could Hurt Flight Schools*, THE ITHACA JOURNAL, Oct. 15, 2004.

<sup>17</sup> *Id.*

have been drastically reduced post-9/11.<sup>18</sup> Part I will address the new requirements needed to earn an SPL, including eligible persons and aircraft, and compare these to other private airman licenses. The limits of the SPL are also discussed in Part I. Part II analyzes the potential destructive capabilities, if any, that might be caused by terrorist attacks involving the lighter aircraft applicable to the SPL. Part III discusses whether an individual, who has no additional flight training, other than an SPL, can pilot larger, heavier, complex aircraft with more destructive capabilities. Part IV briefly discusses any security assessments that existed prior to 9/11, and how they applied to U.S. flight school applicants. Part V discusses the TSA's recent protocols that assess security threats of flight students and how those protocols will impact individuals seeking their SPL. Part VI addresses the related topic of whether the new TSA security protocols will negatively impact the general aviation industry by placing stringent security measures on flight students and instructors. The conclusion shows that the SPL is a crucial new asset to recreational aviation, and despite concerns that terrorists will use it to carry out another 9/11-style attack, the SPL is not likely to prompt an influx of terrorists to enter U.S. flight schools. However, because the new threat assessments are far from perfect and subject to heavy criticism, the conclusion recommends changes that will promote the SPL and recreational aviation, but will maintain the safety of general recreational aviation.

#### PART I – THE REQUIREMENTS TO TRAIN FOR THE SPL AND THE SPL'S LIMITATIONS.<sup>19</sup>

The SPL is the lowest-rated pilot license available; it is the easiest to acquire, but it has significant limitations.<sup>20</sup> Pilots will learn “the core knowledge that individuals must understand and demonstrate in order to safely operate in the airspace system” from SPL training.<sup>21</sup> Among aviation enthusiasts, the SPL is heralded as a major milestone in promoting recreational and gen-

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<sup>18</sup> U.S. Department of Homeland Security, TSA, *Security Guidelines for General Aviation Airports*, Information Publication A-001 at 4 (2004), available at [http://www.tsa.gov/interweb/assetlibrary/security\\_guidelines\\_for\\_general\\_aviation\\_airports\\_may\\_2004\\_a-001.pdf](http://www.tsa.gov/interweb/assetlibrary/security_guidelines_for_general_aviation_airports_may_2004_a-001.pdf) (last visited Nov. 28, 2005).

<sup>19</sup> “Flight training” is defined as “instruction received from a flight school in an aircraft or aircraft simulator.” 49 C.F.R. § 1552.1(b) (2005).

<sup>20</sup> See generally 14 C.F.R. §§ 61.303, 61.307, 61.309, 61.313, 61.315 (2005).

<sup>21</sup> EAA Website, *About the Sport Pilot Certificate*, *supra* note 4.

eral aviation.<sup>22</sup> “If you’ve always wanted to become a pilot or own an aircraft, but the cost and the time required were too much, today is your big day. Getting wings just got considerably less expensive . . . [a]nd light sport aviation just got an infusion of safety.”<sup>23</sup> The biggest cause for aviation enthusiasts’ praise for the SPL was the reduction in training time that is needed before an individual can fly without an instructor. In this regard, the Experimental Aircraft Association (“EAA”) estimates that new pilots will be able to fly “powered aircraft” in “as little as 20 hours of instruction.”<sup>24</sup> To qualify for the SPL, the applicant is merely required to be seventeen years or older before testing for the license, be able to read, write and understand English, hold a valid airman’s medical or valid U.S. driver’s license and, of course, pass the required FAA flight tests and written exams.<sup>25</sup>

The required FAA exams include an “aeronautical knowledge test” which tests a laundry-list of topics, including sport pilot privileges and the SPL’s restrictions, flight operations, accident reporting, use of FAA information and advisories, use of aeronautical charts for navigation, recognition of critical weather, weight and balance computations, principles of aerodynamics, and risk management.<sup>26</sup> Further, the SPL applicant must pass a “practical test,” which requires proficiency in pre-flight procedures, takeoffs and landings, in-flight performance maneuvers, ground-reference maneuvers, navigation, slow flight and stalls, handling emergency situations and post-flight procedures.<sup>27</sup> These subjects are taught by authorized instructors when the

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<sup>22</sup> *Id.*

<sup>23</sup> Marion Bladley, Administrator, Federal Aviation Administration, Remotes at the Sport Pilot Rule Media Event, (July 20, 2004), available at [http://www.faa.gov/news/speeches/Blakey/2004/speeches\\_bladley\\_040720.htm](http://www.faa.gov/news/speeches/Blakey/2004/speeches_bladley_040720.htm).

<sup>24</sup> EAA Website, *About the Sport Pilot License*, *supra* note 4; *see also* 14 C.F.R. § 61.309 (2005) (requiring only ten hours of flight time for a glider, two to four hours for a balloon, and twenty-five hours for a powered parachute).

<sup>25</sup> 14 C.F.R. §§ 61.301, 61.303, 61.305 (2005). The FAA issued an advisory circular to guide flight instructors in their determination of whether a flight student can understand the English language. When a question exists as to whether an applicant understands the English language, the instructor should examine the applicant’s speech and accent, sentence patterns, and interpretation of excerpts from technical manuals. The instructor has discretion to determine if the applicant has met the English language requirements. Students who do not satisfy the requirement are referred to a Flight Standards District Office for review by an aviation safety inspector. FAA, Advisory Circular No. 60-28 (1997).

<sup>26</sup> 14 C.F.R. §§ 61.307, 61.309 (2005).

<sup>27</sup> 14 C.F.R. §§ 61.307, 61.311 (2005).

trainee attends ground school and in-flight training. The required training is minimal.

The SPL requires little ground and in-flight training.<sup>28</sup> Sport pilot applicants must receive ground training from an authorized instructor and log a predetermined number of hours learning particular flight procedures. For example, a pilot who seeks to fly a single-engine airplane must log twenty hours of flight time with at least fifteen hours from an authorized instructor and five hours of solo flight from takeoff to landing.<sup>29</sup> The twenty hours must include two hours of cross-country flight, ten takeoffs and landings to a full stop at an airport, one solo cross-country flight of at least seventy-five nautical miles with a full-stop landing at two points along the flight path and three hours of flight training within a sixty-day period before the date of the practical test.<sup>30</sup> There are even fewer requirements for individuals seeking training on a powered parachute, gyroplane, airship, or balloon.<sup>31</sup> These requirements are significantly less onerous than the requirements to earn a private pilot license or a recreational pilot license for a single-engine airplane – which require a minimum of forty hours of flight logged in an airplane, as well as cross-country and night-time flight requirements.<sup>32</sup>

Prior to the debut of the SPL, recreational aviation enthusiasts complied with the requirements for the recreational pilot license, the previously lowest-rated license. The recreational pilot license required a minimum of thirty hours of flight time with at least fifteen hours of authorized instruction in pre-flight preparation and procedures, airport operations, takeoff and landing, performance maneuvers, ground reference maneuvers, navigation, slow flight and stalls, emergency procedures and post-flight procedures.<sup>33</sup> The recreational pilot license required the thirty hours to include two hours of flight to an airport more than twenty-five nautical miles from where the pilot usually trains, with three takeoffs and landings at such an airport and, further, that the hours be logged in an aircraft of the rating-type

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<sup>28</sup> See generally 14 C.F.R. § 61.309 (2005).

<sup>29</sup> 14 C.F.R. § 61.313(a) (2005). The required hours are less for applicants flying a glider (non-powered aircraft), gyroplanes, airships, balloons, and powered parachutes.

<sup>30</sup> *Id.*

<sup>31</sup> 14 C.F.R. § 61.313(d)-(g) (2005).

<sup>32</sup> 14 C.F.R. § 61.109(a)(1)-(2) (2005).

<sup>33</sup> 14 C.F.R. §§ 61.98-61.99 (2005).

sought.<sup>34</sup> Three hours of solo flight were required, as well as three flight hours within sixty days before the applicant took the practical test.<sup>35</sup>

Due to the relative ease of obtaining an SPL, it is encumbered with substantial flight restrictions. Some of the more significant restrictions effectively limit sport pilots to daytime flights, when the surface of the earth is visible (or when visibility is equal or greater than three miles). Further, sport pilots may carry no more than one passenger and cannot charge a fee to transport a passenger (i.e. no passengers-for-hire). Additionally, the SPL carries certain airspace restrictions, and sport pilots cannot fly higher than the altitude-ceiling of 10,000 feet.<sup>36</sup> Further, no sport pilot may fly outside of United States without authorization from the destination country.<sup>37</sup> Finally, sport pilots who use their drivers' licenses to meet the application requirements must also comply with any restrictions placed on their U.S. drivers' licenses, or any limitation imposed by judicial or administrative order.<sup>38</sup>

Perhaps the most restrictive limitation of the SPL is the category of aircraft that can be flown. The SPL applies to light-sport aircraft, which includes airplanes, gliders, gyroplanes, balloons, airships, weight-shift control aircraft and powered parachutes.<sup>39</sup> These light-sport aircraft are generally "small, simple, lightweight, low-performance, low-energy aircraft," and they are relatively easy to fly.<sup>40</sup> Such aircraft have a maximum takeoff weight<sup>41</sup> of not more than 1,320 pounds (1,430 pounds for sea-

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<sup>34</sup> 14 C.F.R. § 61.99(a)(1), (b) (2005)

<sup>35</sup> *Id.* § 61.99(a)(1)-(2).

<sup>36</sup> 14 C.F.R. § 61.315(a) (c)(2), (4), (8), (11), (12) (2005). Sport pilots cannot fly in Class A airspace; nor can they fly in Class B, C, and D airspace, nor at an airport located in Class B, C, or D airspace, nor to, from, through, or at an airport having an operational control tower. *Id.* § 61.315(a)(6)-(7). The pilot may, however, fly in these restricted airspaces but only after the pilot passes proficiency tests in the use of "radios, communications, navigation system/facilities, and radar services", proficiency in the use of airport with a control tower and participation in the traffic pattern, and knowledge of airspace and traffic control clearances. 14 C.F.R. § 61.325(a)-(b) (2005).

<sup>37</sup> 14 C.F.R. § 61.99 (c)(8) (2005).

<sup>38</sup> *Id.* § 61.99(c)(17).

<sup>39</sup> 14 C.F.R. § 1.1 (2005).

<sup>40</sup> Fact Sheet, Federal Aviation Administration, Sport Pilot, Light-Sport Aircraft Rule (July 20, 2005), *available at* [http://www.faa.gov/news/fact\\_sheets/2004/fact\\_sheets\\_040720.htm](http://www.faa.gov/news/fact_sheets/2004/fact_sheets_040720.htm).

<sup>41</sup> The maximum weight of a light-sport aircraft is the sum of aircraft empty weight, weight of the passenger for each seat installed, baggage allowance for each passenger, and full fuel, including a minimum of the half-hour fuel reserve



planes); a maximum airspeed of 120 knots; and a maximum stalling speed of forty-five knots.<sup>42</sup> They are limited to a maximum seating of two persons (including the pilot), and they must have a fixed-pitch propeller, fixed landing gear, and a non-pressurized cabin.<sup>43</sup> The FAA "did not include helicopters [in the SPL] because their complex design, manufacture, and operation is beyond what the FAA envisioned for light-sport aircraft."<sup>44</sup>

Because the FAA's primary reason for creating the SPL was to promote recreational aviation, the SPL can be obtained quickly, easily and at low cost. These benefits, however, are accompanied by limitations that effectively make the SPL useful only for recreational aviation.<sup>45</sup> One such limitation gives a sport pilot few options for the aircraft he can fly. This limitation, however, was created by the FAA after recognizing the dangers of allowing a sport pilot, who has only basic flight training, to fly large, high-performance aircraft.<sup>46</sup>

## PART II – THE DESTRUCTIVE CAPABILITIES OF THE SMALLER SPORT-PILOT AIRCRAFT COMPARED TO THE DESTRUCTIVE CAPABILITIES OF COMMERCIAL AIRLINERS

### *Overview*

It should be obvious that the small, single-engine, light-sport aircraft cannot, by itself, create the massive destruction witnessed on 9/11. Simply put, they are much too small and lightweight to penetrate steel and concrete edifices. Yet, small aircraft can still play a deadly role in aviation terrorism. For example, small planes can be outfitted into flying bombs that can level tall buildings – a scenario already contemplated by terrorists. Additionally, small aircraft could destroy a commercial airliner if they collided during takeoff or landing. The possibility of these scenarios is discussed in turn.

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required for day visual flight rules. Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 Fed. Reg. 44,772, 44,794 (July 27, 2004) (codified at 14 C.F.R. pts. 1, 21, 43, 45, 61, 65, 91).

<sup>42</sup> Fact Sheet, *supra* note 40.

<sup>43</sup> 14 C.F.R. § 1.1 (2005).

<sup>44</sup> Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 Fed. Reg. at 44,792.

<sup>45</sup> See generally *id.* at 44,796.

<sup>46</sup> *Id.*

*The destructive capacity of commercial aircraft versus that of light-sport aircraft.*

The commercial airliners that were hijacked on 9/11 were much larger, faster and heavier than light-sport aircraft. The two types of aircraft used in the 9/11 attacks<sup>47</sup> had maximum takeoff weights of 450,000 pounds (Boeing 767) and 272,500 pounds (Boeing 757). These heavy aircraft fly at speeds up to 530 knots (982 km/h).<sup>48</sup> Comparably, the maximum weight of light-sport aircraft under the SPL is a 1,430-pound seaplane with a maximum speed of 120 knots.<sup>49</sup> “In the FAA’s judgment, the weight limit in the [sport pilot] rule is appropriate for the light-sport aircraft to be compatible with the skills and training of the sport pilot.”<sup>50</sup> Commercial airliners are capable of massive destruction because they are heavy, fast, and they carry a large amount of fuel – attributes that all light-sport aircraft lack.<sup>51</sup> Because of its size, a light-sport aircraft will likely not destroy a building in a collision.

Illustrating this point is the tale of Charles Bishop, the fifteen-year-old pilot who committed suicide by flying a small, single-engine Cessna into a skyscraper in Tampa, Florida in 2002. He flew the tiny airplane into the twenty-eighth and twenty-ninth floors of a forty-two-floor Bank of America building; he was a student pilot.<sup>52</sup> “The student pilot took off without clearance, [and] traversed military airspace without permission . . . .”<sup>53</sup> The small plane did cause some damage to the building, “but no one inside the building or on the ground was injured by the crash itself or by falling debris. There was no fire, and the stu-

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<sup>47</sup> The two planes that crashed into the north and south towers of the World Trade Center were Boeing 767s. The two that crashed into the Pentagon and Shanksville, Pennsylvania were Boeing 757s. 9/11 COMMISSION REPORT, *supra* note 1, at 4, 7-8, 10, 14.

<sup>48</sup> Commerical Airplanes, <http://www.boeing.com/commercial/flash.html> (last visited Nov. 28, 2005).

<sup>49</sup> 14 C.F.R. § 1.1 (2005).

<sup>50</sup> Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 Fed. Reg. at 44,794.

<sup>51</sup> The Boeing 767 carries a maximum 23,980 gallons of fuel; the Boeing 757 carries a maximum 11,466 gallons. Commercial Airplanes, *supra* note 48. One reason the particular flights on 9/11 were hijacked was because they were long, cross-country flights and the terrorists wanted planes that “would be full of fuel.” 9/11 COMMISSION REPORT, *supra* note 1, at 245.

<sup>52</sup> BBC News, *US Investigates ‘suicide’ plane crash*, BBC NEWS ONLINE (Jan. 6, 2002), <http://news.bbc.co.uk/1/hi/world/americas/1746192.stm>.

<sup>53</sup> FAA Notice, Federal Aviation Administration, Suggestions for Enhanced Security for Flight Schools and Fixed Base Operators (July 9, 2002).

dent was the only fatality.”<sup>54</sup> This situation illustrates that a light-sport aircraft may not cause widespread casualties when flown into a building. Nothing, however, prevents a sport pilot from crashing his craft into an open football stadium, Central Park, or any other outdoor gathering where victims may not be protected by steel and concrete. Thus, a small plane is not likely to destroy a skyscraper or even cause much damage to a smaller building. A small plane crash in a crowd of people, however, would likely have devastating effects.

*Despite their size, small aircraft can still be deadly.*

While light-sport aircraft, alone, are not a serious threat to large buildings, bridges and monuments, history shows that they can nevertheless be used to inflict widespread destruction. A small aircraft is convertible into a deadly weapon. The first attack on the World Trade Center in 1993 provides a chilling example. “[O]n February 26, 1993, a 1,500-pound bomb stashed in a rental van was detonated on a parking garage ramp beneath the Twin Towers. The explosion killed six people, injured about 1,000 more, and exposed vulnerabilities in the World Trade Center’s and [New York’s] emergency preparedness.”<sup>55</sup> A bomb packed in a small, simple aircraft would likely produce the same destruction as commercial airliners loaded with fuel.

Apparently, this idea was contemplated and planned by terrorists in the past. After the arrest of Abdul Hakim Murad (a terrorist who collaborated with Ramzi Ahmed Yousef, the director of the 1993 World Trade Center car-bombing), U.S. intelligence officers learned that “he had earned his pilot’s license in an American flight school and had been planning to seize a small plane, fill it with explosives, and fly it into C.I.A. headquarters.”<sup>56</sup> Murad later confessed “that he had gone to the American flight school ‘in preparation for a suicide mission.’”<sup>57</sup> Other terrorists plotted to collide a small plane into a commercial airliner during takeoff. Although a light-sport aircraft cannot fly over 10,000 feet (far below the regular cruising altitude of commercial aircraft), a small aircraft could collide with an airliner during takeoff and landing and send it crashing to the

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<sup>54</sup> *Id.*

<sup>55</sup> 9/11 COMMISSION REPORT, *supra* note 1, at 280.

<sup>56</sup> Seymore M. Hersh, *Annals of National Security: Missed Messages, Why the Government Didn’t Know What it Knew*, THE NEW YORKER, May 27, 2002, at 40.

<sup>57</sup> *Id.*

earth. Light-sport aircraft, however, will be useless for such attacks.<sup>58</sup>

Attempts to pack a small plane with explosives and collide into a target would require aircraft larger than those allowed under the sport pilot rules. Some of the planes currently listed as “likely candidates” for light-sport aircraft classification have very limited weight capabilities. Most of the candidate aircraft allow only for approximately 300-pound loads, including the weight of the pilot.<sup>59</sup> Thus, to match the destructive capabilities of the World Trade Center car-bombing, a larger plane with a greater payload capacity would be needed to carry out the plot.

A larger plane could carry out such an “aircraft bomb” attack, and could be piloted with only limited flight knowledge, such as the knowledge gained from sport pilot training. For example, a Cessna model Grand Caravan is a simple, single-engine, fixed-gear aircraft that has been extremely popular for bush pilots, charter companies and personal/corporate pilots.<sup>60</sup> It is considered an easy-to-fly aircraft. The Grand Caravan, however, has a 4,500-pound load capacity, and it is also capable of converting into a “cargo hauler” in less than half an hour, making it easier to transport heavy, bulky cargo, such as a bomb.<sup>61</sup> Thus, such a small, easily-flown plane could be used to carry out terrorist plots; commercial airliners are not the only aircraft capable of serious damage, nor have they been the only aircraft eyed by terrorists.

In sum, small aircraft should not be considered harmless in the hands of a committed terrorist. Although a terrorist plot involving light aircraft, as opposed to commercial airliners, would likely require something more than merely crashing the airplane into a target, light aircraft still pose a threat. However, supposing a terrorist plot did involve heavy, high-performance aircraft, the question remains whether an individual armed with only basic flight training – such as that gained from attaining an SPL – can fly such aircraft.

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<sup>58</sup> BBC News, *supra* note 52.

<sup>59</sup> See Sport-Pilot Eligible Aircraft, [http://www.sportpilot.org/lsa/likely\\_lsa.html](http://www.sportpilot.org/lsa/likely_lsa.html) (last visited Nov. 28, 2005).

<sup>60</sup> See Cessna Grand Caravan, <http://grandcaravan.cessna.com/> (last visited Nov. 28, 2005).

<sup>61</sup> See *id.*

PART III: FLYING COMPLICATED AIRCRAFT WITH ONLY BASIC,  
LIMITED FLIGHT TRAINING

Because the SPL significantly relaxes the requirements to get a basic, low-rated pilot's license, there is concern that this opportunity might be used to carry out terrorist plots that mimic 9/11. The 9/11 hijackers trained briefly on large commercial aircraft, as well as small, single-engine aircraft. Therefore, one must question whether a would-be terrorist could quickly acquire an SPL and use basic flight knowledge to fly heavy, transport category aircraft. Some experts believe that flight training is not even necessary to fly a large airplane. Rather, an understanding of aircraft navigation and avionics will suffice.

Experts disagree whether an individual with limited flight training can control a commercial airliner once airborne. No one, however, disputes that the skills needed to pilot a modern commercial airliner take years to develop. The requirements to obtain a commercial pilot license dwarf the requirements for the SPL or a private pilot license.<sup>62</sup> Yet, after completing the pre-flight procedures and the difficult takeoff, most pilots rely on autopilot controls to fly the aircraft. Therefore, while a basic understanding of flight is necessary for the simplest aircraft maneuvers (such as executing turns and maintaining level flight), a commercial pilot license may not be necessary to fly a commercial airliner after it is airborne. According to Phillip Poyner, a board member of the National Association of Flight Instructors ("NAFI") and NAFI Master Flight Instructor:

A common misunderstanding is that skills learned in initial flight training would be transferable to those exercised by terrorists controlling transport category aircraft. The vast majority of initial and recurrent flight training in the country is conducted in small, piston-powered, single engine aircraft. The skills derived

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<sup>62</sup> Besides the difficult knowledge and practical exams, a person who applies for a commercial pilot license with a multi-engine class rating must log at least 250 hours of flight time as a pilot that consists of at least: 100 hours in powered aircraft, of which fifty hours must be in airplanes; 100 hours of pilot-in-command flight time, which includes at least fifty hours in airplanes; ten hours of training in a multi-engine airplane that has a retractable landing gear, flaps, and controllable pitch propellers, or is turbine-powered; ten hours of solo flight time in a multi-engine airplane or ten hours of flight time performing the duties of pilot in command in a multiengine airplane with an authorized instructor; one cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. 14 C.F.R. § 61.129 (b)(1)-(2)(i), 3(ii), 4(i) (2005).

from this training are not directly transferable to transport category aircraft without considerable, additional training. Therefore, it should be understood that the vast majority of flight training has no relevance to the flight activities of terrorists on September 11th.<sup>63</sup>

Not everyone, however, agrees with Poynor. Arnold Beichman, a research fellow at the Hoover Institution at Stanford University, believes that

[t]o take off and land a modern jetliner takes skill, years of training, and an ability to read and understand the instrument panel. But to fly either a Boeing 737, 757, 767 or . . . any modern passenger jet once it is airborne . . . is no big deal. Anybody with a little training can engage the autopilot of a hijacked plane to go to the GPS (Global Positioning System) coordinates for the World Trade Center towers – and the target is in your gunsights.<sup>64</sup>

In fact, the 9/11 terrorists relied on airline pilots to get the aircraft off the ground before the hijackings occurred. After gaining control of the planes, the terrorists relied on the planes' autopilot systems to control them.<sup>65</sup> Once the targets were in sight, the attackers merely steered the aircraft into them.<sup>66</sup> In fact, "one of the September 11 hijackers rented small aircraft several times in the summer before the attacks for practice flights."<sup>67</sup>

Further, commercial airline training is much more rigorous and technologically advanced than basic flight training for the SPL. For example, all commercial airline pilots receive training on a flight simulator – an expensive machine that simulates the sensation of flight and real-world scenarios.<sup>68</sup> Commentators argue that "simulator training would be an essential 'fail-safe' asset once the planes [sic] were hijacked," and such training would almost ensure that a plot to crash a plane into a target would

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<sup>63</sup> Testimony, Phillip Poynor, Principal, Nassau Flyers, Inc., (Sept. 25, 2001) (onfile with author).

<sup>64</sup> Beichman, *supra* note 9.

<sup>65</sup> 9/11 COMMISSION REPORT, *supra* note 1, at 12. In fact, Boeing aircraft were selected over those manufactured by Airbus because the latter were equipped with autopilot safety controls, which prevented the planes from being crashed into the ground. *Id.* at 245.

<sup>66</sup> *Id.* at 6 (stating that the plane was "flying erratically" and was "all over the place").

<sup>67</sup> Elizabeth Wolfe, *U.S. Begins Tighter Flight School Checks*, WASHINGTON POST, Oct. 22, 2004.

<sup>68</sup> Beichman, *supra* note 9.

succeed.<sup>69</sup> Conversely, the very limited instruction required for the SPL makes it unlikely that SPL training would include exercises on aircraft simulators.

Sport pilot training does not require extensive training because of the limited capabilities of light-sport aircraft. Sport pilot training for a fixed-wing aircraft merely includes basic knowledge of flight, *i.e.* maneuvers required to takeoff, land and keep an aircraft airborne.<sup>70</sup> The complexities of commercial aircraft make it difficult, but not impossible, to utilize basic flight fundamentals to pilot a large, high-performance aircraft. The simple control stick functions to maneuver a small plane are similar to those functions applied to larger aircraft. A majority of comments on the SPL contended that "the light-sport aircraft definition should be expanded to accept . . . additional aircraft simply because these larger or higher performance aircraft could be safely operated as light-sport aircraft."<sup>71</sup> The FAA, however, "believes it would not be appropriate or safe for persons with the minimum training and experience of a sport pilot to operate faster or heavier aircraft."<sup>72</sup>

If Arnold Beichman is correct on his theory of GPS knowledge, then it is arguable that the only knowledge required to fly a hijacked airliner, once airborne, is an ability to understand the Global Positioning System. Flight training is not required to learn this, as is evident from the prevalence of civilian-use GPS devices on the market. Additionally, commercial aircraft training and instruction manuals contain information on the aircraft's avionics, including GPS navigation.<sup>73</sup> Therefore, a hijacker arguably could navigate a large airliner and program its destination, provided that the hijacker is proficient in aircraft navigation and avionics.

Even if, however, sport pilot training provides the necessary skills to hijack a large aircraft, issuance of the license should not be suspended. Revocation of the SPL would not solve the problem of terrorists enrolling in U.S. flight schools. Rather, the so-

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<sup>69</sup> *Id.*

<sup>70</sup> See 14 C.F.R. § 61.311 (2005) (requiring sport pilots to pass flight proficiency tests which demonstrate the ability to take-off, land, and execute performance maneuvers).

<sup>71</sup> Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 Fed. Reg. at 44,791.

<sup>72</sup> *Id.* at 44,796.

<sup>73</sup> Flight handbooks and manuals for commercial aircraft as well as flight, radio, and avionics handbooks are readily available on the internet.

lution should focus on improved screening of passengers and flight school students. This tactic promotes the benefits of the SPL and simultaneously addresses its vulnerabilities. After 9/11, the government began meticulously investigating civilian pilots to assess whether they posed a threat to aviation and national security. Such screenings, however, were not being rigorously pursued before 9/11.

#### PART IV: PRE-9/11 SECURITY THREAT ASSESSMENTS FOR U.S. FLIGHT SCHOOL APPLICANTS

The 9/11 attacks prompted Congress to mandate investigations of non-U.S. citizens that enrolled in U.S. flight schools. Before these new procedures can be explained, however, the pre-9/11 security procedures towards flight schools must be examined for comparative analysis. This part of the comment does not attempt to re-write the 9/11 Commission Report nor derive alternative theories for the intelligence and defense efforts that failed to thwart the 9/11 attacks. Rather, it exposes the concerns and priorities of aviation authorities prior to 9/11. Further, it explains the security assessment protocols that applied to non-U.S. citizens who applied for U.S. flight training, so that the new TSA threat assessments can be compared to their predecessors in Part V.

Airline hijackings are not a recent occurrence and U.S. intelligence agencies have long known that “terror groups are known to be planning and training for hijackings.”<sup>74</sup> “As early as 1975, according to an unpublished Senate Foreign Relations Committee document . . . the F.B.I.’s assistant director for intelligence revealed that a suspected member of Black September [a Palestinian terrorist group] . . . had explained his presence in the United States by telling the F.B.I. that he had been admitted for pilot training – the same explanation for the presence of a number of the September 11th terrorists.”<sup>75</sup> The Immigration and Naturalization Service stated that “thousands of Middle Easterners have obtained visas to enroll in flight-instruction programs” in recent decades.<sup>76</sup>

Prior to 9/11, however, the FAA seemed more concerned about aviation sabotage, rather than airplane hijackings, because no domestic hijacking had occurred in over a decade and

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<sup>74</sup> Hersh, *supra* note 56.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*



many officials considered the aviation industry to be more vulnerable to explosives rather than firearms.<sup>77</sup> “In 1996, after the crash of T.W.A. flight 800 [off the coast of Long Island], a commission directed by Vice-President Al Gore called for closer liaison” between intelligence agencies and the FAA.<sup>78</sup> The airlines, however, were successful in their lobbying efforts against many safety procedures recommended by the Gore commission, “such as more stringent security checks on airline employees and tighter screening of passenger baggage.”<sup>79</sup> The events of 9/11 quieted the airlines.

Prior to 9/11 and the FAA’s creation of flight school security checks, “[t]he FAA’s policy was to use intelligence to identify both specific plots and general threats to civil aviation security so that the agency could develop and deploy appropriate countermeasures.”<sup>80</sup> This overwhelming volume of intelligence gathering, however, eventually overburdened the FAA. “[I]nformation on the FBI’s effort in 1998 to assess the potential use of flight training by terrorists and the Phoenix electronic communication of 2001 warning of radical Middle Easterners attending flight school were not passed to FAA headquarters.”<sup>81</sup>

The pre-9/11 security threat assessments did not focus on flight schools, even though the FAA was receiving numerous reports of suspicious flight students in U.S. flight schools. The multi-layer security threats focused more on airport security, rather than on flight school security. The threat assessments focused on passenger pre-screening to ferret out passengers that posed “more than a minimal risk to aircraft,” checkpoint screening as passengers entered the airport gateways and security on board commercial aircraft, specifically teaching flight crews to deal with hijackers.<sup>82</sup> “FAA training material provided no guidance for flight crews should violence occur” on board an airborne aircraft.<sup>83</sup>

The post-9/11 investigations showed that the FAA ignored “alarm bells” from flight school reports regarding suspicious students – students who later turned out to be those responsible

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<sup>77</sup> 9/11 COMMISSION REPORT, *supra* note 1, at 82.

<sup>78</sup> Hersh, *supra* note 56.

<sup>79</sup> *Id.*

<sup>80</sup> 9/11 COMMISSION REPORT, *supra* note 1, at 83.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 84-85.

<sup>83</sup> *Id.* at 85.

for 9/11.<sup>84</sup> Flight instructors at the Pan Am International Flight Academy repeatedly warned the FAA about Middle-Eastern students, with poor English skills, who were pursuing flight training for commercial airliners.<sup>85</sup>

In sum, the FAA's security measures to identify threatening flight school students were mostly bureaucratic, inefficient and ineffective. There were no threat assessments for flight school applicants, and the FAA expected suspicious flight school activity to be spotted by flight school managers and instructors. The schools that reported suspicious students were "clearly more alert than federal officials" said U.S. Representative Martin Sabo, who sits on the House Homeland Security Appropriations Committee.<sup>86</sup> Although 9/11 cannot singularly be blamed on the FAA's failure to notice suspicious flight school students, it was a contributing factor in the attacks. In response to this oversight, every non-U.S. citizen who now enrolls in a U.S. flight school must be investigated for any security threats; SPL applicants are also subject to these procedures. Many recreational aviation enthusiasts decry these screenings and argue that they do more harm than good for general recreational aviation.

#### PART V: THE TSA'S NEWLY IMPLEMENTED SECURITY CHECKS ON U.S. FLIGHT SCHOOLS

Prior to the 9/11 attacks, general aviation airports were not subject to federal rules regarding air security; only airports serving scheduled operations were reviewed.<sup>87</sup> Since the attacks, however, "the TSA must examine all aspects of the transportation system for vulnerabilities to terrorist activities."<sup>88</sup> Currently, "TSA has not taken a position that [general aviation] airports and aircraft are a threat, in and of themselves. However, as vulnerabilities within other areas of aviation have been reduced, [general aviation] may be perceived as a more attractive target and consequently more vulnerable to misuse by terrorists."<sup>89</sup>

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<sup>84</sup> Gordon, *supra* note 10.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Security Guidelines for General Aviation Airports*, *supra* note 18, at 4. "General aviation" is described by the FAA as "all civil aviation activities except those associated with airlines." FED. AVIATION ADMIN., FAA STUDENT PILOT GUIDE, FAA-H-8083-27 (1999), available at [http://www.faa.gov/library/manuals/aviation/media/faa\\_h\\_8083\\_27.pdf](http://www.faa.gov/library/manuals/aviation/media/faa_h_8083_27.pdf).

<sup>88</sup> *Security Guidelines for General Aviation Airports*, *supra* note 18, at 4.

<sup>89</sup> *Id.*

Thus, following the 9/11 attacks, "the Aviation and Transportation Security Act mandated that the U.S. Department of Justice conduct threat assessments for non-U.S. citizens who sought training on aircraft weighing 12,500 pounds or more including commercial aircraft."<sup>90</sup> This responsibility was transferred to the TSA on December 12, 2003, by the Vision 100 – Century of Aviation Reauthorization Act.<sup>91</sup> On September 20, 2004, the TSA announced implementation of Alien Flight Training Rule,<sup>92</sup> which required the TSA to assess threats of "non-U.S. citizens seeking training at U.S. flight schools, regardless of the type and size of aircraft" on which training was sought.<sup>93</sup> According to the TSA, the rule's benefit "will be increased protection of U.S. citizens and property from acts of terrorism."<sup>94</sup> The rule will "decrease the chance that a flight school student who poses a security threat will be able to receive flight training from a U.S. flight school in the operation of aircraft that could be used in an act of terrorism."<sup>95</sup> The new procedures, put into effect October 22, 2004, will prevent terrorists from acquiring any flight training in U.S. flight schools regardless of the size of the aircraft.<sup>96</sup> The TSA said that its rule "will provide greater security benefits than the [Justice Department's] rule"<sup>97</sup> because it applies to aliens seeking training on smaller aircraft, and it also improves

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<sup>90</sup> TSA Press Release, *supra* note 3 (referring to Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001)). Before passage of the Aviation and Transportation Security Act, Congress sought to prevent any alien from training to fly a jet-propulsion aircraft unless the flight school or trainer received confirmation from the U.S. Attorney General that a background check had been completed on the alien. U.S. Commission on Transportation and Infrastructure, Providing for Consideration of H.R. 1350, Secure Transportation of America Act of 2001, H.R. Rep. No. 107-264, § 111 (2001).

<sup>91</sup> Vision 100 – Century of Aviation Reauthorization Act, Pub. L. No. 108-176, 117 Stat. 2490 (2003).

<sup>92</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. 56,324 (proposed Sept. 20, 2004) (to be codified at 49 C.F.R. pt. 1552).

<sup>93</sup> TSA Press Release, *supra* note 3.

<sup>94</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. at 56,339.

<sup>95</sup> *Id.*

<sup>96</sup> Ann Davis, a spokeswoman for the TSA said that the purpose of the procedures is to "check for potential risks to national security before [students are] admitted to flight school." Tutino, *supra* note 16. The new rules will apply to any person providing aircraft training, including "freelance flight instructors." *Information on the TSA Alien Flight Training Rule*, available at <http://www.faa.gov/fsdo/stlfsdo/alien.htm> (last visited Sept. 15, 2005); see also 49 C.F.R. § 1552.1(b) (2005).

<sup>97</sup> See note 84 and accompanying text *supra*.

security at flight schools through the requirement for security awareness training.”<sup>98</sup>

### *Overview of the TSA Alien Flight Training Rule*

The TSA rule “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.”<sup>99</sup> “Certain information” refers to fingerprints, biographical information, including full name, passport and visa information, a photograph to the TSA and specific information regarding the applicant’s desired training.<sup>100</sup> Evidence of U.S. citizenship may be proven by showing the flight school, or flight instructor, a valid unexpired U.S. passport, original birth certificate and government-issued picture ID, original U.S. naturalization or citizenship certificate with raised seal and government-issued picture ID or an original certificate of U.S. citizenship and government-issued picture ID.<sup>101</sup> “The TSA will conduct a security threat assessment by using FBI fingerprint criminal record checks, and other available data for potential terrorist threats and immigration violations.”<sup>102</sup> “If TSA determines that an applicant poses a threat to aviation or national security, TSA will inform the flight school to immediately terminate the applicant’s training.”<sup>103</sup>

The TSA began review of all foreign flight-school applicants on December 19, 2004.<sup>104</sup> Prior to several amendments to the Alien Flight Training Rule, the security assessments included foreigners who already possessed a certified pilot’s license. However, the assessments did not require review of “foreign students already in training or enrolled in flight schools” (unless they commenced training for another level or type of aircraft).<sup>105</sup> This requirement drew complaints from flight schools

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<sup>98</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. at 56,339.

<sup>99</sup> Letter from Chad Wolf, Assistant Administrator for Transportation Security Policy, TSA, Flight Schools Subject to 49 C.F.R. pt. 1552, Docket No. TSA-2004-19147 (Oct. 19, 2004), at [http://www.tsa.gov/interweb/assetlibrary/TSA\\_IFR\\_Exemptions.pdf](http://www.tsa.gov/interweb/assetlibrary/TSA_IFR_Exemptions.pdf) (last visited Nov. 28, 2005).

<sup>100</sup> 49 C.F.R. § 1552.3(a), (c) (2005).

<sup>101</sup> 49 C.F.R. § 1552.3(h) (2005).

<sup>102</sup> Tutino, *supra* note 16.

<sup>103</sup> *Information on the TSA Alien Flight Training Rule*, *supra* note 96.

<sup>104</sup> TSA Press Release, *supra* note 3.

<sup>105</sup> Wolfe, *supra* note 67. Due to criticisms from recreational aviation lobbyists, the TSA revoked the requirement that non-U.S. citizens who seek training on

because, as some argued, "more security checks for many foreign airline pilots is needless since they have often already been fingerprinted and checked by their airline for U.S. visas and by the Justice Department."<sup>106</sup> The Department of Justice states that approximately 30,000 foreign persons applied to U.S. flight schools in 2003, and the new rules were expected to impact more than 100,000 seeking flight training since 2003.<sup>107</sup>

The new rules create four categories encompassing all non-U.S. citizen flight students who pursue training. "Category one" applies to "candidates for training in aircraft over 12,500-pounds who are not current and qualified to fly the aircraft that they are requesting to train on and are not eligible for Category 2."<sup>108</sup> Students who are classified under "category two" are eligible for expedited processing of the security threat assessments; the review must be completed by the TSA in five days.<sup>109</sup> "Category two" applies to candidates who hold a foreign airman certificate that is recognized by the FAA; candidates who are employed by a foreign air carrier that operates under 14 CFR part 129 and has an approved security program permitted under 49 CFR part 1546; candidates with unescorted access authority to a Secure Identification Display Area (SIDA); and candidates who have successfully completed a criminal history records check in accordance with 49 CFR 1544.230.<sup>110</sup>

"Category three" applies to "candidates for training in aircraft 12,500-pounds or less who are not current and qualified to fly the aircraft that they are requesting to train on."<sup>111</sup> "Category four" comprises all recurrent training for "candidates who are current and qualified on the aircraft that they are requesting to train on."<sup>112</sup> Recurrent training "includes flight reviews, proficiency checks, and 'any other check whose purpose is to review rules, maneuvers, or procedures or to demonstrate a pilot's ex-

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aircraft for which they are already licensed undergo the security assessments. As the rule currently stands, only licensed non-U.S. citizens who train for a higher-level aircraft must undergo the screenings. TSA Website, *Flight Training for Non-U.S. Citizens*, at <http://www.tsa.gov/public/display?content=09000519800d8df0> (last visited Sept. 15, 2005).

<sup>106</sup> Wolfe, *supra* note 68.

<sup>107</sup> *Id.*; Sara Kehaulani Goo, *TSA Tightens Rules for Flight Training, Noncitizens Face New Scrutiny*, WASHINGTON POST, (Oct. 23, 2004), at All.

<sup>108</sup> TSA Website, *Flight Training for Non-U.S. Citizens*, *supra* note 105.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

isting skills on aircraft with a maximum certificated weight of 12,500 pounds or less.’”<sup>113</sup> Thus, the rules do not require the threat assessments for non-U.S. citizens who are not seeking training on a higher rated or heavier aircraft.

*The TSA’s responsibility to assess security threats posed by SPL trainee*

Clearly, security concerns regarding pilot certification and identification were considered during the passage of the sport pilot rule. During the public comment period of the rule, “[o]ne state’s Department of Transportation’s aeronautical division expressed concern that allowing persons with a driver’s license, as a sole form of identification, to have access to airports and the airspace system would reduce pilot identification standards and would lead to reduced security.”<sup>114</sup> The commenter said that since the terrorist attacks of 9/11, airport security identification, as well as pilot identification, are under greater scrutiny, and higher standards must be established to prevent unauthorized access to airports and aircraft. The commenter stated that additional scrutiny provided by the process of obtaining a pilot certificate, an airman medical certificate and passing an FAA practical test, is a welcome safety enhancement at this time and must not be eliminated.<sup>115</sup>

The FAA agreed with such comments and, therefore, the TSA threat assessments will apply to individuals training for their SPL. The SPL, however, has another oversight body, the Light Sport Standardization Branch of the FAA’s Regulatory Support Division.<sup>116</sup> “The Light Sport Standardization Branch is tasked to manage and provide oversight of the sport pilot examiner and the light sport aircraft repairman-training programs. Additionally [sic] the branch is tasked with providing subject matter experts for the FAA and industry concerning the sport pilot/light sport aircraft safety initiatives.”<sup>117</sup>

The Light Sport Standardization Branch conducts initial and recurrent standardization courses for sport pilot examiners, ap-

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<sup>113</sup> *TSA Announces Modifications of Rules for Flight Schools and CFIs*, [http://www.nafinet.org/tsa\\_modifications.pdf](http://www.nafinet.org/tsa_modifications.pdf) (last visited Nov. 28, 2005).

<sup>114</sup> Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 Fed. Reg. at 44,774.

<sup>115</sup> *Id.* at 44,774-75.

<sup>116</sup> Regulatory Support Division, Light-Sport Aviation Branch, [http://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/afs/afs600/afs6101](http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/afs600/afs6101) (last visited Nov. 28, 2005).

<sup>117</sup> *Id.*

points and provides oversight of sport pilot examiners, accepts industry repairman courses for the certification of light sport aircraft repairman, conducts annual sport pilot examiner recurrent flight tests and provides timely information to the FAA and industry concerning sport pilot/light sport aircraft initiatives. The branch supports the development and revision of sport pilot practical test standards and airman knowledge tests. The branch personnel also provide support for FAA and TSA courses concerning sport pilot/light sport aircraft accident investigation and standardization procedures.<sup>118</sup>

*The TSA delegated many of its security awareness responsibilities to flight schools and flight instructors.*

Although the TSA has the ultimate authority over flight school security, it has reduced its burden by delegating important responsibilities to the front line, namely, flight schools and flight instructors. For example, the new TSA rule requires flight school instructors and employees to take “security awareness training” on the TSA website “that would teach employees how to recognize suspicious activity.”<sup>119</sup> Further, flight schools are required to “ensure that each of its flight school employees who has direct contact with students (including flight instructors, ground instructors, chief instructors and administrative personnel who have direct contact with students) receives both initial and recurrent security awareness training.”<sup>120</sup> Moreover, the TSA gave flight schools the option of requiring its employees to take the TSA’s awareness training online, or the school may create its own program, provided that it complies with the standards set forth in the “Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees” rule.<sup>121</sup> If the flight school creates its own awareness program,

it must require active participation by the flight school employee receiving the training.

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<sup>118</sup> *Id.*

<sup>119</sup> Sara Keuhaulani Goo, *supra* note 107.

<sup>120</sup> General Aviation: Flight School Security Awareness Training, [http://www.tsa.gov/public/interapp/editorial/editorial\\_1727.xml](http://www.tsa.gov/public/interapp/editorial/editorial_1727.xml) (last visited Nov. 28, 2005); *see also* Flight Training for Aliens and Other Designated Individuals, Security Awareness Training for Flight School Employees, 69 Fed. Reg. 56,324, 56,336 (Sept. 20, 2004) (to be codified at 14 C.F.R. pt. 1552).

<sup>121</sup> General Aviation: Flight School Security Awareness Training, *supra* note 120; *see* 49 C.F.R. § 1552.23 (2005).

Studies have shown that individuals retain information better when they receive the information in an interactive format than when they receive the information passively (for example, by merely listening to a lecture). Thus, the TSA initial training program is interactive, and TSA believes that any alternative initial training program must be as well.<sup>122</sup>

Second, an alternative security awareness training program “must provide situational scenarios that require the employee to assess specific situations and determine appropriate courses of action.”<sup>123</sup> Third, the alternative training must ensure that an employee be able “to identify the proper uniforms and other identification (if any are required at the flight school) for employees at that flight school or other persons authorized to be on the grounds of that flight school. The training also must enable an employee to identify suspicious behavior.”<sup>124</sup> Fourth, an alternative program is required to “provide an employee with appropriate responses for the employee to make in specific situations. Appropriate responses include: taking no action, . . . questioning an individual, . . . informing a supervisor, . . . or calling local law enforcement.”<sup>125</sup> Last, an alternative security awareness program “must contain any other information relevant to security measures or procedures at the flight school, including applicable information in the TSA Information Publication ‘Security Guidelines for General Aviation Airports.’”<sup>126</sup> Interestingly, “[a] flight school is not required to submit its alternative initial security awareness training program to TSA for approval before the flight school uses the program to comply with the rule. Rather, TSA officials may audit a flight

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<sup>122</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. at 56,336.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* (defining “suspicious behavior” as “excessive or unusual interest in restricted airspace or restricted ground structures, such as repeated requests to fly over nuclear power plants; unusual questions or interest regarding aircraft capabilities; aeronautical knowledge inconsistent with the student’s existing airman credentialing; sudden termination of the student’s instruction; loitering on the flight school grounds for extended periods of time; and entering “authorized access only” areas without permission”); *see also* 49 C.F.R. § 1552.23 (2005).

<sup>125</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. at 56,336; *see also* 49 C.F.R. § 1552.23(c)(3)(v)(A)-(E).

<sup>126</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. at 56,336.



school's alternative training program when inspecting the flight school."<sup>127</sup>

In sum, despite the fact that the TSA does not consider general aviation to be excessively vulnerable to terrorism, the new security protocols impose many new security requirements on flight schools. These rules focus on flight school and general airport security, and the rules delegate much of the security responsibilities to flight instructors and flight schools. This delegation of responsibility has not been overwhelmingly welcomed by general aviation enthusiasts.

PART VI: THE IMPACT OF THE NEW TSA THREAT ASSESSMENTS  
ON THE SPL AND GENERAL RECREATIONAL AVIATION IN  
THE UNITED STATES

Although the Alien Flight Training Rule and security assessments for flight schools were much-needed safety measures, they have not received unanimous support from aviation enthusiasts. Just as enthusiasts heralded the SPL because it promoted recreational aviation, they decried the security measures and alleged that they would drastically cripple the aviation industry. Critics of the security measures claimed that they were burdensome, confusing, time consuming, financially straining and a hindrance to individuals seeking a pilot's license. Some people, however, believe these complaints are unfounded and believe the new rules are beneficial to general aviation. These people also believe that the new SPL's promotion of recreational aviation will impact the aviation industry in a very positive manner. Additionally, supporters of the rules praise the TSA's efforts to involve flight schools, flight instructors and general aviation pilots in homeland security initiatives.

The TSA's new rules were quickly met with disapproval from private flight instructors and flight schools because they created financial and record-keeping problems.<sup>128</sup> The Aircraft Owners and Pilots Association ("AOPA") said that the "measures will

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<sup>127</sup> *Id.* at 56,337.

<sup>128</sup> *NAFI Efforts Help Obtain Security Modifications for Flight Instructors and Schools*, <http://www.nafinet.org/news/> (follow Jan. 11, 2005 hyperlink) (last visited Nov. 28, 2005). Although the original TSA proposal required "that [flight] schools keep citizenship records of students for five years," the new procedures merely require schools to "verify that the student's citizenship documents are authentic, then note that in a logbook . . . the TSA agreed to this concept as it goes a long way towards easing the paperwork burden on the flight training community." Sara Kehaulani Goo, *supra* note 107.

force flight schools to perform immigration and citizenship verification duties that the government should perform.”<sup>129</sup> Organizations such as the National Association of Flight Instructors (“NAFI”) pressured the TSA into easing the “confusing” regulations.<sup>130</sup> David St. George, the manager of the “East Hill Flying Club in Lansing which train[s] non-citizens, many from nearby Cornell University . . . said the new regulations will cost foreign flight students about \$200 in fingerprint and administrative fees.”<sup>131</sup> St. George also expressed concerns that the systems used by flight schools to conform to the threat assessment screenings may not be up and running in all flight schools.<sup>132</sup> Therefore, those flight schools may be grounded until they comply, and business will suffer.<sup>133</sup>

Furthermore, foreign students comprise a significant proportion of flight school business, making the new rules more financially straining on schools. St. George estimates that foreign students make up “as much as 25 percent of [their] business.”<sup>134</sup> Many flight trainers expressed concern that the new procedures are over-inclusive because they say that “any non-U.S. citizen is a threat.”<sup>135</sup> The TSA, however, stated that it does not expect the rule to have “a significant impact on the overall demand for U.S. flight school training” because the rule only impacts non-U.S. citizens, a group that is small compared to the total number of U.S. flight students.<sup>136</sup> The TSA admitted that “costs will increase for alien flight school candidates” but the impact “will not be significant because U.S. flight training is considered to be the global standard, and it is comparatively less expensive to obtain a pilot’s certificate in the U.S. than in most foreign countries.”<sup>137</sup>

General aviation is a booming industry in the U.S. and, therefore, any security measures must be carefully tailored to avoid negative economic impacts on the industry. General aviation accounts for approximately seventy-seven percent of all flights in

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<sup>129</sup> *Id.*

<sup>130</sup> *NAFI Efforts Help Obtain Security Modifications for Flight Instructors and Schools*, *supra* note 128.

<sup>131</sup> Tutino, *supra* note 16.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. at 56,338.

<sup>137</sup> *Id.*

the U.S., as well as more than 200,000 aircraft, 650,000 pilots, and over 19,000 domestic airports and landing sites.<sup>138</sup> The general aviation industry "accounts for 1.3 million jobs, with nearly \$20 billion in annual earnings. Its direct and indirect economic impact exceeds \$102 billion annually."<sup>139</sup> Therefore, some aviation enthusiasts believe that "[a]nything that affects [general aviation flight education] has short and long-term consequences not only on general aviation, but on everyone who uses the National Airspace System: General Aviation, Commercial Aviation, the Air Carriers, and, to some extent, the military."<sup>140</sup>

Aviation lobbyists sought to reduce the negative impacts that the TSA security assessments have on recreational aviation, and lobbyists testified before congressional committees to remind lawmakers of the importance of general recreational aviation. One benefit of recreational aviation, they noted, is that "general aviation flight instructors teach to fly approximately sixty-three percent of pilots hired by America's major, national, regional and commuter airlines."<sup>141</sup> "Without civilian-trained general aviation pilots, the airline industry could not possibly find, train, and hire the pilots it will need."<sup>142</sup> General aviation flight instruction is critical for "aerial operations from law enforcement and search-and-rescue to aerial application (crop dusting) and transportation services to the nation's remote areas (bush flying) . . . if the airlines are the backbone of the aviation industry, flight training is its lifeblood."<sup>143</sup>

Furthermore, the TSA recognized that general aviation enthusiasts can play a vital role in homeland security. During the week leading up to the inauguration of President Bush for his second term, the TSA asked general aviation pilots and aircraft and airport owners and operators to be on alert for "suspicious activities."<sup>144</sup> This was not the first time the TSA called upon general and recreational pilots to assist authorities in securing the homeland. In November 2003, the Aviation Security Advisory Committee Working Group, a coalition of general aviation

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<sup>138</sup> General Aviation: What is General Aviation?, <http://www.tsa.gov/public/display?theme=180> (last visited Nov. 28, 2005).

<sup>139</sup> Testimony of Phillip Poyner, *supra* note 63.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> TSA Asks GA: Be Alert During Inauguration Week, <http://www.eaa.org/communications/eaanews/archive0105.html> (follow "01/14/05" hyperlink) (last visited Nov. 28, 2005).

associations, helped the TSA publish an Information Publication on Security Guidelines for General Aviation Airports.<sup>145</sup> Together, the federal government and the aviation industry developed security guidelines to ensure that training-aircraft were not subject to unauthorized use at flight schools. The recommendations suggest that flight schools should:

require flight students to use proper entrances and exits to ramp areas [and] . . . consider having flight school personnel allow access to ramp areas only after establishing positive identification of flight students.

Establish positive identification of student pilots prior to every flight lesson.

Control aircraft ignition keys, [and] . . . limit student pilot access to aircraft keys until the student pilot has reached an appropriate point in the training curriculum.

Consider having any student pilot check in with a specific employee . . . before being allowed access to parked aircraft.

When available, use a different ignition key from the door lock key. The instructor would provide the ignition key when he or she arrives at the aircraft.<sup>146</sup>

In addition to the above recommendations, the FAA also took steps to protect pilot identities and protect aircraft from individuals masquerading as pilots. In July 2003, the FAA began issuing new, "security-enhanced" airman certificates to active pilots.<sup>147</sup> "The new credit card-sized certificates are made from high-quality composite PVC media card stock and incorporate new security features, such as a hologram of the FAA seal. They will replace the existing paper airman certificates which can be eas-

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<sup>145</sup> *Security Guidelines for General Aviation Airports*, *supra* note 18, at iii. The Working Group members who collaborated on the report are: Aircraft Owners & Pilots Association, Airports Consultants Council, American Association of Airport Executives, Experimental Aircraft Association, General Aviation Manufacturers Association, Helicopter Association International, National Air Transportation Association, National Association of State Aviation Officials, National Business Aviation Association, and United States Parachute Association. Aviation Sec. Advisory Comm., Report of the Aviation Security Advisory Committee Working Group on General Aviation Airports Security at 1 (Oct. 1, 2003), at [http://www.tsa.gov/interweb/assetlibrary/ASAC\\_Working\\_Group\\_11-2003.pdf](http://www.tsa.gov/interweb/assetlibrary/ASAC_Working_Group_11-2003.pdf) (last visited Nov. 28, 2005).

<sup>146</sup> *Security Guidelines for General Aviation Airports*, *supra* note 18, at 9.

<sup>147</sup> Press Release, Federal Aviation Administration, FAA Administrator Unveils New Airman Certificate (July 31, 2003), available at <http://www.faa.gov/apa/pr/pr.cfm?id=1762>.

ily damaged.”<sup>148</sup> The new certificates will be issued to newly-licensed pilots, including sport pilots.<sup>149</sup>

The TSA security measures are necessary and important, but some aviation enthusiasts complain that they may delegate too much responsibility for identifying terrorist threats to flight school managers and instructors. Whether or not the FAA’s approach will be effective remains to be seen. However, considering the bureaucratic difficulties inherent in the TSA procedures,<sup>150</sup> it could prove wise to ask the instructors, who have face-to-face, personal contact with students, to be the ones on the alert. Some aviation enthusiasts support the self-help rules because they keep federal agencies at bay. “In order to prevent increased government restrictions and regulations on flight schools and general aviation, it would be more palatable for the general aviation community to establish and adhere to their own voluntary security standards.”<sup>151</sup>

In sum, the new security measures’ inconveniences are outweighed by the benefits heaped upon aviation security and the promotion of general aviation. They do create a financial burden on trainees and flight schools, but these burdens appear, for the most part, nominal. Further, the increased security-related responsibilities imposed on flight schools and instructors are sensible, considering that these are the parties in the best positions to identify a suspicious student. The fact that flight schools and instructors are more involved in the security threat assessments will likely effectuate the goals of the new procedures. In short, the critiques of the new rules seem to state a “parade of evils” rather than actual impositions.

CONCLUSION: THE SPL AND NEW TSA SECURITY MEASURES ARE  
NOT LIKELY TO GIVE TERRORISTS MORE ACCESS TO  
U.S. FLIGHT TRAINING.

“Many people in government – and the public at large – see flight training as part of a recreational activity that is not particularly critical to the national interest. After all, flight instructors teach people to fly those ‘little planes.’”<sup>152</sup> Whether or not this statement is indeed true of the “public at large,” recreational

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See generally Gordon, *supra* note 10; Hersh, *supra* note 56.

<sup>151</sup> Daniel J. Benny, *Flight School Security* (2002), <http://www.iflyamerica.org/flightschool/security.htm>.

<sup>152</sup> Testimony of Phillip Poynor, *supra* note 63.

aviation remains an important component of the general aviation industry. Thus, recreational aviation should be promoted, but it must be made to conform to the changes necessitated by the 9/11 attacks.

The SPL is a significant milestone for recreational aviation, in that it will introduce new enthusiasts to the sport. The increase of sport pilots should have a positive impact on the aviation industry as they acquire their own aircraft, and demand for rental planes increases. Further, many sport pilots may eventually pursue upper-level licenses or fly for an air carrier. These new privileges, however, accompany important responsibilities, and the SPL must not become an entry-point for terrorists seeking to carry out another 9/11-style attack.

The threat of a light sport aircraft being used in the same manner as the 9/11 commercial airline's is almost non-existent. A 1,320-pound, single-engine aircraft simply is not capable of the level of destruction as that of larger, faster, jet-propulsion aircraft. Flying such a small plane into a building is comparable to driving a car through a large building. Therefore, the SPL, and the aircraft authorized to be flown with it, do not pose a threat serious enough to revoke the new SPL. Although light sport aircraft themselves do not pose a serious threat, the training may, because someone armed with the basic fundamentals of flight training could effectively navigate a larger aircraft, once airborne. Thus, in order to ensure general aviation safety, the SPL should not be eliminated. Rather, the most logical precaution seems to be exactly what the TSA has already undertaken – meticulous threat assessments on individuals applying for flight schools.

The TSA recognized the necessity of carefully monitoring and identifying suspicious individuals who apply for flight training in the U.S. "Since 9/11, the TSA has already taken steps to guard against unauthorized use of flight school or rental aircraft, required background checks for foreign pilots seeking a U.S. pilot certificate, and is working with the Department of Justice to track suspicious aircraft purchases."<sup>153</sup> Their recent implementation of security threat assessments and the Alien Flight Training Rule are important steps to maintaining flight school safety. Despite concerns about the rules, it is unlikely that they will pre-

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<sup>153</sup> Press Release, Transportation Security Administration, TSA Outlines Security Recommendations for General Aviation, (Dec. 1, 2003), <http://www.tsa.gov/public/display?theme=44&content=090005198006ed60>.

sent a serious impediment on individuals seeking their SPL. The increased cost for non-U.S. citizens, \$130 for the application,<sup>154</sup> is minimal when compared to the total cost for flight training.<sup>155</sup> For an individual willing to invest the time and money in basic instruction (in addition to aircraft rental, insurance, airport fees and continuing instruction once licensed), the \$130 TSA application fee does not seem to pose as significant an obstacle as the rule's opponents claim.

Opponents to the new TSA rules also argue that the investigation of students' threat levels places burdensome obstacles on students who want to begin flying right away. This, however, is the purpose behind the rules to allow the TSA to investigate flight school applicants before training begins. As a measure of good faith, however, the TSA recently decreased the time frame for conducting the threat assessments for students training on aircraft weighing over 12,500-pounds, which includes commercial airplanes. The TSA scaled back the previous forty-five-day deadline in favor of a thirty-day deadline.<sup>156</sup> Thus, non-U.S. applicants will see only a thirty-day delay before they begin training on large aircraft. The burden is even less for sport pilot training because light-sport aircraft fall under the "category three" requirements for aircraft weighing less than 12,500-pounds.<sup>157</sup> "Category three" students can begin training when the "TSA acknowledges receipt of all the required information."<sup>158</sup> It is estimated that it will take forty-five minutes for an individual to assemble the required materials requested by the TSA and that each flight school will see an annual record-keeping burden of only 104 hours.<sup>159</sup> Although complaints may arise from students who submit the information and are allowed to train, but later

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<sup>154</sup> TSA Press Release, *supra* note 3.

<sup>155</sup> Basic flight instruction typically costs between \$100 to \$140 per hour including instruction and aircraft rental. *Id.*; see Ultralight Training Unit, <http://www.mordenflyingclub.com/?page=train> (last visited Nov. 28, 2005); Flight Instructions, <http://www.sportpilotairsports.com/pending/flight-instruction.htm> (last visited Nov. 28, 2005). The sport pilot license requires twenty hours of training to be certified in an airplane, bringing the cost to approximately \$1,900 to \$2,800.

<sup>156</sup> TSA Press Release, *supra* note 3.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Department of Homeland Security, Notice, Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 69 Fed. Reg. 68,952, (Nov. 26, 2004).

fail the TSA screening, sport pilot students will not see an immediate impediment from the new TSA requirements. These small burdens are a pittance in exchange for promotion of a safe, secure general aviation industry.

The TSA also alleviated problems that may arise from the increased number of security threat assessments that will need to be performed for non-U.S. citizens who pursue an SPL. By transferring many of the responsibilities for flight-school security to flight instructors, the TSA has likely eliminated delays that would result from the increased number of individuals entering flight school. Despite complaints from flight schools that the rules are burdensome, the TSA has acknowledged the complaints and conceded to several of them.

Flight schools should not see the rules as an onus, but merely a small concession in exchange for greater aviation security and oversight. The instructors are much more capable of identifying potentially threatening students that attend their schools; therefore, the instructors should continue to be integral participants in safeguarding U.S. flight schools. The fact that several flight schools reported suspicious students prior to 9/11 and that federal agencies failed to follow up is indicative that instructors can identify a security problem before agencies such as the FAA and TSA take notice. Concededly, instructors should not be charged with the full responsibility of the issue, but the TSA has found a comfortable and workable solution that incorporates all the necessary parties. Further, the TSA argues that, because of general aviation's substantial economic impacts, "general aviation operators are keenly aware of and willing to individually enhance the security of their operations without government regulation."<sup>160</sup>

The SPL has not existed long enough to manifest any latent problems related to aviation terrorism. The FAA wisely opted to use "a building-block approach in extending privileges to sport pilots" which will allow the FAA and TSA to expand or withdraw sport pilot privileges as problems, or lack thereof, begin to surface.<sup>161</sup> The real problem, the dedication of anti-American terrorists, may never be overcome despite close monitoring of flight schools and flight students. Nevertheless, the relaxed re-

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<sup>160</sup> Press Release, Transportation Safety Administration, Report Of The Aviation Security Advisory Committee Working Group On General Aviation Airports Security (Dec. 1, 2003), at <http://www.tsa.gov/public/display?theme=44&content=090005198006ed85> (last visited Sept. 15, 2005).

<sup>161</sup> Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 Fed. Reg. at 44,777.



quirements for the SPL are not likely to contribute to aviation terrorism. "The terrorists took advantage of America's strengths and used them against us. They took advantage of the freedoms we accord to our citizens and guests . . . [a]nd as long as we continue to treasure our freedoms, we always will run some risk of future attacks."<sup>162</sup>

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<sup>162</sup> "FBI Reorganization": *Hearing on Reforming the FBI in the 21st Century: Reorganizing and Refocusing The Mission Before the Senate Comm. on the Judiciary*, 107th Cong., 2nd Sess. (May 8, 2002) (testimony of Robert Mueller, Director of Federal Bureau of Investigation).available at <http://www.fbi.gov/congress/congress02/mueller050802.htm> (last visited Nov. 28, 2005)