Federal Register

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Part IV

Department of Justice

28 CFR Part 105

Screening of Aliens and Other Designated Individuals Seeking Flight Training; Interim Final Rule and Proposed Rule

Rescission of Second Notice of Advance Consent for Providing Certain Aviation Training; Notice

DEPARTMENT OF JUSTICE

28 CFR Part 105

[OAG 104; AG Order No. 2590–2002]

RIN 1105–AA80

Screening of Aliens and Other Designated Individuals Seeking Flight Training

AGENCY: Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act, certain aviation training providers subject to regulation by the Federal Aviation Administration (''FAA'') are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless the aviation training provider notifies the Attorney General of the identity of the alien seeking training and the Attorney General does not direct the aviation training provider within 45 days that the alien presents a risk to aviation or national security. This interim final rule implements a process by which aviation training providers would provide the required notification for specific categories of aliens, the Attorney General would respond, and the aviation training providers would begin or resume instruction for candidates who the Attorney General has determined do not present a risk to aviation and national security as a result of the risk assessment conducted pursuant to section 113 of the Aviation and Transportation Security Act.

DATES: *Effective date:* This interim rule is effective June 14, 2002.

Comment date: Written comments on the interim final rule must be submitted on or before July 15, 2002. Written comments only on the proposed information collection must be submitted on or before August 13, 2002.

ADDRESSES: Please submit written comments to Aviation Training Security, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Steven C. McCraw, Director, Foreign Terrorist Tracking Task Force, U.S. Department of Justice, Telephone (703) 414–9535.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (''ATSA''), Pub. L. No. 107–71. Upon enactment, section 113 of ATSA, 49 U.S.C. 44939, imposed notification and reporting requirements on certain persons who provide aviation training to aliens and other specified individuals. By its terms, section 113 of ATSA applies to anyone ''subject to regulation under this part.'' The reference to ''this part'' refers to Title 49, Subtitle VII, Part A, of the U.S. Code, entitled ''Air Commerce and Safety.'' Any entity regulated by any portion of Part A, comprising section 40101 through section 46507 of Title 49, must comply with the requirements of section 113 of ATSA. Persons subject to regulation under these provisions include individual training providers, training centers, certificated carriers, and flight schools (hereinafter collectively referred to as ''Providers''). Thus, virtually all private flight instructors located in the United States are covered by section 113 of ATSA and therefore are subject to this rule. In addition, section 113 of ATSA does not exclude private providers of flight instruction located in countries outside the United States if these providers are authorized by the FAA to award United States licenses, certificates, or ratings. Providers outside the United States are not covered with regard to a particular instance of training, however, if that training will not lead to an FAA license, certificate or rating, regardless of whether the provider also has authority to issue such licenses, certificates or ratings. When the Department of Defense or the U.S. Coast Guard, or an entity providing training pursuant to a contract with the Department of Defense or the U.S. Coast Guard, provides training for a military purpose, such training is not subject to FAA regulation and therefore these entities, when providing such training, are not ''person[s] subject to regulation under this part'' within the meaning of section 113. *See, e.g.,* 49 U.S.C. 44701(a) (Administrator's jurisdiction extends to promoting ''safe flight of civil aircraft in air commerce''); 14 CFR part 61 (provisions concerning certification of pilots, flight instructors, and ground instructors do not apply where training is not for purpose of FAA certification).

Failure to comply with this rule may result in penalties being imposed in conformance with section 140(d) of ATSA. Pursuant to 49 U.S.C. 46301, persons violating this section are subject to civil penalties.

Pursuant to section 113 of ATSA, if an alien (defined in 8 U.S.C. 1101(a)(3) as ''any person not a citizen or national of the United States'') or other person specified by the Under Secretary of Transportation for Security (collectively ''candidates'') seeks instruction from a Provider in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, the Provider must notify the Attorney General and must submit identifying information for the candidate in such form as the Attorney General may require in order to initiate a security risk assessment by the Department of Justice (the ''Department'').

Once the Attorney General has been notified and all the required identifying information has been submitted, the Attorney General then has 45 days to inform the Provider that the candidate should not be given the requested training because he or she presents a risk to aviation or national security. If the Attorney General does not indicate that the candidate presents a risk to aviation or national security by the end of this 45-day review period, then the Provider may proceed with training. The Attorney General, however, may interrupt the training if he later determines that the candidate presents a risk to aviation or national security. The Attorney General has delegated his authority under section 113 of ATSA to conduct security risk assessments of individuals seeking flight training and to determine whether such individuals present a risk to aviation or national security to the Director of the Foreign Terrorist Tracking Task Force (''FTTTF'').

The Department recognized that section 113 of ATSA became immediately effective, and that Providers had been forced to suspend the training of aliens covered by ATSA pending the implementation of the process for notification to the Attorney General and the determination by the Attorney General whether the individual seeking training presents a risk to aviation or national security. The Department issued a notice on January 16, 2002 (''First Advance Consent Notice'') that stated that the Department was granting a provisional advance consent for the training of three categories of aliens, based on an initial determination they did not appear to present a risk to aviation or national security. 67 FR 2238. The First Advance Consent Notice was subsequently superseded, and the categories of advance consent modified in a notice published on February 8, 2002 (''Second Advance Consent Notice'' or ''Second Notice''). 67 FR 6051 (Feb. 8, 2002). The Second Notice is rescinded as of June 14, 2002.

This interim final rule with request for comments (''interim rule'') rescinds the Second Advance Consent Notice and imposes notification requirements for aliens within one of the three

categories eligible for expedited processing pursuant to this interim rule. Providers who currently are training any aliens in one of the four categories described in the Second Notice must suspend training until the Attorney General authorizes it to continue. This interim rule implements an expedited processing procedure for aliens in two of the four categories listed in the Second Notice and adds one additional category. Aliens in those three categories cannot be trained until the Provider notifies the Department in accordance with this rule and either the Attorney General authorizes training to proceed or 45 days from the date of notification elapses.

Although this regulation is being issued as an interim rule, the Department is committed to issuing a final rule that addresses comments from the public and the aviation industry. The Department plans to issue a final rule addressing these comments as soon as possible after the comment period closes.

Expedited Processing for Aviation Training of Certain Aliens

The Department believes that the primary intent of Congress was to protect aviation and national security by preventing aliens who present a risk to aviation or national security from being taught how to pilot aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. The Department has determined that providing aviation training for certain categories of aliens presents little risk to aviation or national security because these aliens already have been trained as pilots. In this interim rule, the Department establishes an expedited processing procedure for those categories of aliens. These three categories of aliens are:

(1) Foreign nationals who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the United States for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, or who are currently employed by U.S. air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Commercial, governmental, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who must receive familiarization training on a particular aircraft in order to transport it to the purchaser or recipient, provided that the training provided is limited to familiarization (familiarization training is limited to that required to become proficient in configurations and variations of an aircraft and does not include initial qualification or type rating for an aircraft); or

(3) Military or law enforcement personnel who must receive training on a particular aircraft given by the United States to a foreign government pursuant to a draw-down authorized by the President under section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)), provided that the training provided be limited to familiarization.

These three categories differ slightly from the categories described in the Second Notice. At the suggestion of the FAA, this interim rule expands category (1) in the Second Notice to include foreign nationals currently employed by U.S. air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Such individuals may have temporarily lost their current status or qualification either through personal or medical reasons. Nevertheless, as they are already fully trained pilots, requiring them to undergo a full investigation before regaining current status would create a hardship to the industry without bringing any significant benefit to national security.

Category (2) of the Second Notice covered training being conducted directly by the United States Department of Defense or the U.S. Coast Guard. When the Department of Defense or the U.S. Coast Guard, or an entity providing training pursuant to a contract with the Department of Defense or the U.S. Coast Guard, provides training for a military purpose, such training is not subject to FAA regulation and therefore these entities, when providing such training, are not ''person[s] subject to regulation under this part'' within the meaning of section 113. *See, e.g.,* 49 U.S.C. 44701(a) (Administrator's jurisdiction extends to promoting ''safe flight of civil aircraft in air commerce''); 14 CFR part 61 (provisions concerning certification of pilots, flight instructors, and ground instructors do not apply where training is not for purpose of FAA certification). Accordingly, in the instant rule, the former Category (2) is not included.

One category in the Second Notice covering certain students scheduled for training pursuant to an export authorization issued by the Department of State will not be included in the interim rule.

Finally, Category (3) will allow expedited processing for law enforcement or military pilots of foreign countries who would receive familiarization training on aircraft given to those countries by the United States pursuant to draw-downs authorized by the President in support of the United States' anti-narcotics efforts. Such pilots are subject to careful evaluation by the State Department and, as they are fully qualified pilots seeking only familiarization training rather than basic flight instruction, no significant security benefits would be realized by requiring them to undergo a full investigation.

Providers wishing to furnish aviation training to candidates in any of these categories will need to provide the Department with certain minimal identification, including the candidate's name, date of birth, passport issuing authority, country of citizenship, dates of training, unique student identification number, and the expedited processing category under which the candidate qualifies. The unique student identification number must be created by the Provider as a means of identifying records concerning the candidate. The unique student identification number must correspond to records kept by the Provider containing basic data concerning the candidate, including date of birth, place of birth, passport issuing authority and passport number, and copies of any other documentation that the FAA may require. As soon as the Provider furnishes the information to the Department in accordance with section 105.12 of this interim rule, and receives a response from the Department indicating that the individual does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA, the Provider immediately may begin training. Receipt of this response by the Department to the notification will be deemed approval by the Department to commence training.

The Provider's notification must be sent electronically to the Department in accordance with this regulation. Certificated training Providers must receive initial access to the system through the FAA. Providers will be required to make appointments to register through their local Flight Standards District Offices. Upon registration, Providers will be e-mailed a password for accessing the system and verifying applicant submissions. Any electronic notifications submitted to the Department must be submitted from a registered e-mail address in a format provided by the Department or the FAA. Any submissions sent from an unregistered e-mail address or using an incorrect format will not constitute notification of the Department for purposes of this rule.

The Department intends for its review to be accomplished expeditiously and requests comments on what turnaround time is needed to minimize any burdens that may be experienced by the aviation industry. Providers should keep in mind that the required notifications may be provided in advance of the anticipated training.

Limiting submissions to electronic submissions placed by Providers will help to eliminate data-input errors, speed the processing of submissions, and aid the Department's ability to audit the process. In addition, the Department will be able to implement controls to help ensure the integrity of the submissions. A paper-based system likely would result in more errors and increased processing times, thus further burdening the flight instruction industry.

In order to ensure that the electronic submissions are made by certificated training providers, Providers must receive initial access to the system through the FAA. Providers will be required to make appointments to register through their local Flight Standards District Offices. Upon registration, Providers will be e-mailed a password for accessing the system. The Department believes that most, if not all, Providers furnishing instruction on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more already possess Internet access. Those Providers not possessing an e-mail address will need to obtain one if they wish to utilize this process. The Department also notes that free Internet access is available at many public facilities, such as public libraries, and that free e-mail services are available from some Internet Service Providers. The Department seeks comments from Providers and candidates on the impact of the requirement to provide notifications to the Department electronically.

Citizens and Nationals of the United States

Citizens and nationals of the United States are not subject to section 113 of ATSA unless they are covered by a category designated by the Under Secretary of Transportation for Security. Accordingly, Providers may proceed with training for such individuals once they establish that they are citizens or nationals of the United States.

The Attorney General is requiring that all prospective trainees who claim to be citizens or nationals of the United States must present documents to the Provider (such as a passport or birth certificate) establishing that the trainee is a citizen or national of the United States. Proof of United States citizenship or nationality is mandatory for United States citizens or nationals seeking training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, because, with the exception of individuals designated by the Under Secretary of Transportation for Security, the Department will not conduct checks on citizens or nationals of the United States. This requirement is necessary to prevent aliens from falsely claiming to be United States citizens in order to evade the Department's security risk assessment. The Department also notes that aliens who falsely claim to be United States citizens in order to obtain flight training subject to section 113 of ATSA may be convicted of a felony under 18 U.S.C. 911 and will be permanently inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(6)(C)(ii).

Risk Assessments for Aliens Not Granted Expedited Processing and Other Persons Specified by the Under Secretary of Transportation for Security

The Department is issuing a separate proposed rule to address training for aliens who do not fall within a category of expedited processing in this interim rule. The proposed rule also addresses the notification process for individuals who may be specified by the Under Secretary of Transportation for Security. In accordance with ATSA, the Under Secretary of Transportation for Security may specify other individuals for whom the Department should conduct security risk assessments. At this time, however, no other individuals have been specified.

Attorney General Review

After the Provider submits all the information that is required under this rule, the Attorney General will have 45 days to conduct a security risk assessment. The Department recognizes the economic burden imposed on Providers by the 45-day waiting period for those candidates who are subject to this notification requirement. The Department believes that it is unnecessary to make a candidate wait for the full 45-day period in order to begin training if the Department has completed its risk assessment. Accordingly, in most cases, the Department expects that the Provider will be authorized to commence training (or instructed to deny it) sooner than the 45 days allowed by the statute.

Providers training candidates qualifying for expedited processing who have notified the Department in accordance with section 105.12 may commence training immediately after they receive a response from the Department to their notification, indicating that the individual does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA. In the event that the Attorney General does not instruct the Provider to deny training within 45 days of the submission of all the information required under this rule, the Provider may commence the requested training.

The information provided to the Department will be used to confirm the identity of the individuals being trained and to help assess the risk presented by the candidate. In the event the Department subsequently determines that a candidate being trained does, in fact, present a risk to aviation or national security and that training should be denied, the Department will notify the Provider to terminate training immediately. Appropriate measures will be taken with respect to any candidate who is determined to present a risk to aviation or national security or with respect to any candidate or Provider who knowingly or negligently provides false information to the Department.

Regulatory Procedures

Good Cause

This interim rule is effective immediately upon the date of publication. For the following reasons the Department finds that good cause exists for adopting this rule without the prior notice ordinarily required by 5 U.S.C. 553(b). Delay in the implementation of the rule will cause serious disruption in the aviation industry and the economy in general, will have a negative impact on public safety and national security, and will have a seriously adverse impact on the military and foreign affairs of United States.

As a consequence of the notification requirement in section 113 of ATSA, Providers were prohibited from furnishing aviation training to aliens pending the implementation of a process for submitting training notifications to the Department. As a temporary measure to relieve the economic pressure on the aviation industry pending the promulgation of this rule, and based on a determination that the training of certain categories of aliens who already had flight skills did not pose any additional risk to aviation or national security within the meaning of the statute, the Department published two **Federal Register** Notices defining

certain categories of ''advance consent.'' Providers subsequently provided training to pilots in those categories without first notifying the Department. This advance consent process, however, is terminated with the publication of this rule, based on an assessment of the requirements of the ATSA.

This rulemaking is being issued on an interim basis to prevent the burdens that would be imposed on the public and the aviation industry if the revocation were effected without immediate provision of a means for Providers to furnish the required training notifications to the Attorney General for those aliens who are within the categories described in the expedited processing provisions of the interim final rule. For the following reasons, advance notice and comment would be contrary to the public interest.

While the primary intent of Congress behind section 113 of ATSA was to protect aviation and national security, the public also has a strong interest in seeing that those aliens who do not present such risks are allowed to train. Because advance consent is being revoked, Providers who are prohibited from training aliens, airlines who regularly employ these pilots, and manufacturers who sell to these airlines would lose business every day that these regulations are not in effect. In addition, the inability to provide training would have a ripple effect on the United States economy. On the basis of available information, the Department believes that the aviation industry and the public would be affected severely if the Department were to eliminate advance consent without providing an immediate means of furnishing the required notifications to the Department.

First, flight schools will be harmed economically over the course of the 60 days that might be expected to elapse were this rule published as a proposed, rather than an interim, rule. Almost all aliens coming to this country who seek training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more will use aircrew-training simulators, and a significant proportion of simulator time is used by aliens eligible for expedited processing pursuant to this interim final rule. A new simulator costs between $5.5 million and $19 million each, and therefore must generate substantial revenue to return a profit for a flight school. There are approximately 700 simulators in the United States. Financial difficulties accruing to Providers from lost opportunities due to restrictions on training aliens are confirmed by Pan Am International Flight Academy in Miami, Florida. In addition to the revenue they generate, simulators support the employment of numerous flight school employees. Simulators also support substantial demand for overnight accommodations, meals, and transportation, and related employment. The direct and indirect losses to the national economy caused by a 60-day delay in the effective date of this rule would be substantial.

Second, the training delays have direct adverse effects on air carriers and their ability to conduct their business. As discussed above, much of the training conducted by Providers to aliens is in the form of recurrent training offered to experienced pilots who are currently flying into and out of the United States. The Department has estimated that 50,500 aliens will be subject to the expedited processing provisions implemented in this rule. Although the requirements for recertification vary, the Department estimated that these 50,500 aliens will need to take recurrent training, on average, approximately three times each year. This suggests that an average of approximately 12,625 pilots may risk losing their current status for lack of the required recurrent training every month that the publication of an effective rule is delayed. The potential loss of the services of this number of pilots and flight crew would have a substantial negative effect on the aviation industry. Information provided by the industry reflects that some 5–10% of pilots employed by United States carriers are aliens. If these individuals were to lose their current flight status and be unable to fly, a loss in revenue could be expected.

Third, the domestic airplane manufacturing industry also is affected by the notification requirements of section 113 of ATSA. According to the FAA, the Commerce Department, and the industry, large purchase contracts of domestic airplane manufacturers involve not only the sale of aircraft, but also the training of pilots in the use of such aircraft. Indeed, according to one industry source, a contract for the sale of a large aircraft includes, in every instance, a certain amount of ''entitlement training.'' If overseas buyers are deterred from purchasing planes manufactured in the United States because they cannot have their pilots trained in the operation of such aircraft, expected losses would be severe.

Fourth, a delay in the effective date of a rule providing expedited processing for the three categories of aliens also would be contrary to the public's interest in aviation safety. Aviation training may be furnished outside the United States by flight schools not subject to section 113. Therefore, the lack of an effective rule would serve to encourage aliens who otherwise would be trained in the United States to seek training elsewhere. That decision not only risks the economic well being of domestic Providers, but increases the risk that these aliens would be trained by lower quality foreign flight schools that do not comply with FAA regulations. It clearly is in the interest of public safety for pilots to be trained by Providers regulated by the FAA.

Moreover, aliens in the three categories that would end up being trained by non-FAA regulated flight schools would avoid the risk assessments to which they would be subject if they sought training by Providers pursuant to these regulations. The loss of an opportunity to perform a risk assessment could mean that the Department would have no record of an attempt to seek training by an alien with ties to terrorism.

Additionally, a delay in issuing a rule allowing current pilots to take training would discourage these pilots from seeking to improve and refresh their piloting skills. In addition, if pilots are unable to complete their recurrent training, the United States air carriers employing those pilots may be required under the laws and regulations governing the aviation industry to ground those current pilots, depending upon their individual circumstances, from flying into United States airspace until their recurrent training can be completed. *See* 14 CFR part 121 and part 135. In turn, that action would cause the air carriers to begin to experience a shortage of available pilots.

Fifth, delay in the implementation of a notification process for aliens in the three categories also would injure the United States' military interests and would have a significant harmful effect on its foreign relations. The rulemaking requirements of 5 U.S.C. 553 do not apply to rules that involve ''a military or * * * foreign affairs function of the United States.'' 5 U.S.C. § 553(a). A number of the aliens subject to section 113 are being trained pursuant to agreements with the governments of other countries for both economic and military reasons. Indeed, this interim rule provides for expedited processing for a category of foreign military pilots. The delay in implementing this rule with respect to such pilots will have an increasingly serious adverse impact on the military interests and foreign affairs of the United States.

The Department has consulted with the FAA and considered comments from representatives of the aviation industry

during its development of a notification process. While the Department is soliciting further comments from the public regarding this interim rule, the Department believes, for all the foregoing reasons, that it would be contrary to the public's interest to issue this regulation as a proposed rule at this time.

Finally, the Department also has good cause to issue this interim rule with an immediate effective date, in accordance with 5 U.S.C. 553(d). As set forth above, the immediate publication of these regulations is in the public interest because it will prevent the imposition of burdens on the aviation industry, the economy, and the public in general that would occur were the advance consent revoked without the expedited processing made available through this interim final rule. The immediate publication of the rule also will limit a serious negative impact on military interests and foreign affairs of the United States. Because additional delay is contrary to the public interest, there is good cause under 5 U.S.C. 553(d) to make this rule effective as of June 14, 2002.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General, by approving this regulation, certifies that this rule will have a significant economic impact on a substantial number of small entities. Although the overall economic impact of this regulation will be beneficial toward small entities, the Department has prepared the following initial Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

The small entities affected by this rule include virtually all Providers furnishing flight instruction to aliens in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Pursuant to section 113 of ATSA, Providers are prohibited from furnishing any instruction to such aliens until the Attorney General is able to provide a means for determining whether the alien presents a risk to aviation or national security. Because this prohibition was so recently enacted, the Department is not aware of any studies or data detailing its effect on small entities.

The purpose of this rule is to provide a mechanism by which Providers may instruct aliens deemed by the Attorney General not to present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA. This regulation will help the affected Providers to furnish instruction to most of the aliens in categories described in the Second Notice who had been receiving flight instruction. Thus, this regulation will have a beneficial effect on small businesses. The only costs incurred by Providers complying with this regulation will be the minimal costs they incur when providing the required notification to the Attorney General.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (''OMB'') for review.

Paperwork Reduction Act of 1995

The Department of Justice has submitted the following information collection requests to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. This information collection has been approved and assigned OMB Control Number 1105–0074. As part of this information collection, the Office of Management and Budget has approved an emergency revision to this information collection. The proposed information collections are published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of one of the proposed information collection instruments with instructions or additional information, please contact Aviation Training Security; U.S. Department of Justice; 950 Pennsylvania Avenue, NW., Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged. Your comments should address one or more of the following four points:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Whether the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate;

(3) How to enhance the quality, utility, and clarity of the information to be collected, and

(4) How to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The following is an overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Flight Training Candidate Checks Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* FTTTF–2; Foreign Terrorist Tracking Task Force, Aviation Training Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government—Federal Aviation Administration Flight Standards District Offices; Business or other for-profit—U.S.-based flight training providers offering instruction on the operation of aircraft having a maximum certificated takeoff weight of 12,500 pounds or more; Individuals—aliens seeking flight training in the United States on the operation of aircraft having a maximum certificated takeoff weight of 12,500 pounds or more. This information is being collected pursuant to section 113 of the Aviation and Transportation

Security Act so that the Attorney General or his designee can determine the risk presented to aviation or national security by a foreign national receiving flight training in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are 86 Flight Standards District Offices in the United States. Representatives of each of these offices will log approximately one hour per year per office on the system covered by this notice. Although 83,000 flight training providers are authorized to furnish aviation training, the FAA estimates that only 10,000 of those offer training on aircraft subject to regulation by section 113 of the Aviation and Transportation Security Act. Projections for the annual number of alien applicants to the system vary from 3,000 to 50,000 (excluding those eligible for expedited review), but for purposes of estimation, the Department contends that some 50,500 candidates are expected to qualify for expedited review; Providers will submit form FTTTF–2 an average of three times per year for each of these candidates. It is estimated that only two minutes will be required from Providers for each submission of FTTTF–2.

(6) *An estimate of total public burden (in hours) associated with the collection:* The total public burden to Flight Standards District Offices, flight training providers, and alien applicants for flight training subject to this regulation will be approximately 5,050 hours per year.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 28 CFR Part 105

Administrative practice and procedure, Airmen, Flight instruction, Risk Assessments, Reporting and recordkeeping requirements, Security measures.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended by adding a new part 105 to read as follows:

PART 105—SECURITY RISK ASSESSMENTS

Subpart A—[Reserved]

Subpart B—Aviation Training for Aliens and Other Designated Individuals

Sec.
105.10 Definitions, purpose, and scope.
105.11 Individuals not requiring a security risk assessment.
105.12 Notification for candidates eligible for expedited processing.

Authority: Section 113 of Public Law 107–71, 115 Stat. 622 (49 U.S.C. 44939).

Subpart B—Aviation Training for Aliens and Other Designated Individuals

§ 105.10 Definitions, purpose, and scope.

(a) *Definitions.*

(1) *ATSA* means the Aviation and Transportation Security Act, Pub. L. 107–71.

(2) *Provider* means a person or entity subject to regulation under Title 49 Subtitle VII, Part A, United States Code. This definition includes individual training providers, training centers, certificated carriers, and flight schools. Virtually all private providers of instruction in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more are covered by section 113 of ATSA and are therefore subject to this rule. Providers located in countries other than the United States are included in this definition to the extent that they are providing training leading to a United States license, certification, or rating. Providers located in countries other than the United States who are providing training that does not lead to a United States license, certification, or rating are not included in this definition. When the Department of Defense or the U.S. Coast Guard, or an entity providing training pursuant to a contract with the Department of Defense or the U.S. Coast Guard, provides training for a military purpose, such training is not subject to FAA regulation and therefore these entities, when providing such training, are not ''person[s] subject to regulation under this part'' within the meaning of section 113.

(3) *Candidate* means any person who is an alien as defined in section 101(a)(3) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(3) who seeks training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more from a Provider.

(4) *Certificates with ratings recognized by the United States* means a valid certificate with ratings issued by the United States, or a valid foreign license issued by a member of the Assembly of the International Civil Aviation Organization, as established by Article 43 of the Convention on International Civil Aviation.

(b) *Purpose and scope.*

(1) Section 113 of ATSA prohibits Providers from furnishing aviation instruction to candidates on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more without the prior notification of the Attorney General. The purpose of this notification is to allow the Attorney General to determine whether such an individual presents a risk to aviation or national security before flight instruction may begin. The Department believes that it is unnecessary to make a candidate wait for 45 days in order to begin training if the Department has completed its risk assessment. Therefore, after providing the required notification to the Attorney General as described in this subpart, the Provider may begin instruction of a candidate if the Attorney General has informed the Provider that the candidate does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA. If the Attorney General does not provide either an authorization to proceed with training or a notice to deny training within 45 days after receiving the required notification, the Provider may commence training at that time. All candidates must show a valid passport establishing their identity to a Provider before commencing training.

(2) In the event the Attorney General subsequently determines that a candidate being trained does, in fact, present a risk to aviation or national security and that training should be denied, the Attorney General will instruct the Provider to terminate training.

(3) Providing false information or otherwise failing to comply with section 113 of ATSA may present a threat to aviation or national security and is subject to both civil and criminal sanctions. The United States will take

all necessary legal action to deter and punish violations of this section.

§ 105.11 Individuals not requiring a security risk assessment.

(a) *Citizens and nationals of the United States.* A citizen or national of the United States is not subject to section 113 of ATSA. A Provider must determine whether a prospective trainee is a citizen or national of the United States prior to providing instruction on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. To establish United States citizenship or nationality, the prospective trainee must show the Provider from whom he or she seeks training any of the following documents as proof of United States citizenship or nationality:

(1) A valid, unexpired United States passport;

(2) An original or government-issued certified birth certificate with raised seal documenting birth in the United States or one of its territories, together with a government-issued picture identification of the individual named in the birth certificate;

(3) An original United States naturalization certificate with raised seal, Form N–550 or Form N–570, together with a government-issued picture identification of the individual named in the certificate;

(4) An original certification of birth abroad with raised seal, Form FS–545 or Form DS–1350, together with a government-issued picture identification of the individual named in the certificate;

(5) An original certificate of United States citizenship with raised seal, Form N–560 or Form N–561, together with a government-issued picture identification of the individual named in the certificate; or

(6) In the case of training provided to a federal employee (including military personnel) pursuant to a contract between a federal agency and a Provider, the agency's written certification as to its employee's United States citizenship/nationality, together with the employee's government-issued credentials or other federally-issued picture identification.

(b) [Reserved]

§ 105.12 Notification for candidates eligible for expedited processing.

(a) *Expedited processing.* The Attorney General has determined that providing aviation training to certain categories of candidates is not likely to present a risk to aviation or national security because of the aviation training already possessed by these individuals or because of risk assessments conducted by other agencies. Therefore, the following categories of candidates are eligible for expedited processing:

(1) Foreign nationals who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the United States for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, or who are currently employed and qualified by U.S. air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Commercial, governmental, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who must receive familiarization training on a particular aircraft in order to transport it to the purchaser or recipient, provided that the training provided is limited to familiarization (familiarization training is limited to that required to become proficient in configurations and variations of an aircraft and does not include initial qualification or type rating for an aircraft); or

(3) Military or law enforcement personnel who must receive training on a particular aircraft given by the United States to a foreign government pursuant to a draw-down authorized by the President under section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)), provided that the training provided be limited to familiarization.

(b) *Notification.* Before a Provider may conduct training for a candidate eligible for expedited processing under paragraph (a) of this section, the Provider must submit the following information to the Department:

(1) The full name of the candidate;

(2) An unique student identification number created by the Provider as a means of identifying records concerning the candidate;

(3) Date of birth;

(4) Country of citizenship;

(5) Passport issuing authority;

(6) Dates of training; and

(7) The category of expedited processing under paragraph (a) of this section for which the candidate qualifies.

(c) *Commencement of training.* The notification must be provided electronically to the Department by the Provider in the specific format and by the specific means identified by the Department. Notification must be made by e-mail. Only e-mail sent from an e-mail address registered as a Provider will be accepted. Specific details about the mechanism for the notification will be made available by the Department or the FAA. After the complete notification is furnished to the Department, the Provider may commence training the candidate as soon as the Provider receives a response from the Department that the individual does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA and the candidate presents a valid passport establishing his or her identity to the Provider. Receipt of this response by the Department will be deemed approval by the Department to commence training. If the Department later determines that the candidate presents a risk to aviation or national security, it will immediately notify the Provider to cease training. A Provider so notified shall immediately cease providing any training to the person, regardless of whether or in what manner such training had been authorized. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(d) *Records.* When a Provider conducts training for a candidate eligible for expedited processing, the Provider must retain records to document how the Provider made the determination that the candidate was eligible. The Provider also must retain certain identifying records regarding the candidate, including date of birth, place of birth, passport issuing authority, and passport number. The Provider must be able to reference these records by the unique student identification number provided to the Department pursuant to this section. Providers also are encouraged to maintain photographs of all candidates trained by the Provider. Such records should be maintained for at least three years following the conclusion of training by the Provider. The Provider also should be able use the unique student identification number to cross-reference any other documentation that the FAA may require the Provider to retain regarding the candidate.

Dated: June 11, 2002

John Ashcroft,

Attorney General.

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