Dated: January 24, 2003.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

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DEPARTMENT OF JUSTICE

28 CFR Part 105

[OAG 104; AG Order No. 2656–2003]

RIN 1105–AA80

Screening of Aliens and Other Designated Individuals Seeking Flight Training

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act, certain aviation training providers subject to regulation by the Federal Aviation Administration 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 candidate seeking training and the Attorney General does not notify the aviation training provider within 45 days that the candidate presents a risk to aviation or national security. On June 14, 2002, the Department issued two rulemaking documents, a proposed rule and an interim final rule, requesting comments on both documents.

This final rule implements the Flight Training Candidate Checks Program, by which aviation training providers will provide the required notification for specific categories of flight training candidates. The final rule also sets forth how aviation training providers may begin or resume instruction for candidates whom 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 rule is effective March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert E. Casey, Jr., Director, Foreign Terrorist Tracking Task Force, Mailbox 27, FBI Headquarters, 935 Pennsylvania Avenue, NW., Washington, DC 20535, Telephone (703) 414–9777.

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 (hereinafter referred to as ''Providers'') to aliens and other specified individuals. The Department recognized that section 113 of ATSA became immediately effective upon enactment and that Providers had been forced to suspend the training of aliens covered by ATSA pending the implementation of a process for notification to the Attorney General and a determination 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 provisional advance consent for the training of three categories of aliens, based on an initial determination that persons in these categories did not appear to present a risk to aviation or national security. 67 FR 2238 (Jan. 16, 2002). The First Advance Consent Notice was superseded and the categories of advance consent modified in a notice published on February 8, 2002 (''Second Advance Consent Notice''). 67 FR 6051 (Feb. 8, 2002). The Second Advance Consent Notice was rescinded as of June 14, 2002, with the publication of the interim final rule, which instituted ''expedited processing'' in lieu of advance consent for certain alien pilots. 67 FR 41140 (June 14, 2002).

The Department also issued a proposed rule on the same date. 67 FR 41147 (June 14, 2002). The proposed rule set forth the manner in which candidates not eligible for expedited processing would be able to seek aviation training in compliance with section 113 of ATSA. Comments were invited on both the interim final rule and the proposed rule.

The Department received numerous comments from concerned individuals and organizations, including over 20 lengthy submissions. These comments covered numerous areas and all comments were considered. Many recommendations were adopted or taken into account in the preparation of this final rule. In addition, the Department made several stylistic changes to improve the clarity of the rule. A discussion of the comments follows.

1. Advance Consent

A number of commenters expressed the view that the Department should institute the former ''advance consent'' provisions, under which candidates who were both fully licensed and qualified pilots of large aircraft could obtain training without being subject to any risk assessment or background check. It was the opinion of these commenters that checks of these particular candidates serve no legitimate national security interest and merely create a deterrent for foreign candidates to train in the United States.

While the congressionally mandated requirements may have the unintended consequence of deterring some foreign nationals from seeking training from U.S. Providers, section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, the Department believes that the burden of complying with the regulations is comparatively small in relation to the benefits to security. During the brief time in which the expedited processing checks have been in effect, the process has resulted in the discovery and arrest of a number of persons for violations of the immigration and nationality laws, or on the basis of outstanding criminal warrants. The Department believes that the discovery of numerous immigration-related and criminal offenders among the expedited process candidates militates in favor of a thorough check system for all training candidates.

2. Expedited Processing

With regard to the expedited processing regulations that were issued after the advance consent notice, one commenter suggested that ''[a]ir carrier employees under employment contracts with U.S. air carriers that are issued FAA Operations Specifications should be handled differently than those not employed by U.S. air carriers.'' In support of this comment, the commenter noted that an individual hired by an American air carrier must provide detailed professional, medical, and other information to satisfy Federal Aviation Administration (''FAA'') requirements.

The commenter also suggested that the requirement that training dates be specified in advance denied Providers and pilots much-needed flexibility in complying with continuing training requirements. The commenter stated that ''to force the air carriers to list an individual training date, to insist on an individual training course, to specify the exact time and date that a training event will be conducted * * * is not in the intent, or the letter of the Law.''

The Department notes that while the FAA's system does contain certain security features, it is not focused on terrorism prevention in the same way as

section 113 of ATSA. Section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, through implementation of the expedited processing system, the Department already has discovered individuals attempting to seek covered flight training who were not eligible to be trained under the law. Accordingly, the Department will continue checks for all flight training candidates included within the ambit of section 113 of ATSA.

As to the second point, the Department agrees that the vicissitudes of scheduling, in combination with the busy schedules of many professional aviators and Providers, warrants some additional flexibility. Accordingly, § 105.10(b)(4) of the rule has been changed to allow for greater flexibility in training dates.

The Department also received the suggestion that expedited processing should include foreign nationals not ''current and qualified'' under § 105.12(a)(1). While the Department acknowledges that the ''current and qualified'' requirement for expedited processing does leave out certain individuals who might have been made eligible for expedited processing, the Department created easily-enforced and carefully-defined limits for expedited processing. In so doing, it consulted with the FAA and determined that the ''current and qualified'' requirement for expedited processing would be easily understood and enforced. The Department believes that, with the advent of web-based access to the risk assessment system, those candidates not eligible for expedited processing will have a turnaround time for their applications comparable to that of the expedited processing candidates. Accordingly, this aspect of the expedited processing requirement has not been changed.

An aviation industry association suggested that the Department expand the expedited processing categories to include current employees of United States and foreign air carriers operating under Part 129 of the Federal Aviation Regulations regardless of whether the individuals were current and qualified in aircraft weighing 12,500 pounds or more. In addition, some commenters urged that ground training with no flight simulator time be excluded from the scope of the regulation, or at least that candidates be able to undergo ground training pending the completion of their risk assessments. Commenters were concerned that the scope of the regulations was too broad, and imposed too great an administrative burden.

The Department has determined that waiving the ''current and qualified'' requirement could have a deleterious effect on security. While all employees of air carriers subject to FAA regulation do undergo certain background checks, these checks are not an adequate substitute for the risk assessment required pursuant to section 113 of ATSA. Under expedited processing, several individuals not eligible to be trained under the law have been discovered seeking flight training. Therefore, the Department will require thorough risk assessments for these candidates. As to the possibility of allowing certain training events to proceed either prior to or without a risk assessment, the Department cannot waive the requirements of ATSA. As a result, training cannot be allowed to begin before the end of the required 45-day notification period unless the Department has affirmatively authorized it. In most cases, the Department anticipates being able to authorize the commencement of training within a fraction of the 45-day notification period after submission of the candidate's fingerprints. Accordingly, requiring Providers to wait for authorization from the Department before beginning training should not impose a significant burden on those Providers.

An aviation industry association pointed out that existing regulations of the Federal Aviation Administration require crew members of aircraft weighing *more* than 12,500 pounds to have what is known as a ''type rating'' to operate them. Crew members of aircraft weighing 12,500 pounds or less (except in the case of jets) are not required to have type ratings. This causes some confusion with regard to section 113 of ATSA, which, by its terms, does not refer to type ratings, but instead to aircraft weighing 12,500 pounds and more.

To resolve this divergence between section 113 of ATSA and FAA regulations regarding type ratings, the Department has amended § 105.12(a)(1) of the rule. Henceforth, persons who are qualified on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less will not be eligible to obtain expedited processing.

An aircraft manufacturer commented that, in many cases, fully qualified pilots come to receive familiarization training in connection with the purchase of an aircraft. At present, the regulations only provide for expedited processing of training requests for familiarization training provided in order to transport the aircraft to the purchaser or recipient. The commenter also pointed out that the familiarization training that accompanies the purchase of a new aircraft is not always provided directly in conjunction with the ''delivery'' of the aircraft.

The Department agrees that training provided in connection with the sale of a particular aircraft, as long as such training is limited to familiarization training and not basic flight instruction, should be subject to expedited processing. Accordingly, the language of § 105.12(a)(2) has been amended to broaden the expedited processing category that deals with familiarization training. As revised, the section no longer limits familiarization training to pilots directly involved with the transport of an aircraft to the purchaser. Rather, any familiarization training in connection with the sale of a particular aircraft will qualify for expedited processing, regardless of whether the trainee will ultimately be responsible for transporting the aircraft to the purchaser.

3. Candidates Not Eligible for Expedited Processing

The process by which aliens not eligible for expedited processing will receive approval from the Department to be trained is a two-step process. It is generally similar to the process set forth in the proposed rule. As prescribed in this rule, the alien initially will be required to complete a detailed form requesting information regarding his or her background, including employment information and the source of funds being used to pay for the training. After this form is completed, it will be submitted to the Foreign Terrorist Tracking Task Force (''FTTTF'') on behalf of the alien by the Provider. Upon receiving this information, the FTTTF will conduct a detailed risk assessment of the alien. Assuming no potential risks are discovered, the Provider or the alien will be notified that the alien may now proceed to the Provider where he or she will receive the necessary fingerprinting instructions. After receiving this notice, the alien must have his or her fingerprints taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual.

After the fingerprints are taken, the candidate will receive a receipt that should be given to the Provider. The Provider then will notify the FTTTF electronically that the alien has completed the fingerprinting requirement.

After the Provider has furnished this notification, the Department will complete its final review of the risk presented by the alien. In most cases, the Department anticipates being able to authorize the commencement of training within a fraction of the 45-day notification period after submission of the candidate's fingerprints. If the Department subsequently uncovers a problem, the FTTTF will order the Provider to cease training, in accordance with section 113(b) of ATSA.

4. Training Dates

Concerning flexibility with regard to training dates, one recommendation was that candidates be given up to 13 months to commence training following approval, provided there were no material changes in the information provided to the Department. It was also suggested that candidates be permitted to receive approval for several different courses of training.

The Department has determined that sound security practices require that training take place at a time and place known to the Department and that training occur within a reasonable amount of time following the request. Nevertheless, the Department agrees that some additional flexibility within this program, the Flight Training Candidate Checks Program (''FTCCP''), would not be inconsistent with security interests. Hence, changes have been made to § 105.10(b)(4) to allow actual training to occur within 30 calendar days of the scheduled training date.

5. Fingerprinting

Several concerns were raised by commenters on the subject of the fingerprinting process. Among these was the concern that requiring candidates to go before local law enforcement as the primary method of collecting fingerprints would be unduly burdensome given the possibility of a waiting period of up to 45 days after the candidate arrives in the United States before training can commence.

The Department agrees that requiring candidates to arrive in the United States 45 days prior to training would pose many problems and serve as a significant deterrent to U.S. training for some candidates. The 45-day time frame for action by the Department after the submission of all required information was established by the statute. The Department does not anticipate requiring this much time to conduct the necessary checks and assessments for the vast majority of candidates. The anticipated future use of electronic fingerprinting equipment will permit the fingerprint processing (including all necessary checks) to be completed in most cases in less than 24 hours after the proper electronic submission of a set of prints.

Commenters also expressed a preference for collecting the required fingerprints at U.S. embassies and consulates before a candidate undertakes the expense of traveling to this country and being subject to a 45-day waiting period. This option may prove difficult given limitations on State Department diplomatic personnel. At the present time, embassies and consulates cannot accommodate candidates in this regard. The final rule, however, has been drafted to allow for fingerprints to be taken abroad at U.S. Government agencies as these options become more feasible in the future. In addition, the Department is negotiating to obtain access to a process that may allow candidates to comply with its fingerprint requirements through the Immigration and Naturalization Service and its successor organizational unit in the Department of Homeland Security Directorate of Border and Transportation Security (''INS''), which has the most advantageous system for the prompt electronic processing of fingerprints available in the government, to allow INS to take fingerprints at its Application Support Centers. It is anticipated that INS centers, including centers abroad, may become available for fingerprinting candidates in the future.

Suggestions that fingerprints be collected in electronic format are consistent with the Department's future plans but dependent upon the resources and technology available to the FTCCP.

Another comment questioned the purpose of the fingerprinting provisions. Commenters believed that the databases against which fingerprints would be checked contain, for the most part, information obtained from crimes committed in the United States. Accordingly, they said that such records check on a foreign national would rarely produce any meaningful results. In the past, this may have been true; however, Departmental fingerprint resources are expanding to include substantial amounts of relevant data—including foreign records—that justify the requirement. The requirement also will help to prevent identity fraud by training candidates.

As provided in § 105.13(c) and (f) of the regulation, the Department may authorize private individuals to take the required fingerprints on a case-by-case basis if it determines that such individuals possess the necessary training and will be able to ensure the integrity of the fingerprinting process. The Department anticipates that some Providers may seek to engage the services of dependable fingerprinting experts in order to facilitate the fingerprint submission process.

6. Weight Classes

One commenter inquired about the distinction made in section 113 between large aircraft (over 12,500 pounds, maximum certificated takeoff weight) and smaller aircraft. According to this commenter, ''the statement on the FAQ portion of [the] web page * * * leads [him] to believe that any foreign nationals and nationals of the United States desiring to attend training at any FAA approved and certificated flight school must register.''

At this time, section 113 applies only to training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Training in the operation of a smaller aircraft, however, is included under certain special circumstances. For example, some lines of jets, such as the Cessna Citation and the Lear, are manufactured with several different models with maximum certificated takeoff weights ranging above and below 12,500 pounds. A Provider must furnish the required notification if the Provider is furnishing training that would allow the candidate to fly an aircraft with a certificated takeoff weight of 12,500 pounds or more in accordance with applicable FAA regulations. This matter has been addressed in § 105.10(b)(1) of the rule.

Section 113 applies to students who: (1) Are not citizens or nationals of the United States, or who fall into another category designated by the Under Secretary of Transportation for Security; (2) wish to receive flight training in aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, or if the training would allow the candidate to fly a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations; *and* (3) wish to receive flight training from an FAA regulated flight training provider that will lead to an FAA certification, rating, or other FAA-covered distinction, regardless of whether training occurs in the United States or abroad.

Another commenter stated that the rule prevents people from obtaining flight training in the United States, but does not prevent them from gaining the same skills in another country. The commenter also stated that training in the operation of a light aircraft, which is not subject to regulation under

section 113 of ATSA, might be sufficient to allow a potential terrorist to steer a large aircraft.

Because Congress has not, to date, chosen to include training on aircraft with a maximum certificated takeoff weight of less than 12,500 pounds within the scope of the statute, the Department does not have the discretion to expand the scope of this rule to cover training on such aircraft (except where training in such aircraft could lead to a type rating that might enable a candidate to fly a larger aircraft).

7. Dry Leasing

Various organizations commented on the subject of a common industry practice known as ''dry-leasing.'' In a ''dry-lease'' arrangement, an air carrier utilizes an established flight training facility's equipment and classrooms for its crews but provides its own instructors, curriculum, and record keeping. The Department has determined that, in certain circumstances, flight training providers participating in dry leases as lessors will be subject to the reporting requirements of section 113 even though they may not have direct control over who receives training. Many believe that it is inappropriate to impose these requirements on facility owners given that they do not have a direct relationship with the candidate who is to receive training.

The Department is sensitive to this concern. It is, however, the opinion of the Department and the FAA that, if U.S. flight training providers were able to dry lease simulator equipment to unregulated foreign providers, Congress's intent in passing ATSA would be frustrated.

8. The Web Site

The Department also has received various comments on the web-based system designed for initial flight training candidates to submit information. Among the more technical concerns was the observation that the Web site contains a number of information fields designated as ''optional.'' Commenters stated that the information required by the existing system is sufficiently extensive to obviate any need for ''optional'' data. Instead, it was recommended that the Department collect only the data needed to determine if the candidate poses a threat to aviation or national security.

It is not the Department's intention to make any portion of the FTCCP form ''optional.'' Nevertheless, some fields had to be made—at least provisionally—''optional'' from a functional perspective because the information might not be available or applicable to the individual filling out the form. For example, the form requests visa information, which some candidates may not possess at the time they submit their applications. In other cases, candidates filling out the form are asked for ''optional'' information about their Provider (*i.e.*, Provider's Tax ID number, student ID number and end date for training). Commenters note that this information should not be required, as it should already be available to the Department.

All applicable items on the form that can be answered by the candidate must be answered, and all have been selected as helpful in some manner to the necessary risk assessment. In most cases, the form cannot be submitted without complete information. Moreover, in filling out the form, candidates are required to give full and complete answers. Where any item of information sought from a candidate is available to the candidate, the FTCCP form's request for that item of information should not be considered ''optional.''

An industry commenter also found the link on the FTCCP Web site to the FAA's home page confusing and unnecessary. The commenter felt that Providers already would have registered with the FTCCP and that the candidate would be able to locate the Provider through that system without any need to go to the FAA's web page.

The Department believes that it is important to have a link to the FAA on the FTCCP website because the FAA maintains valuable information on this website (including lists of Providers) that will be important to users of the FTCCP Web site. Accordingly, with the advice and cooperation of the FAA, the Department has modified the Web site to eliminate confusion.

9. Relationship to Other Regulations

A commenter pointed out an apparent conflict between the regulations created under section 113 of ATSA and certain regulations established by the INS. Under ATSA, the Department has up to 45 days to notify a Provider not to train a candidate. According to the commenter, this could conflict with an INS regulation requiring individuals admitted to the U.S. under F–1 (student) visas to commence their courses of study within 30 days of arrival. *See* 8 CFR 214.2(f)(5)(i). The Department notes the potential conflict. If students were compelled by ATSA to wait for 45 days after arriving in the United States before beginning training, they might thereby be forced into violating the INS's 30-day requirement. In practice, however, no conflict is anticipated.

For the purposes of flight training and when feasible, the Department encourages students not eligible for expedited processing to arrive in the United States approximately two weeks before their scheduled training. In the vast majority of cases, this will be enough time to satisfy the fingerprint requirement and ensure that training begins when scheduled. It should also be noted that most individuals seeking aviation training independent of an employment contract or as part of a degree program will not have F–1 (student) visas.

A manufacturing association stated that ''any law or regulation which discourages legitimate pilot candidates from training in the U.S. will undoubtedly compromise aviation safety globally, and could harm U.S. citizens traveling abroad.'' While supportive of security measures generally, the association believes that flight training candidates could be more efficiently checked and monitored if the INS and the FTTTF were to combine and coordinate their regulations regarding data collection and processing. In particular, the association made reference to the INS's Student and Exchange Visitor Information System (''SEVIS'') and the Automated Biometric Identification System (''IDENT''). The Department notes that SEVIS and IDENT do not serve the same purpose as the FTCCP. Nevertheless, the Department is making every effort to coordinate the resources of the FTCCP and the INS in implementing this system.

The association also recommended that prospective flight students who were required to apply for M–1 (technical training) or J–1 (exchange visitor programs) visas should submit information regarding their intentions with regard to aviation training at that time. Visas are issued by the State Department; information and risk assessments generated by the FTCCP will be provided to the State Department, which may choose to use these assessments and information in visa determinations.

10. The FTCCP Help Line

Several commenters asked the Department to extend the hours of operation for the help line supporting this system because ''last minute changes in training schedules occur frequently and need to be addressed immediately.'' As noted above, the Department has made amendments to the rule to allow for some additional flexibility with regard to training dates.

Nevertheless, at this time, resource constraints prevent operation of the help line 24 hours per day, seven days per week.

11. Training

There was some confusion as to what constitutes ''training'' within the meaning of section 113 of ATSA. Accordingly, the Department, in consultation with the FAA, has modified § 105.10(a) of this rule to resolve this concern by including a definition of training that specifically includes ''ground school'' but excludes the provision of written materials, such as manuals.

12. Designations by the Under Secretary of Transportation for Security

Section 113 of ATSA provides that the Under Secretary of Transportation for Security may designate individuals who, in addition to aliens, would be subject to the notification requirements of the statute should they seek training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. As of this time, the Under Secretary has made no designations. Because this is a matter within the discretion of the Under Secretary, this rule states only that individuals designated by the Under Secretary will not be eligible for expedited processing.

13. Training by or on Behalf of the Department of Defense

Training by the Coast Guard or a component of the Department of Defense is not covered by section 113 of ATSA and is therefore not subject to this regulation. Likewise, training by Providers pursuant to contracts with the Department of Defense are not covered by the regulation. A question was raised as to whether training by subcontractors was within the ambit of the statute. The Department has added language to § 105.10(a)(2) to clarify that any training conducted at the behest of the Coast Guard or Department of Defense for a military purpose is not subject to this rule, regardless of whether the training itself is administered by a subcontractor.

Conclusion

Initial experience with the regulations implementing section 113 of ATSA generally has been positive. While the Department recognizes the burdens imposed on the aviation industry and individuals by ATSA, it is striving to produce a policy consistent with ATSA that will realize security goals while simultaneously protecting the commercial interests of the aviation industry.

Regulatory Procedures

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. As a result, the Department has prepared the following Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

Section 113 of ATSA requires the Department to conduct risk assessments to determine if providing flight training to certain aliens presents a risk to aviation or national security. The Department has no authority to waive this requirement.

The small entities affected by this rule include virtually all Providers furnishing flight instruction to aliens or other designated individuals 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 candidates until the Attorney General is able to provide a means for determining whether the candidate presents a risk to aviation or national security. The purpose of this rule is to provide a mechanism by which Providers may instruct candidates 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.

Because section 113 of ATSA prohibits training of aliens without a prior risk assessment, the issuance of the rule will have a beneficial effect on small businesses because the rule will allow Providers to resume training for aliens determined by the Attorney General not to present a risk to aviation or national security. 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. The Department is not aware of any studies or data detailing the effects of this regulation on small entities.

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.

The amendments made by ATSA prohibit the training by Providers of any alien without notification and clearance by the Attorney General. Notwithstanding the institution of the expedited processing procedures on June 14, 2002, this prohibition continues to impose a substantial economic burden on both Providers and air carriers utilizing alien pilots and flight engineers because aliens not eligible for expedited processing have been prohibited from receiving training since the enactment of the ATSA. These regulations are essential to providing a means to allow Providers and air carriers to function smoothly by allowing flight instruction for those candidates not provided relief through the publication of the interim final rule.

Paperwork Reduction Act of 1995

This information collection has been approved and assigned OMB Control Number 1105–0074. 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, Reporting and recordkeeping requirements, security measures, Terrorism.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended by revising 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.

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

Subpart B

§ 105.10 Definitions, purpose, and scope.

(a) *Definitions.*

ATSA means the Aviation and Transportation Security Act, Public Law 107–71.

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), or a person specified by the Under Secretary of Transportation for Security, who seeks training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more from a Provider.

Certificates with ratings recognized by the United States means a valid pilot or flight engineer certificate with ratings issued by the United States, or a valid foreign pilot or flight engineer 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.

Notification means providing the information required under this regulation in the format and manner specified.

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 (49 U.S.C. 44939) 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 who ''dry-lease'' simulator equipment to individuals or entities for use within the United States are deemed to be providing the training themselves if the lessee is not subject to regulation under Title 49. Providers located in countries other than the United States who are providing training that does not lead to a United States pilot or flight engineer 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 (including a subcontractor), provides training for a military purpose, such training is not subject to Federal Aviation Administration (FAA) regulation. Accordingly, these entities, when providing such training, are not ''person[s] subject to regulation under this part'' within the meaning of section 113 of ATSA.

Training means any instruction in the operation of an aircraft, including ''ground school,'' flight simulator, and in-flight training. It does not include the provision of training manuals or other materials, and does not include mechanical training that would not enable the trainee to operate the aircraft in flight.

(b) *Purpose and scope.*

(1) Section 113 of ATSA (49 U.S.C. 44939) prohibits Providers from furnishing candidates with training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more without the prior notification of the Attorney General. Training in the operation of smaller aircraft is considered to be training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more if the training would lead to a type rating allowing the candidate to operate a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations. 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 training may begin. The Department believes that it is not required 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 Attorney General has determined as a result of the risk assessment conducted pursuant to section 113 of ATSA that providing the training does not present a risk to aviation or national security. 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 who are not citizens or nationals of the U.S. must show a valid passport establishing their identity to a Provider before commencing training.

(2) The Department may, at any time, require the resubmission of all or a portion of a candidate's training request, including fingerprints. If, after approving any training application, the Department determines that a candidate presents a risk to aviation or national security, it will notify the Provider to cease training. 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.

(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.

(4) Providers should make every effort to ensure that approved training occurs on the dates specified in the training request at the location of the Provider who submitted the request. However, where scheduling problems or other exigent circumstances prevent this from happening, training may be rescheduled for any time within 30 days of the approved training dates without submitting an additional request. If any scheduling change of greater than 30 days occurs, a new request with the

corrected training dates must be submitted. Any proposed change in location or Provider must precipitate a new request, although Providers may employ the assistance of other Providers or their facilities for a portion of the training, provided that the substantial majority of the training occurs at location of the Provider who submitted the request.

§ 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 unless otherwise designated by the Under Secretary of Transportation for Security. A Provider must determine whether a prospective trainee is a citizen or national of the United States prior to providing training in the operation of an 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 a registrar's raised, embossed, impressed or multicolored seal, registrar's signature, and the date the certificate was filed with the registrar's office, which must be within 1 year of birth, together with a government-issued picture identification of the individual named in the birth certificate (the birth certificate must establish that the person was born in the United States or in an outlying possession, as defined in section 101(a)(29) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(29)));

(3) An original United States naturalization certificate with raised seal, INS Form N–550 or INS 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, Department of State 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, INS 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) *Exception.* Notwithstanding paragraph (a) of this section, a Provider is required to provide notification to the Attorney General with respect to any individual specified by the Under Secretary of Transportation for Security. Individuals specified by the Under Secretary of Transportation for Security will be identified by procedures developed by the Department of Transportation and are not eligible for expedited processing under § 105.12 of this part.

§ 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 presents a minimal additional 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, unless the candidate is an individual specified by the Under Secretary of Transportation for Security:

(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 FAA for aircraft with a maximum certificated takeoff weight of over 12,500 pounds, or who are currently employed and qualified by U.S. regulated air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Foreign nationals who are commercial, governmental, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who are receiving training on a particular aircraft in connection with the sale of that aircraft, provided that the training provided is limited to familiarization (*i.e.*, training required by one who is already a competent pilot to become proficient in configurations and variations of a new aircraft) and not initial qualification or type rating; or

(3) Foreign 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)), if the training provided is 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) A 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.* (1) 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 electronic mail. Only notifications sent from an electronic mail address registered as a Provider will be accepted. Specific details about the mechanism for the notification will be made available by the Department and distributed through the FAA.

(2) 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 foreign national candidate presents a valid passport establishing his or her identity to the Provider. Receipt of this response from the Department will be deemed approval by the Department to commence training.

(d) *Records.* When a Provider conducts training for a candidate eligible for expedited processing, the Provider must retain a copy of the relevant pages of the passport and other 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 must be maintained for at least three years following the conclusion of training by the Provider. The Provider must also be able to use the unique student identification number to cross-reference any other documentation that the FAA may require the Provider to retain regarding the candidate.

§ 105.13 Notification for candidates not eligible for expedited processing.

(a) A Provider must submit a complete *Flight Training Candidate Checks Program* (FTCCP) form and arrange for the submission of fingerprints to the Department in accordance with this section prior to providing flight training, except with respect to persons whom the Provider has determined, as provided in § 105.11 of this part, are not subject to a security risk assessment. A separate FTCCP form must be submitted for each course or instance of training requested by a candidate. A set of fingerprints must be submitted in accordance with this rule prior to the commencement of any training. Where a Provider enlists the assistance of another Provider in training a candidate, no additional request need be submitted, as long as the specific instance of training has been approved.

(b) The completed FTCCP form must be sent to the Attorney General via electronic submission at *https://www.flightschoolcandidates.gov.* The form must be submitted no more than three months prior to the proposed training dates. No paper submissions of this form will be accepted.

(1) In order to ensure that such electronic submissions are made by FAA certificated training providers, Providers must receive initial access to the system through the FAA. Providers should register through their local FAA Flight Standards District Offices. The FAA has decided that registration will be only by appointment. Upon registration, Providers will be sent (via electronic mail) an access password to use the system.

(2) Candidates may complete the online FTCCP form at *https://www.flightschoolcandidates.gov* to reduce the burden on the Provider. After the form has been completed by a candidate, it will be forwarded electronically to the Provider for verification that the candidate is a bona fide applicant. Verification by the Provider will be considered submission of the form for purposes of paragraph (a) of this section. To reduce the burden on the candidates, personal information needs only to be updated, rather than reentered, for each subsequent training request.

(c) Candidates must submit fingerprints to the Federal Bureau of Investigation (FBI) as part of the identification process. These fingerprints must be taken by, or under the supervision of, a federal, state, or local law enforcement agency, or by another entity approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division. Where available, fingerprints may be taken by U.S. government personnel at a United States embassy or consulate. Law enforcement agencies and U.S. diplomatic installations are not required to participate in this process, but their cooperation is strongly encouraged. Any individual taking fingerprints as part of the notification process must comply with the following requirements when taking and processing fingerprints to ensure the integrity of the process:

(1) Candidates must provide two forms of identification at the time of fingerprinting. In the case of aliens, one of the forms of identification must be the individual's passport. In the case of United States citizens or nationals designated by the Under Secretary of Transportation for Security, a valid photo driver's license issued in the United States may be submitted in lieu of a passport;

(2) The fingerprints must be taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual. Individuals other than law enforcement or consular officers will only be approved on a case-by-case basis by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division, upon a showing that they possess the necessary training and will ensure the integrity of the fingerprinting process;

(3) The fingerprints must be processed by means approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(4) The fingerprint submissions must be forwarded to the FBI in the manner specified by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(5) Officials taking fingerprints must ensure that any fingerprints provided to the FBI are not placed within the control of the candidate or the Provider at any time; and

(6) Candidates must pay for all costs associated with taking and processing their fingerprints.

(d) In accordance with Public Law 101–515, as amended, the Director of the FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for certain purposes, including non-criminal justice and licensing purposes. In addition to the cost to the FBI for conducting its review, other fees may be imposed, including the cost of taking the fingerprints and the cost of processing the fingerprints and submitting them to the FBI for review. Because the total fee may vary by agency, the candidate must check with the entity taking the fingerprints to determine the applicable total fee. This payment must be made at the designated rate for each set of fingerprints submitted.

(e) In some cases, candidates seeking training from Providers abroad may be unable to obtain fingerprints. If a Provider located in a country other than the United States can demonstrate that compliance with the fingerprint requirement is not practicable, a temporary waiver of the requirement may be requested by contacting the Foreign Terrorist Tracking Task Force. The Director of the Foreign Terrorist Tracking Task Force will have the discretion to grant the waiver, deny the waiver, or prescribe a reasonable, alternative manner of complying with the fingerprint requirement for each Provider location.

(f) The 45-day review period by the Department will not start until all the required information has been submitted, including fingerprints.

§ 105.14 Risk assessment for candidates.

(a) It is the responsibility of the Department of Justice to conduct a risk assessment for each candidate. The Department has made an initial determination that providing training to the aliens in the categories set forth in § 105.12(a) of this part presents minimal additional risk to aviation or national security and therefore has established an expedited processing procedure for these aliens. Based on the information contained in each FTCCP form and the corresponding set of fingerprints, the Department will determine whether a candidate not granted expedited processing presents a risk to aviation or national security.

(b) After submission of the FTCCP form by the Provider, the Department will perform a preliminary risk assessment.

(1) If the Department determines that a candidate does not present a risk to aviation or national security as a result of the preliminary risk assessment, the candidate or the Provider will be notified electronically that the Provider may supply the candidate with the appropriate materials and instructions to complete the fingerprinting process described in § 105.13(c) and (d) of this part.

(2) If the Department determines that the candidate presents a risk to aviation or national security, when appropriate, it will notify the Provider electronically that training is prohibited.

(3) For each complete training request submitted by a Provider, the Department will promptly conduct an appropriate risk assessment. Every effort will be made to respond to a training request in the briefest time possible. In routine cases, the Department anticipates granting approval to train within a fraction of the 45-day notification period after receiving a complete, properly submitted request, including fingerprints. In the unlikely event that no notification or authorization by the Department has occurred within 45 days after the proper submission under these regulations of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (c) of this section.

(c) Providers must ascertain the identity of each candidate. For candidates who are not citizens or nationals of the United States designated by the Under Secretary of Transportation for Security, a Provider must inspect the candidate's passport and visa to verify the candidate's identity before providing training. Candidates who are citizens or nationals of the United States must present the documentation described in § 105.11(a) of this part. If the candidate's identity cannot be verified, then the Provider cannot proceed with training.

(d) If, at any time after training has begun, the Department determines that a candidate subject to this section being trained by a Provider presents a risk to aviation or national security, the Department shall 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 commenced or 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.

(e) With regard to any determination as to an alien candidate's eligibility for training, when appropriate, the Department will inform the Secretary of State and the Secretary of Homeland Security as to the identity of the alien and the determination made.

Dated: February 6, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–3384 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–19–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA280–0390B; FRL–7451–1]

Interim Final Determination That State Has Corrected Rule Deficiencies and Stay and/or Deferral of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rules 2020 and 2201.

DATES: This interim final determination is effective on February 13, 2003. However, comments will be accepted until March 17, 2003.

ADDRESSES: Mail comments to Ed Pike, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rules that are the basis for today's action at our Region IX office during normal business hours: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the submitted rules at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified APCD, 1990 E. Gettysburg, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Ed Pike, EPA Region IX, (415) 972–3970 or send email to *pike.ed@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

On July 19, 2001, we published a limited approval and limited disapproval of SJVUAPCD Rules 2020 and 2201 as adopted locally on September 17, and August 20, 1998, respectively, and submitted by the State on October 27, and September 29, 1998, respectively. 66 FR 37587 (July 19, 2001). We based our limited disapproval action on certain deficiencies in the submittal. This limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 19, 2001 (the effective date of our limited disapproval) and highway sanctions six months after the offset sanction is imposed, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On December 19, 2002, the SJVUAPCD adopted revisions to Rules 2020 and 2201 that were intended to correct the deficiencies identified in our limited disapproval action. On December 23, 2002, the State submitted these revisions to EPA.

In the Proposed Rules section of today's **Federal Register**, we have proposed approval of revised Rules 2020 and 2201 because we believe the revisions correct the deficiencies specified in our July 19, 2001, limited disapproval action.[1] Based on our proposed approval of the District's revisions to Rules 2020 and 2201, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 19, 2001, limited disapproval.

[1] The Proposed Rules section of today's **Federal Register** also contains our proposal to find that the approved California SIP is substantially inadequate because it cannot provide ''necessary assurances'' that no State law prohibits the State or districts from carrying out the Prevention of Significant Deterioration (PSD) or nonattainment New Source Review (NSR) portions of the SIP because California Health & Safety Code section 42310(e) exempts agricultural sources from permitting requirements. This additional action will require the State to provide the necessary assurances of authority required to implement the NSR program in the District as it applies to major agricultural sources.