

DEPARTMENT OF JUSTICE**28 CFR Part 105****[OAG 104; AG Order No. 2591–2002]****RIN 1105–AA80****Screening of Aliens and Other Designated Individuals Seeking Flight Training****AGENCY:** Department of Justice.**ACTION:** Proposed 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 proposed rule would implement a process by which aviation training providers would provide the required notification, the Attorney General would respond, and the aviation training providers would begin or resume instruction for candidates who do not present a to aviation and national security.

DATES: Written comments on the proposed regulation 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 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 notification requirement applies to aliens as set forth above. As also noted, 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. In the event that the Under Secretary of Transportation for Security specifies other individuals, these individuals will be subject to the requirements contained in this proposed rule.

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 (Jan 16, 2002). The First Advance Consent Notice was subsequently superseded, and the categories of advance consent modified in a notice effective February 8, 2002 (“Second Advance Consent Notice” or

“Second Notice”). 67 FR 6051 (Feb. 8, 2002).

The Department also published an interim final rule with a request for comments (“interim rule”) that rescinded the Second Advance Consent Notice. The interim rule, published concurrently with this rule, implemented an expedited processing procedure for aliens in two of the four categories listed in the Second Notice and added one additional category.

This proposed rule addresses those candidates not covered by the concurrently published interim rule and provides the process by which Providers may notify the Attorney General with respect to candidates who are not within any of the expedited processing categories. Providers may not train candidates in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more unless they have complied with this rule, or unless the candidate is included within a category of expedited processing and the Provider has been notified by the Department that the candidate has been found not to present a risk to aviation or national security as result of the risk assessment conducted pursuant to section 113 of ATSA. Because these candidates may present a greater risk to aviation or national security than candidates eligible for expedited processing, Providers planning to train these candidates will need to furnish more detailed information, including fingerprints, to the Department.

Availability of Flight Training Candidate Checks Program Notification System for Review

The notification system for pilots not eligible for expedited processing will be one of the first electronic-based systems developed by the Department. The Department wants to make sure that the public and the aviation industry had an opportunity to comment on this interface. As a result, the *Flight Training Candidate Checks Program* proposed notification system has been made available for public review. The public is welcome to access the system, but should refrain from submitting any data. No candidate forms should be submitted through this notification system until a final rule implementing the system is in effect. The submission of identifying applicant information through this system will not constitute notification of the Attorney General as required by section 113 of ATSA. Any notifications submitted to the Department for pilots eligible for expedited processing should be provided in accordance with the interim rule published concurrently with this proposed rule.

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

Providers wishing to train aliens who do not fall within a category of expedited processing, or any other individuals specified by the Under Secretary of Transportation for Security, will need to submit detailed identifying information to the Department before providing training. The information must be provided to the Department via electronic submission on the form titled *Flight Training Candidate Checks Program*, as described in section 105.13 of this rule. This form requests the submission of certain identifying data, including the covered candidate's name, address, and physical characteristics; various government-issued identification numbers; information regarding the source of the funds to pay for instruction; information about immediate family members; occupational and education information; and information regarding citizenship. The form is designed to be the first part of a two-part process; candidates also will be required to submit a set of fingerprints.

Limiting submissions to electronic submissions will 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 vastly increased processing times, thus further burdening both the flight instruction industry and candidates.

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. 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. In order to reduce the potential burden on Providers, candidates may complete the on-line form themselves. After the candidate completes the form, the Provider must verify that the candidate is a *bona fide* applicant for instruction and complete the submission process.

Fingerprinting Requirements for Candidates

Aliens who do not fall within a category of expedited processing, and other individuals specified by the Under Secretary of Transportation for Security, also must submit fingerprints to the Federal Bureau of Investigation (“FBI”) prior to the commencement of instruction as part of the identification process. These fingerprints must be taken by federal, state, or local law enforcement agencies, or any other official approved by the Director of the FTTTF. The fingerprints must be taken under the direct observation of the official. Procedures by which such fingerprints may be taken currently exist in the states for many other purposes. The Department, however, welcomes comments regarding whether or how candidates might be allowed to have their fingerprints taken outside the United States.

The fingerprints must be recorded on fingerprint cards distributed by the Director of the FTTTF for that purpose, or processed by other means approved by the Director of the FTTTF. The fingerprint submissions must be forwarded to the FBI in a manner specified by the Director of the FTTTF. The Provider and the official taking the fingerprints will receive, through the FTTTF, explicit instructions for fingerprint submissions. Officials taking fingerprints should ensure that any fingerprints provided to the FBI are not placed within the control of the candidate or Provider at any time. Candidates must provide appropriate identification, including a passport if the candidate is an alien, at the time of fingerprinting.

Candidates submitting fingerprints must pay for the costs associated with taking and processing the fingerprints in a form and manner approved by the FBI. This payment process may vary depending upon where the fingerprints are taken. In accordance with Pub. L. No. 101–515, as amended (28 U.S.C. 534 note), the Director of the FBI may 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. The federal component of this fee currently is \$31. Depending on the entity taking the fingerprints, however, an additional fee also may be imposed for taking and submitting the fingerprints to the FBI. Because the total fee may vary by state, 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. The procedure for taking and submitting fingerprints is described in section 105.13 of this rule. Fingerprints will be considered submitted for purposes of this rule once the Provider has provided on-line notification through the system to the Department that the candidate's fingerprints have been taken in accordance with section 105.13 of this rule.

The Department recognizes that some Providers furnish training to candidates at facilities located outside the United States. In those instances, it may be impracticable for a candidate to be fingerprinted in accordance with section 105.13 of this rule. Therefore, on a case-by-case basis, a Provider wishing to train a candidate outside the United States may request a waiver of the fingerprinting requirements from the FTTTF. The waiver request must detail why it is impracticable for the alien to be fingerprinted in accordance with section 105.13.

Attorney General Review

After the Provider submits all the information that is required under this rule, including fingerprints, 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. In the event that the Attorney General does not instruct the Provider to deny training within 45 days of the submission and verification of all the information required under this rule (including the submission of

fingerprints), 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

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. Anecdotal evidence, however, suggests that while some entities may have experienced no decline in business, other entities estimate that they may have experienced as much as a 30% loss of income because they are not able to provide flight instruction to aliens.

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 aliens who had

been unable to receive flight instruction since section 113 of ATSA was enacted. 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 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. 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-1; 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 an average of 26,000 candidates will apply annually using the primary form, FTTTF-1, and that on average these candidates will apply twice per year. Because entries subsequent to the first will take less time, the Department estimates that each alien applicant using FTTTF-1 will spend approximately 45 minutes on the system per year.

(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 19,500 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.

PART 105—SECURITY RISK ASSESSMENTS

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Subpart B—Aviation Training for Aliens and Other Designated Individuals

1. The Authority citation continues to read as follows:

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

2. Amend § 105.10 by revising paragraph (a)(3) and paragraph (b)(1) to read as follows:

§ 105.10 Definitions, purpose, and scope.

(a) * * *

(3) *Candidate* means any person seeking training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more from a Provider who is either:

(i) An alien as defined in section 101(a)(3) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(3); or

(ii) Is within a class of persons as specified by the Under Secretary of Transportation for Security, pursuant to section 113(a) of ATSA, 49 U.S.C. 44939(a).

* * * * *

(b) * * *

(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 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, including those

granted expedited processing in accordance with § 105.12, must show a valid passport establishing their identity to a Provider before commencing training. Candidates who are citizens or nationals of the United States, but who were required to provide notification to the Attorney General may present a valid United States picture driver's license in lieu of a passport.

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3. Amend § 105.11 by revising the introductory text to paragraph (a) and adding a new paragraph (b) to read as follows:

§ 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 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 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:

* * * * *

(b) *Exception.* Notwithstanding paragraph (a) of this section, a Provider is required to provide notification to the Attorney General with respect to any candidates who are within a class of persons designated 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.

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4. Amend § 105.12 by revising the introductory text to paragraph (a) as follows:

§ 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, candidates determined by Providers to be eligible for expedited processing are subject to the notification requirements

of this section, but do not have to comply with the more detailed notification requirements of section 105.13, unless the candidates are within a class of persons as designated by the Under Secretary of Transportation for Security. The following categories of candidates are eligible for expedited processing:

* * * * *

5. Adding a new § 105.13 to read as follows:

§ 105.13 Notification for candidates not eligible for expedited processing.

(a) A Provider must submit a complete *Flight Training Candidate Checks Program* 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 or § 105.12, are not subject to a security risk assessment or are eligible for expedited processing. A separate form must be submitted for each course or instance of training requested by a candidate. 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 form should be sent to the Attorney General via electronic submission at <https://www.flightschoolcandidates.gov/insdoc/index.html>. No paper submissions of this form will be accepted.

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

(2) Candidates may complete the online form at <https://www.flightschoolcandidates.gov/insdoc/index.html> 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. In order to reduce the burden on the candidates, personal information only needs to be updated, rather than reentered, for each subsequent training request.

(c) Candidates also must submit fingerprints to the Federal Bureau of Investigation (FBI) as part of the identification process. These fingerprints must be taken by a federal, state, or local law enforcement agency, or any other official approved by the Director of the Foreign Terrorist Tracking Task Force. In the case of candidates seeking training from providers located in countries other than the United States, fingerprints may be taken by officials at the nearest United States embassy or consulate. Law enforcement agencies are not required to participate in this process, but their cooperation is strongly encouraged. Any officials 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, 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 government official;

(3) The fingerprints must be recorded on fingerprint cards distributed by the Director of the Foreign Terrorist Tracking Task Force for that purpose, or processed by other means approved by the Director of the Foreign Terrorist Tracking Task Force;

(4) The fingerprint submissions must be forwarded to the FBI in the manner specified by the Director of the Foreign Terrorist Tracking Task Force;

(5) Officials taking fingerprints should 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 state, 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 determines that compliance with the fingerprint requirement is not practicable, it may request, in writing, a waiver of the requirement, on a case-by-case basis, by contacting the Foreign Terrorist Tracking Task Force, Aviation Industry Liaison. In such a case, the Foreign Terrorist Tracking Task Force will have discretion to grant the waiver; deny the waiver; or prescribe a reasonable alternative manner of complying with the fingerprint requirement.

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

6. Adding a new § 105.14 to read as follows:

§ 105.14 Risk assessment for candidates not granted expedited processing.

(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) presents little risk to aviation or national security and therefore has established an expedited processing procedure for these aliens. Based on the information contained in each *Flight Training Candidates Checks Program* 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 *Flight Training Candidate Checks Program* form by the Provider, the Department will perform an interim 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 interim risk assessment, the candidate and/or the Provider will be notified electronically that the candidate may proceed to the Provider to receive appropriate materials to complete the fingerprinting process described in § 105.13(c) and (d). The Provider's e-mail also will provide a toll-free telephone number through which "fingerprint packets" will be provided.

(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 training request, the Department will have 45 days from the date on which all required information, including fingerprints, is submitted to conduct an appropriate risk assessment. Every effort will be made to respond to a training request in the briefest time possible. If no notification or authorization by the Department has occurred within 45 days of submission of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (d) of this section.

(c) Providers must ascertain the identity of each candidate. For

candidates who are not citizens or nationals of the United States, a Provider must inspect the candidate's passport to verify the candidate's identity before providing training; candidates who are citizens or nationals of the United States must present either a valid United States passport or a valid United States picture driver's license. 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, when appropriate, 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 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 Commissioner of the Immigration and Naturalization Service as to the identity of the alien and the determination made.

Dated: June 11, 2002

John Ashcroft,
Attorney General.

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