

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.