

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.