

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