

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.

- 105.10 Definitions, purpose, and scope.
- 105.11 Individuals not requiring a security risk assessment.
- 105.12 Notification for candidates eligible for expedited processing.
- 105.13 Notification for candidates not eligible for expedited processing.
- 105.14 Risk assessment for candidates.

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