

§ 104.62

The Special Master shall take appropriate steps to inform potential claimants of section 405(c)(3)(B) of the Act.

(b) *Pending actions.* Claimants who have filed a civil action or who are a party to such an action as described in paragraph (a) of this section may not file a claim with the Special Master unless they withdraw from such action not later than March 21, 2002.

[66 FR 66282, Dec. 21, 2001, as amended at 67 FR 11246, Mar. 13, 2002]

§ 104.62 Time limit on filing claims.

In accordance with the Act, no claim may be filed under this part after December 22, 2003.

§ 104.63 Subrogation.

Compensation under this Fund does not constitute the recovery of tort damages against a third party nor the settlement of a third party action, and the United States shall be subrogated to all potential claims against third party tortfeasors of any victim receiving compensation from the Fund. For that reason, no person or entity having paid other benefits or compensation to or on behalf of a victim shall have any right of recovery, whether through subrogation or otherwise, against the compensation paid by the Fund.

Subpart G—Measures to Protect the Integrity of the Compensation Program

§ 104.71 Procedures to prevent and detect fraud.

(a) *Review of claims.* For the purpose of detecting and preventing the payment of fraudulent claims and for the purpose of assuring accurate and appropriate payments to eligible claimants, the Special Master shall implement procedures to:

- (1) Verify, authenticate, and audit claims;
- (2) Analyze claim submissions to detect inconsistencies, irregularities, duplication, and multiple claimants; and
- (3) Ensure the quality control of claims review procedures.

(b) *Quality control.* The Special Master shall institute periodic quality control audits designed to evaluate the accuracy of submissions and the accuracy

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of payments, subject to the oversight of the Inspector General of the Department of Justice.

(c) *False or fraudulent claims.* The Special Master shall refer all evidence of false or fraudulent claims to appropriate law enforcement authorities.

PART 105—SECURITY RISK ASSESSMENTS

Subpart A [Reserved]

Subpart B—Aviation Training for Aliens and Other Designated Individuals

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AUTHORITY: Section 113 of Pub. L. 107-71, 115 Stat. 622 (49 U.S.C. 44939).

SOURCE: Order No. 2656-2003, 68 FR 7318, February 13, 2003, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Aviation Training for Aliens and Other Designated Individuals

§ 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 corrected training dates must be submitted. Any proposed change in location or Provider must precipitate a new request, although Providers may employ the assistance of other Providers or their facilities for a portion of the training, provided that the substantial majority of the training occurs at location of the Provider who submitted the request.

§ 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 otherwise 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 training in the operation of an 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:

(1) A valid, unexpired United States passport;

(2) An original or government-issued certified birth certificate with a registrar's raised, embossed, impressed or multicolored seal, registrar's signature, and the date the certificate was filed with the registrar's office, which must be within 1 year of birth, together with a government-issued picture identification of the individual named in the birth certificate (the birth certificate must establish that the person was born in the United States or in an outlying possession, as defined in section 101(a)(29) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(29)));

(3) An original United States naturalization certificate with raised seal, INS Form N-550 or INS Form N-570, together with a government-issued picture identification of the individual named in the certificate;

(4) An original certification of birth abroad with raised seal, Department of State Form FS-545 or Form DS-1350, together with a government-issued picture identification of the individual named in the certificate;

(5) An original certificate of United States citizenship with raised seal, INS Form N-560 or Form N-561, together with a government-issued picture identification of the individual named in the certificate; or

(6) In the case of training provided to a federal employee (including military personnel) pursuant to a contract between a federal agency and a Provider, the agency's written certification as to its employee's United States citizenship/nationality, together with the employee's government-issued credentials or other federally-issued picture identification.

(b) *Exception.* Notwithstanding paragraph (a) of this section, a Provider is required to provide notification to the Attorney General with respect to any individual specified 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 under § 105.12 of this part.