

DEPARTMENT OF JUSTICE**Provision of Aviation Training to Certain Alien Trainees**

AGENCY: Department of Justice.

ACTION: Notice of advance consent for providing aviation training to certain alien trainees.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act (ATSA), training providers subject to regulation by the Federal Aviation Administration (FAA) are prohibited from providing training to aliens in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General. This notice temporarily grants advance consent for the training of certain categories of aliens, without requiring that they provide identifying information to the Attorney General, based on a provisional finding that they do not constitute a risk to aviation or national security at this time.

DATES: This notice is effective January 15, 2002 and remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Steven C. McCraw, Director, Foreign Terrorist Tracking Task Force, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Telephone (703) 414-9535.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71. Upon enactment, section 113 of the ATSA imposed new constrictions on persons subject to regulation under Title 49 subtitle VII part A, United States Code, with respect to providing aviation training to aliens. Persons subject to regulation under Title 49 subtitle VII Part A, United States Code, include individual training providers, certificated carriers, and flight schools (hereinafter collectively referred to as "training providers"). Pursuant to section 113, training providers must provide the Attorney General with the alien's identification in such form as the Attorney General may require in order to initiate a security risk assessment by the Department of Justice. After notification, the Attorney General then has 45 days to inform the training provider that the alien should not be given the requested training because he or she presents a risk to aviation or national security. If the Attorney General does not indicate that the person is a risk within this 45-day review period, then the training provider may proceed with training.

The ATSA, however, permits the Attorney General to interrupt training if he later determines that the alien poses a risk to aviation or national security. The Attorney General has delegated his authority under Section 113 to the Director of the Foreign Terrorist Tracking Task Force.

The Department recognizes that section 113 of the ATSA became immediately effective, and that training providers have been forced to suspend the training of aliens covered by the ATSA pending the implementation of the process for notification to the Attorney General. The Department plans to issue any necessary implementing regulations as soon as possible. However, because the suspension of training imposes a substantial economic burden on regulated training providers, the Department is granting provisional advance consent, effective immediately, for training providers to resume aviation training for certain categories of aliens who appear to pose a risk to aviation and national security which is sufficiently minimal that the Department would not deny them training. In addition, section 113 also permits the Under Secretary of Transportation for Security to specify other individuals for whom the Department should conduct security risk assessments. At this time, however, no other individuals have been specified. The Department plans to publish implementation procedures shortly to provide a means by which training providers may notify the Attorney General with respect to covered individuals seeking aviation instruction who are not eligible for advance consent in order to initiate the Department of Justice's 45-day review period.

Provisional Advance Consent for the Training of Certain Aliens

The Department believes that the primary intent of Congress regarding the enactment of this statute was to prevent potentially dangerous aliens from being taught how to pilot aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Based on that standard, it appears that certain categories of aliens pose little such risk. For example, currently licensed pilots who seek recurrent training already know how to fly the aircraft for which they wish to maintain proficiency. Denying such retraining would appear to offer no benefit to aviation or national security. Indeed, the purpose behind recurrent training is to make flying safer for the public. The Department has identified several similar classes of aliens who appear not to pose the risk

to aviation or national security contemplated by Congress in section 113 of the ATSA. The Department will revisit this provisional advance consent when it promulgates any necessary implementing regulations to determine whether these pilots should continue to be granted advance consent.

Accordingly, effective immediately and until further notice, the Department is granting a provisional advance consent for the training of the following three categories of aliens, based on an initial determination that they do not appear to pose a risk to aviation or national security:

(1) Foreign nationals who are currently employed by U.S. air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Foreign nationals employed by foreign air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates and ratings recognized by the United States; and

(3) Commercial, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who must receive familiarization training on a particular aircraft in order to transport it to the purchaser.

Determination of Status as a U.S. Citizen or National or as an Alien

Section 113 of the ATSA applies to all aliens as defined in section 101(a)(3) of the Immigration and Nationality Act, but does not currently apply to citizens or nationals of the United States. Accordingly, training providers must make a determination as to whether or not a prospective trainee is an alien. If the prospective trainee establishes that he or she is a citizen or national of the United States, the restrictions of section 113 do not apply.

Training providers should require appropriate proof of citizenship or nationality from all trainees who claim to be citizens or nationals of the United States, before commencing aviation training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. This requirement is necessary to prevent aliens from falsely claiming to be United States citizens or nationals in order to evade the Department's security risk assessment.

The Department believes that the following documents are sufficient to establish proof of citizenship or nationality:

(1) A valid, unexpired United States passport;

(2) An original birth certificate with raised sea documenting birth in the United States or one of its territories;

(3) An original U.S. naturalization certificate with raised seal, Form N-550 or Form N-570;

(4) An original certification of birth abroad, Form FS-545 or Form DS-1350; or

(5) An original certificate of U.S. citizenship, Form N-560 or Form N-561.

If a training provider has questions about the documents above or any other documentation presented by a person who claims to be a citizen or national of the United States, the training provider may seek further guidance from the Department or the Immigration and Naturalization Service.

Commencement of Aviation Training for Aliens Granted Advance Consent

After a training provider reasonably determines that a prospective alien trainee falls within one of the three advance consent categories, the training provider may proceed with training the alien immediately and does not have to submit any identifying information to the Department. The training provider, however, should retain records to document how the training provider made the determination that the alien was eligible for advance consent. Appropriate measures will be taken by the Department with respect to any alien who is determined to pose a risk to aviation or national security. Available civil and/or criminal penalties will be pursued with respect to any training provider who knowingly or negligently provides training to aliens not covered by this notice.

Dated: January 14, 2002.

Steven C. McCraw,

Director, Foreign Terrorist Tracking Task Force.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on January 3, 2002, a proposed consent decree in *United*

States v. American Allied Additives, Inc., et al., No. 00-01014, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree would resolve the United States' claims against defendant Advanced Chemical Design, Inc. under CERCLA Sections 106 and 107, 42 U.S.C. 9606 and 9607, in connection with the American Allied Additives Superfund Site ("Site") in Cleveland, Ohio. The proposed consent decree would also resolve Advanced Chemical Design's counterclaim against the United States alleging a taking of private property in violation of the Fifth Amendment to the United States Constitution.

The U.S. Environmental Protection Agency ("EPA") incurred unreimbursed costs of approximately \$148,000 in responding to the release or threatened release of hazardous substances at the Site. Advanced Chemical Design is liable for response costs at the Site as a generator of waste disposed there and is subject to civil penalties as a result of noncompliance with a Unilateral Administrative Order issued by EPA for the performance of an emergency removal at the Site.

Under the proposed consent decree, Advanced Chemical Design agrees to pay a total of \$1,000 (\$300 for the claim under CERCLA Section 106, and \$700 for the claim under CERCLA Section 107) within thirty (30) days of entry of the consent decree. Advanced Chemical Design also agrees to dismiss with prejudice its counterclaim against the United States. In exchange, Advanced Chemical Design will receive a covenant not to sue for Site response costs, and for civil penalties for the violations alleged in the complaint. Advanced Chemical Design will also receive contribution protection for Site response costs.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments related to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to *United States v. American Allied Additives, Inc., et al.*, Civil Action No. 00-01014; D.J. Ref. No. 90-11-2-1318.

The consent decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, Cleveland, Ohio 44114, and at the U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the consent decree

may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of \$5.75 (23 pages at 25 cents per page reproduction cost), and please refer to *United States v. American Allied Additives, Inc., et al.*, Civil Action No. 00-01014; D.J. Ref. No. 90-11-2-1318.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a partial consent decree in *United States v. American Scrap Company*, Civil Action No. 1:99-CV-2047, was lodged with the United States District Court for the Middle District of Pennsylvania on October 1, 2001. This notice was previously published in the **Federal Register** on October 15, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in mail service to the Department of Justice, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been delivered to the Department of Justice. As a result, the United States is providing this opportunity for any persons who previously submitted comments to resubmit their comments as directed below.

The Partial Consent Decree resolves the United States' claims against Chemung Supply Corporation ("Settling Defendant") under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania. The Partial Consent Decree requires the Settling Defendant to pay \$210,000.00 in past response costs.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree that were previously submitted during the original comment period. Any persons who previously submitted comments should resubmit those comments by facsimile (at 202-