

of section 733(b) of the Act.<sup>9</sup> Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 5, 2001.<sup>10</sup> The hearing was held in Washington, DC, on December 14, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 4, 2001. The views of the Commission are contained in USITC Publication 3486 (February 2002), entitled *Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom: Investigations Nos. 701-TA-409-412 and 731-TA-909 (Final)*.

Issued: February 4, 2002.

By order of the Commission.

**Marilyn R. Abbott,**

*Acting Secretary.*

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## DEPARTMENT OF JUSTICE

### Provision of Aviation Training to Certain Alien Trainees, Additional Categories of Provisional Advance Consent

**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 February 8, 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 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.

On January 16, 2002, the Department published a notice in which it granted advance consent for certain categories of aliens to begin aviation training (the "First Advance Consent Notice"). 67 FR

2238 (Jan. 16, 2002). As discussed in that notice, the Department recognized 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. Because the suspension of training imposed a substantial economic burden on regulated training providers, the Department granted provisional advance consent, effective January 15, 2002, for training providers to resume aviation training for certain categories of aliens who appeared to pose a risk to aviation and national security which was sufficiently minimal that the Department would not deny them training. This notice supercedes the notice published in the **Federal Register** on January 16, 2002. 67 FR 2238 (Jan. 16, 2002). Any training commenced in compliance with that notice, however, remains valid and may continue.

### Provisional Advance Consent for the Training of Certain Aliens

Since publication of the First Advance Consent Notice, the Department has continued to analyze the types of aliens seeking aviation training. The Department continues to believe 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 determined that advance consent for aviation training could be granted to additional categories of aliens who appear not to pose the risk to aviation or national security contemplated by Congress in section 113 of the ATSA. The new categories of aliens identified by the Department have some overlap with respect to the three categories previously identified in the First Advance Consent Notice. Therefore, in order to prevent confusion, this notice supercedes the First Advance Consent Notice. Any training commenced in compliance with the First Advance Consent Notice, however, remains valid and may

<sup>9</sup> 19 U.S.C. 1673b(b). Following final determinations by Commerce of sales at not less than fair value for imports of low enriched uranium from Germany, the Netherlands, and the United Kingdom (66 FR 65886, December 21, 2001), the Commission terminated investigations Nos. 731-TA-910-912 (Final) effective December 21, 2001 (67 FR 344, January 3, 2002).

<sup>10</sup> 66 FR 46467, September 5, 2001. Subsequently, the Commission published notice of a revised schedule for the investigations and public hearing (66 FR 57986, November 19, 2001).

continue. 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.

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

(1) Foreign nationals 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 for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Military pilots or other crew members who are being provided training by a component of the Department of Defense or the U.S. Coast Guard, or pursuant to a contract awarded by a component of the Department of Defense or the U.S. Coast Guard;

(3) Military pilots or other crew members who are being provided training pursuant to an export authorization of the Department of State, provided such authorization was issued prior to February 1, 2002 and that the training was scheduled to commence prior to April 1, 2002; and

(4) Commercial, governmental, 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 or recipient, provided that the training provided be limited to familiarization and not basic flight instruction.

The categories covering military pilots were devised after consulting with the Departments of Defense and State. Based on these consultations, the Department believes that military pilots training under the auspices of the Department of Defense or Coast Guard are thoroughly investigated prior to training and pose no risk to aviation or national security. Aliens being trained pursuant to export authorizations of the Department of State, however, are not always investigated to the same extent. As a result, the Department is limiting the advance consent for this category to certain aliens already scheduled for training, as these were not found to constitute a risk to aviation or national security.

#### **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 seal 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.

(6) In the case of training provided to a federal employee pursuant to a contract between a U.S. Government agency and a training provider, the agency's written certification as to its employee's U.S. citizenship may be accepted as sufficient proof of such citizenship.

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, the Immigration and Naturalization Service, or the appropriate federal agency.

#### **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 four 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: February 4, 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 Clean Water Act**

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Oleander Company, Inc. and Nelson MacRae* was lodged with the United States District Court for the Eastern District of North Carolina on December 20, 2001. The proposed Consent Decree concerns alleged violations of sections 301(a), 402, and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1342 and 1344, resulting from Defendant's unauthorized discharge of pollutants into waters of the United States at a site of New Hanover County, North Carolina, North Carolina.

The proposed Consent Decree would require restoration or mitigation of affected wetlands, filling of ditches, payment of civil penalties totaling \$15,000, and preservation of approximately 40 acres of wetlands as part of a Supplemental Environmental Project.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this Notice. Comments should be faxed to 202.514.8865 to the attention of S. Randall Humm, Attorney, United States Department of Justice, Environmental Defense Section, PO Box 23986, Washington, DC 20026-3986, and should refer to *United States v. Oleander Company, Inc. and Nelson MacRae*.