managers or directors that is elected or appointed by the owners, and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, as a board of directors of a bank chartered as a corporation in the State;

(3) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(4) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms ''stockholder'' and ''shareholder'' includes an owner of any interest in a bank chartered as an LLC, including a member or participant;

(2) The term ''director'' includes a manager or director of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of a director of a corporation;

(3) The term ''officer'' includes an officer of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms ''voting stock,'' ''voting shares,'' and ''voting securities'' includes ownership interests in a bank chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

By order of the Board of Directors.

Dated in Washington, DC, this 31st day of January, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Resolution

Whereas, the Board of Directors (''Board'') of the Federal Deposit Insurance Corporation (''FDIC'') is responsible for administering the Federal Deposit Insurance Act (''FDI Act''); and

Whereas, the FDIC is authorized under section 5 of the FDI Act (12 U.S.C. 1815) to approve or disapprove applications for deposit insurance for State banks as well as other depository institutions; and

Whereas, in order for a banking institution to qualify as a ''State bank'' eligible to apply for deposit insurance, section 3(a) of the FDI Act (12 U.S.C. 1813(a)) generally requires that it be engaged in the business of receiving deposits other than trust funds and that it be ''incorporated under the laws of any State''; and

Whereas, the FDI Act does not define the term ''incorporated,'' and there is some uncertainty as to the meaning of the term ''incorporated''; and

Whereas, on July 23, 2002, the Board authorized the publication in the **Federal Register** of a proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies, describing the circumstances under which a bank chartered as a limited liability company would be considered to be ''incorporated'' and, therefore, eligible to apply for deposit insurance; and

Whereas, the Board requested public comment on the proposed rule and received 23 comment letters, and

Whereas, the staff has reviewed and the Board has considered the comments submitted by the public in response to the proposed rule; and

Whereas, the staff has recommended that the Board adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies as set forth in the attached **Federal Register** document; and

Whereas, the Board has decided to adopt the proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies as a final rule with certain modifications.

Now, therefore, be it resolved, that the Board does hereby adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies amending 12 CFR part 303 in the manner set forth in the attached **Federal Register** document.

Be it further resolved, that the Board hereby authorizes publication in the **Federal Register** of the attached final amendment to part 303.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the attached final rule to be published in the **Federal Register** in a form and manner satisfactory to the General Counsel, or his designee, and the Executive Secretary, or his designee.

Be it further resolved, that the Board hereby delegates authority to the General Counsel, or the General Counsel's delegate(s), and to the Executive Secretary, or the Executive Secretary's delegate(s) to make technical, non-substantive changes to the text of the attached **Federal Register** document.

[FR Doc. 03–3387 Filed 2–12–03; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA26

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final Rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is adopting an amendment to Appendix A to Subpart B of 12 CFR part 1750 Risk-Based Capital. The amendment, which more accurately incorporates and implements Financial Accounting Standard 133 in the stress test, is intended to enhance the accuracy of the calculation of the risk-based capital requirement for the Enterprises.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accounting Specialist, Office of Risk Analysis and Model Development, telephone (202) 414–3796 or Marvin L. Shaw, Senior Counsel, telephone (202) 414–8913 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1]

On September 12, 2002, OFHEO published a notice of proposed rulemaking (NPRM), 67 FR 57760, which proposed twelve technical and corrective amendments to the Rule.

[1] Risked-based Capital, 66 FR 47730 (September 13, 2001, 12 CFR part 1750, *as amended,* 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002), 67 FR 66533 (November 1, 2002).

These proposed amendments were intended to make minor technical corrections to the Rule, and to account more appropriately for Financial Accounting Standard No. 133 (FAS 133).[2] This amendment does not alter the FAS 133 accounting standard; it simply corrects the manner in which FAS 133 is incorporated into the stress test. Although the NPRM was subject to a ten-day comment period, OFHEO reopened and extended the comment period regarding the two FAS 133-related proposed amendments, noting that it might move to final action on any of the other ten.[3] On November 1, 2002, OFHEO published a final rule, which adopted eight of the technical and corrective amendments.[4] OFHEO is adopting three of the other amendments in today's final rule.[5]

Comments

OFHEO received comments in response to the NPRM from Fannie Mae, Freddie Mac, FM Watch, and the Honorable Richard H. Baker. In response to the September 30 notice that extended the comment period, OFHEO subsequently received one supplemental comment, which was submitted by FM Watch. The comments addressed the appropriateness of the proposed amendments related to FAS 133. Commenters also addressed procedural issues such as the effective date for the proposed amendments related to FAS 133 and the AOLTV Table, the length of the comment period, and the use of guidelines to supplement the Rule. Commenters also addressed issues related to regulatory impacts, particularly whether the proposal was ''economically significant'' under Executive Order 12866 and whether the proposal complies with the OFHEO's and the Office of Management and Budget's (OMB's) guidelines on information quality.

[2] Financial Accounting Standards Board Statement of Financial Accounting Standards No. 133, ''Accounting for Derivative Instruments and Hedging Activities,'' June 1998.

[3] Risk-based Capital, 67 FR 61300 (September 30, 2002).

[4] Risk-based Capital, 67 FR 66533 (November 1, 2002).

[5] OFHEO has determined that it is appropriate to delay adopting the amendment that would correct the description of ''unamortized balance'' in Table 3–56 and Table 3–57 (amendment #7 in the NPRM), because that same term appears in numerous other places throughout the rule. OFHEO is conducting a systematic review of the entire Rule to ensure that this term is used and defined consistently. In the meantime, users of the stress test code will not be affected, because the Risk-based Capital Report Instructions, which are used to prepare data for the model, are correct.

Discussion of Issues

1. FAS 133

The NPRM included two changes to reflect the impact of FAS 133 on the stress test. The first of these, number 11 in the NPRM preamble, would modify the calculation of common stock dividends to reflect the effects of FAS 133 adjustments on after-tax income. The second, number 12 in the NPRM preamble, would modify the calculation of risk-based capital to account more fully for changes that FAS 133 required in the computation of Total Capital. As explained below, after considering all the comments on the proposed FAS 133-related changes, OFHEO has determined that the changes are appropriate and timely and is adopting them as proposed. Changes in the language from the proposed amendments clarify the rule, but have no substantive affect.

All five comment letters addressed the FAS 133-related changes. Both Enterprises were supportive of the changes, but suggested that OFHEO not waive the 30-day delay in effective date that is ordinarily required of final rules. Congressman Baker's letter voiced concern that the impact on the Enterprises' capital from amendment number 12 was so significant that OFHEO should extend the comment period.[6]

As noted above, FM Watch provided two comment letters. The first, which was submitted within the initial 10-day comment period, requested additional time for comment and urged OFHEO to delay action on the changes related to FAS 133 until OFHEO had more data on the affect of those changes on the Enterprises' risk-based capital. The letter also questioned whether the thirty percent add-on for management and operations risk should be applied after, rather than before FAS 133-related adjustments were made to the capital requirement. In FM Watch's second letter, received during the extended comment period, it stated that without additional background as to the implications OFHEO anticipates from the amendment, FM Watch was unable to provide informed comments on the proposal. The second letter, therefore, largely reiterated its earlier comments on the FAS 133-related amendments and requested that OFHEO defer action until additional quarters of data on the financial impact of the changes are available.

None of the comment letters took issue with the need for or the importance of the proposed FAS 133-related changes. Two commenters believed it necessary to delay action until the impact of the changes on the Enterprises' capital could be measured for a few more quarters. Neither, however, recommended that the change should not be implemented eventually. Nor did any commenter suggest that the proposed changes did not tie capital more closely to risk or that there was a better alternative methodology.

[6] *Id.* note 3.

Commentary regarding the final rule's effective date was unanimous in supporting a delayed effective date for implementation of these amendments. The Administrative Procedure Act, 5 U.S.C. 552(d), provides that the effective date for substantive rules will be delayed at least 30 days after publication, except in certain circumstances not applicable in this case. Accordingly, OFHEO has determined these changes take effect 30 days after the notice is published in the **Federal Register**. The effect of this determination is that OFHEO will incorporate these amendments related to FAS 133 in the capital calculation process starting with data submitted by the Enterprises for the fourth quarter of 2002, which OFHEO anticipates receiving from the Enterprises in early 2003. The first capital classification under the amended rule will occur approximately two months after publication.

Two of the comments suggested that the proposed change related to the effect of FAS 133 on total capital may be in error by adding the effects of FAS 133 after the thirty percent add-on for management and operations risk. After consideration of these comments, OFHEO has decided to utilize the methodology proposed in the NPRM.

As explained in greater detail in the NPRM preamble, the stress test, in essence, measures the amount of capital that would be consumed by an Enterprise during the ten-year stress period. This amount of capital is referred to in the amended regulation as ''stress-test capital.'' The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (1992 Act) provides that stress-test capital should be increased by thirty percent to account for management and operations risk. The proposed amendment follows exactly that approach. However, the statute also requires that the risk-based capital requirement be expressed as an amount of ''total capital,'' which can be compared to an Enterprise's current total capital to determine whether a deficiency exists. Because total capital is adjusted up or down before the start of the stress test to delete the impact of

FAS 133, it is appropriate to make the opposite adjustment at the end of the calculation, so as to compare apples with apples (or total capital with total capital).[7] Adding the FAS 133 impact in before the thirty percent add-on, as FM Watch suggests, would cause the adjustment at the end to be thirty percent greater than the adjustment at the beginning, overstating the value (in either a positive or negative direction) of the derivatives in an Enterprise's portfolio. OFHEO has not found that modifying its proposed approach in that manner would improve the sensitivity of the stress test to risk. Further, no commenter has identified a compelling rationale for such a change.

FM Watch contends that OFHEO lacks authority under the 1992 Act to add in the FAS 133-related adjustment after the 30 percent add-on. However, the Act expresses no such limitation on OFHEO's broad discretion to determine appropriate losses or gains on interest rate hedging activities, which are, in part, reflected in the changes in derivatives market value that FAS 133 adds to total capital. 12 U.S.C. 4611(a)(4).

2. Use of Guidelines

OFHEO proposed to amend the rule by replacing a static table containing fixed weighted average amortized original LTV (AOLTV) values with a notation that the table would be updated as necessary with a guideline (Guideline 404) that would be available on OFHEO's web site. Other guidelines related to Risk-Based Capital include Guideline 402 ''Interest Rates'' and Guideline 403 ''Average Loan Size.''

Freddie Mac stated that OFHEO is required by statute to issue all provisions related to risk-based capital requirements through notice-and-comment rulemaking, as opposed to OFHEO's reference to guidelines. Specifically, Freddie Mac believes that the Rule must include detailed descriptions of the precise methodologies that such guidelines would apply. Freddie Mac further stated that a change in a guideline should be effective only as of the end of the first reporting period beginning 60 days or more after the publication of such change.

OFHEO disagrees with Freddie Mac's view that guidelines are inappropriate. OFHEO believes that guidelines are necessary and appropriate for various aspects of implementing the Risk-Based Capital Requirement, provided the guideline addresses the finer details of the stress test where OFHEO requires the flexibility to make rapid or frequent changes, such as updating index changes. Such guidelines, which are used by other financial regulators, allow rapid response to rapidly changing circumstances and can be incorporated into the rule at a later date if such an incorporation appears advisable.

As to the effective dates for guidelines, OFHEO does not feel it necessary to announce a fixed rule. In the event that a new guideline or change to a guideline might impact capital significantly, OFHEO will consider the need for the Enterprises to plan their business strategies with capital requirements in mind. In this case, the Enterprises have had sufficient notice of Guideline 404, given its minor impact, to adapt to it. Accordingly, OFHEO has determined that a 30-day delay in effectiveness is adequate.

3. Comment Period

Congressman Baker and FM Watch requested a longer period of time for public comment on the proposed change related to FAS 133. In response to these requests, OFHEO extended the comment period until October 29, 2002. This extension allowed the public approximately six weeks to comment on the initial proposal. Only one commenter, FM Watch, submitted a comment during the extended comment period. Its comment simply amplified its earlier position.

4. Other Comments

Other comments received are beyond the scope of the amendment. Because these comments are not relevant to the substance of the proposal, they are not addressed in the preamble.

Regulatory Impacts

Executive Order 12866

OMB determined that these amendments are ''significant'' for purposes of review under EO 12866.

Two commenters questioned OFHEO's conclusion that the FAS 133 amendments are not economically significant within the meaning of Executive Order 12866. Both comments referred to the fact that the changes would have impacted Freddie Mac's risk-based capital requirement by more than $1.6 billion in a recent period. Neither comment, however, contends that the rule has resulted in costs to the Enterprises in excess of $100 million. Because the minimum capital requirement would have required more capital than the amended risk-based requirement in that period, the change would not have required Freddie Mac to raise any additional capital. Therefore, the commenters have not demonstrated that the change would have created cost for Freddie Mac. However, even if the amendment were to have the affect in some future period of requiring an Enterprise to raise capital or otherwise alter its hedging strategies, it is speculative to opine at this point that, in the absence of this amendment, the Enterprise would not have recognized the capital problem with its internal stress tests and taken equally expensive measures to deal with it.

Further, this essentially technical change, required to implement accounting standards imposed by a separate regulatory authority, does not raise the type of economic issues for which the detailed cost/benefit analysis required by the Executive Order was intended. No commenter has suggested that there is some less expensive means of implementing FAS 133 in the risk-based capital regulation or that OFHEO should continue to account for FAS 133 improperly.

Nevertheless, given the fact that this regulation is new and only recently became fully enforceable, OMB has exercised its discretion to review the FAS 133-related amendments formally to determine whether they have any important policy implications for the Administration or other Federal agencies.

OMB Information Quality Guideline

An additional issue raised by FM Watch concerned the application of OFHEO's recently issued ''Final Guidelines for Ensuring Quality of Disseminated Information and Procedures for Correction by the Public'' (67 FR 63672, September 15, 2002) (the Information Quality Guideline). In its letter, FM Watch indicates that the Rule may not be consistent with OFHEO's Information Quality Guideline because (i) in the two-day period between the posting of the amendment on the OFHEO Web site and publication in the **Federal Register** OFHEO revised the estimated impact of the FAS 133 amendments and (ii) FM Watch was unable to replicate OFHEO's

[7] Mathematically, the same result could be achieved by simply comparing starting capital (the capital at the beginning, ''time zero,'' of the stress period) to stress test capital plus thirty percent. This was the way OFHEO had structured the calculation until FAS 133 altered the composition of total capital by including some changes in the market value of derivatives. OFHEO determined that it is unnecessarily complex to estimate market values throughout the stress test and, therefore, adjusted the starting amount of total capital to remove the market value changes. In order to provide a risk-based capital requirement that can be compared directly to actual, or unadjusted, ''total capital,'' it is necessary to reverse-adjust stress test capital (which does not include market value changes) by adding back the market value changes that were removed at the start of the stress test.

conclusions. OFHEO notes that its revision to the estimate of the impact of the change was not a violation of the guidelines in this area. The initial error was rectified immediately and the correct information was published in the **Federal Register** and was available to all commenters during the entire comment period. With respect to the issue of replicability, the stress test model set forth in the Rule has been replicated by the Enterprises and largely incorporated into their operations. The ability of the Enterprises' to replicate the model demonstrates that OFHEO has met the burden imposed by both OFHEO's and OMB's data quality guidelines. OFHEO will continue to assist others to replicate the stress test by making available the stress test computer code and by publishing a stylized data set for their use in testing and replication.

Paperwork Reduction Act

These amendments do not contain any information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that this regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–59 in paragraph 3.7.2.3;

b. Revise paragraph 3.10.3.2 [a] 2.; and

c. Add new paragraph 3.12.3 [a] 9. after paragraph 3.12.3 [a] 8.

Appendix A to Subpart B of Part 1750-Risk-Based Capital Test Methodology and Specifications

* * * * *

3.7.2.3 * * *

TABLE 3–59—AGGREGATE ENTERPRISE AMORTIZED ORIGINAL LTV ($AOLTV_0$) DISTRIBUTION [1]

Original LTV	UPB Distribution	Wt Avg AOLTV for Range
00<LTV<=60		
60<LTV<=70		
70<LTV<=75		
75<LTV<=80		
80<LTV<=90		
90<LTV<=95		
95<LTV<=100		
100<LTV		

[1] **Source:** RBC Report, combined Enterprises single-family sold loan portfolio. Table 3–59 is updated as necessary with combined Enterprises single-family sold loan group data from the RBC Report in accordance with OFHEO guideline #404. The contents of the table appear at *http://www.OFHEO.gov.*

Note: Amortized Original LTV (also known as the ''current-loan-to-original-value'' ratio) is the Original LTV adjusted for the change in UPB but not for changes in property value.

* * * * *

3.10.3.2 * * *

[a]* * *

2. *Common Stock.* In the first year of the Stress Test, dividends are paid on common stock in each of the four quarters after preferred dividends, if any, are paid unless the Enterprise's capital is, or after the payment, would be, below the estimated minimum capital requirement.

a. *First Quarter.* In the first quarter, the dividend is the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding.

b. *Subsequent Quarters.*

(1) In the three subsequent quarters, if the preceding quarter's after tax income is greater than after tax income in the quarter preceding the Stress Test, (adjusted by the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the larger of (1) the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) the average dividend payout ratio for common stock for the four quarters preceding the start of the Stress Test times the preceding quarter's after tax income (adjusted by the reciprocal of the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) less preferred dividends paid in the current quarter. In no case may the dividend payment exceed an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter.

(2) If the previous quarter's after tax income is less than or equal to after tax income in the quarter preceding the Stress Test (adjusted by the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the lesser of (1) the dividend per share ratio for common stock for the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter, but not less than zero.

* * * * *

3.12.3 * * *

[a]* * *

9. Subtract the net increase (or add the net decrease) in Retained Earnings related to Fair Value Hedges at the start of the stress test made in accordance with section 3.10.3.6.2[a]1.b. of this appendix.

Dated: January 24, 2003.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–2082 Filed 02–12–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 105

[OAG 104; AG Order No. 2656–2003]

RIN 1105–AA80

Screening of Aliens and Other Designated Individuals Seeking Flight Training

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act, certain aviation training providers subject to regulation by the Federal Aviation Administration are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless the aviation training provider notifies the Attorney General of the identity of the candidate seeking training and the Attorney General does not notify the aviation training provider within 45 days that the candidate presents a risk to aviation or national security. On June 14, 2002, the Department issued two rulemaking documents, a proposed rule and an interim final rule, requesting comments on both documents.

This final rule implements the Flight Training Candidate Checks Program, by which aviation training providers will provide the required notification for specific categories of flight training candidates. The final rule also sets forth how aviation training providers may begin or resume instruction for candidates whom the Attorney General has determined do not present a risk to aviation and national security as a result of the risk assessment conducted pursuant to section 113 of the Aviation and Transportation Security Act.

DATES: *Effective date:* This rule is effective March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert E. Casey, Jr., Director, Foreign Terrorist Tracking Task Force, Mailbox 27, FBI Headquarters, 935 Pennsylvania Avenue, NW., Washington, DC 20535, Telephone (703) 414–9777.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (''ATSA''), Pub. L. No.107–71. Upon enactment, section 113 of ATSA, 49 U.S.C. 44939, imposed notification and reporting requirements on certain persons who provide aviation training (hereinafter referred to as ''Providers'') to aliens and other specified individuals. The Department recognized that section 113 of ATSA became immediately effective upon enactment and that Providers had been forced to suspend the training of aliens covered by ATSA pending the implementation of a process for notification to the Attorney General and a determination whether the individual seeking training presents a risk to aviation or national security. The Department issued a notice on January 16, 2002 (''First Advance Consent Notice''), that stated that the Department was granting provisional advance consent for the training of three categories of aliens, based on an initial determination that persons in these categories did not appear to present a risk to aviation or national security. 67 FR 2238 (Jan. 16, 2002). The First Advance Consent Notice was superseded and the categories of advance consent modified in a notice published on February 8, 2002 (''Second Advance Consent Notice''). 67 FR 6051 (Feb. 8, 2002). The Second Advance Consent Notice was rescinded as of June 14, 2002, with the publication of the interim final rule, which instituted ''expedited processing'' in lieu of advance consent for certain alien pilots. 67 FR 41140 (June 14, 2002).

The Department also issued a proposed rule on the same date. 67 FR 41147 (June 14, 2002). The proposed rule set forth the manner in which candidates not eligible for expedited processing would be able to seek aviation training in compliance with section 113 of ATSA. Comments were invited on both the interim final rule and the proposed rule.

The Department received numerous comments from concerned individuals and organizations, including over 20 lengthy submissions. These comments covered numerous areas and all comments were considered. Many recommendations were adopted or taken into account in the preparation of this final rule. In addition, the Department made several stylistic changes to improve the clarity of the rule. A discussion of the comments follows.

1. Advance Consent

A number of commenters expressed the view that the Department should institute the former ''advance consent'' provisions, under which candidates who were both fully licensed and qualified pilots of large aircraft could obtain training without being subject to any risk assessment or background check. It was the opinion of these commenters that checks of these particular candidates serve no legitimate national security interest and merely create a deterrent for foreign candidates to train in the United States.

While the congressionally mandated requirements may have the unintended consequence of deterring some foreign nationals from seeking training from U.S. Providers, section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, the Department believes that the burden of complying with the regulations is comparatively small in relation to the benefits to security. During the brief time in which the expedited processing checks have been in effect, the process has resulted in the discovery and arrest of a number of persons for violations of the immigration and nationality laws, or on the basis of outstanding criminal warrants. The Department believes that the discovery of numerous immigration-related and criminal offenders among the expedited process candidates militates in favor of a thorough check system for all training candidates.

2. Expedited Processing

With regard to the expedited processing regulations that were issued after the advance consent notice, one commenter suggested that ''[a]ir carrier employees under employment contracts with U.S. air carriers that are issued FAA Operations Specifications should be handled differently than those not employed by U.S. air carriers.'' In support of this comment, the commenter noted that an individual hired by an American air carrier must provide detailed professional, medical, and other information to satisfy Federal Aviation Administration (''FAA'') requirements.

The commenter also suggested that the requirement that training dates be specified in advance denied Providers and pilots much-needed flexibility in complying with continuing training requirements. The commenter stated that ''to force the air carriers to list an individual training date, to insist on an individual training course, to specify the exact time and date that a training event will be conducted * * * is not in the intent, or the letter of the Law.''

The Department notes that while the FAA's system does contain certain security features, it is not focused on terrorism prevention in the same way as